



REVISED VERSION

TO: The Honorable the Members of the Board of Regents

FROM: Johanna Duncan-Poitier

COMMITTEE: Professional Practice Committee

TITLE: The Expansion of the Licensed Professions

DATE OF SUBMISSION: June 7, 2001

PROPOSED HANDLING: Discussion

RATIONALE FOR ITEM: To inform the Regents of this emerging issue

STRATEGIC GOAL: Goal 3

AUTHORIZATION(S):

EXECUTIVE SUMMARY

This is the ninth in a series of reports to the Board of Regents on emerging issues in professional regulation. The report deals with challenges familiar to professional regulators around the nation and around the world – the increase in the number of licensed professionals, the pressure to further expand the number of licensed professions and the pressure to expand the scopes of practice of existing professions as professional practice evolves. Since the fundamental reason for licensure is public protection and safety, the issues surrounding the expansion of scopes of practice or the addition of new professions require careful scrutiny. Adding new professions or allowing existing scopes of practice to expand or overlap those of other professions profoundly effects both New York's consumers and the licensed professionals who provide health, design and business services.

The Board of Regents oversight of the licensed professions ranges across health, design, and business professions. Over the course of more than a century, the professions that are vital to the common welfare have been placed under the jurisdiction of New York's independent, citizen body: the Board of Regents. Because of the Board of Regents authority to regulate the entry to and practice of the professions, consumers rely on the Regents "stamp of approval" when selecting a licensed professional.

The Regents jurisdiction over the licensed professions, also referred to as the "learned professions," began over a century ago. Guided by the Regents, the professions are within New York State's unified system of education – The University of the State of New York. This recognizes the key role education plays in both preparing licensed professionals and in ensuring their continuous development.

Gradually, the number of professions grew from one profession - medicine in the late 1800s, to 38 professions today, and over 30,000 professional practice business entities. The number of professions under the Board of Regents jurisdiction has grown steadily. Today, there are 1.6 million people licensed as professionals in our State; of those, more than 653,000 are currently registered to practice.* This number is expected to grow as new groups continuously seek to become licensed professions. Mental health therapists, genetic counselors, medical physicists and geologists are just a sample of those seeking to become licensed professionals in New York State.

This report describes the growth of the licensed professions in New York State; the critical importance of professional regulation to protect the public interest and the integrity of the professions; and some of the factors critical to determining whether licensure is appropriate for a particular profession to guarantee public protection. It also provides basic information about the process of establishing licensure for a new group.

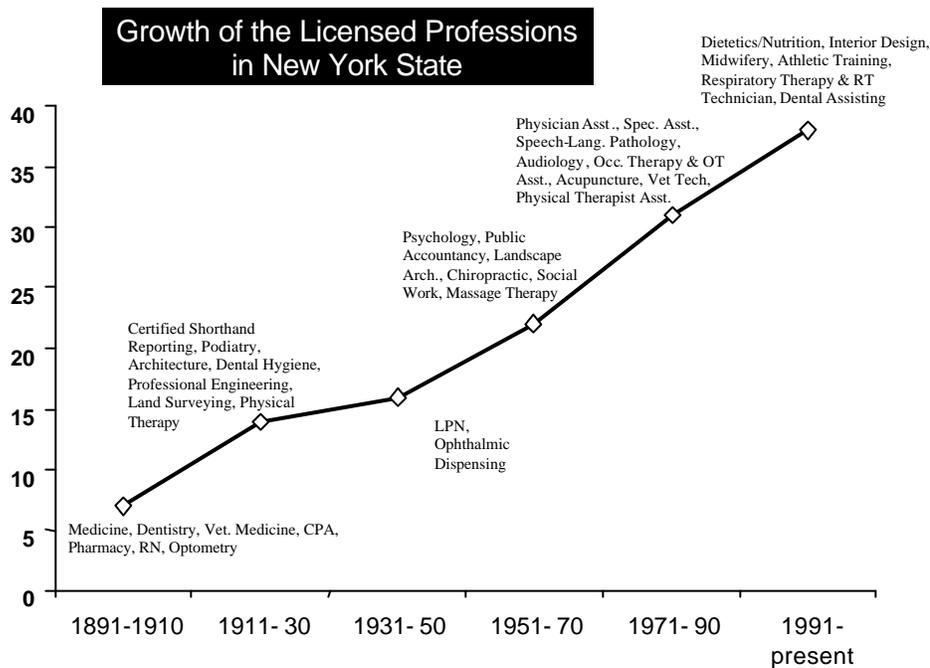
Previous reports in this series include an array of other horizon topics of critical and timely importance to professional regulators, the professions and the protection of the public: corporate practice of the professions, telepractice, cross-jurisdictional professional practice, continuing competence, effective professional regulation and discipline, illegal (unlicensed) practice of the professions, rising consumer expectations and the nursing shortage. These reports are available on the Office of the Professions (OP) website at www.op.nysed.gov/news.htm.

THE REGENTS AND PROFESSIONAL REGULATION IN NEW YORK STATE

History

The Board of Regents unique role in professional regulation extends back more than 125 years. This important responsibility began in 1872, when New York State Education Law authorized the Regents to appoint examining and licensing boards in the State's medical schools. Public concern about the propriety of medical faculties licensing their own students led the Legislature to vest in the Regents the exclusive authority to license physicians in 1890. By 1912, the Regents had jurisdiction over professions that previously had independent examining and licensing boards: dentistry (1895), pharmacy (1910), podiatry (1912) and several newly established professions, including veterinary medicine (1895), certified public accountancy (1896), registered nursing (1903), and optometry (1909). The solid roots of the comprehensive system of professional regulation that we know today were just beginning to develop. At this early stage, the Board of Regents assumed a leadership role in professional regulation and defined its essential commitment to public protection.

* Individuals must be licensed and currently registered to engage in professional practice.



As interest in the licensure of the professions gained momentum in New York State, the number of statutes authorizing licensure grew. Education, experience, examination and/or good moral character requirements varied among the different professions. In the 1920s, the Regents and the Education Department began to consolidate some functions such as examination administration and the registration process. By 1970, 22 professions had been authorized. The governing laws and regulations often differed significantly from one profession to another as the Legislature attempted to tailor the requirements to the practice of the individual professions.

In 1970, a statute consolidated and simplified the regulatory and disciplinary structure for the professions regulated by the Regents. Existing professions were considered "licensed" and fell under the provisions of the new statute, regardless of whether the credential was called "registered," "certified," or "licensed." This was followed, in 1981, by a further consolidation of the disciplinary process. The investigation, prosecution and hearing of misconduct cases became the full responsibility of the Board of Regents and the Education Department. The only exception occurred when the Legislature transferred the disciplinary function of the State Board for Medicine and the authority to make final decisions in medical disciplinary cases to the Department of Health (DOH) in 1991.

Today, there are over 653,000 actively registered licensed professionals in 38 distinct health, design, and business professions. The following table shows the number of active licensees by profession.

TABLE I

New York State Professions Number of Active Licensees Registered by Profession as of April 1, 2001			
Acupuncture	1,533	Occupational Therapy Assistant	3,366
Architecture	14,420	Ophthalmic Dispensing	3,807
Athletic Trainer	785	Optometry	2,737
Audiology	1,196	Pharmacy	19,286
Certified Dental Assistant	304	--Pharmacy, 3-yr limited license	31
Certified Public Accountant	34,354	Physical Therapist Assistant	4,220
Certified Shorthand Reporting	310	Physical Therapy	14,915
Chiropractic	6,108	Podiatry	2,448
Dental Hygiene	8,976	Professional Engineering	26,512
Dentistry	17,231	Psychology	9,891
Dietetics-Nutrition	4,661	Public Accountant	385
Interior Design	171	Registered Professional Nurse	234,820
Land Surveying	1,701	Registered Physician Assistant	5,805
Landscape Architecture	992	Registered Specialist Assistant	62
Licensed Practical Nurse	68,912	Respiratory Therapist	4,596
Massage Therapy	10,184	Respiratory Therapy Technician	1,728
Medicine	72,920	Social Work	39,194
--Medicine, 3-yr limited license	638	Speech-Language Pathology	9,589
Midwifery	895	Veterinary Medicine	3,953
Nurse Practitioner specialty areas	9,789	--Veterinary Medicine, 3-yr limited license	6
Occupational Therapy	7,743	Veterinary Technology	2,386
		--Veterinary Technology, 3-year limited license	1
		Total:	653,561

Notes: All licensees must be currently registered to practice and/or use a professional title within New York State. All nurse practitioners must also be currently registered as registered professional nurses. Nurse practitioner specialty areas include: adult health, college health, community health, family health, gerontology, neonatology, obstetrics/gynecology, oncology, pediatrics, perinatology, psychiatry, school health, and women's health. Individuals may hold more than one professional license.

The licensure, practice and conduct of these licensees are regulated by the Board of Regents* and the Education Department with the assistance of 25 State boards for the professions organized under the Department's Office of the Professions. Some State boards represent more than one profession; for example, the members of the State Board for Dentistry provide assistance to the Board of Regents and the Department on

* The Board of Regents license and has an advisory board for medicine; however, the professional conduct of physicians, physician assistants and specialist assistants is under the jurisdiction of the Department of Health.

issues related to the professions of dentistry, dental hygiene, and dental assisting. Similarly the Engineering and Land Surveying Board covers issues related to professional engineers and professional land surveyors.

Professional Regulation in New York
at a Glance - 2000

Licensure Data

1,615,000	Total licenses issued
653,561	Registered licensees as of April 1, 2001
230,000	Reregistrations each year
35,000	New licensees each year
30,000	Registered professional entities (professional corporations, pharmacies, continuing education providers, providers of courses in infection control and in the identification and reporting of child abuse, and others)
3,300	Registered professional education programs
100	Countries from which applicants come
38	Professions

Professional Discipline Data

8,252	Professional disciplinary cases opened in 2000 - a 48% increase over 5,568 in 1997
8,050	Investigations completed
930	Regents and administrative actions
22	License restoration petition cases referred for hearings

The Regents and the Education Department's authority over the licensed professions evolved over the course of more than 125 years, so that today, it effectively balances public protection and professional interests. New York's regulatory structure is also regarded as a model design for the future. The highly regarded Pew Commission - a national panel that reviews issues of professional regulation - has recommended one model of professional regulation above all others. Their model features the independent oversight of the professions by a lay board. New Yorkers have benefited from this "model" through Board of Regents oversight of professional regulation for more than a century.

Emerging Professions

Groups seek professional licensure for a variety of reasons. These reasons, which vary depending upon the group, may include:

- a belief that the services delivered by a given group are unique and need to be regulated (with basic standards for education and licensure) to protect the health, safety and/or welfare of the public;
- a belief that there is a need for a credential (based on established standards) so that the public can easily identify who has met the recognized education and training to be qualified to provide such a service;
- the desire to have services eligible for third-party insurance (insurance companies, among others, often limit financial compensation to services offered by licensed professionals); and
- public recognition of the value and professionalism of the services they provide.

While prestige and financial reward are often motives, they are rarely the only incentives for seeking licensure.

The State Legislature and the Governor, however, rarely impose licensure as a statutory requirement unless there is a perception that the service that is offered poses some risk or hazard to the public, and requires the assurance of minimum levels of education, training, and competence. New professions can only be established in law. When groups approach the Legislature regarding the establishment of a new profession, legislators may ask a series of questions to help them determine whether an activity or professional service should be licensed. The questions focus on consumers' needs and the health and safety of the public as demonstrated by the following examples.

- ◆ What is the problem? Has the public been harmed because the professionals have not been regulated?
- ◆ Who are the users of the professional services and are they able to evaluate the qualifications of those offering the services?
- ◆ Is there a nongovernmental certification program that would assist the public in identifying qualified practitioners, and what are the requirements for the certificate?
- ◆ Could existing laws or standards solve the problem? Would strengthening existing regulations help?
- ◆ How will the public benefit from licensing of these professionals? What standards would be used? Are they job related? Will they ensure competence?
- ◆ What is the cost to the public for regulating the profession, and what is the impact on individuals who perform the services and may not wish to become licensed or would not meet the newly created licensing standards.

The issues presented in these questions illustrate only some of the ways groups seeking to secure statutory status as licensed professionals must demonstrate a need for such licensure status.

Bills to license mental health therapists, genetic counselors, medical physicists and geologists, among others, have been introduced in the Legislature this session. As each of these professions is being assessed to determine the need for regulation, the

Legislature reaches out to the Education Department for guidance and technical assistance. The Department's experience in regulating licensed professions is a valuable resource when new professions are being assessed. For example, the questions we receive regarding practice issues in the engineering profession are helpful when assessing the proposed profession of geology. Likewise, practice issues raised in psychology and social work have informed our analysis of the mental health therapy professions. Discussions with the relevant State professional boards are also helpful when considering new professions, especially when the profession being proposed is the result of recent technological advances and scientific discoveries, such as genetic counselors and medical physicists.

Implementing a New Profession for Licensure

Once the Legislature has enacted a statute authorizing a new profession, the Board of Regents appoints a State board for that profession on the recommendation of the Commissioner of Education. The State professional board assists the Department staff in developing regulations for Board of Regents approval to implement and govern the licensed profession. These are circulated widely for appropriate input before being submitted to the Board of Regents for discussion. At the same time, the proposed regulations are published in the State Register to inform the public and provide time for comment and possible revisions. After the Board of Regents approves the regulations, detailed implementation work continues in the Department. This is a resource-intensive and complex process. In forming a State professional board, nominations are sought from the public, professional and consumer organizations, schools, and other agencies.

All of the professional programs in colleges and universities that prepare potential licensees are reviewed by the Office of the Professions, sometimes in collaboration with the Department's Office of Higher Education, to determine if they meet the requirements of the newly enacted regulations. Information is circulated to all interested parties about the profession being licensed. The Department may need to develop or contract for the development and/or administration of an acceptable licensing examination. After all requirements have been established by regulation and the exam selected, other materials necessary to apply for licensure are developed. With so many qualifications and criteria to establish when implementing a new profession, meeting the statutory deadline for issuing the first license is often a challenge. If it is anticipated that large numbers of individuals will apply for the newly established license, procedures and staffing may need significant adjustments. In addition to its current workload, the Office of the Professions must also plan to handle the disciplinary process for the new profession by preparing investigators to understand the scope of practice of the new profession and orienting the new State professional board members to the details of the professional disciplinary process. In addition, print and Web information must be created or updated.

In short, the creation of a new profession requires the commitment of substantial resources, both in terms of funding and staffing. One cost estimate for the implementation of a relatively small profession (under 5,000 new licensees) that did not

require the development of a new licensing examination was over \$300,000. These costs are not recouped because licensure fees are prospective, and are devoted to the costs of maintaining the new profession.

Challenges Resulting from the Expansion of the Professions

The expansion of the number of professions over the years presents unique challenges to professional regulation. For example, when there were only a few health professions distinctions and similarities were more clear. The definition of the Registered Professional Nurse's scope of practice, for example, is fairly distinct from that of a dentist, podiatrist, pharmacist, or optometrist. In some of the 30 health professions, the distinctions are far more subtle. For that reason, the law specifies that the scope of practice of one profession may not limit similar or equivalent practice in another profession. At the same time that new professions are discussed, proposals are regularly made to the Legislature to expand or modify the scope of practice of one of the existing professions which may impact professional practice in the field and our regulatory process.

Evaluating the hundreds of educational programs, many from foreign countries, is a much more complex and logistically difficult undertaking as the number of professions has grown. Similarly, as the number of licensed professions grows, so have the number and types of foreign institutions that educate individuals who seek professional licensure in New York State. The Office of the Professions reviews and approves over 3,300 educational programs that prepare students for professional licensure. The challenge of verifying the authenticity of both U.S. and foreign candidates' credentials, as well as the validity of their programs, has intensified.

Professional Licensure Is More Than Just a Credential

A host of activities, resources and information support every professional license issued to help guarantee public protection and that professionals have the information they need to practice safely. This report has already noted the need to select or develop an exam, to design and distribute forms and develop Web information and automated phone scripts, and approve educational programs or evaluate equivalent preparation. These are among the most critical pre-licensure activities.

In addition, many post-licensure activities and resources must be provided to uphold the credibility that professional licensure represents. To the general public, a professional license means that an individual has met the basic education, training and exam requirements to provide competent professional services. It is also understood that licensees are regulated for the services they provide so that the public can be assured of the safe delivery of professional services.

To uphold this public trust, the Office of the Professions, under the guidance of the Board of Regents, implements a comprehensive system of professional regulation to respond to and address all allegations of professional misconduct; to keep licensed

professions informed of relevant practice issues; and to educate consumers so that they fully understand the services of licensed professionals and can make informed choices. When establishing new professions, each of these elements must be put in place. Consumers, insurers, employers and others must be informed of the qualifications and the parameters of the scope of practice of any new profession (e.g., what a licensee may and may not do).

To establish the disciplinary system for a new profession, investigators, prosecutors and State professional board members must also be trained to understand the scope of the new profession, so they may make appropriate decisions at each stage of the professional disciplinary process, if charges of professional misconduct or illegal practice are brought.

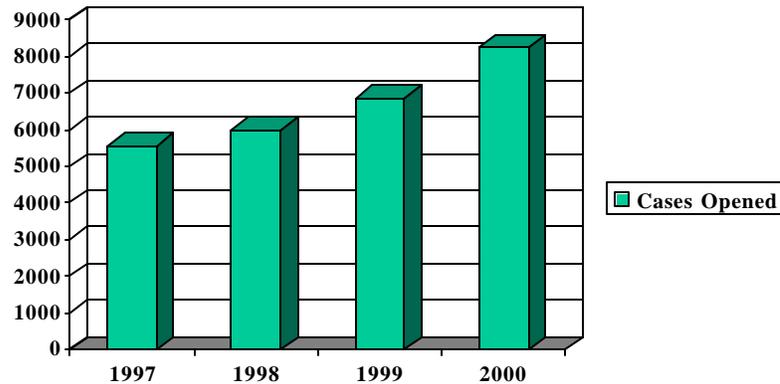
Many Department activities focus on public education for public protection. These efforts are expanded as new professions are established. The activities include an up-to-date website containing information on licensure status and the history of Regents final disciplinary actions, along with information for consumers and current information about the requirements and responsibilities of licensees. In addition, plain language brochures in four languages are developed and widely distributed to alert consumers to the qualifications for licensure, what to expect of a licensee and how to file complaints of professional misconduct or unlicensed practice of the profession.

State professional board members and Department staff also do extensive outreach in communities across the State. This outreach includes not only consumer information for the public but also frequently describes the requirements and responsibilities of licensure for high school and college students who may aspire to be licensed professionals in the future.

In the past four years, there has been a substantial growth in the number of discipline cases opened. This number reflects, at least in part, the increase in the number of licensed professionals over which the Regents have responsibility and the extensive public education outreach that is under way.

Professional Discipline Cases Opened 1997-2000

48% Increase



Last year the Office of Professional Discipline opened over 8,200 professional misconduct cases – a 48% increase in the number of cases since 1997. Over 2,000 final disciplinary actions were taken against licensees. Once opened, the resolution of these professional misconduct cases requires an adjudicatory process that protects the public from professional misconduct while providing the full measure of due process to the respondent licensee. These demands fuel our continuous improvement efforts. They have produced a number of re-engineered approaches, such as the new complaint resolution process.

A major responsibility involves responding to thousands of inquiries annually about scope of practice issues. The responses must provide the type of clarity needed by licensees to enable them to practice safely and competently. Regulations may also need to be revised to recognize the evolution in practice. This reflects the flexible regulatory approach envisioned by the Legislature, with the Regents and the Department interpreting the laws and rules in the context of evolving practice. Examples of such regulatory changes include the revised regulations on the delegation of design responsibility by design professionals, the provision for electronic transmission of prescriptions between prescribers and pharmacists, and the conditions necessary for non-patient specific immunization programs. One aspect of the Department's efforts to promote good practice has included the development, by the professional State boards, of practice guidelines and practice alerts that identify and support standards that benefit

professionals and promote the public's rights to safe and accessible professional services.

These many efforts related to the regulation of post-licensure practice are part of the ongoing responsibility for professional regulation, but the magnitude of the efforts always changes to reflect the increased number of professions and licensees.

Future Challenges on the Horizon

Challenges related to the regulation of the licensed professions will continue and even grow. Every year there are dozens of bills in the Legislature seeking to expand the licensed professions either by adding new professions, or changing the scope of practice of those that are already established. Assessment of these bills must continue to examine: the risk that the non-licensed professions' services may harm the public if the profession is unregulated; the need to increase access to essential services provided by a new or similar profession; the depth and breadth of the educational programs supporting the profession and the impact of any new profession upon those already in existence.

The Regents and the Department must be prepared to objectively address a number of factors in the expansion and development of the professions. Among the items to consider are the impact of technology on licensure requirements, movements toward national and international licensure and the issues emerging from research and invention. In considering new professions, traditional entry pathways may need to change to facilitate access, diversity, and specialization. As we stand at the beginning of this new century, we have the benefit of being informed by the experience of the expansion to 38 licensed professions over the past 125 years. That experience teaches that nothing is more important than good decisions about when to grant licensure to protect the public, and that decisions about new licensed professions must be coordinated among the Regents, the Department, the Governor's office, the Legislature and other agencies.