

## EXECUTIVE ORDER NUMBER 7

**WHEREAS**, in *North Carolina State Board of Dental Examiners v. FTC*, the United States Supreme Court held that state licensing boards do not enjoy automatic immunity from antitrust claims if a controlling number of the decision makers are “active market participants in the occupation the board regulates.” In such circumstances, the regulators will only be immune from antitrust claims if the “challenged restraint” is clearly and affirmatively expressed as state policy and the board is actively supervised by the State;

**WHEREAS**, according to the United States Supreme Court, active state supervision requires substantive review of the purported anti-competitive action, veto and modification power over a board or commission decision, and more than mere potential supervision;

**WHEREAS**, the “state supervision must be specific and bona fide[,]” or in other words, state rubber-stamping of a regulatory board’s actions is inadequate to trigger state action immunity;

**WHEREAS**, in order to comply with the mandate of the United States Supreme Court’s decision, there is a need for the State of Alabama to put into place active state supervision of boards and commissions’ rule-making and certain licensing actions to ensure that the rulemaking or board actions do not result in anti-competitive conduct without a significant and corresponding state interest; and

**WHEREAS**, no state legislation is currently in place that provides a mechanism for the required active state supervision.

**NOW, THEREFORE**, based upon these considerations, and for other good and valid reasons related thereto, I, Robert Bentley, Governor of the State of Alabama, by virtue of the authority vested in me by the Constitution and laws of the State of Alabama, do hereby establish a voluntary program for those Alabama boards and commissions controlled by active market participants to comply with existing law requiring active state supervision as a condition of state action immunity.

**BE IT ORDERED**, that there is established the Alabama Office for Regulatory Oversight of Boards and Commissions (the Office), and the Office shall be headed by a Secretary appointed by the Governor as an employee in the Office of Governor and assigned to the State Personnel Department, which shall provide administrative support, serve as the fiscal agent, and develop policies and procedures for charging fees and expenses of the Office to Participating Entities (as such term is defined below).

**BE IT FURTHER ORDERED**, that, for those state entities that regulate a business or a profession and that voluntarily submit to the authority of the Secretary (Participating Entities), the Secretary shall review actions and/or rules submitted by Participating Entities (the Submitted Actions) to ensure the Submitted Actions are

based upon clear state policy and shall be authorized to veto or modify the Submitted Actions as the Secretary deems necessary.

**BE IT FURTHER ORDERED**, that the Secretary shall develop and adopt procedures for reviewing Submitted Actions by Participating Entities and shall require each of the Participating Entities to agree to the adopted procedures as a condition to participating in the program.

**BE IT FURTHER ORDERED**, that the Secretary shall be an unclassified employee and subject to termination or removal only for the reasons set forth in Section 36-11-1, Code of Alabama (1975).

**BE IT FURTHER ORDERED**, that this Executive Order shall become effective immediately upon its execution and shall remain in effect until amended or modified by the Governor or legislative act.

DONE AND ORDERED this 23 day of June, 2015.



Robert Bentley  
Robert Bentley  
Governor

Attested

J. H. Merrill  
John Merrill  
Secretary of State