

STATE AUTHORIZATION AND PROFESSIONAL LICENSURE

INSTITUTIONAL DISCLOSURES REGARDING STATE AUTHORIZATION AND PROFESSIONAL LICENSURE-TRACK PROGRAMS

INTRODUCTION

This is the second of two papers published by WCET on the subject of state authorization and professional licensure. The first paper (<http://wcet.wiche.edu/wcet/docs/state-approval/State-Authorization-Professional-Licensure.pdf>) gave background information on the cross-section between the state authorization regulations and standards for professional licensure and what institutions should know regarding the role of consumer protection by the agencies that handle those two types of oversight. Although state and federal regulations require numerous disclosures on various topics, this paper provides insight on what state and federal regulations say about disclosing information to students and the general public regarding licensure-track programs offered by institutions.

What do state and federal regulations say about disclosing to students information about licensure-track programs?

BACKGROUND

The purpose of state authorization is to provide protection for consumers. State regulators want to ensure their residents are getting something of value for the time and money spent on higher education. Although fraudulent institutional activity still occurs, it really surfaced back in the 90s when correspondence schools were popping up all over. Many of these schools made promises about job opportunities and wages for their completers when in fact those opportunities did not exist. Or, some simply took money from students, closed up shop, and moved away leaving the student in a lurch without a credential that would lead to a job.

Today, a major concern of state authorization regulators is an institution that advertises and offers programs it says or implies lead to a professional license when in fact they do not in the state where the student lives. This is more often a problem with distance education programs, but it can also be of concern with campus-based programs.

In the past, institutions that addressed the issue of disclosures often did so by informing students it was their responsibility to determine if a program led to a license in their states. This practice – along with the hundreds of institutions that published no disclosures – has led to lawsuits by students and graduates against institutions claiming they were not informed that a program did not lead to a professional license in their state. As a result, state authorization regulators and professional licensing boards have tightened the oversight of professional licensure-track programs, including requiring institutions to be more transparent by disclosing clearer information to students and the general public. In addition, the federal government, through the misrepresentation regulations in the Program Integrity Rules published in 2010 (34 CFR (B)(VI)(668)(F) (<http://www.ecfr.gov/cgi-bin/text-idx?rgn=div8&node=34:3.1.3.1.34.1.39.6>), requires institutions to disclose information regarding professional licensure-track programs.

FEDERAL REQUIREMENTS

Federal regulations about institutional disclosures are found in the Program Integrity Rules under Misrepresentation. This part of the regulation was not set aside and is currently in effect. Let's start with three definitions in 34 CFR (B)(VI)(F) (668.71) (emphasis by the author):

Misrepresentation: Any false, erroneous or misleading statement *an eligible institution, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide education programs or to provide marketing, advertising, recruiting or admissions services*, makes directly or indirectly to a student, prospective student or *any member of the public*, or to an accrediting agency, *to a State agency*, or to the Secretary. A misleading statement includes *any* statement that has the *likelihood or tendency* to deceive. A statement is *any communication made in writing, visually,*



orally, or through other means. Misrepresentation includes the dissemination of a student endorsement or testimonial that a student gives either under duress or because the institution required the student to make such an endorsement or testimonial to participate in a program.

Prospective student: Any individual who has contacted an eligible institution for the purpose of requesting information about enrolling at the institution *or who has been contacted directly by the institution or indirectly through advertising about enrolling at the institution.*

Substantial misrepresentation: Any misrepresentation on which the person to whom it was made *could reasonably be expected to rely, or has reasonably relied,* to that person's detriment.

The next section of the regulations, 668.72 "Nature of education program", provides specific examples of misrepresentation:

- (c) Whether successful completion of a course of instruction qualifies a student –
 - (2) To receive, to apply to take, or to take the examination required to receive, a local, State, or Federal license, or a nongovernmental certification required as a precondition for employment, or to perform certain functions in the States in which the education program is offered, or to meet additional conditions that the institution knows *or reasonably should know* are generally needed to secure employment in a recognized occupation for which the program is represented to prepare students;

Under 668.74 Employability of graduates - the following pertains to disclosures and misrepresentation:

- (f) Other requirements that are generally needed to be employed in the fields for which the training is provided, such as requirements related to commercial driving licenses or permits to carry firearms, and *failing to disclose factors that would prevent an applicant from qualifying for such requirements, such as prior criminal records or preexisting medical conditions.*

In October 2014, the U.S. Department of Education published new gainful employment regulations effective July 1, 2015, that include three provisions regarding disclosures for professional licensure programs (34 CFR 668.414(d)). Gainful employment applies to all for-profit institutions and non-degree programs offered by public and private nonprofit institutions, but at this time does not include distance education programs. CFR 668.412(a)(14)(i) requires institutions to certify:

- 14(i) (A) The applicable educational prerequisites for professional licensure or certification in each state within the institution's MSA; and
 - (B) The applicable education prerequisites for professional licensure or certification in any other State for which the institution has made a determination regarding such requirements.
- 14(ii) For any States not described in paragraph (a)(14)(i) of this section, a statement that the institution has not made a determination with respect to the licensure or certification requirements of those States.

Although this rule currently does not include distance education programs, that could change when the Department publishes a new distance education rule (replacing vacated 34 CFR 600.9(c)) later this year. The Department has clearly indicated that the new rule will include professional licensure disclosure requirements for distance education programs. That means institutions will need to know and disclose whether their programs meet the requirements for professional licensure in multiple states, not just those states where they have a physical campus.

The references above describe the expectations and requirements for disclosure to the general public as anything that could prevent an applicant from enrolling in a program. For example, if a prospective student's goal is to be in a licensed profession in their state of residence, being informed about whether or not they could get licensed after completing a program from a specific institution would have a bearing on his or her decision to attend that institution. Anyone in the shoes of a potential student would want and expect full disclosure of the programs being offered. Not unlike any consumer, the prospective student deserves to know as much as possible about the educational purchase they are contemplating.

STATE DISCLOSURE REQUIREMENTS

A number of states also have regulations regarding disclosures about professional licensure. Below are a few examples (emphasis by author).

Florida: 6E-1.0032 Fair Consumer Practices

This section of the Florida regulations provides details on advertising of expected salaries for graduates, making claims that are up-to-date with citations of the source of such claims, where and what other disclosures are required, as well as a list of institutional catalog requirements. In addition,



Each state may have its own disclosure requirements for licensure programs.

- (5) *Any licensed institution offering a program which does not make the graduate eligible to take required professional examinations in that field or to practice regulated professions in that field in Florida must publish a disclosure statement to inform prospective students clearly and unambiguously of this fact.*
- (6) *Licensure and accreditation status:*
- (d) The institution shall disclose its status regarding licensure by the Commission and its status as an accredited institution or program as applicable. The level and scope of licensure or accreditation shall be disclosed, and any ramifications of accreditation or lack of accreditation on the ability to sit for professional examinations and eligibility for financial aid shall be disclosed.
- (g) Admissions: *If the practice of a career has special requirements or limitations, such as certain physical or language capabilities or lack of a criminal record, such requirements or limitations shall be disclosed to prospective students interested in training for that career.*
- (11) *An institution is responsible for ensuring compliance with this rule by any person or company contracted with or employed by the institution to act on its behalf in matters of advertising, recruiting, or otherwise making representations which may be accessed by prospective students, whether verbally, electronically, or by other means of communication.*

Georgia: 392-5.01 Minimum Standards for Educational Institutions

In consonance with the authority granted in O.C.G.A. 20-3-250.5(b)(2), the Commission requires that a nonpublic postsecondary educational institution be maintained and operated, or, in the case of a new institution, demonstrate that it can be maintained and operated in compliance with the following minimum standards:

- (d) that the institution provides students and other interested persons with a catalogue or other written description containing information describing the programs offered; program objectives; length of program; schedule of tuition, fees, and all other

charges and expenses necessary for completion of the course of study; cancellation and refund policies consistent with the standards adopted by the Commission; prior year's enrollment; graduation and job placement rates; and such other *material facts concerning the institution and the program or course of instruction as are reasonably likely to affect the decision of the student to enroll therein*, together with any other disclosures specified by the Executive Director or defined in the Rules of the Commission; *and that such information is provided to prospective students prior to enrollment;*

Oregon – ORS 583-030-0035(8) Standards for Schools Offering Degree Programs in or from Oregon

- (d) *Where a degree or certificate implies preparation for a specific occupation, the school shall explain clearly the true relationship between its curriculum and subsequent student qualification for occupational practice, including employment rates in the field and graduates' success rates in passing licensure examinations if applicable.*

Wisconsin – EAB 5.03 Misrepresentation of extent or nature of accreditation or approval.

- (3) *A school shall not falsely represent that a program has been approved by a particular industry, or that successful completion thereof qualifies the student for admission to a labor union, similar organization, or apprenticeship program, or for the receipt of a state or federal license to perform certain functions.*

Massachusetts – 940 CMR 31.00

In 2014, the Massachusetts Attorney General updated and amended 1978 regulations 940 CMR 3.10 with 940 CMR 31.00, specifically addressing *for-profit degree-granting and non-degree granting institutions, including those that have no physical presence in the state but deliver distance education to Massachusetts residents.*

940 CMR 31.03 Definitions

Disclosures must be clear and conspicuous, (a) contained on a school's website in a manner that is easy to locate and access; and (b) provided to and signed and dated by the consumer or prospective student, with copies to be provided both to the consumer or prospective student (and if the prospective student is younger than 18 years old, to the prospective student's parent or guardian) and retained by the school.

The regulations have a long list of required disclosures and what constitutes unfair or deceptive practices, but highlighted here are those pertaining to professional licensure.



CMR 940 31.04(7) False or Misleading Statements Regarding Employment Opportunity.

It is an unfair or deceptive act or practice for a school to make any false, untrue, or deceptive statement or representation or any statement or representation which has the tendency or capacity to mislead or deceive students, prospective students, or any other person regarding:

- a) any opportunity in any job or occupation, or the likelihood of employment in any job or occupation;
- b) *the necessity, requirement, or usefulness of any program in obtaining professional licensure, employment in the field of study, admission to a labor union or similar organization;*
- c) *the necessity of or qualification(s) for certification or licensure in any job or occupation, including but not limited to:*
 - 1. *any cost to obtain or maintain such certification or licensure, if such cost is not included in the school's tuition or fees; and*
 - 2. *any continuing education requirement to obtain or maintain such certification or licensure; and*
- d) *any opportunity to qualify for membership in a society or association or union, or to obtain a license, or any opportunity to enroll in a future program or field of study, as a result of the completion of any program, without further education, study, externship, internship, or clinical experience.*

940 CMR 31.05 Required Disclosures:

- (6) *If a school offers or requires students to take an examination, certification examination, or similar test of the students' competence to enter, continue with, or graduate from a program, or to be certified in a particular occupational field, and the examination or test is available directly from an outside vendor, it is an unfair or deceptive act or practice for a school to fail to disclose the actual cost of such examination or test prior to the time of enrollment.*

The information above is a sampling of professional licensure disclosures in five states. Many other states have similar regulations. It is easy to see that institutions must be aware of regulations from all states and territories and determine how they will demonstrate compliance. Institutions may need to provide state-specific disclosures in numerous locations and via all means of communication (verbal, written, electronic, etc.). In some situations institutions may be able to craft one disclosure to cover several state requirements. The important

point is that the disclosures must be clear and easy for the public to find – and they must be provided prior to a student enrolling in a program.

Both the federal and state regulations indicate that disclosures shall be made to “prospective students” and the “general public”. That eliminates the option of notifying only current students after they have enrolled in a program.

WHERE, HOW, AND WHEN TO PUBLISH DISCLOSURES

Although there is no one regulation that specifies where, how, and when to publish professional licensing disclosures, there is some common ground from which to start. First, both the federal and state regulations indicate that disclosures shall be made to “prospective students” and the “general public”. That eliminates the option of notifying only current students after they have enrolled in a program. They need to be communicated (in writing, electronically, and verbally) *prior to a student enrolling*.

The most likely place to publish disclosures is conspicuously on the institution’s website. It is at the institution’s discretion as to the best location on the website, but the regulations say the disclosures should not be hidden deep into the site; the general public should easily find them. Some state regulations say that disclosures about professional licensing (and many other topics) need to be published in the institution’s academic catalog. Again, the placement in the catalog is generally up to the institution (some states specify the location), but the disclosures should be in an obvious place so the general public readily sees the implications about the licensure-track programs.

When the disclosures are made is also regulated. Because professional licensure requirements can change, it is wise to remind students of this fact over the course of their academic career. One online university sends an email every six months to all students enrolled in a licensure-track program reminding them to be aware of professional licensure requirements in their state. Of course, this is after students were informed about whether the program met professional licensure requirements in their state prior to enrolling in the program. Some institutions (and some states) require students to sign an enrollment agreement that includes the required professional licensure disclosures. This signed agreement is to be kept in the student’s record.



A number of years ago, state regulators were fairly comfortable with an institution notifying prospective students that it was their responsibility to know the licensure requirements in their state. That is not the case any longer. The federal government does not accept such a general disclosure either. As noted earlier in CFR 66874(f), institutions are required to disclose factors that would prevent an applicant from qualifying for a license profession, like a prior criminal record. A state example is Florida 6E-1.0032(5) that says institutions must disclose if a licensure-track program does not qualify a Florida resident to take a professional examination or practice a regulated profession. The disclosure must be “clear and unambiguous”. Of course, prospective students and students should know their state’s professional licensure requirements, and it is wise to inform them of that. But an institution cannot rely on that alone for meeting the federal misrepresentation or state authorization disclosure regulations.

Disclosure regulations cover more than professional licensure and more than what is written on the website or in a catalog.

WHAT TO SAY IN THE DISCLOSURES

Some states require specific language for certain disclosures such as a tuition refund policy, but it is the responsibility of the institution to craft all disclosure statements clearly and directly. In short, the language needs to disclose if a program does or does not meet professional licensure requirements and in which states. Some institutions have provided an interactive map on their websites whereby when clicking on a state the disclosure language appears for any licensure-track program.

One thing that institutions want to avoid in the disclosures is saying a graduate *will* get licensed, or imply that because graduates have obtain a professional license in the past then current students can expect the same. There are many factors that go into obtaining a professional license, factors over which the institution has no control. It is better if the disclosure language says a program meets licensure requirements or graduates from a particular licensure-track program may be eligible to obtain a license.

Admissions and marketing departments at institutions are not fond of the disclosure requirements as they believe those statements turn prospective students away. That may happen, but it likely would turn people away who should not be in the

program anyway because they cannot obtain a professional license in their state after completing that institution’s program. There are ways to craft disclosure language so it is accurate and clear to the consumer. Not informing prospective students is unlawful and puts students and the institution at risk.

Although it has been mentioned earlier, it is important to emphasize that disclosure regulations cover more than professional licensure and more than what is written on the website or in a catalog. It also includes verbal statements by anyone representing the institution, even third party vendors. That means institutions will want to pay attention to the training of the admissions or enrollment personnel, faculty, alumni ambassadors, on-the-ground recruiters, or third party vendors representing the institution.

CONSEQUENCES FOR LACK OF OR UNCLEAR DISCLOSURES

The U.S. Department of Education may take a number of disciplinary actions against an institution that is found to be out of compliance with the Title IV regulations, including misrepresentation. The details are in Subpart G – Fine, Limitation, Suspension and Termination Proceedings 668.81-98.

An example of state action, Florida 6E-1.0032 Fair Consumer Practices, says the following:

- (9) If the Commission determines that ongoing complaints show a pattern of misinformation, lack of disclosure, or discrepancies between printed, electronic, and verbal information being given to prospective students, the Commission shall require that institutions prepare additional documents, to be individually signed and dated by students to address the problem. Significant deviations from fair consumer practices shall be grounds for probation, denial or revocation of licensure pursuant to Sections 1005.32(7), 1005.34(3), and 1005.38(1), F.S. and Rule 6E-2.0061. F.A.C.

In addition to disciplinary actions that may be taken by governmental agencies, non-compliance findings may be published in the press. Negative press can affect enrollment, retention, and working relationships with regulators. More importantly, non-compliance negatively affects the students. It is always best to be in compliance than to wish you had been.



CONCLUSION

The requirements, rationale, and need for disclosures is much too complex to be covered in one brief paper. However, with the information provided here, institutions have enough information to begin the journey to compliance. It cannot be emphasized enough that students or graduates should not be left in the lurch because the institution has not taken the time or provided the resources to initially inform and keep them informed about professional licensure matters not only in the institution's home state, but in any state where a student is located.



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Sharyl Thompson has gained expertise in higher education regulatory affairs and compliance for over a decade. She is now an independent consultant, assisting institutions with all phases of state authorization and regulatory compliance, including initial strategic planning, research, training, presenting, and completion of applications.