

## THE LEGAL LIMIT OF BOARD ACTIONS

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THE LEGAL LIMITS ARE SCARCE BUT  
BUILDING ARGUMENTS WILL HELP  
CHANGE THE LAW IN THE FUTURE.  
ALWAYS ARGUE EACH PLAUSIBLE, LEGAL,  
AND PRACTICAL ARGUMENT REGARDLESS  
OF PROBABILITY OF SUCCESS



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## THIS PRESENTATION

- REVIEW OF HISTORY AND BASICS OF ADMINISTRATIVE LAW
- THE PROBLEMS OF STALE COMPLAINTS
- REVIEW OF TAANA POSITION PAPER
- REVIEW OF NCSBN RESPONSE TO POSITION PAPER
- REVIEW LEGAL ARGUMENTS TO SUPPORT DISMISSAL
- FEDERAL APA AND COMMERCE CLAUSE
- MODEL APA
- FROM HEAD TO HEART

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**HISTORY AND THE BASICS**  
ADMINISTRATIVE LAW

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**ADMINISTRATIVE LAW IS AN ARM OF GOVERNMENT REGULATION**

- GOVERNMENT AGENCY ACTION CAN INCLUDE RULE MAKING, ADJUDICATION, OR THE ENFORCEMENT OF A SPECIFIC REGULATORY AGENDA.
- ADMINISTRATIVE LAW IS CONSIDERED A BRANCH OF PUBLIC LAW OR AN ARM OF THE EXECUTIVE BRANCH OF GOVERNMENT.

[https://en.wikipedia.org/wiki/Administrative\\_](https://en.wikipedia.org/wiki/Administrative_)

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**FUN FACT - THERE ARE GOBS OF FEDERAL AND STATE AGENCIES MANY ARE OF LITTLE WORTH AND INEFFICIENT.**

- THE NUMBER OF AGENCIES EMPOWERED TO PROTECT THE PUBLIC SAFETY IS MIND BOGGLING.
- IN ARIZONA THERE ARE 130 BOARDS OR "AGENCIES" FROM REGULATION OF HEALTH PROFESSIONALS TO BARBERS, AND ONE BOARD TO GOVERN THE HISTORIC PRESERVATION OF THE "PIONEER HOME".
- THIS PRESENTATION EXAMINES THE NATURE OF REGULATION OF NURSES BY FOCUSING PRIMARILY ON THE CONCEPT OF DUE PROCESS AS IT RELATES TO THE TIMELINE OF COMPLAINT TO RESOLUTION.

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**EXECUTIVE BRANCHES OF GOVERNMENT AND DUE PROCESS**

- UNLIKE THE JUDICIAL SYSTEM THE EXECUTIVE BRANCH FUNCTIONS TO CARRY OUT THE LAW.
- TO THE EXTENT THAT ANY DUE PROCESS EXISTS, IT IS GENERALLY APPLICABLE TO PROCEDURE - NOT SUBSTANCE WHICH IS DEFERRED TO THE BOARD.

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**THE PROBLEM OF STALE COMPLAINTS AT AGENCY LEVEL**

- STALE COMPLAINTS DO NOT PROTECT THE PUBLIC!
- STALE COMPLAINTS ARE STRESSFUL, EXPENSIVE AND LIFE ALTERING FOR THE LICENSEE.
- STALE COMPLAINTS BOG DOWN THE GOVERNMENT PERPETUATING INEFFICIENCY.
- STALE COMPLAINTS IGNORE THE REALITY OF THE PROPERTY RIGHT OF THE LICENSED PROFESSIONAL.
- STALE COMPLAINTS IGNORE THE COMMERCE CLAUSE AND THE EVOLUTION OF THE COMPACT LICENSE.
- STALE COMPLAINTS FLAT OUT IGNORE DUE PROCESS.

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**SO WE ARGUE FOR FAIRNESS AND DUE PROCESS!**

- THE CONSTITUTION GUARANTEES FAIRNESS BOTH IN SUBSTANCE AND IN PROCEDURE.
- THIS IS FREQUENTLY A FAILED ARGUMENT.

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## WHAT IS DUE PROCESS?

### TIMOTHY SANDEFER REMINDS US OF THE CONSTITUTION'S PROMISE THAT:

"NO PERSON SHALL BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW" MEANS NOT ONLY THAT GOVERNMENT MUST TAKE CERTAIN PROCEDURAL STEPS (HEARINGS, TRIALS, AND SO FORTH) WHEN IT IMPOSES A DEPRIVATION, BUT ALSO THAT SOME ACTS ARE OFF LIMITS FOR GOVERNMENT, "REGARDLESS OF THE FAIRNESS OF THE PROCEDURES USED TO IMPLEMENT THEM."

https://www.cato.org/blog/2013/02/08/what-is-due-process-Answered-on-July-8-2018-Author-Timothy-Sandefur-February-2013

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## THE PROBLEM: A NURSING LICENSE IS NOT LIFE, LIBERTY, OR PROPERTY

- ALL FIFTY STATES AND EVEN THE FEDERAL GOVERNMENT VARY ON THIS ISSUE.
- IN ARIZONA THERE IS NO LAW OR CASE THAT HOLDS THAT A NURSING LICENSE IS CONSTITUTIONALLY PROTECTED BECAUSE IT IS PROPERTY.
- THE GENERAL CONSENSUS IS THAT IT IS A JOB AND YOU CAN WORK AT ANY JOB.
- THE MAJORITY OF OTHER STATES FIND THAT THIS IS NOT CONSTITUTIONALLY PROTECTED.

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## COMPARISON OF DUE PROCESS

### CRIMINAL

- RIGHT TO LIBERTY
- RIGHT TO BE FREE FROM UNREASONABLE SEARCH AND SEIZURE
- CONSTITUTIONAL RIGHT TO PROTECTION OF PROPERTY
- DEADLINES FOR SPEEDY TRIAL

### ADMINISTRATIVE

- ABILITY TO WORK IS NOT RESTRICTED TO LICENSE
- ADMINISTRATIVE LAW USUALLY ALLOWS UNFETTERED SUBPOENA POWER
- NURSING LICENSE IS NOT "PROPERTY".
- DEADLINES, IF ANY, ALMOST ALWAYS FAVOR THE GOVERNMENT

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**EXAMPLES OF "SOME" DUE PROCESS MANDATES IN ADMINISTRATIVE LAW**

NOTICE OF CHARGES

OPPORTUNITY FOR EVIDENTIARY HEARING

RIGHT TO APPEAL - BUT LIMITED

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**DUE PROCESS STILL REMAINS AN IMPORTANT CONCEPT**

- DESPITE THE FACT THE FEDERAL AND MOST STATES' GOVERNMENTS HAVE A LEAN "DUE PROCESS" STATUTE, IT REMAINS AS AN OVERALL PART OF THE GOVERNMENT'S OBLIGATION AS THEY EXECUTE THE LAW.
- SO.....
- ADVOCATE FOR THE LICENSE AS A PROPERTY RIGHT – EVEN IF YOU HAVE CASE LAW AGAINST YOU. THIS IS HOW LAWS ARE CHANGED.

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**WHAT IS STALE?**

- MANY STATES HAVE NO LIMIT ON WHEN COMPLAINTS MUST BE FILED.
- MANY STATES HAVE NO LIMIT ON WHEN AN INVESTIGATION MUST BE COMPLETE.
- MANY STATES HAVE NO LIMIT ON WHEN DUE PROCESS DEMANDS AN EVIDENTIARY HEARING.
- TAANA TAKES POSITION THAT COMPLAINTS SHOULD BE FILED WITHIN 2 YEARS OF EVENT.

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## ROADMAP FOR MOTION TO DISMISS

1. WHAT IS STALE – DEFINE THIS FOR YOUR BOARD LEGALLY AND FACTUALLY.
2. NEXT ARGUE STATUTE OF LIMITATIONS ON POINT OR FROM A PUBLIC POLICY PERSPECTIVE.
3. IS DOCTRINE OF LACHES APPLICABLE?
4. IS DOUBLE JEOPARDY APPLICABLE?
5. IS THERE FEDERAL ARGUMENT AVAILABLE?
6. FINALLY, HEAD TO HEART – MAKE THE PRACTICAL AND COMPASSIONATE ARGUMENT.

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## TAANA POSITION

- KEY ELEMENTS ARE STALE C/O FAIL TO PROTECT PUBLIC
- LACK OF UNIFORMITY BETWEEN STATES RESULTS IN PREJUDICE TO LICENSEE
- STATUTE OF LIMITATIONS AS PUBLIC POLICY APPLIES
- RETAINED JURISDICTION RESULTS IN DOUBLE JEOPARDY

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## NCSBN POSITION

- STATUTE OF LIMITATIONS LIMITED TO CIVIL AND CRIMINAL CASES
- TIMEFRAMES AND DEADLINES INAPPLICABLE TO PROTECT THE PUBLIC
- DOCTRINE OF LACHES MAY BE AVAILABLE
- SAFEGUARDS OF APA ARE SUFFICIENT

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STATUTE OF LIMITATIONS  
 ARGUMENT NO. 1

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STATUTE OF LIMITATIONS

1. DOES YOUR VENUE HAVE ANY APPLICABLE STATUTE?
2. DOES ANOTHER ADMINISTRATIVE AGENCY HAVE AN APPLICABLE STATUTE – DUE PROCESS?
3. IF NO RULE, ARGUE PUBLIC POLICY FAVORS A LIMIT.

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STATUTE OF LIMITATIONS

- "THE PLAIN PURPOSE OF STATUTES OF LIMITATIONS IS TO IDENTIFY THE OUTER LIMITS OF THE PERIOD OF TIME WITHIN WHICH AN ACTION MAY BE BROUGHT TO SEEK, REDRESS, OR TO OTHERWISE ENFORCE LEGAL RIGHTS CREATED BY THE LEGISLATURE OR AT COMMON LAW." *SEE IN RE ESTATE OF TRAVERS*, 192 ARIZ. 333, 336, ¶ 21, 965 P.2D 67, 70 (APP.1998) ("A STATUTE OF LIMITATIONS IS A LEGISLATIVE ENACTMENT WHICH SETS MAXIMUM TIME PERIODS DURING WHICH CERTAIN ACTIONS CAN BE BROUGHT." (CITING BLACK'S LAW DICTIONARY 927 (6TH ED.1990))).<sup>2</sup>

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## STATUTE OF LIMITATIONS

■ AS A MATTER OF PUBLIC POLICY, OUR LEGISLATURE HAS DETERMINED THAT CLAIMS MUST BE BROUGHT WITHIN AN IDENTIFIABLE PERIOD OF TIME, AND CLAIMS BROUGHT THEREAFTER ARE, ABSENT CERTAIN CIRCUMSTANCES, TOO STALE TO BE ENFORCEABLE. *PORTER V. SPADER*, 225 ARIZ. 424, 427, ¶ 7, 239 P.3D 743, 746 (APP. 2010)

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### STATUTE OF LIMITATIONS: THE LEGITIMATE PURPOSES OF STATUTES OF LIMITATIONS ARE THREEFOLD

1. TO PROTECT DEFENDANTS FROM STALE CLAIMS, PURSUIT OF A CLAIM AFTER AN UNREASONABLE AMOUNT OF TIME MAY BE THWARTED WHEN EVIDENCE MAY HAVE BEEN LOST OR WITNESSES' MEMORIES HAVE FADED.

SEE *BROOKS V. SOUTHERN PACIFIC CO.*, 105 ARIZ. 442, 444, 466 P.2D 736, 738 (1970).

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### STATUTE OF LIMITATIONS: THE LEGITIMATE PURPOSES OF STATUTES OF LIMITATIONS ARE THREEFOLD

2. TO PROTECT DEFENDANTS FROM INSECURITY — ECONOMIC, PSYCHOLOGICAL, OR BOTH.

“THERE COMES A TIME WHEN HE OUGHT TO BE SECURE IN HIS REASONABLE EXPECTATION THAT THE SLATE HAS BEEN WIPED CLEAN OF ANCIENT OBLIGATIONS.”

COMMENT, DEVELOPMENTS IN THE LAW: STATUTES OF LIMITATIONS, 63 HARV. L. REV. 1177, 1185 (1950)

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**STATUTE OF LIMITATIONS:**  
THE LEGITIMATE PURPOSES OF STATUTES OF LIMITATIONS ARE THREEFOLD

**3. TO PROTECT COURTS FROM THE BURDEN OF STALE CLAIMS.**

CHASE SECURITIES CORP.V.DONALDSON, 325 U.S. 304, 314, 65 S.CT. 1137, 1142, 89 L.ED. 1628 (1945).

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**STATUTE OF LIMITATIONS**

“THE UNDERLYING PURPOSE OF STATUTES OF LIMITATIONS IS TO PREVENT THE UNEXPECTED ENFORCEMENT OF STALE CLAIMS CONCERNING WHICH PERSONS INTERESTED HAVE BEEN THROWN OFF THEIR GUARD BY WANT OF PROSECUTION.”

JACKSON V.AM. CREDIT BUREAU, INC., 23 ARIZ. APP. 199, 531 P2D 932 (1975)

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**STEP 1: ARGUE STATUTE OF LIMITATIONS ALWAYS, ALWAYS, ALWAYS**

**IF YOU HAVE NO STATUTE, ARGUE DE FACTO STATUTE OF LIMITATIONS.**

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**TAANA POSITION ON STATUTE OF LIMITATIONS**

- 1. APPLIES TO AGENCY ACTIONS
- 2. GENERALLY TWO YEARS
- 3. READ PAPER AS TO RATIONALE – SIMILAR TO ARGUMENTS ABOVE

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**NATIONAL COUNCIL OF STATE BOARDS OF NURSING (“NCSBN”) RESPONSE**

- “IT IS WELL-ESTABLISHED THAT, IN THE ABSENCE OF SPECIFIC STATUTORY ENACTMENT, STATUTES OF LIMITATIONS ARE INAPPLICABLE TO ADMINISTRATIVE LICENSE REVOCATION AND DISCIPLINARY PROCEEDINGS TAKEN IN THE PUBLIC INTEREST.”
- THE RATIONALE IS THAT STATES REGULATE PROFESSIONS IN THEIR SOVEREIGN CAPACITY FOR THE PUBLIC SAFETY, NOT TO ADJUDICATE PRIVATE INTERESTS.

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**NATIONAL COUNCIL OF STATE BOARDS OF NURSING (“NCSBN”) RESPONSE**

STATE REGULATORY AGENCIES TAKE DISCIPLINARY ACTION IN THE FURTHERANCE OF PROTECTING THE PUBLIC BY INSURING THAT ONLY PROPERLY QUALIFIED AND ETHICAL INDIVIDUALS PRACTICE NURSING.

SEE NORALYN O. HARLOW, ANNOTATION, APPLICABILITY OF STATUTE OF LIMITATIONS OR DOCTRINE OF LATCHES TO PROCEEDING TO REVOKE OR SUSPEND LICENSE TO PRACTICE MEDICINE, 51 A.L.R. 4TH 1147, 1151 (1987); IN RE TENENBALUM, 918 A.2D 1109 (DEL. 2006); ALA. BD. OF NURSING V. WILLIAMS, 941 SO. 2D 990 (ALA. 2005); ALA. CIV. APP. LEXIS 687; KRISHENBIRPHI V. WIS. DENTISTRY EXAMINING BD., 2004 WI APP 147, ¶¶ 30-31, 275 WIS. 2D 626, 688 N.W.2D 591; NIMS V. BD. OF REGISTRATION, 53 F.3D 52 (WASH. 2002); LANE V. STATE COMM. OF PSYCHOLOGISTS, 954 S.W.2D 23 (1997 MO.); FAHMY V. MEDICAL BD. OF CALIFORNIA, (1995) 38 CAL APP 4TH 810, 45 CAL RPTR. 2D 486; SAHAY IOWA BD. OF MED. EXAM’RS, 537 N.W.2D 674, 676 (IOWA 1995).

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## YOUR RESPONSE

- PROSECUTING STALE COMPLAINTS DOES NOT PROTECT THE PUBLIC
- PROSECUTING STALE COMPLAINTS ENDANGERS THE PUBLIC
- SOME LIMITATIONS PROTECT BOTH THE PUBLIC AND THE INTEGRITY OF THE PROCESS

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## DOCTRINE OF LACHES

ARGUMENT NO. 2

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## DOCTRINE OF LACHES

THE DOCTRINE OF LACHES IS BASED ON THE MAXIM THAT "EQUITY AIDS THE VIGILANT AND NOT THOSE WHO SLUMBER ON THEIR RIGHTS".

(BLACK'S LAW DICTIONARY).

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## DOCTRINE OF LACHES

A LEGAL RIGHT OR CLAIM WILL NOT BE ENFORCED OR ALLOWED IF A LONG DELAY IN ASSERTING THE RIGHT OR CLAIM HAS PREJUDICED THE ADVERSE PARTY.

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## DOCTRINE OF LACHES

### ELEMENTS OF LACHES INCLUDE:

- KNOWLEDGE OF A CLAIM;
- UNREASONABLE DELAY;
- NEGLIGENCE;
- WHICH TAKEN TOGETHER HURT THE OPPONENT.

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## LACHES DEFINED

"LACHES" MEANS "TOO BAD, YOU ARE OUT OF TIME", AS IN, "THAT DOOR IS NOW LOCKED."

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## DOCTRINE OF LACHES

1. IT IS NOT ENOUGH THAT TIME HAS PASSED.
2. IF CONDITIONS AND RELATIVE POSITIONS OF THE PARTIES, THAT THEY ARE NOT MATERIALLY IMPAIRED, AND THERE ARE PECULIAR CIRCUMSTANCES EXCUSING THE DELAY, THE COURT WILL NOT DENY THE APPROPRIATE RELIEF.
3. EVERY CASE IS GOVERNED CHIEFLY BY ITS OWN CIRCUMSTANCES.

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## TO HAVE CASE DISMISSED DUE TO LACHES

YOU MUST BE ABLE TO SHOW  
PREJUDICE DUE TO THE PASSAGE OF  
TIME.

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## PROBLEM - EVEN ACKNOWLEDGED BY ("NCSBN") RESPONSE

- MANY STATES REJECT THIS DOCTRINE
- "AT PRESENT, THE COURTS ARE SPLIT AS TO WHETHER THE DOCTRINE OF LACHES APPLIES TO ADMINISTRATIVE DISCIPLINARY ACTION."

See, HARLOW, 51 A.L.R. 4TH AT §§ 2(A), 4.5. COMPARE: ALABAMA BD. OF EXAMINERS IN PSYCHOLOGY V. HAMILTON, 150 SO.3D 1085 (ALA. CIV. APP. 2013); IN RETENENBAUM, SUPRA; STATE EX. REL. WEBB V. VA. BD. OF MED., 506 S.E. 2D 830 (1998 W.VA.); APPEAL OF BLANTIER, 494 A.2D 270 (1985 NOLF.) (HOLDING LACHES MAY BE APPLICABLE ON A CASE-BY-CASE BASIS), WITH INGALLS V. BD. OF REGISTRATION IN MED., 837 N.E.2D 232 (2005 MARS.); PEARL V. N.Y. STATE BD. OF PROF'L MED. CONDUCT, 295 A.D. 2D 764 (2002 (N.Y.)), OHIO STATE BD. OF PHARM V. FRANTZ, 555 N.E. 2D 630 (1990 OHIO) (HOLDING THE DEFENSE OF LACHES IS NOT APPLICABLE TO ADMINISTRATIVE DISCIPLINARY ACTIONS).

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**NCSBN SOLUTION –  
APA DUE PROCESS SAFEGUARDS**

“BUT, THIS CONSIDERATION CAN BE ADEQUATELY ADDRESSED THROUGH THE DUE PROCESS AFFORDED BY THE STATE ADMINISTRATIVE PROCEDURE ACT SAFEGUARDS, APPLICABLE TO SUCH DISCIPLINARY PROCEEDINGS. MOREOVER, A NURSE SUBJECT TO DISCIPLINARY ACTION MAY BE ABLE TO ASSERT THE EQUITABLE DEFENSE OF LATCHES.”

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**PROBLEM**

**NO STATE OR FEDERAL APA HAS A TRUE “SAFEGUARD” FOR PROCEDURAL DELAY OVERALL.**

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**DOUBLE JEOPARDY**  
ARGUMENT NO. 3

ARGUMENT NO. 3

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## DOUBLE JEOPARDY

- BASICALLY DUE TO COMPACT LICENSURE – MULTIPLE STATES ARE ALLOWED TO REVIEW AND TAKE DIFFERENT AND PUNITIVE ACTION AGAINST THE LICENSEE – THIS IS RETAINED JURISDICTION.
- See TAANA POSITION PAPER

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## CONCEPT OF DOUBLE JEOPARDY

THE DOUBLE JEOPARDY CLAUSE IN THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION PROHIBITS THE GOVERNMENT FROM PROSECUTING INDIVIDUALS MORE THAN ONETIME FOR A SINGLE OFFENSE AND FROM IMPOSING MORE THAN ONE PUNISHMENT FOR A SINGLE OFFENSE. IT PROVIDES THAT "NO PERSON SHALL ... BE SUBJECT FOR THE SAME OFFENSE TO BE TWICE PUT IN JEOPARDY OF **LIFE OR LIMB.**"

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## PROBLEM

DOUBLE JEOPARDY IS GENERALLY **LIMITED** TO CRIMINAL CHARGES

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ALTERNATIVE ARGUMENT –  
COMMERCE CLAUSE

ARGUMENT NO. 4



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COMMERCE CLAUSE

THE COMMERCE CLAUSE (ART. I, §8, CL. 3) OF THE UNITED STATES CONSTITUTION PROVIDES THAT:

THE CONGRESS SHALL HAVE THE POWER TO REGULATE  
INTERSTATE AND FOREIGN COMMERCE. THE PLAIN  
MEANING OF THIS LANGUAGE MIGHT INDICATE A LIMITED  
POWER TO REGULATE COMMERCIAL TRADE BETWEEN  
PERSONS IN ONE STATE AND PERSONS OUTSIDE OF THAT  
STATE.

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COMMERCE CLAUSE HAS A STRONG BITE IN THIS TIME

COMMERCE CLAUSE HAS BECOME THE CONSTITUTIONAL  
BASIS FOR A SIGNIFICANT PORTION OF THE LAWS PASSED  
BY CONGRESS OVER THE LAST 50 YEARS, AND IT  
CURRENTLY REPRESENTS ONE OF THE BROADEST BASES  
FOR THE EXERCISE OF CONGRESSIONAL POWERS.

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## ARGUMENT: COMMERCE CLAUSE

1. RETAINED JURISDICTION BY MULTIPLE STATES VIOLATES THE COMMERCE CLAUSE
2. THE FEDERAL APA SUPERSEDES ANY STATE PROCEDURE
3. FEDERAL APA HOLDS PROSECUTION MUST BE TIMELY BUT UNTIMELY OR CONTRADICTORY STATE RULINGS VIOLATES COMMERCE CLAUSE

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## ARGUMENT: COMMERCE CLAUSE

- DISPARITY IN STATE DECISIONS IMPEDES MOVEMENT OF THE NURSE
- DISPARITY IN STATE RULINGS IS CONTRARY TO THE CURRENT PRACTICE OF MEDICINE, I.E., INTERNET AND TELEMEDICINE
- MULTIPLE STATES ACTING ON SAME EVENT IMPEDES THE FREEDOM OF THE RESPONDENT TO MOVE AND CREATES AN APPELLATE QUAGMIRE

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## FEDERAL APA

- THE APA DIRECTS REVIEWING COURTS TO "COMPEL AGENCY ACTION UNLAWFULLY WITHHELD OR UNREASONABLY DELAYED" AND TO "HOLD UNLAWFUL AND SET ASIDE AGENCY ACTION, FINDINGS, AND CONCLUSIONS" THAT VIOLATE THE LAW OR ARE OTHERWISE "ARBITRARY AND CAPRICIOUS."
- THIS REVIEW IS LIMITED, HOWEVER, TO "FINAL AGENCY ACTION" THAT IS NOT PRECLUDED FROM REVIEW BY ANOTHER STATUTE OR LEGALLY COMMITTED TO THE AGENCY'S DISCRETION.

Congressional Research Service (December, 2016) "An Introduction to Judicial Review of Federal Agency Action" Cole, Jared P. accessed on 8/8 at <https://fas.org/igp/crs/misc/R444699.pdf>

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## FEDERAL ADMINISTRATIVE PROCEDURE ACT

(5 U.S.C. SUBCHAPTER II) SECTION 554 (ADJUDICATIONS)

(c) THE AGENCY SHALL GIVE ALL INTERESTED PARTIES OPPORTUNITY FOR--

(1) THE SUBMISSION AND CONSIDERATION OF FACTS, ARGUMENTS, OFFERS OF SETTLEMENT, OR PROPOSALS OF ADJUSTMENT WHEN TIME, THE NATURE OF THE PROCEEDING, AND THE PUBLIC INTEREST PERMIT; AND

(2) TO THE EXTENT THAT THE PARTIES ARE UNABLE TO DETERMINE A CONTROVERSY BY CONSENT, HEARING AND DECISION ON NOTICE AND IN ACCORDANCE WITH SECTIONS 556 AND 557 OF THIS TITLE.

5 U.S.C.A. § 554 (West).

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## CONCLUSION

ROAD MAP TO MOTION TO DISMISS



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## CHECKLIST: RECOMMENDED ACTION

- FIRST: STATE LEGISLATIVE CHANGE
- LITIGATION CASES: CREATE A RECORD AND APPEAL TO SUPREME COURT
- LITIGATION CASES INVOLVING COMMERCE CLAUSE: APPEAL TO FEDERAL COURT

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## FINALLY, HEAD TO HEART

### MAKE REAL LIFE PASSIONATE ARGUMENTS BASED ON YOUR CLIENT

- THIS COMPLAINT HAS BEEN AROUND FOR TWO YEARS.
  - ❖ THIS NURSE HAS SPENT THE LAST 730 DAYS WAITING FOR HER OPPORTUNITY TO PRESENT EVIDENCE.
  - ❖ FOR 730 NIGHTS, THIS IS THE LAST THOUGHT SHE HAS WHEN SHE GOES TO BED AND THE FIRST THOUGHT IN THE MORNING .
  - ❖ THIS HAS IMPACTED HER PHYSICAL HEALTH, HER MENTAL HEALTH AND HER SPIRITUAL HEALTH.

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## HOMEWORK

- LEARN AND REPORT TO [KKENT@KLGAZ.COM](mailto:KKENT@KLGAZ.COM) ON YOUR STATE'S LIMITS
- READ TAANA POSITION PAPER
- READ NCSBN RESPONSE
- DRAFT YOUR OWN TEMPLATE MOTION TO DISMISS
- FIND PERFECT CASE TO APPEAL
- REPORT OUTCOMES TO TAANA

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OUR GREATEST WEAKNESS LIES IN GIVING UP. THE MOST CERTAIN WAY TO SUCCEED IS ALWAYS TO TRY JUST ONE MORE TIME.

THOMAS A. EDISON

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