



PROFESSIONAL
CERTIFICATION
COALITION

May 3, 2023

Sen. Ralph Hise
ralph.hise@ncleg.gov

Sen. Buck Newton
buck.newton@ncleg.gov

Sen. Norman Sanderson
norman.sanderson@ncleg.gov

Re: S.B. 641

Dear Senators Hise, Newton, and Sanderson:

The Professional Certification Coalition (PCC)¹ writes to share our views regarding S.B. 641. As currently drafted, the bill would **unconstitutionally intrude on the First Amendment right of private organizations to establish and define their credentials**. The PCC's preference is always to work with bill sponsors on legislation where we identify areas of disagreement. We are a non-partisan organization solely focused on protecting and promoting the certification community through public policy, not advancing or opposing a political agenda. However, the constitutional implications of S.B. 641 compel the PCC to oppose the bill unless it is amended so as not to interfere with the eligibility and disciplinary decisions of private certification organizations.

Federal law already protects health care providers who refuse on religious or moral grounds to perform or assist in the performance of certain health care services, including abortion and assisted suicide.² The PCC supports the right of individual providers to refrain from participation in specific procedures that would violate the provider's religious beliefs or objections of conscience.

As currently drafted, however, S.B. 641 tramples the constitutional rights of private certification organizations. **By prohibiting enforcement of private certification codes of conduct, S.B. 641 violates its own principle that private organizations should not be required to act contrary to their "moral, or ethical beliefs or principle" or their "published ... moral, or ethical guidelines or directives, policies, or regulations."** As its core provision, the bill states: "It shall be unlawful for any person to discriminate against any medical practitioner ... that refuses to participate in ... a health care service on the basis of conscience." In Section 90-21.141(3)(g), the bill defines "discrimination" to include "**refusal of board certification**," and in Section 90-21.141(8), the definition of "participation in a health care service" includes "**referral**" and "**admittance** of any person or individual to provide any health care service."

As background, many certification bodies and professional societies for physicians, other medical practitioners, and allied health professionals have adopted codes of conduct that require that their certificants or members take no action that threatens the health and safety of their patients. Violation can result in loss of certification or membership.

Placing the health of the patient at the center of decision-making entails explaining relevant treatment options and risks to the patient and often requires referring a patient to another provider who is better able to provide treatment to that patient, due to their training, expertise, or willingness to perform certain procedures. For example, if a gynecologist were consulted by a patient with advanced uterine cancer, a hysterectomy would be among the treatment options that should be presented to the patient. If a particular gynecologist, for reasons of conscience,

¹ The PCC is a nonprofit association formed to address legislation that affects professional certification programs, those who hold private certification credentials, and the many constituencies that rely on professional certification. The PCC's organizational members include non-governmental professional certification organizations, professional societies, and service providers, spanning a wide spectrum of professions, including numerous health care organizations. Our founding organizations – the American Society of Association Executives (the leading organization for association management) and the Institute for Credentialing Excellence (the leading developer of accreditation standards for professional certification programs) – govern the PCC.

² See, e.g., *Conscience and Religious Nondiscrimination*, U.S. DEP'T HEALTH AND HUMAN SERVICES, <https://www.hhs.gov/conscience/conscience-protections/index.html> (last visited May 2, 2023).

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were unwilling or unable to perform a hysterectomy on a pregnant cancer patient, the gynecologist would need to refer the patient to another provider for consideration of the patient's full treatment options. Indeed, failure to do so could result not only in loss of certification for the gynecologist but also legal liability for malpractice.

Despite this, S.B. 641 would define it as unlawful discrimination (subject to treble damages) for a private certification organization to enforce its code of conduct in this circumstance. **For the PCC, this is a direct infringement on our members' First Amendment rights as private organizations.**

The Constitution bars the state from interfering with the free speech of private organizations, and choosing who to endorse or not to endorse through conferring a certification goes to the heart of private certification organizations' right to free expression. **The North Carolina legislature has no constitutional authority to dictate the eligibility or disciplinary codes of those private certification programs.**

Although S.B. 641 is limited in scope to health care-related professions, its overreach is similar to that of a Florida law³ that was recently blocked on First Amendment grounds by a federal court. In issuing a preliminary injunction against the statute in that case,⁴ the U.S. District Court for the Northern District of Florida explained that "the First Amendment bars the state from burdening speech, while private actors may burden speech freely."

Challenges to the right of certification organizations to develop and define the content and requirements of their credentials have repeatedly failed. As the U.S. Court of Appeals for the Third Circuit stated in *Kenney v. Am. Board of Internal Medicine*, a certification organization "has the right to control who it is certifying and what standards and requirements are necessary." S.B. 641 violates this fundamental principle.

If this bill is enacted, it will certainly face legal challenges, diverting taxpayer funds to litigation – and with the expected result that this provision of the bill will be blocked. **For all of these reasons, we respectfully request that you remove "refusal of board certification" as a form of discrimination and, consistent with widely accepted standards of ethical patient treatment practices, delete "referral," and "admittance" from the definition of participation in a health care service.**

Sincerely,



Jeff Evans
Director, Public Policy
ASAE: The Center for Association Leadership
Phone: (202) 626-2722
Email: jevans@asaecenter.org



Denise Roosendaal, FASAE, CAE
Executive Director
Institute for Credentialing Excellence
Phone: (202) 367-1165
Email: drosendaal@credentialingexcellence.org

CC:

Sen. Bill Rabon, *Chair*
Rules and Operations of the Senate Committee
bill.rabon@ncleg.gov

Sen. Warren Daniel, *Vice Chair*
Rules and Operations of the Senate Committee
warren.daniel@ncleg.gov

Sen. W. Ted Alexander
Ted.Alexander@ncleg.gov

Sen. Joyce Krawiec
Joyce.Krawiec@ncleg.gov

Sen. Timothy D. Moffitt
Tim.Moffitt@ncleg.gov

Sen. Paul Newton
Paul.Newton@ncleg.gov

Sen. Brad Overcash
Brad.Overcash@ncleg.gov

Sen. Benton G. Sawrey
Benton.Sawrey@ncleg.gov

³ The Individual Freedom Act, H.B. 7, 2022 Legis. (Fla. 2022).

⁴ *Honeyfund.com, Inc. v. Ron DeSantis*, 4:22-cv-00 227 (N.D. Fla. Aug. 18, 2022).



AABC Commissioning Group
ABRET Neurodiagnostic
Credentialing & Accreditation
(ABRET)
ABSA International: the
Association for Biosafety and
Biosecurity (ABSA)
Academy for Certification of
Vision Rehabilitation &
Education Professionals
(ACVREP)
American Association of
Professional Landmen (AAPL)
American Board for
Certification in Orthotics,
Prosthetics and Pedorthics
(ABCOP)
American Board of Certification
for Gastroenterology Nurses
(ABCGN)
American Board of Foot and
Ankle Surgery (ABFAS)
American Board of Medical
Specialties (ABMS)
American Board of
Neuroscience Nursing (ABNN)
American Board of Nursing
Specialties (ABNS)
American Industrial Hygiene
Association (AIHA)
American Legal Nurse
Consultant Certification Board
(ALNCCB)
American Medical Certification
Association (AMCA)
American Nurses Credentialing
Center (ANCC)
American Payroll Association
(APA)
American Society of
Association Executives (ASAE)

American Society of Civil
Engineers (ASCE)
American Speech-Language-
Hearing Association (ASHA)
American Traffic Safety
Services Association (ATSSA)
American Translators
Association (ATA)
Arcitura Education, Inc.
Association for Financial
Counseling & Planning
Education (AFCPE)
Association of Surgical
Technologists (AST)
Behavior Analyst Certification
Board (BACB)
Board of
Certification/Accreditation
(BOC)
Board of Certified Safety
Professionals (BCSP)
Board of Pharmacy Specialties
(BPS)
Building Commissioning
Certification Board (BCCB)
Certification Board for Diabetes
Care and Education (CBDCE)
Certification Board for Music
Therapists (CBMT)
Certification Board of Infection
Control and Epidemiology
(CBIC)
Certification Council for
Professional Dog Trainers
(CCPDT)
Certified Financial Planner
Board of Standards (CFP Board)
Certified Fund Raising
Executive International (CFRE)
CertiProf, LLC

Chartered Financial Analyst
Institute (CFA Institute)
Commission for Case Manager
Certification (CCMC)
Commission on Nurse
Certification (CNC)
Community Association
Institute (CAI)
Computing Technology Industry
Association (CompTIA)
Construction Management
Association of America
(CMAA)
Council for Interior Design
Qualification (CIDQ)
Council of Engineering and
Scientific Specialty Boards
(CESB)
Dental Assisting National Board
(DANB)
Diving Equipment and
Marketing Association (DEMA)
Entertainment Services and
Technology Association (ESTA)
ETA International
Financial Planning Association
(FPA)
Healthcare Sterile Processing
Association (HSPA)
Hearth, Patio, & Barbecue
Education Foundation (HPBA)
Heuristic Solutions
Hospice and Palliative
Credentialing Center (HPCC)
Institute for Credentialing
Excellence (ICE)
Institute of Hazardous Materials
Management (IHMM)
Institute of Inspection Cleaning
and Restoration Certification
(IICRC)

International Coach Federation (ICF)
International Information System Security Certification Consortium (ISC²)
Investments & Wealth Institute (IWI)
Irrigation Association
IT Certification Council (ITCC)
Laborers' International Union of North America Training & Education Fund (LIUNA)
Medical-Surgical Nursing Certification Board (MSNCB)
National Association of Insurance and Financial Advisors (NAIFA)
National Association of Personal Financial Advisors (NAPFA)
National Athletic Trainers' Association Board of Certification, Inc. (NATA/BOC)
National Board of Certification and Recertification for Nurse Anesthetists (NBCRNA)
National Board of Certification in Hearing Instrument Sciences (NBC-HIS)
National Board of Certification in Occupational Therapy (NBCOT)
National Board of Surgical Technology and Surgical Assisting (NBSTSA)
National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM)
National Certification Corporation (NCC)
National Commission on Certification of Physician Assistants (NCCPA)
National Commission for Health Education Credentialing (NCHEC)

National Council on Family Relations (NCFR)
National Kitchen and Bath Association (NKBA)
National Recreation and Park Association (NRPA)
National Restaurant Association (NRA)
National Roofing Contractors Association (NRCA)
National Society of Professional Engineers (NSPE)
Nephrology Nursing Certification Commission (NNCC)
Oncology Nursing Certification Corporation (ONCC)
Pediatric Nursing Certification Board (PNCB)
Pharmacy Technician Certification Board (PTCB)
Professional Association of Therapeutic Horsemanship International (PATH)
PSI Services
Pearson Vue
QualityPro
Rehabilitation Nursing Certification Board (RNCB)
School Nutrition Association (SNA)
SeaCrest Consulting
Security Industry Association (SIA)
Society of Broadcast Engineers (SBE)
Specialty Pharmacy Certification Board (SPCB) c/o National Association of Specialty Pharmacy Certification Board
Spray Polyurethane Foam Alliance (SPFA)

Towing and Recovery Association of America, Inc. (TRA)
National Board of Public Health Examiners (NBPHE)