



Occupational Licensing Advisory Commission Report

A STUDY OF OCCUPATIONAL LICENSING IN OKLAHOMA
2021 REPORT & RECOMMENDATIONS

THIS REPORT WAS PREPARED BY:
The Occupational Licensing Advisory Commission
December 1, 2020

Occupational Licensing Advisory Commission Members

- Labor Commissioner Leslie Osborn
- Senator Nathan Dahm
- Senator Kay Floyd
- Senator Adam Pugh
- Representative Mark McBride
- Representative Cyndi Munson
- Representative Mike Osburn
- Matthew Burns, Chief Communications Officer, HCSC-BCBS of OK
- Jerry Moore, Chief Information Officer, OMES
- Mike Robins, Founder, Michael Robins Consulting LLC
- Steven Shoemaker, VP of Sales and Marketing, Ideal Homes

Commission Staff: Janet DeVeny-Edwards, Project Director, Occupational Licensing Advisory Commission

Table of Contents

Executive Summary	3
Background	7
What is Occupational Licensing?	7
Benefits of Occupational Licensing	7
History of Licensing Review in Oklahoma	7
Work of the Commission	7
License Review Process	7
Commission Members and Staff Activities	9
January – March 2020	9
April – June 2020.....	9
July – September 2020.....	9
October - November 2020.....	11
Recommendations	12
Licenses Reviewed with No Action	12
New Occupational License Reviewed	13
Additional Review from Licenses in 2020 Report & Recommendations	13
Licenses Investigated Further with No Action	13
Licenses with Name Streamlined	14
APPENDIX	15
Letter to Licensed Entities	17
Sample Blueprint	19

Executive Summary

In 2018, the Occupational Licensing Advisory Commission (“Commission”) was formed and charged with conducting a comprehensive review of Oklahoma’s occupational and professional licenses (collectively, “occupational licenses”) not less than once every four (4) years and to provide recommendations to the Oklahoma Legislature. A written report of the Commission’s legislative recommendations shall be provided to the Governor, President Pro Tempore of the Senate, and the Speaker of the House of Representatives prior to the deadline for requesting legislation for the upcoming legislative session. The Commission’s report strives to balance free market principles with protecting public safety, and reducing unreasonable barriers to entry into the workforce.

In 2019, immense work was done to create an updated data source of all occupations requiring a license in Oklahoma. Through a refocused consideration of licensure classification, the Commission adjusted its initial listing of over four hundred (400) licenses to the accurate number of two hundred ten (210) occupational licenses, which are being administered by forty-two (42) separate licensing entities in Oklahoma. This change was due to information received in response to a letter the Commission sent to all licensing entities (attached) requesting updated information on occupational licenses, exclusive of sub-license categories, and updated agency contact information. Licensing entities were also requested to provide information on their fee structures, annual fiscal information, and implementation efforts for HB 1373 and SB 670 relating to felony convictions and military member/spouse reciprocity, respectively. They were also requested to provide information on implementation provisions for HB 2933, which requires a one-time, one-year, fee waiver for low-income individuals seeking occupational licensure. This database is available on the Oklahoma Department of Labor’s website (www.ok.gov/odol/) as well as that of Office of Management and Enterprise Services (<https://omes.ok.gov/boards-commissions/occupational-licensing-advisory-commission>).

Two (2) 2019 bills significantly reduced barriers into Oklahoma’s workforce:

- HB 1373 supports criminal justice reform by requiring state licensing entities to modify licensure requirements for convicted felons through the limitation of disqualifying felony convictions to only those offenses that substantially relate to the duties and responsibilities of the occupation and pose a reasonable threat to public safety.
- SB 670 supports military personnel and their families’ expedited integration and licensure into the workforce upon presentation of satisfactory evidence of equivalent education, training, and experience for the desired license(s).

In 2020 Senate Bill 1823 added a new occupational license in Oklahoma and was therefore added to the Commission’s review. Under SB 1823, a Certified Professional Midwife (CPM) or Certified Midwife (CM) would be required to be licensed in Oklahoma. All midwives would be required to disclose what credentials or licensure they may or may not have, their limitation of skills and whether they carry malpractice insurance. A required informed consent document would also include information on the midwife’s plan for emergencies and complications and gives parents the ability to pre-select a hospital in case of an emergency.

The Commission worked through email, and examined fifty three (53) licenses issued through nine (9) different licensing entities. One public meeting was held to make recommendations of whether those licenses should be maintained, modified, or eliminated. An Occupational Regulation Blueprint (“Blueprint”) (attached) went to all reviewed licensing entities in advance of their appearances before the Commission to assist with the Commission’s review. Also, additional review was completed on twenty-nine (29) licenses carried over from the 2020 Occupational Licensing Advisory Commission Report and Review.

The Commission’s legislative recommendations for licenses reviewed in 2020 are as follows and listed on the Recommendation page of this report.

1. Discussion, Recommendations and Public Action/Vote on all Licenses reviewed in 2020.

Licensing entities provided clarifications for the following licenses, the Commission makes no recommendations:

Corporation Commission

1. Pipe Pulling & Well Plugging
2. Petroleum Storage Tank (PST) AST License
3. PST Environmental Consultant
4. PST Vapor Monitoring Well Technician
5. PST Monitoring Well Technician for Ground Water
6. PST Underground Storage Tank Installer
7. PST Underground Storage Tank Remover

Department Of Education

8. Teaching Certificates and Licenses

Department of Environmental Quality

9. On-Site Sewage Treatment System Installer Certification
10. Septage Tank Pumpers and Transporters
11. Certified Soil Profiler
12. Industrial Radiographer Certification
13. Lead-Based Paint Supervisor
14. Lead-Based Paint Inspector
15. Lead-Based Paint Risk Assessor
16. Lead-Based Paint Abatement Worker
17. Lead-Based Paint Project Designer
18. Waterworks and Wastewater Operator Certification - D-A Operator Certification
19. Waterworks and Wastewater Works Operator Certification - Distribution/Collection Tech
20. Waterworks and Wastewater Laboratory Operator Certification - C-A Lab Certification

Fire Marshall

21. Fireworks Outdoor Display Operator
22. Fire Extinguisher licenses: Qualified Agent, Technician, Salesperson, Trainee

Department of Labor

23. Alarm/Locksmith/Fire Sprinkler (Company) Manager
24. Alarm/Locksmith/Fire Sprinkler Salesperson
25. Alarm/Locksmith/Fire Sprinkler Technician
26. Alarm/Locksmith/Fire Sprinkler Trainee
27. Alternative Fuels Equipment Technician
28. Alternative Fuels Compression Technician
29. Asbestos Contractor
30. Asbestos Inspector
31. Asbestos Management Planner
32. Asbestos Project Designer
33. Asbestos Abatement Supervisor
34. Asbestos Worker
35. Boiler/Pressure Vessel Operator
36. Elevator Apprentice
37. Elevator Certificate Inspector
38. Elevator Mechanic License
39. Elevator Special Inspector License
40. Elevator Witness Inspector License

Department of Mines

41. Blaster, Surface
42. Hoisting Engineer, Underground

43. Mine Fire Boss (Underground)
44. Mine Foreman (Underground)
45. Mine Shot Firer (Underground)
46. Mine Superintendent (Underground)
47. Mine Surface Supervisor
48. Miner, Practical (Underground)

Oklahoma Board of Optometry

49. Optometry

Oklahoma Board of Pharmacy

50. Pharmacists
51. Pharmacy Technician

Speech Pathology & Audiology Board

52. Audiologist
53. Speech Pathologist

2. Discussion, Recommendations and Public Action/Vote New Occupational License – Licensed Midwife

According to the legislation and statute that formed this Commission, the role is to review all new licenses that were passed in the last year. No vote was taken on this license, only a review.

Oklahoma Department of Health

54. Licensed Midwife

3. Additional Review, Discussion, Recommendations, and Public Action/Vote on specific licenses carried forward from the “2020 Occupational Licensing Advisory Commission Report & Recommendations”

The Commission publicly discussed the licenses carried forward from the 2020 Report and Recommendations. A public vote was made on the following licenses:

Oklahoma State Department of Health

1. Certified Micropigmentologist
2. Licensed Tattoo Artist
3. Body Piercing Artist

Oklahoma Board of Cosmetology and Barbering

4. Cosmetologist
5. Facialist/Esthetician
6. Manicurist/Nail Tech

Oklahoma Funeral Board

7. Embalmer
8. Funeral Director

Oklahoma Construction Industries Board

9. Home Inspector

Able Commission

10. Manufacturer
11. Employee
12. Retail

Oklahoma Board of Medical Licensure and Supervision

13. Anesthesiologist Assistant
14. Licensed Dietitian

15. Provisional Licensed Dietitian
16. Prosthetist/Orthotist
17. Registered Prosthetist/Orthotist Assistant
18. Registered Prosthetist/Orthotist Technician
19. Pedorthist
20. Radiologist Assistant
21. Registered Electrologist
22. Therapeutic Recreation Specialist
23. Licensed Professional Music Therapist
24. Anesthesiologist Assistant

Oklahoma Board of Nursing

25. Certified Registered Nurse Anesthetist

Water Resources Board

License name changed to the following:

26. License to perform commercial drilling or plugging of groundwater wells including test drilling for groundwater, and commercial drilling or plugging of fresh water observation wells changed to **Commercial Water Well Drilling.**
27. License to perform commercial drilling or plugging of monitoring wells and site assessment wells, and drilling or plugging of geotechnical borings changed to **Commercial Geotechnical Drilling.**
28. License to perform commercial installation of water well pumps changed to **Commercial Water Well Pump Installation.**
29. License to perform commercial drilling or plugging of wells utilized for heat exchange purposes changed to **Commercial Geothermal Drilling.**

After extensive work and input from Commission members, various boards and stakeholders, and the public, the Commission respectfully submits this report of its findings and recommendations for licenses reviewed in 2020.

Background

What is Occupational Licensing?

Occupational licensing is the process by which an agency or state board enforces and maintains licensing requirements for persons/legal entities providing regulated, professional or occupational services. A licensure board is typically made up of individuals from the profession who will accept and review applications or oversee the administration of certain requirements (such as exams). These powers and the organization of such licensure bodies are created by legislation.

Benefits of Occupational Licensing

Occupational licensing ensures integrity of the trade and protects the public. Workers may seek to become licensed as a move toward greater professionalism. It also builds community and cohesiveness within an occupation to standardize work functions. Consumers benefit as they are able to research information through the licensing entity before seeking service. Licensing creates incentives for workers to invest in increased training and skill development for high quality services.

History of Licensing Review in Oklahoma

Oklahoma began addressing the issue of occupational licensing by convening an Occupational Licensing Task Force in 2017 (Final Report can be found at (www.ok.gov/odol/) per Executive Order No. 2018-02 by Governor Fallin. What the Task Force found was a state of complete disarray in licensing review and administration. The Task Force recommended additional occupational license review through an independent entity tasked with considering the necessity, utility, and impact of all existing licensing regulations in the state. As a result of the Task Force the Oklahoma Legislature enacted SB1475, creating an Occupational Licensing Advisory Commission (effective July 1, 2018). This Commission is comprised of a broad representation of needed stakeholders including: legislators, industry members, information technology representatives, license holders, and others. It is tasked with conducting a review of all Oklahoma occupational licenses and making recommendations to the Legislature.

Work of the Commission

Each year the Commission reviews a portion of the occupational licenses issued in Oklahoma to make recommendations to the legislature and administrative agencies for potential reform or modification. The review will be prioritized by critical occupations to Oklahoma. These recommendations are made following a public meeting and vast input from stakeholders. The recommendations for reform or modification are made to the Oklahoma Legislature in December of each year, prior to the start of the legislative session. The Commission also compiles data to determine the number of differing occupational licenses issued by Oklahoma's agencies, boards, and commissions, in order to continually update the online database created by the Task Force (licensing.ok.gov).

License Review Process

The Commission uses informational meetings with licensed entities, industry participants and the public; independent research; and fact gathering tools such as the Occupational Regulation Blueprint ("Blueprint" attached) in its review of licensing requirements and in submitting its informed recommendations to the Oklahoma Legislature. These tools, which are under constant review for potential improvement, allow for an objective, practical determination of whether an occupational license is necessary or whether a lesser form of regulation would be equally effective. This process helps determine whether there is a governmental interest in regulating an occupation (such as public safety, public health, a fiduciary responsibility, or preservation of a fundamental right.) It also questions whether insurance, bonding, or registration would be preferable to licensing. Furthermore it considers the composition of Oklahoma licensing boards.

Newly created licenses will be reviewed by the Commission within ninety (90) days of enactment. In year one, (i.e., 2019 Report and Recommendations), the Commission examined some of Oklahoma's critical occupations with high economic potential indicators and licenses that appeared to be outliers. In this second year, the 2020 Report and recommendations will focus on many of Oklahoma's remaining critical occupation licenses (as identified by Oklahoma Works), and the Occupational Licensing Policy Learning Consortium's targeted occupations list. The following years will examine the balance of Oklahoma's occupational licenses. Commission members can add licenses to the proposed schedule at any time with a majority vote.

Commission Members and Staff Activities

January – March 2020

In January meetings continued with partner organizations and stake holders to present the Commission report and recommendations. The entities who were involved with the report were contacted and sent a report.

In early February the Commission hosted a breakfast for the freshman legislators to learn more about the Commission and occupational licensing. A conference call was held with Oklahoma's project officer and National Conference of State Legislatures (NCSL) to touch base and discuss a possible visit.

The Commission continued to actively track proposed licensing legislation. However in March the President declared a national health emergency due to COVID-19. On March 15, 2020 Oklahoma's Governor followed by declaring a state of emergency caused by the impending threat of the COVID-19. The legislative session was put on hold and many Oklahomans started telework. An important piece of the Governor's executive order was to extend any license renewals by 14 days after the emergency orders in the state end.

April – June 2020

In April meetings were held with the Commission Chair and Project Director to determine a "new normal" for Commission meetings during the COVID pandemic. The first meeting was to determine what licenses to review and how to manage the need to social distance with an open meeting. The decision was made to focus on licenses that were on the NCSL list of target occupations. Senate Bill 1823 regarding licensing of Certified Professional Midwife (CPM) or Certified Midwife (CM) was passed during legislative session and will be added to the list for review.

Investigation went into having virtual open meetings for the Commission. However it was determined that person to person is still the best since there is no limit on attendees.

Decisions were made for the Commission to work independently under a deadline and meet one time in an open meeting format. This would allow less person to person contact. The deadlines for this year are August 6, September 3, and on November 5, 2020 where the Commission will come together in an open meeting environment. The Occupational Regulation Blueprint ("Blueprint") was sent to the boards to gather information for the August review.

July – September 2020

Blueprints from the following boards were received and sent to the Commission members for review. The Commission worked independently and send questions or need of clarification to the Project Director. Validation was made for answers with each board and reported back to the Commission.

CORPORATION COMMISSION – 7 licenses

- Pipe Pulling & Well Plugging
- Petroleum Storage Tank (PST) AST License
- PST Environmental Consultant
- PST Vapor Monitoring Well Technician
- PST Monitoring Well Technician for Ground Water
- PST Underground Storage Tank Installer
- PST Underground Storage Tank Remover

OK DEPARTMENT OF EDUCATION – 1 license

- Teaching Certificates and Licenses

OK DEPARTMENT OF ENVIRONMENTAL QUALITY – 13 licenses

- On-Site Sewage Treatment System Installer Certification

Septage Tank Pumpers and Transporters
Certified Soil Profiler
Industrial Radiographer Certification
Lead-Based Paint Supervisor
Lead-Based Paint Inspector
Lead-Based Paint Risk Assessor
Lead-Based Paint Abatement Worker
Lead-Based Paint Project Designer
Waterworks and Wastewater Operator Certification - D-A Operator Certification
Waterworks and Wastewater Works Operator Certification
Distribution/Collection Tech
Waterworks and Wastewater Laboratory Operator Certification - C-A Lab Certification

FIRE MARSHALL – 2 licenses

Fireworks Outdoor Display Operator
Fire Extinguisher licenses: Qualified Agent, Technician, Salesperson, Trainee

The Occupational Regulation Blueprint (“Blueprint”) was sent to the boards for the September review. Clarification to questions that were asked for the August review was gathered and sent back to the Commission. Gathering of additional information to follow-up on the 2019 Report and Recommendations began.

Blueprints from the following boards were received and sent to the Commission members for review. The Commission worked independently and sent questions or need of clarification to the Project Director. Validation was made for answers with each board and reported back to the Commission.

OKLAHOMA DEPARTMENT OF LABOR – 18 licenses

Alarm/Locksmith/Fire Sprinkler (Company) Manager
Alarm/Locksmith/Fire Sprinkler Salesperson
Alarm/Locksmith/Fire Sprinkler Technician
Alarm/Locksmith/Fire Sprinkler Trainee
Alternative Fuels Compression Technician
Alternative Fuels Equipment Technician
Asbestos Abatement Supervisor
Asbestos Contractor
Asbestos Inspector
Asbestos Management Planner
Asbestos Project Designer
Asbestos Worker
Boiler/Pressure Vessel Operator
Elevator Apprentice
Elevator Certificate Inspector
Elevator Mechanic License
Elevator Special Inspector License
Elevator Witness Inspector License

DEPARTMENT OF MINES – 8 licenses

Blaster, Surface
Hoisting Engineer, Underground
Mine Fire Boss, Underground
Mine Foreman, Underground
Mine Shot Firer, Underground
Mine Superintendent, Underground
Mine Surface Supervisor
Miner, Practical

OPTOMETRY BOARD – 1 license

Optometry

BOARD OF PHARMACY – 2 licenses

Pharmacists

Pharmacy Technician

October - November 2020

Clarification to questions that were asked for the September review was gathered and sent back to the Commission. Additional information to the follow-up on the 2019 Report and Recommendations was sent to the Commission. Preparation for the November meeting began.

The Commission began its November 5th meeting by determining how to discuss the licenses viewed before the Commission in 2020. It was determined to discuss licenses by each licensure board. The licenses were numbered individually on the agenda therefore the numbers were used to assist in making recommendations. The Commission made recommendations to eliminate, streamline, or to take no action/leave as is. After discussing each board of licenses, a public vote was made for all fifty three (53) licenses.

Also on the agenda for discussion was the new license (SB 1823) for a Certified Professional Midwife or Certified Midwife (CM) effective November 1, and follow-up review of licenses from the 2020 Occupational Licensing Advisory Commission Report and Recommendations. The Legislative recommendations proposed by the Commission for this 2021 Report and Recommendations are listed on the following pages.

Recommendations

Licenses Reviewed with No Action

Licensing entities provided clarifications for the following licenses, the Commission makes no recommendations:

Corporation Commission

1. Pipe Pulling & Well Plugging
2. Petroleum Storage Tank (PST) AST License
3. PST Environmental Consultant
4. PST Vapor Monitoring Well Technician
5. PST Monitoring Well Technician for Ground Water
6. PST Underground Storage Tank Installer
7. PST Underground Storage Tank Remover

Department Of Education

8. Teaching Certificates and Licenses

Department of Environmental Quality

9. On-Site Sewage Treatment System Installer Certification
10. Septage Tank Pumpers and Transporters
11. Certified Soil Profiler
12. Industrial Radiographer Certification
13. Lead-Based Paint Supervisor
14. Lead-Based Paint Inspector
15. Lead-Based Paint Risk Assessor
16. Lead-Based Paint Abatement Worker
17. Lead-Based Paint Project Designer
18. Waterworks and Wastewater Operator Certification - D-A Operator Certification
19. Waterworks and Wastewater Works Operator Certification - Distribution/Collection Tech
20. Waterworks and Wastewater Laboratory Operator Certification - C-A Lab Certification

Fire Marshall

21. Fireworks Outdoor Display Operator
22. Fire Extinguisher licenses: Qualified Agent, Technician, Salesperson, Trainee

Department of Labor

23. Alarm/Locksmith/Fire Sprinkler (Company) Manager
24. Alarm/Locksmith/Fire Sprinkler Salesperson
25. Alarm/Locksmith/Fire Sprinkler Technician
26. Alarm/Locksmith/Fire Sprinkler Trainee
27. Alternative Fuels Equipment Technician
28. Alternative Fuels Compression Technician
29. Asbestos Contractor
30. Asbestos Inspector
31. Asbestos Management Planner
32. Asbestos Project Designer
33. Asbestos Abatement Supervisor
34. Asbestos Worker
35. Boiler/Pressure Vessel Operator
36. Elevator Apprentice
37. Elevator Certificate Inspector

38. Elevator Mechanic License
39. Elevator Special Inspector License
40. Elevator Witness Inspector License

Department of Mines

41. Blaster, Surface
42. Hoisting Engineer, Underground
43. Mine Fire Boss (Underground)
44. Mine Foreman (Underground)
45. Mine Shot Firer (Underground)
46. Mine Superintendent (Underground)
47. Mine Surface Supervisor
48. Miner, Practical (Underground)

Oklahoma Board of Optometry

49. Optometry

Oklahoma Board of Pharmacy

50. Pharmacists
51. Pharmacy Technician

Speech Pathology & Audiology Board

52. Audiologist
53. Speech Pathologist

New Occupational License Reviewed

54. Licensed Midwife

Additional Review from Licenses in 2020 Report & Recommendations

The Commission publicly discussed the licenses carried forward from the 2020 Report and Recommendations. A public vote was made on the following licenses.

Licenses Investigated Further with No Action

Oklahoma State Department of Health

1. Certified Micropigmentologist
2. Licensed Tattoo Artist
3. Body Piercing Artist

Oklahoma Board of Cosmetology and Barbering

4. Cosmetologist
5. Facialist/Esthetician
6. Manicurist/Nail Tech

Oklahoma Funeral Board

7. Embalmer
8. Funeral Director

Oklahoma Construction Industries Board

9. Home Inspector

Able Commission

10. Manufacturer
11. Employee
12. Retail

Oklahoma Board of Medical Licensure and Supervision

13. Anesthesiologist Assistant
14. Licensed Dietitian
15. Provisional Licensed Dietitian
16. Prosthetist/Orthotist
17. Registered Prosthetist/Orthotist Assistant
18. Registered Prosthetist/Orthotist Technician
19. Podiatrist
20. Radiologist Assistant
21. Registered Electrologist
22. Therapeutic Recreation Specialist
23. Licensed Professional Music Therapist
24. Anesthesiologist Assistant

Oklahoma Board of Nursing

25. Certified Registered Nurse Anesthetist

Licenses with Name Streamlined

Water Resources Board

License name changed to the following:

26. Commercial Water Well Drilling
27. Commercial Geotechnical Drilling
28. Commercial Water Well Pump Installation
29. Commercial Geothermal Drilling

APPENDIX

Letter to Licensed Entities

Oklahoma Department of Labor



Leslie Osborn
COMMISSIONER OF LABOR

March 19, 2019

Thanks to your help as a licensing entity, and the hard work of former Labor Commissioner Melissa Houston and Christina Foss, Program Administrator, the Oklahoma Department of Labor now has a permanent link on its webpage the public can access for a list of occupational licenses in Oklahoma. To ensure licensing information on the link remains accurate and up to date, the Occupational Licensing Advisory Commission¹ respectfully requests you review your previously submitted information and update or adjust where needed.

To review your agency's submission, please pull up the Occupational Licensing Database through the ODOL website. Click on the "Safety Inspections & Licensing" tab on the header. Then click on "Occupational Licensing Commission" in the dropdown menu, then the "Licensing Database" hyperlink on the right side of the page in the Related Topics box. Once you've accessed the Occupational Database, please confirm all information on your agency's row is accurate and complete. If your agency has not already done so, then please provide a brief response to the six questions listed below:

- | | |
|--------------------------------------|--------------------------------------|
| A. License Name | D. License Name |
| B. Licensing Authority Name/web link | E. Licensing Authority Name/web link |
| C. Required Education Level | F. Required Education Level |

For our records but not the online Occupational Database, please provide an updated agency contact, phone number mailing and email address.

In a continuing effort to best meet the needs of the public and avoid potential confusion, we do not want licenses listed the online Occupational Database that are not occupations. For example, a Commercial Applicator License for spraying pesticides would probably be something agriculturalists across the state utilize for buying chemicals in bulk, but is not their occupation. If you see any such listing, whether for your agency or another, please notify us so we may make an adjustment to the database. Also, please carefully consider whether subcategories need a separate listing, such as electricians for example. If a Licensee can attain multiple certifications or endorsements, which are all tied to a single, overarching license, then it may not be necessary to list each certification/endorsement as a separate license; the occupational license alone is likely sufficient. The intention of ODOL and the Occupational Licensing Advisory Commission is to have an accurate, easy to access website, showing citizens where to apply for occupational licenses via web links, and what it entails to do so.

The next round of occupational licenses to be reviewed by the Occupational Licensing Advisory Commission will come post legislative session so it is essential we clean up the Occupational Database prior to that start date.

Thank you very much, in advance. We respectfully request this information within the next thirty (30) days. Please send your agency's updated information to the following email addresses: christina.foss@omes.ok.gov; liz.searock@labor.ok.gov; labor.commissioner@labor.ok.gov. If you have questions, Christina Foss, Program Administrator may be reached at 405/521-6102.

Respectfully,

Leslie Osborn
Commissioner of Labor

¹ The Occupational Licensing Advisory Commission is a successor to the Occupational licensing Task Force created on July 1, 2018, pursuant to 40 O.S.9 § 800.1 3017 N. Stiles, Suite 100. Oklahoma City. Oklahoma 73105-5212 · Telephone 405-521-6100 · Fax 405-521-6018 · www.labor.ok.gov Toll-free 1-888-269-5353

Roadmap for Occupational Licensing

- Is there a compelling public interest that needs to be protected?
 - If yes, then continue
 - If no, then no regulation is required
 - Types public interests
 - Public health
 - Public safety
 - Fundamental rights
 - Substantial fiduciary interest
- Is the least restrictive means that would sufficiently protect the public interest used?
 - If yes, then continue
 - If no, then use a less restrictive means
 - Regulation options from least restrictive to most restrictive
 - Market Competition
 - Third-party or consumer created ratings and reviews
 - Private certification
 - Specific private civil cause of action or alternative dispute resolution
 - Deceptive trade practice act
 - Regulation of the process of providing specific goods or services to consumers
 - Public inspection
 - Mandatory bonding or insurance
 - Registration
 - Government certification
 - Business License
 - Specialty occupational license for medial reimbursement
 - Occupational license
- If occupational licensing is used, does the board in charge of such licensure have a controlling number of board members as market participants?
 - If yes, continue (board does not have antitrust immunity yet)
 - If no, stop (board has antitrust immunity)
- Is there active supervision of the board's actions by the state?
 - If yes, then board has antitrust immunity
 - If no, then board is subject to antitrust litigation

Occupational Regulation Blueprint

License Details

What is the license? _____

What does the license cover? _____

What Board regulates the license? _____

Compelling Public Interest

What is the compelling public interest (see Annex, item 1)? _____

Is this public interest a demonstrated, real, significant, and probable harm (see Annex, item 2)?

Least Restrictive Means

What means is used to protect the public interest? _____

Is it the least restrictive means (see Annex, item 3), which sufficiently protects the interest (see Annex, item 4)? _____

If the answer to the above question is “No” then do not use that type of regulation to protect the public interest.

-----*Continue only if Occupational Licensing was Used*-----

Controlling Number of Market Participants on the Board

How many members are on the regulatory board? _____

How many of them are active market participants (see Annex, item 5)? _____

Is the board controlled by these active market participants (see Annex, item 6)? _____

-----*Continue only if the Board is Controlled by Market Participants*-----

Active Supervision of the Board

Is there active state supervision of the board (see Annex, item 7)? _____

If the answer to the above question is “No” then board’s conduct may violate the Sherman Act and the board’s actions are not protected by state immunity.

Annex

1. *Definition of a compelling public interest.* A compelling public interest must be one of the following interests: public health, public safety, fundamental rights, or a substantial fiduciary interest.
2. *Definition of a demonstrated, significant, and probable harm.* A harm is demonstrated when it has occurred in the past. A harm is significant when it could cause damage that merits action by lawmakers. A harm is probable when its propensity to occur merits action by lawmakers. When determining whether a harm is significant and probable, lawmakers may analyze various sources of information, including whether similar activities are licensed or regulated in other states. If, in other states, a lack of licensing does not cause significant harms, the harm is not demonstrated, real, or probable.
3. *List of means from least to most restrictive.*
 - Private Governance Options
 - Market Competition
 - Third-party or consumer created ratings and reviews
 - Private certification
 - Specific private civil cause of action or alternative dispute resolution
 - Public Regulation
 - Deceptive trade practice act
 - Regulation of the process of providing specific goods or services to consumers
 - Public inspection
 - Mandatory bonding or insurance
 - Command and Control
 - Registration
 - Government certification
 - Business license
 - Specialty occupational license for medical reimbursement
 - Occupational license
4. *Definition of sufficient protection.* A regulation sufficiently protects an interest if the regulation adequately remedies the harm or possible harm to the legitimate public interest so that the likelihood of such harm is appropriate considering the degree of damages which the harm may cause. “Sufficient” has not been uniformly defined by courts, but there should be some limitation on

the choice to use a high standard of protection (like a guarantee) to justify the most restrictive mean every time.

5. *Definition of an active market participant.* The Court has found that active market participants possess strong private interests in a matter and pose a risk of self-dealing. A conservative interpretation of a “market participant” is any practitioner who works in the general industry, which is affected by the types regulations addressed by their respective boards. One could persuasively argue that these individuals possess strong interests and pose a threat of self-dealing.
6. *Definition of a controlling number.* Justice Alito, in his dissent in *NC Dental*, raises concerns that the Court did not define a “controlling number” on the board. He mentions how it could be a majority, a number required for a veto power, or even an obstructionist minority. To be safe, the State should consider all of these options to be a “controlling number,” especially since simpler terms like a “majority”—which clearly indicate a specific standard—are not used by the Court.

Definition of active state supervision. Active state supervision constitutes more than simply authorizing and enforcing decisions made by the board. States need to establish, review, or monitor decisions to ensure they are clearly articulated and firmly expressed as state policy. Therefore, a state must be reasonably informed to the decisions of a board, and then ratify the board’s conduct as proper state policy. The Court has made it clear that a “state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their violation is lawful.

