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## ***The Federation of Associations of Regulatory Boards Publishes Model for Identifying and Addressing Antitrust Issues***

Northbrook, IL - The Federation of Associations of Regulatory Boards (FARB) is pleased to announce the development of the **FARB Model for Identifying and Addressing Antitrust Issues**. The Model provides a reasoned and balanced approach to regulation in response to the 2015 Supreme Court of the United States ruling in *North Carolina State Board of Dental Examiners v. FTC*. Legislative and legal responses exceeding those necessary to adequately address the issues have emerged, ignoring the foundation of the established administrative regulatory system. Examples of legislative responses range from the formation of oversight commissions to altering the board membership. The composition of state boards has become the focus of criticism, rather than the underlying nature of the contemplated board action.

### **Supreme Court Ruling**

The Supreme Court ruling has prompted varied legal and political reactions including challenges to the basic need for an administrative regulatory system; suggested additional bureaucratic layers of government decision makers; and modifications to the composition of the regulatory boards. The judicial decision characterized a state regulatory board as "non-sovereign" for purposes of applying the immunity principles under the state action doctrine. This state action doctrine is a common law defense and provides antitrust immunity to state actors. Based upon the involvement of licensees, referred to as "active market participants," the Supreme Court imposed the two part test generally reserved to private actors seeking immunity from antitrust liability. The two part test includes a clearly articulated state policy to displace competition and active supervision by the state. In spite of the checks and balances in place to curb self-serving interests and the existence and application of relevant ethics laws applicable to volunteer state board members, the Court found the need for satisfaction of the two prong test and focused on the state oversight requirement.

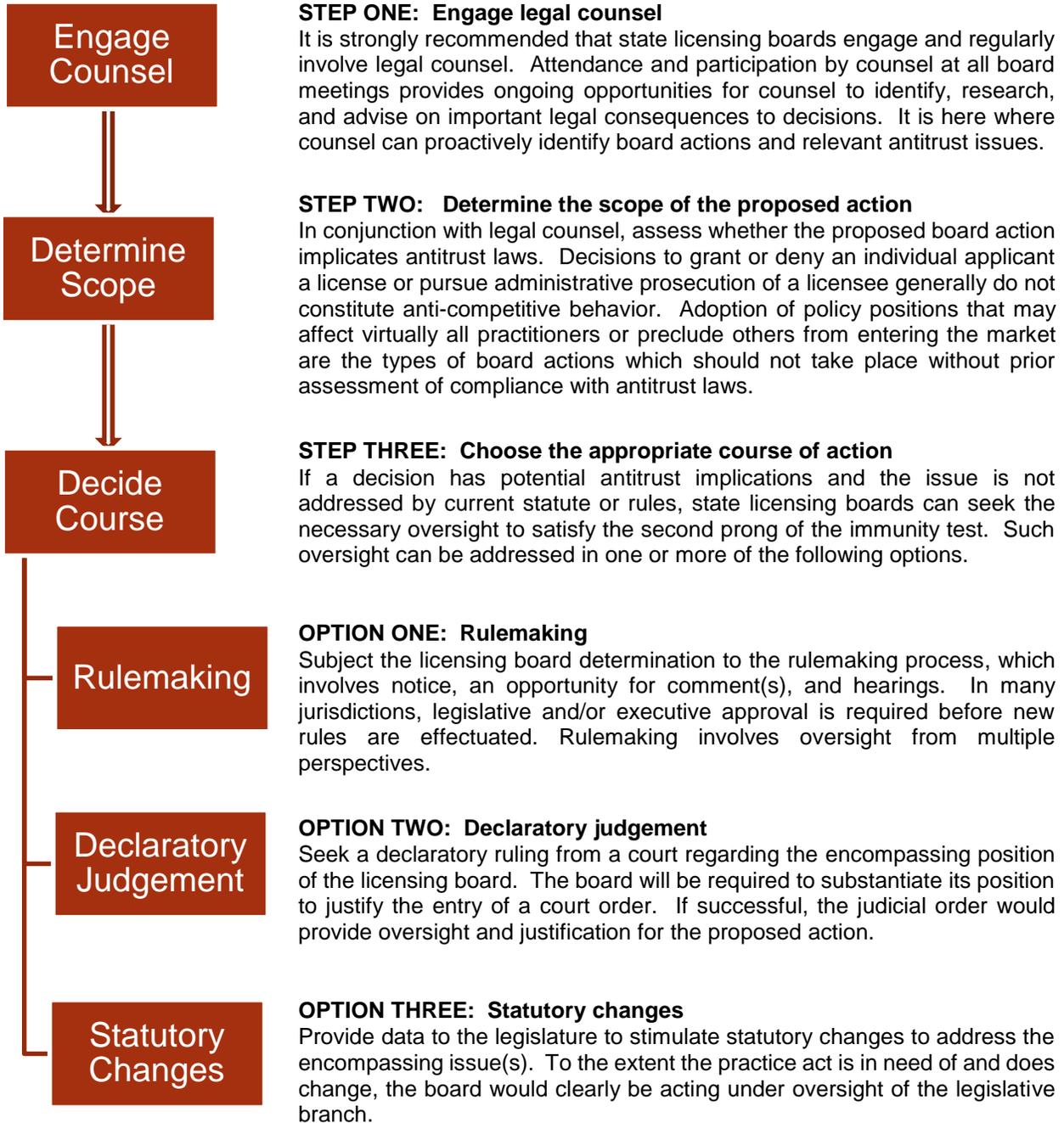
FARB offers the following Model as a method by which boards may address the concerns in the opinion, balancing economic factors and the public protection needs met by an effective and efficient state based licensure system.

### **About FARB**

FARB is a not for profit, 501(c)(3) organization incorporated in 1974 to promote public protection and provide a forum for information exchange for associations of regulatory boards and their stakeholders with interests in professional regulation. The mission of FARB is to advance excellence in regulation of the professions in the interest of public protection. FARB looks forward to continued dialogue with relevant stakeholders on important topics related to effective and efficient regulation of the professions.

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## FARB Model for Identifying and Addressing Antitrust Issues



These options, individually and/or collectively, will involve time, costs, and effort, and may contain some uncertainty. However, such checks and balances provide state oversight while maintaining the expertise on the boards to promote effective and efficient public protection legislation.