

## Interested Party Testimony – Antitrust and Regulatory Board Consolidation in HB49

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Good afternoon Chairman Faber and members of the Committee. My name is Dr. David Hayes. I am a board certified clinical psychologist, licensed in Ohio for more than thirty years. I am a member of the Board of Directors and a past president of the Ohio Psychological Association (OPA). I also serve as OPA's liaison to the Ohio Board of Psychology, the board that licenses psychologists and school psychologists in Ohio and provides certificates for behavior analysts. I am here to speak to you today as an interested party on behalf of OPA and Ohio psychologists about the significant problems – some obvious, some less so – that will arise if the Ohio Board of Psychology is eliminated and combined with other regulatory boards to form an omnibus behavioral health board.

The debate about board consolidation involves two issues that are better treated separately:

- 1) Should the current boards regulating behavioral health providers be combined into one omnibus board?
- 2) Does the U.S. Supreme Court decision in *North Carolina Board of Dental Examiners v. FTC* threaten members of regulatory boards with loss of their immunity against antitrust allegations?

Let me address the antitrust question first. The Supreme Court decision does indeed lay out circumstances under which board members' immunity might be in jeopardy. However,

- The facts of the case in North Carolina concern actions that are quite different from what Ohio's Psychology board does;
- The Supreme Court offered a solution to this risk: "active state supervision." The DAS oversight provisions of HB49 accomplish this;
- Several other states have devised approaches to mitigating this risk without the known problems inherent in board consolidation;
- Board consolidation is **not necessary** to address this problem.

Let's turn now to the question of whether it is necessary or wise to consolidate Ohio's boards. Consolidation of regulatory boards is not a new idea. Here are some of the ideas that have been offered as reasons:

- Omnibus boards produce cost savings because they increase efficiency and produce economies of scale;
- The antitrust implications of *North Carolina Board of Dental Examiners v. FTC* pose potential risk for regulatory boards;
- Regulations have become too numerous and too onerous. Smaller government is better, and states would be well advised to simply let the marketplace work to sort out competition and appropriate service delivery.

What about the potential savings to be found by consolidating boards? While this idea sounds sensible enough, in Ohio, this approach ignores the facts that:

- Many of the regulatory boards that would be combined already share a number of approaches to cost saving, including group purchasing and shared services;
- The Ohio Board of Psychology is already fiscally responsible. In fact, Ohio's Psychology board is self-sufficient and already pays for itself entirely;
- Moving from multiple boards to one board would involve a number of hidden costs (even if the omnibus board moved out of downtown, as has been proposed): leases would have to be cancelled, materials re-worked, contracts worked out, employment issues and loss of employment addressed, expensive data management systems that were just developed retooled, websites changed, additional staff hired to do the work currently done by Board members, and so on;
- Bottom line – in Ohio, elimination of the Psychology board could as easily cost money as save it. (And, as described below, consolidation would introduce other serious problems by establishing boards that lack the expertise to oversee the professions they are charged with regulating).

Finally, let's turn to the question of deregulation or changes in the ways behavioral healthcare is regulated in Ohio. First, let's remind ourselves about why we have regulatory boards. Regulatory boards are necessary to:

- Protect the public from unscrupulous or poorly trained or unethical actors, in this case, often a particularly vulnerable public;
- Permit the public to rely on the fact that someone holding him or herself out to be a psychologist is, in fact, appropriately trained and qualified;
- Provide due process protection for psychologists.

If you go to a dentist or to a cardiologist or to a probate attorney, you don't have to wonder if the professional knows what he or she is doing. In fact, most of us don't have the education, training, or experience to make these judgments. It is the same with a psychologist. When you or a family member decides to see a psychologist, you want to have confidence in the training and education of the psychologist, and you also want to know that he or she is ethical and follows professional standards.

Psychologists are trained and educated in different ways than any of our behavioral health colleagues, and generally our training and education are more extensive, as is our scope of practice. Professional education in psychology also covers areas – psychological and neuropsychological testing, for example – that are outside the education and scope of practice of our colleagues. An omnibus board would place the regulation, evaluation and investigation of one profession – psychology – under people who lack the appropriate training, background and experience to competently or fairly or ethically do so. We don't ask or permit dermatologists to weigh in about the standard of care for cardiac surgery. Both specialists practice medicine, but they do not do the same thing. Similarly, we don't ask or permit marriage and family therapists to give opinions about the standard of care for neuropsychological testing, because they do not possess the necessary education, training or skill set. Psychologists and other behavioral health providers all practice behavioral health, but they do not do the same things. Omnibus boards ignore these essential differences.

What do we know about what has happened in other jurisdictions that have eliminated their psychology boards? Two states, Colorado and New Hampshire, and one territory, the US Virgin Islands, re-established their psychology boards after a period with omnibus boards. Colorado made the change in the 1990's, the Virgin Islands in 2010, and New Hampshire, after a disastrous experience with an omnibus board, in 2012. The New Hampshire board was dissolved after psychologists were repeatedly and inappropriately investigated by pastoral counselors, social workers, and other non-psychologist providers in areas in which they lacked training, education, experience, and expertise and after investigations were regularly turned into fishing expeditions. These investigations led to repeated legal challenges around denial of due process protections and had a chilling effect on psychologists in New Hampshire, prompting some to leave the state entirely. Investigations outside areas of training and expertise are unavoidable under an omnibus board unless appropriate experts are hired. In the case of psychology, these appropriate experts already exist – the Ohio Board of Psychology.

Board consolidation leads inevitably to these practical and ethical problems because a “one size fits all” model simply does not work as a regulatory strategy in a complex area of health care. Ohio’s Board of Psychology is nationally recognized as a pioneer in regulatory policy and practice, and Ohio licensees view it as fair and consistent.

Consolidation would make Ohio one of only two states that do not have an independent psychology board. Such a change would send a clear message to psychologists that either the Ohio does not understand the discipline of psychology or that Ohio does not value psychology’s specific and individual skill set. Making Ohio a less appealing state for psychologists seems especially ill advised at a time when we are facing an unprecedented opioid epidemic and have a high concentration of military Veterans. Ohio needs to be attracting more psychologists, not discouraging them from studying or practicing here.

OPA and Ohio psychologists support the steps HB49 proposes to mitigate the risk of loss of antitrust immunity by regulatory board members. OPA and Ohio psychologists strongly oppose elimination of the Ohio Board of Psychology and the creation of an omnibus regulatory board. Thank you for the opportunity to testify about these important issues. I would be happy to respond to any questions you might have.