



## ***Preserving and Promoting Professional Certification***

***Monday, March 28, 2022***



**Moderated by:**  
**Maine State Representative**  
**Kristen Cloutier**



**Featuring:**  
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**Pillsbury Winthrop**  
**Shaw Pittman LLP**



**Featuring:**  
**Tom Granatir**  
**Senior Vice President of Policy**  
**and External Relations**  
**American Board of Medical Specialties**



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- **Please take a moment to introduce yourself in the Chat Box.**
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**Women In Government**



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# Presenting Organizations



PROFESSIONAL  
CERTIFICATION  
COALITION



American Board  
of Medical Specialties

*Higher standards. Better care.®*



**Preserving and Promoting Professional Certification**  
**#StrongEconomies**

**Moderated by:**



**Maine State Representative**  
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# About Professional Certification

## Key Elements



- Voluntary
- Granted by non-governmental organizations
- Reflect established standards defined by subject matter experts
- Credentials require establishing necessary qualifications and adhering to conduct codes

## Key Benefits



- Promotes competition and informed choice
- Enables the public to distinguish between qualified and unqualified professionals
- Prospective professionals can identify necessary skills and demonstrate mastery

# Enforcement Function of State Regulators

- Some **licensure requirements incorporate private certification competency standards**
- **Competency standards protect the public** — standards defined by subject matter experts
- **Content** of standards best established by non-governmental professional certification program
- **Enforcement** of standards more effective by the licensing agency



# Certifications and Licensure Promote Opportunity

- According to a 2017 [Working Paper](#) from the *Human Capital and Economic Opportunity Global Working Group of the University of Chicago*, both **certification** and **occupational licensure** reduce the racial wage gap among men by 43% and the gender wage gap between women and white men by 36%-40%.

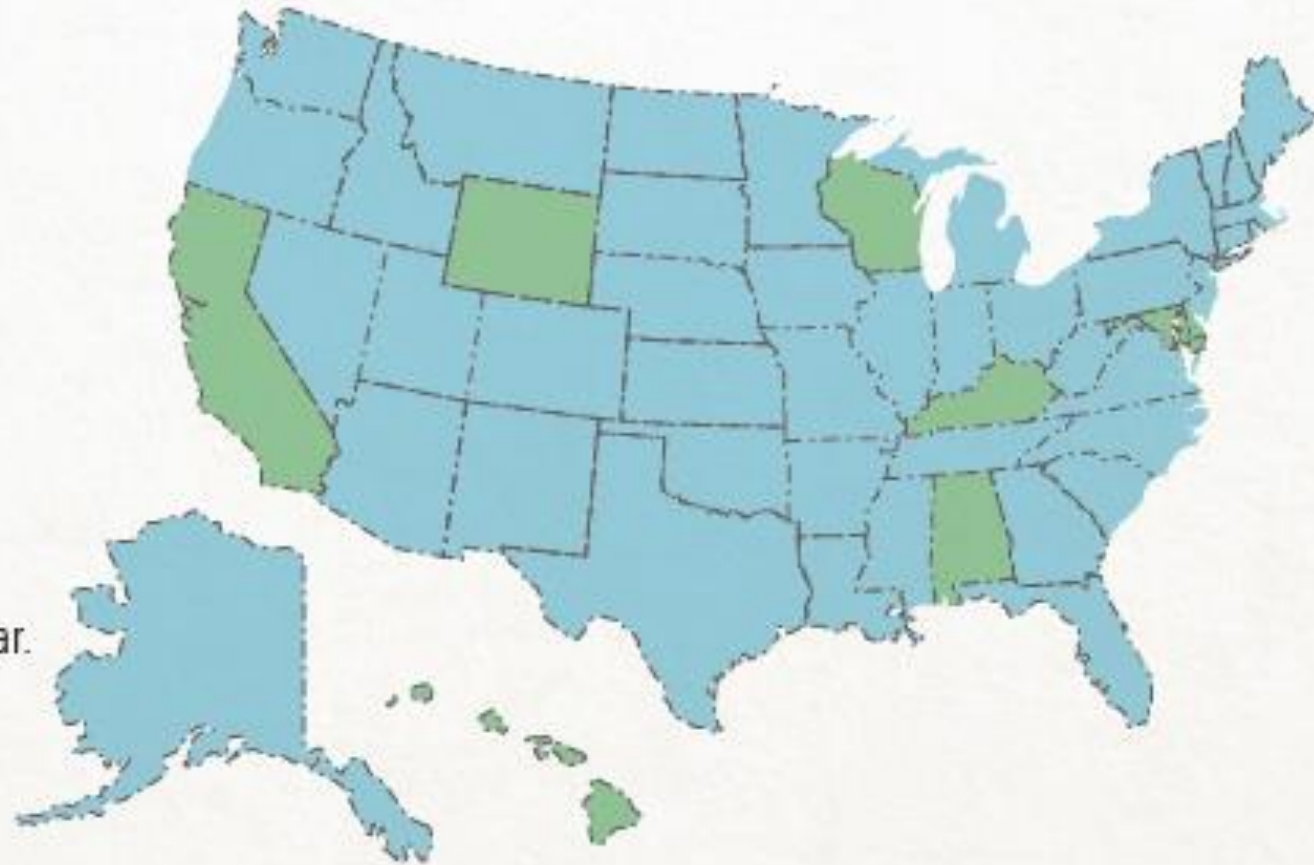




# PCC State Legislative and Regulatory Monitoring

In the 2020-2021 fiscal year, the PCC analyzed and tracked more than **140 bills** introduced in more than **43 states**.

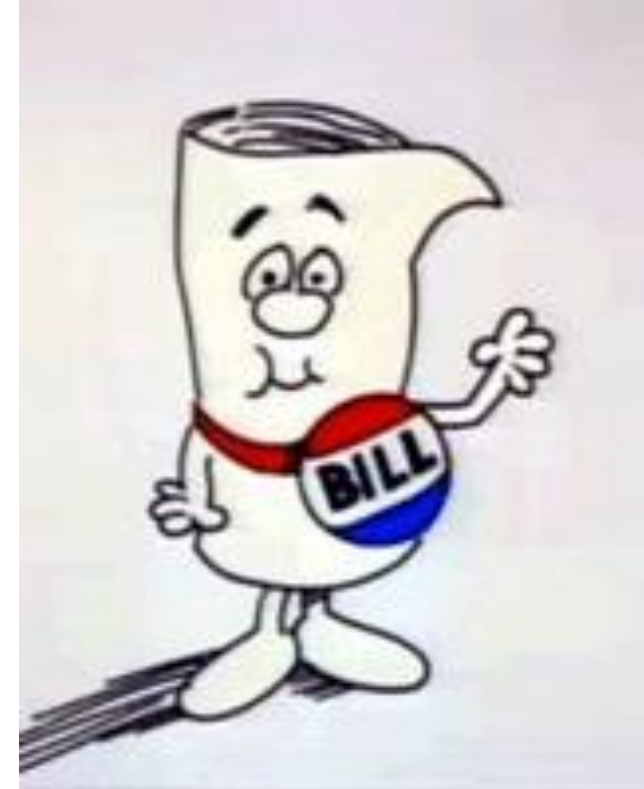
- States that introduced bills on the PCC's watchlist.
- States with no watchlist bills in the 2020-2021 fiscal year.



# Key Areas of Concern

Legislation that restricts the authority of licensing boards and certification organizations to enforce eligibility and conduct standards or to uphold profession-specific values.

1. Universal/Reciprocal Licensure
2. Occupational Licensing Reform
3. Ex-Offender Reentry Legislation
4. Clean Slate Legislation
5. Barring Discipline for Violating Professional Values



# Universal/Reciprocal Licensure Principles

1. **Profession-specific action** rather than automatic, sweeping recognition.
2. Permit reciprocity only if substantial similarity between requirements, knowledge, and scope of practice.
3. Joint oversight for in-state and out-of-state licensing agencies.
4. Any alternative pathways must reflect **substantially equivalent education, training, exam, credential, and experience requirements**, not just work experience.
5. Consider residency requirements.



# Occupational Licensing Reform Principles

- Private certification organizations have **First Amendment right to define and enforce their own standards.**
- Ensure **balanced standards** for determining whether an occupational licensing regime for a certain field should be maintained or adopted.
- Recognize that the **public expects licensure laws to set a higher bar** than protecting against gross negligence and injury.
- Avoid **title restrictions** (“certified” or “registered”) for earned non-governmental credentials.



# Ex-Offender Reentry Legislation Principles

- Conduct requirements often overlap with legal requirements.
- Restricting consideration of criminal convictions based solely on whether they are felonies or misdemeanors disregards that the underlying conduct may be the same.
- Where private certification is a condition of licensure, reflects judgment that the **standards established by the credentialing organization are necessary to protect the public.**
- **To protect the public from unacceptable risks**, some criminal convictions permanently and automatically disqualify offenders from holding certain professional certifications.



# “Clean Slate” case study: CT Public Act No. 21-32



- **Automatic erasure** of criminal conviction history for individuals with certain criminal convictions — based only on the passage of time
  - **7 years** after most recent conviction for a misdemeanor
  - **10 years** after most recent conviction for certain class D or E felonies, or unclassified felonies with prison terms of five years or less
- Only exceptions: family violence crimes, nonviolent sexual offenses, and sexually violent offenses
- Erasure even if pending charges for reoffending, but individual has not yet been convicted
- No evidence of rehabilitation required

# “Clean Slate”: CT Public Act No. 21-32

- Added twist:

Makes it a **discriminatory practice** for a membership association, board, or organization of regulated professionals “to refuse to accept a person as a member...solely on the basis of that person’s erased criminal history record information.”



# “Clean Slate” Legislation: In General

- Arguments in favor:
  - Ex-offenders unnecessarily denied access to career paths
  - Criminal conviction history stigma disproportionately affects POC and economically disadvantaged
  - Access/fairness concerns about individualized approach
- Bipartisan interest in removing barriers to opportunities for ex-offenders



# “Clean Slate” Bills: Considerations

- Cookie-cutter approach to dissimilar professions and offenses



- Places **blinkers on licensure agencies** about potentially relevant conduct
  - **Fraud crimes/crimes of opportunity** may be relevant to many licensed professions
  - Example: **Medicaid fraud** – details of offense matter for **patient safety**
- One bad outcome could set back all ex-offender reentry laws

# “Clean Slate” alternative approaches

- **Completion of sentence**, not date of conviction, starts clock for automatic erasure/sealing based on passage of time.
- Delay of automatic erasure/sealing if **pending charges**.
- **Broaden categories of offenses excluded from automatic erasure.**
- **Allow licensing agencies to consider sealed/erased records of offenses that would violate licensee conduct standards**
  - Maine LD 1465; bar on considering convictions after 3 years, unless conduct is otherwise a ground for disciplinary action against a licensee

# Misinformation, Professionalism, and Professional Self-Regulation

Tom Granatir  
American Board of Medical Specialties  
Senior Vice President, Policy and External Affairs

# ABMS Member Boards

**24** Independent Member Boards | **40** Specialties | **88** Subspecialties  
Over **950,000** Board-Certified Physicians | Over **650,000** in Continuing Certification

**1933** Founding Member Boards:

American Board of Dermatology  
American Board of Obstetrics and Gynecology  
American Board of Ophthalmology  
American Board of Otolaryngology – Head and Neck Surgery

**1935** American Board of Orthopaedic Surgery

American Board of Pediatrics  
American Board of Psychiatry and Neurology  
American Board of Radiology  
American Board of Urology

**1936** American Board of Internal Medicine

American Board of Pathology

**1937** American Board of Surgery

**1940** American Board of Neurological Surgery

**1941** American Board of Anesthesiology  
American Board of Plastic Surgery

**1947** American Board of Physical Medicine and Rehabilitation

**1949** American Board of Colon and Rectal Surgery  
American Board of Preventive Medicine

**1969** American Board of Family Medicine

**1971** American Board of Allergy and Immunology  
American Board of Nuclear Medicine  
American Board of Thoracic Surgery

**1979** American Board of Emergency Medicine

**1991** American Board of Medical Genetics and Genomics

# Medical training, licensure, and certification

US Medical school (UME)

Foreign Medical School (IMG)  
ECFMG Certification

ACGME Accredited Residency

US Medical Licensing Exam

Licensure – undifferentiated by specialty

Certification in Specialty and subspecialty

Continuing Certification

Continuing Medical Education

# ABMS-ACGME Core Competencies

Medical Knowledge

Patient Care and Procedural Skill

Interpersonal Communication

Practice-based Learning and Improvement

Systems-based Practice

**Professionalism**



# Specialty Board Certification

## INITIAL CERTIFICATION

ACGME-accredited training

Assessment of knowledge and clinical skills

Other forms of assessment

- Objective Structured Clinical Examination
- Chart review
- Peer assessment
- Oral Examination

**Professionalism & professional standing**

## CONTINUING CERTIFICATION

Learning and Self-Assessment

Assessment of Knowledge and Clinical Skills

Improvement in Health and Health Care

**Professionalism & Professional Standing**

# Professional misconduct

Breaching norms of professional conduct that

- Pose a risk to patient safety

Harm or the potential to harm patients or the public

- Undermine trust

*To certification* – demonstrating the knowledge, professionalism and clinical judgment to practice safely as a specialty physician

*To the profession* – questions of personal or professional ethics

# AMA Code of Medical Ethics - Opinion 8.12

Ethical responsibility when speaking publicly as a physician

Speak truthfully

Represent the science faithfully

Acknowledge debate where it exists, and the limits of what is known

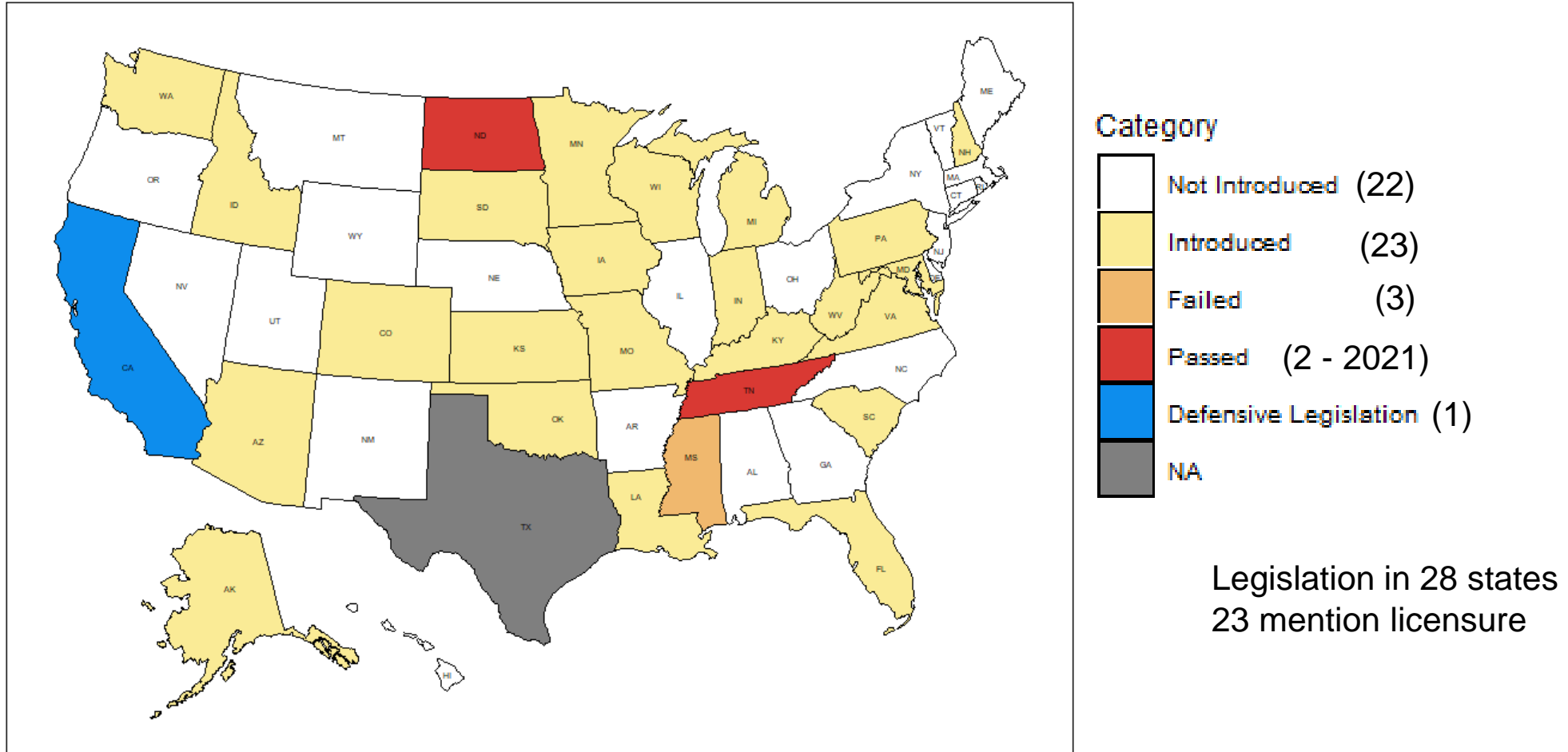
Recognize the limits of one's personal knowledge and experience

Be honest about recommendations that are not consistent with standard care and explain why non-standard care is being recommended

# Identifying Potential Misconduct

Type of Misinformation	Ethical or Professional Misconduct	Relevance to Certification
Pseudoscience	Spreading information that is unscientific or based on fraudulent or false data	Calls into question clinical competence
Outdated science	Spreading information that has been disproved	Calls into question whether the clinician is up to date
Misapplication of science	Making recommendations for treatment that is scientifically valid but not appropriate to the clinical context	Calls into question clinical judgment
Debatable science	Failure to acknowledge that science is unclear or state of the science	Potentially misleading and ethically questionable
Public recommendation of nonstandard treatment	Innovation that is not supported by sound scientific data or reasoning or that is recommended unprofessionally or unethically	Unethical or unprofessional testing or dissemination of clinical innovation

# State Legislation – Misinformation/Board Restriction



# FSMB - Legislative Limits on authority to investigate harm

## FSMB OPPOSES LEGISLATIVE EFFORTS TO LIMIT STATE MEDICAL BOARDS' AUTHORITY TO INVESTIGATE PATIENT HARM

*State medical boards protect patients by investigating complaints, evaluating the standard of care and taking disciplinary action when appropriate. The FSMB opposes legislation intended to limit a board's ability to conduct this important work as it sets a dangerous precedent and puts the public at risk. State legislatures are encouraged to work with their state medical boards to uphold existing statutory authority to respond to complaints about the quality of care provided and take disciplinary action against physicians when necessary to protect the public.*

# Implications and Open Questions

- While targeted to state medical boards, certification is grounded by medical licensure and therefore directly affected by constraints on it.
- Threatens to undermine the system of professional self-regulation, board autonomy, and “social contract” with medicine
- Public professional speech, civic speech, practice choices by individual physicians for individual patients are different issues.
- Ethical and professional norms convey not only what a physician may do but the manner in which they do it.



# Questions?



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[info@profcertcoalition.org](mailto:info@profcertcoalition.org) or visit  
[www.profcertcoalition.org](http://www.profcertcoalition.org).



# Join Women In Government for an Upcoming #ResilientCommunities Webinar:

Thursday, April 21<sup>st</sup> at 2:00 pm ET:

*Meeting Kids Where They Are: Preventing Child Abuse*  
**#ResilientCommunities**