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ABSTRACT

This report summarizes, and gives a full report, of a feasibility study involving a discussion of problems and issues related to occupational and professional regulation that took place during four regional conferences attended by nearly 100 officials from 30 states. Participants included state legislators, licensing administrators, attorneys general staff members, governors' aides, and consumer officials. Major problems and concerns emerging from the discussions covered eight broad topics: Proliferation of Licensure, Regulatory Boards, Accountability, Qualifications for Licensure, Testing for Competence, Continued Competence, Enforcement, and Protecting the Consumer. The major recommendation made from the insights gained during the conferences was that regulator improvement in the states would be substantially enhanced by the development of a handbook that would provide state officials with practical organizational and procedural guidance in both legislative and operational matters. A preliminary outline for the proposed handbook is included and illustrates administrative and legislative questions that the handbook might try to answer and problems for which solutions might be sought. A list of conference participants and sample worksheets used during the conference are appended. (HD)

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IMPROVING OCCUPATIONAL REGULATION

Officials from 30 States
Discuss Common Problems
and Search for Solutions

Benjamin Shimberg

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

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Final report to Employment and Training Administration, U.S. Department of Labor under Grant No. 21-34-75-12, Cooperative Planning to improve Occupational Regulation.

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HIGHLIGHTS
FROM THE
FINAL REPORT

IMPROVING OCCUPATIONAL REGULATION

Project Title: COOPERATIVE PLANNING TO IMPROVE
OCCUPATIONAL REGULATION

Project Director: BENJAMIN SHIMBERG
Associate Director
Center for Occupational and
Professional Assessment
Educational Testing Service

Submitted to: EMPLOYMENT AND TRAINING ADMINISTRATION
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Washington, D.C.

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OVERVIEW

This report summarizes a discussion of problems and issues related to occupational and professional regulation that took place during four regional meetings attended by nearly 100 officials from 30 states. Participants included state legislators, licensing administrators, attorneys general staff members, governors' aides, and consumer officials.

Among the questions considered were the following:*

- What purposes are served by regulation? (p.8)
- How can states halt the proliferation of unnecessary licensing? (p.11)
- Is it possible to de-regulate an occupation or profession when the need has ceased to exist? (The "Sunset" approach) (p.16)
- What type of administrative arrangements are most likely to promote efficiency and accountability? (p.28)
- What is the function of regulatory boards? Should they be advisory or decision-making? (p.22)
- What role should public members play? How can their effectiveness be increased? (p.31)
- What qualifications should be used to determine eligibility? (pp.20, 38)
- What can be done to increase the quality of tests used for licensure? (p.39)
- How can continued competency be assured? (p.35)
- What impact do reciprocity/endorsement policies have on mobility of skilled workers and professionals? (p.44)
- Why is enforcement the weakest link in the regulatory chain? (p.47)
- How can boards be made more responsive to consumer interests? (p.50)

While these and similar questions were explored, no attempt was made to solve specific problems or to arrive at any firm conclusions. Participants agreed that since the states shared many problems in common, it made sense for them to seek solutions through cooperative projects. One such project, the development of a Handbook on Occupational and Professional Regulation, is outlined briefly. (p.60)

* Numbers refer to page(s) in final report where topic is discussed.

EXECUTIVE SUMMARY

BACKGROUND: LICENSING PROBLEMS AND ISSUES

Licensing of occupations and professions is designed to protect the public health and safety and to control fraud, but regulation also poses barriers across the entire spectrum of the American labor force. By placing restrictions on job entry and mobility, licensing influences the availability, quality, and cost of services. Consumer groups recognize that licensing often restricts competition and leads to higher prices.

As legislators and public interest groups are looking more closely at the proliferation of licensing and the way licensing operates, they are raising questions about the need for so much licensing; whether alternative approaches might accomplish the same purpose; and whether the benefits to the public are worth the cost.

These groups are also challenging qualifications for determining eligibility for licensure and tests used to assess competency. Are requirements valid? Are they clearly related to the job or have they been imposed as exclusionary devices? Once practitioners have been licensed, what assurance does the public have that they have kept up to date and are still competent? In the face of charges that many licensing boards have misused their power, how can boards be made accountable and responsive to the public interest?

These and similar questions had been raised by Benjamin Shimberg and his associates in a study, Occupational Licensing: Practices and Policies,

1973, funded by the Manpower Administration (now the Employment and Training Administration) U.S. Department of Labor. In 1974 the Manpower Administration convened an ad hoc committee of state-level regulatory officials to review an ETS proposal which was aimed at finding out what problems states had in common and whether it might be feasible for them to seek solutions on a cooperative basis. On the committee's recommendation, and with support from USDL, ETS conducted a Feasibility Study during 1975. The title of the project was "Cooperative Planning to Improve Occupational Regulation."

THE FEASIBILITY STUDY: FORMAT, PARTICIPANTS, PURPOSE

The Feasibility Study took the form of four conferences held in the cities listed below, to which one or more participants came from the states indicated:

<u>Chicago:</u>	Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, Wisconsin
<u>Atlanta:</u>	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Tennessee, Virginia
<u>San Francisco:</u>	Alaska, Arizona, California, Idaho, Nevada, Oregon, Washington
<u>Newark:</u>	Connecticut, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island

Participants were 32 state legislators and legislative aides, 27 licensing administrators, 16 legal officers, 15 consumer officials, and 6 governors' aides -- a total of 96 individuals from the 30 states.

Each conference was a problem-oriented work session providing a forum where participants could identify common problems, exchange viewpoints, and explore

possibilities for interstate cooperation. No attempt was made to solve specific problems or to arrive at any firm conclusions.

In developing plans for the study, ETS received advice and cooperation from the National Council on Occupational Licensing (NCOL), an organization made up primarily of administrators of state-level licensing agencies. The Council of State Governments also provided informal assistance.

The study pursued the following objectives:

1. To determine the problems and issues related to occupational and professional regulation that were of concern to state officials;
2. To ascertain the interest and readiness of state officials to participate in cooperative projects aimed at resolving some of these problems and issues;
3. To develop strategies for an action-oriented project that would help bring about needed changes in occupational and professional regulation in the states.

OUTCOMES OF THE CONFERENCES

Major problems and concerns emerging from the discussions covered eight broad topics.

Proliferation of Licensure

"Everybody wants to be licensed or certified...they want it because it is a status thing and we're fighting them as hard as we can." This comment by a participant is typical of the feeling of many. Because of the rapid growth of new requests for licensing, and the criticism that licensing serves the interests of the regulated group rather than those of the public, the purposes of licensing need to be reexamined. Guidelines need to be developed to assist legislators in deciding whether or not to approve new

requests for licensure.

The need for regulation should be carefully documented; alternatives to mandatory licensure should be thoroughly examined; and the costs of regulation in relation to anticipated benefits should be set forth as objectively as possible.

Several state officials suggested that all regulated occupations be subject to periodic review to determine whether the need for regulation still exists and whether the agency has performed its functions to benefit the public. Such review might lead to the repeal or modification of the statute or call attention to needed administrative reform.

Regulatory Boards

Participants devoted more time to the subject of licensing boards than to any other topic. They felt that the function of boards should be more clearly defined. Should they be advisory or decision-making? Legislators were concerned with such details as composition of boards, terms of office, duties and responsibilities, and grounds for removal of board members.

Much discussion focused on the role of public members on boards, with legislators wanting to know what functions such members should perform; what qualities they should possess; how they should be chosen; and what types of training and support services would enhance their usefulness.

Accountability

To whom should boards be accountable? How might activities of boards be monitored to insure that their regulatory powers are being used in the

public interest? Legislators were interested in ways to organize regulatory activities to insure both effective administration and adequate accountability. They also debated the advantages of centralized licensing administration -- so-called "umbrella" agencies -- compared with decentralized models.

Qualifications for Licensure

Many participants were troubled by lack of uniformity, inequities, and inconsistencies in the requirements among different occupations and across states. How valid are such requirements as experience, training, age, citizenship, and "good moral character"? One person asked, "Is there any evidence that people with fewer years of experience are not qualified?"

Concern was expressed about procedures used in licensing out-of-state and foreign applicants. Are such procedures equitable? Do they permit qualified people to move from one place to another without undue difficulty? Is the system sufficiently flexible to accommodate qualified individuals who may have received their training or acquired experience under non-traditional circumstances?

Testing for Competence

Most boards use examinations to assess the competency of applicants, but participants expressed concern about the quality of both the written and performance tests used. Few people seemed to have confidence in the effectiveness of examinations prepared by local boards, and some expressed reservations about national testing programs. Do tests meet the professional standards of the American Psychological Association or satisfy the testing guidelines of the Equal Employment Opportunity Commission? Licensing

administrators indicated that they would welcome assistance in evaluating locally prepared examinations and in conducting training programs to help make board members more aware of the qualities that a valid competency examination should possess.

A number of participants felt that the use of "unassembled" examinations should be explored. Such examinations rely on a review of an individual's credentials rather than on a test, and permit an evaluation of the person's education and relevant experience.

Continued Competence

Most of the emphasis in licensing has been on initial competence, with little attention to the question of continued competence. Recently, legislators have been under increased pressure to require that licensed practitioners participate in programs of continuing education as a condition of license renewal. Proposals to require performance audits or periodic reexamination as a basis for relicensure have usually been opposed by trade and professional groups.

The conferences raised many questions about the need for mandatory continuing education programs. A typical question: "Is it worthwhile to subject a whole discipline to mandatory continuing education when only a small minority may need it?" Another participant criticized continuing education as "window dressing" because "a person gets credit for attending a meeting or taking a course. But that doesn't necessarily mean he's competent."

Among other questions raised were those about the cost of continuing education to the consumer, the effectiveness of continuing education in protecting

the consumer from incompetent practitioners, and what impact differing continuing education requirements might have on interstate mobility of skilled workers and professionals.

Enforcement

Most regulatory agencies place major emphasis on setting standards and on the initial screening of applicants, but many fail to monitor licensees to insure that they are rendering service of high quality. Inadequate enforcement of laws and regulations was identified by many as the weakest link in the regulatory chain. Several participants cited instances where boards had been lax about taking action against licensees. One consumer official reported on a matter in which his agency had interceded when a board failed to take action because a complaint had been withdrawn after the licensee had made monetary settlement. The agency official told the board, "This man is a license holder. The act he committed is a violation of your own rules and regulations, and you have an obligation to proceed on it." The board ultimately suspended the violator's license.

Participants also expressed concern regarding possible violations of due process when board members are actively involved in investigating charges, conducting hearings, determining guilt or innocence, and deciding on appropriate penalties. A separate investigative unit and the use of administrative hearing officers were suggested as ways to safeguard the constitutional rights of applicants, licensees, and consumers.

Protecting the Consumer

Lax enforcement and failure of boards to intercede with licensees on behalf of aggrieved consumers was regarded by some as indicative of a pro-industry

bias. Recent actions taken by the Federal Trade Commission were cited as evidence that some boards have abused their rule-making power to institutionalize anticompetitive practices, such as against price advertising.

Consumers do not understand the structure of government or the channels they can use to file and pursue a complaint. Although boards do have power to suspend or revoke a license, most of them have no statutory authority to provide redress to a wronged or injured complainant. Among the suggestions offered for improvement of consumer protection were the establishment of an ombudsman-type agency for the pursuit of consumer complaints and greater involvement by consumer groups in the legislative and rule-making process.

RECOMMENDATION: COOPERATIVE ACTION

The major recommendation to emerge from the four conferences was that states should seek ways to work together to solve common problems in the area of occupational and professional regulation. Despite differences among states, their problems in this area are essentially similar, and it would be wasteful and possibly even counter-productive for each state to seek solutions independently of others. On an evaluation questionnaire, 97% of those responding indicated that they would be interested in participating in cooperative activities.

The project staff suggested as an initial venture the development of a handbook or resource file that would encompass problems and solutions in both the legislative and administrative areas. Such a handbook should be designed to provide state officials with practical organizational and

procedural guidance with respect to problems and issues that had been discussed at the conferences. The handbook might describe, for example, how a particular problem had been handled in one or more states; what experts think could (or should) be done; what a preferred approach might be; and what standards apply in a particular situation.

Participants strongly supported this approach because it would be sufficiently flexible to accommodate the wide diversity among states. The pros and cons of each approach might be summarized along with demographic or situational factors under which it had been found to work -- or not work. A state could then select an approach suited to its needs, or it could draw elements from among the options presented to tailor a unique solution to fit its own circumstances. Nine out of ten respondents to the evaluation questionnaire indicated that such a handbook would yield benefits to their states.

The usefulness and practicality of the handbook would be enhanced by having state officials participate actively as planners, contributors, and reviewers of materials being considered for inclusion. Such involvement would make state officials more knowledgeable about regulatory problems, more sensitive to the need for change, and more willing to initiate or support reform efforts in their own states.

FINAL REPORT

IMPROVING OCCUPATIONAL REGULATION

Project Title: COOPERATIVE PLANNING TO IMPROVE
OCCUPATIONAL REGULATION

Project Director: BENJAMIN SHIMBERG
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The Project Director acknowledges his debt to the many state officials who took time from their busy schedules to attend the regional meetings to share with him and with other state officials their concerns about occupational and professional regulation. The rich array of information and ideas that form the basis for this report attest to the contribution of all who participated.

Special thanks must go to the Advisory Committee, appointed by the National Council on Occupational Licensing (NCOL), which offered support and many helpful suggestions, especially during the planning stage and following the initial conference in Chicago. Members of the Advisory Committee were:

Mr. Marvin Gregersen
President of NCOL
Chief, Bureau of Occupational Licenses
Boise, Idaho

Mr. Richard Griesinger
Executive Secretary of NCOL
Lansing, Michigan

Dr. J. Phillip Halstead
Staff Member
Committee on Regulated Industries and Licensing
Florida House of Representatives

Mrs. Ruth J. Herrink, *Chairperson of the Advisory Committee*
Director, Department of Professional
and Occupational Regulation
Richmond, Virginia

Dr. Raymond D. Salzman
Director of Professional Licensing
State Department of Education
Albany, New York

In addition to their participation in the work of the Advisory Committee, Mrs. Herrink and Dr. Salzman assisted in developing and/or reviewing the various worksheet forms. They also attended each of the regional meetings, serving either as discussion leaders or as resource persons. The success of the regional meetings was due in large measure to their active and creative contributions.

Mr. Alec Sutherland, Staff Member in the Midwestern Office of The Council of State Governments, provided wise counsel with respect to the format of

the conferences and offered many practical ideas for identifying appropriate state officials and for involving them in the conferences.

Two officials of the Employment and Training Administration, U.S. Department of Labor -- Dr. Howard Rosen, Director of Research, and Mrs. Karen Greene, Project Monitor -- also offered many thoughtful and constructive suggestions during the course of the project. Their incisive questions and critical comments helped to sharpen the recommendations that appear in Chapter VI.

Mrs. Betsy Turner, my Administrative Assistant, was responsible for the logistics of the regional meetings, for preparing transcripts of the group discussions, and for collating comments from the worksheets. Her initiative and attention to detail were critical to the fulfillment of the project objectives.

While all the people mentioned above deserve thanks for their contributions and credit for any beneficial result that may follow, they should not be held accountable for any shortcomings of the study itself or of this report. The Project Director assumes full responsibility for the summaries of the discussions and for the recommendations growing out of this study.

Benjamin Shimberg

TABLE OF CONTENTS

I. BACKGROUND AND PURPOSE	1
II. DESIGN AND IMPLEMENTATION OF THE STUDY	3
III. SUMMARY OF FEASIBILITY STUDY CONFERENCES	8
Legislative Problems and Issues	8
• Purposes and Goals of Regulation	8
• Accomplishment of Goals.	9
• Deciding Whether or Not to Regulate.	11
• Drafting the Regulatory Law.	18
• Regulatory Boards.	22
• Public Members on Regulatory Boards.	31
• Financing Regulatory Activities.	33
• Continued Competence	35
Administrative Problems and Issues.	38
• Evaluation of Qualifications	38
• Testing for Competency	39
• Reciprocity and Endorsement.	44
• Handling Complaints from Applicants.	46
• Enforcement.	47
• Consumer Complaints.	50
IV. INTEREST IN PARTICIPATION	52
V. EVALUATION OF THE CONFERENCES.	55
VI. RECOMMENDATIONS FOR A COOPERATIVE ACTION PROGRAM	59

APPENDICES

- A. PARTICIPANTS IN THE CONFERENCES
- B. SAMPLE WORKSHEET

I. BACKGROUND AND PURPOSE

Previous studies* have shown that occupational and professional regulation poses barriers across the entire spectrum of the American labor force. By placing restrictions on job entry and mobility, licensing influences the availability, quality, and cost of services. Consumer groups have come to recognize that licensing often restricts competition and results in higher prices.

As legislators and public interest groups have begun to look more closely at the way licensing operates, questions have been raised about the need for so much licensing, whether alternative approaches might accomplish the same purpose, and whether the benefits to the public are worth the cost.

The qualifications used to determine eligibility and the tests used to assess competency are being challenged. Are requirements valid? Are they clearly related to the job, or have they been imposed as exclusionary devices? What assurance does the public have that practitioners have kept up to date and are still competent? How can boards be made more accountable and more responsive to the public interest?

In 1974, Educational Testing Service (ETS) proposed to the Manpower Administration (now the Employment and Training Administration) of the U.S. Department of Labor that a program of technical assistance be initiated to help state regulatory officials deal more effectively with a number of problems and issues identified in earlier studies. Since state-level officials were to be the focus of the proposed demonstration project, the Manpower Administration convened an ad hoc committee of state-level officials concerned with regulatory matters to review the proposal and to suggest ways in which it might be strengthened. The committee recommended that a field study be conducted to determine the feasibility of undertaking such a venture. Members of the committee felt that state officials should be involved not only in the identification of problems and issues but also in the exploration of possible action-oriented approaches that would be most beneficial to their states.

In developing plans for the feasibility study, ETS sought the advice and cooperation of the National Council on Occupational Licensing (NCOL), an organization made up primarily of administrators of state-level licensing agencies. At its annual meeting in Boise, Idaho, in August 1974, the NCOL membership voted to participate in the feasibility study.

~~The specific objectives of the study were:~~

- To determine the problems and issues related to occupational and professional regulation of concern to state-level officials.

* Shimberg et al. *Occupational Licensing: Practices and Policies*. Washington, D.C.: Public Affairs Press, 1973. 258 pp.

- To ascertain the interest and readiness of state officials to participate in cooperative projects aimed at resolving some of these problems and issues.
- To develop strategies for an action-oriented project that would help bring about needed changes in occupational and professional regulation in the states.

It was agreed that the focus of the feasibility study would not be on a further detailing of the shortcomings of licensure. These are already well-known and well-documented. Rather it would determine what positive steps might be initiated to resolve important problems so that licensing might better fulfill its intended purpose of protecting the public health and safety without imposing unnecessary restrictions on the fullest development and utilization of the nation's manpower resources.

An underlying assumption of the feasibility study was that there are already a number of forces working for change in the states. Some state officials are devising innovative and creative solutions. Others are becoming aware of the problems, but are not sure where they can turn for help. Unfortunately, communication among states is virtually nonexistent when it comes to licensing. State officials -- even in neighboring states -- often do not know who their counterparts are and do not realize that both may be struggling with the same problem or that one may already have found a solution the other might use or adapt.

The feasibility study was undertaken to find out whether it would be possible to get the cooperation of state officials in a cooperative planning venture; whether they would be willing to share their problems and experiences; and whether they would actively support a project aimed at improving occupational regulation.

II. DESIGN AND IMPLEMENTATION OF THE STUDY

To achieve the objectives of the feasibility study, it was decided to bring together state officials actively concerned about licensing. The conference format would enable such officials to become more aware of licensing problems in other states, to get to know other officials with similar interests, and to explore with them ways in which they might work together to solve common problems.

WHERE CONFERENCES WERE HELD

The conferences were held at airport locations near major cities so that participants would be able to arrive and depart on the same day. The following cities were selected as conference sites. The dates of each conference and the states that sent one or more representatives are listed below:

Midwest (Chicago) April 11, 1975

Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, Wisconsin

Southeast (Atlanta) May 15-16, 1975

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Tennessee, Virginia

Far West (San Francisco) June 20, 1975

Alaska, Arizona, California, Idaho, Nevada, Oregon, Washington

Northeast (Newark) October 6, 1975

Connecticut, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island

HOW PARTICIPANTS WERE IDENTIFIED AND SELECTED

The following categories of officials were identified as desired participants:

- Administrators of state-level regulatory agencies
- Legislators with responsibility for regulatory matters; also legislative aides or staff personnel
- Governors' Aides with responsibility for liaison with the legislature or with regulatory boards
- Attorneys General staff (legal officers) with responsibility for disciplinary and enforcement activities or for advising boards on legal matters
- Consumer Officials concerned with the role of regulatory agencies in safeguarding the rights of consumers

To identify individuals with the requisite background and experience, three approaches were used:

Letters to governors. A letter was sent to each state informing the governor of the goals of the project, asking for the names of individuals in each of the major categories, and requesting that a liaison person be designated to facilitate cooperation with the project. Thirty-seven governors responded either directly or through the head of the umbrella agency. All but one expressed interest in the project, offered to cooperate, and provided names of key officials. Thirty-one governors designated specific individuals to serve as liaison with the project.

NCOL contacts. In those states where an NCOL member headed the umbrella agency, it was relatively easy to ascertain which legislators played key roles in regulatory matters, who in the governor's office served as liaison with licensing boards, and whether the consumer agency played a significant role in the state. Once the project staff had decided which individuals from the states should be invited, the NCOL members would usually make personal contacts, explain the importance of the project, and urge that the individuals accept the invitation. Their intercession with legislators was especially helpful since many of the legislatures were still in session and burdened with a heavy work load.

Legislative service agencies contacts. With the assistance of the Council of State Governments and the National Conference of State Legislatures, contact was established with the directors of legislative service agencies in a number of states. These individuals proved to be very helpful in identifying legislators who chaired committees that dealt with regulatory matters as well as those who were especially knowledgeable about licensing by virtue of having headed study groups on this subject. Directors of legislative service agencies expressed a great deal of interest in the feasibility study and asked to be kept informed of developments. Several stated that many legislators depend on their agencies for research and advice regarding the drafting of regulatory statutes. Two agency directors asked if they could send staff members to the conferences as observers at state expense. They felt it would provide the staff members with ideas as to how the regulatory structure might be improved and how licensing bills might be drafted to better safeguard the public interest.

The process of winnowing down the list of prospective participants was highly subjective. Since the number of individuals to be invited from a state would usually not exceed five, criteria had to be developed to guide the selection process. Insofar as possible, at least one official from each of the five categories would be invited. When circumstances indicated that more than one person from a given category (such as two legislators) should be invited, reductions would have to be made elsewhere. In practice, it was usually found that states lacked candidates from all categories. For example, there might not be anyone in the governor's office concerned with licensure, or there might not be an active consumer protection program in the state.

Preference was given to legislators and legislative aides who were or had been involved in regulatory reform efforts or who were currently responsible for regulatory legislation. Administrators of umbrella agencies were always included, as were legal officers concerned with enforcement and discipline.

Many of the prospective participants were first contacted by telephone. If they expressed interest and were willing to consider attending the conferences, they were sent a letter of invitation outlining the purpose of the conference, its sponsorship, and travel arrangements. A list of topics for discussion was attached to suggest the scope of the conference.

In a number of instances, the individual approached initially could not accept but would suggest others, usually associates. These alternates were carefully weighed against other possibilities to achieve the best possible mix. Shortly before each scheduled conference, all invited participants were sent a follow-up letter summarizing the purposes of the conference and providing an overview of the agenda.

The number of representatives from each category varied from meeting to meeting, but the total mix achieved across the four conferences proved to be highly satisfactory, as may be seen from this table:

Legislators and Legislative Aides	32
Licensing Administrators	27
Attorneys General Staff	16
Consumer Officials	15
Governors' Aides	6

The names, titles, and addresses of those who participated in each of the conferences are given in Appendix A.

FORMAT OF THE MEETINGS

The conference format underwent change as a result of postmeeting evaluation sessions. The Project Director and members of the NCOL Advisory Committee, who had been present at the meeting, would note any weaknesses in the format and discuss ways in which subsequent conferences might be improved. For example, following the first meeting in Chicago, it was suggested that administrative officials (heads of umbrella agencies, legal officers, and consumer officials) should meet in a separate one-day session apart from legislators and their aides.

While this method of grouping proved to be quite satisfactory when it was used in Atlanta, a number of the participants indicated that they would have preferred greater diversity in their groups. Administrators said they would have liked an opportunity to exchange views with legislators, and several legislators said they would have welcomed an opportunity to hear about problems directly from people who were running licensing programs and dealing with boards.

The insights gained during the first two meetings led to the development of a new format that was followed without change for the final two meetings. Heterogeneity was preserved by assigning participants to two subgroups so that each subgroup was virtually identical in composition. The subgroups were small enough (12-15 people) to permit a useful interchange to take place.

The program format consisted of the following elements:

Orientation to the project. At each conference, the Project Director oriented the group to the goals of the project -- to find out what state officials regarded as their most pressing problems, which of these the states shared in common, and the interest of the participants in taking part in cooperative projects aimed at resolving at least some of these problems.

State reports. Before moving into the substantive part of the program, a representative from each state was invited to give a ten-minute overview of how licensing was handled in his or her state and what changes had recently been made or were being contemplated. It was felt that such overviews would provide participants with an understanding of the context in which licensing occurred in various states. These overviews proved to be of great interest. Participants were made aware of the tremendous diversity that presently exists among states with respect to such factors as organization, financing, autonomy of boards, personnel procedures, and enforcement activities. They also gained an appreciation of similar problems being faced by their counterparts in neighboring states. These included such matters as evaluating qualifications, assessing competence, dealing with consumer complaints, and insuring due process for licensees accused of improper behavior or of violating board rules and regulations. Reports on successful and unsuccessful efforts to bring about changes in licensing were of special interest and often gave rise to questions and comments later on in the session.

Discussion of problems and issues. Following the state reports, the Project Director initiated the discussion of a single topic such as the purposes of licensing or what might be done to reduce the proliferation of regulation. The entire group participated. After lunch the total group was usually subdivided into smaller groups. At Chicago there were three such groups. In San Francisco and Newark there were two. Participants were allowed time to review the worksheets (see below) and to respond to the stimulus questions.

While the worksheets provided some structure, it was clearly impossible to deal with all the questions in detail. Each discussion leader usually introduced a topic with a stimulus question and allowed participants to discuss it freely for as long as time allowed. Later, when participants were asked whether they felt the time available for discussion had been adequate, most felt that there had not been enough time, and some indicated that another day of discussion would have been highly desirable.

WORKSHEETS

The project staff prepared worksheets for use by participants. These contained stimulus questions about various aspects of licensing. At the first two conferences, participants were asked to respond to the questions at the conference site. The prevailing view of participants was that they would have preferred to have had the worksheets in advance so they could think about the questions and prepare more detailed and thoughtful answers than it was possible to give under the circumstances.

For the last two meetings, the worksheets were sent to participants in advance. The worksheets underwent extensive revision after each conference. New questions were added; some were deleted if they appeared to be redundant or had failed to elicit a significant response. The stimulus questions that appeared on the worksheet used at the final conference are presented in Appendix B.

The response to the worksheets proved to be very positive. Not only were they filled out with considerable care and attention to detail, but 84 percent of the participants at the last three conferences indicated on their evaluation questionnaires that they felt the worksheets had helped make the meetings more productive.

III. SUMMARY OF FEASIBILITY STUDY CONFERENCES

Since participants were free to comment as they saw fit or to omit questions about topics when they had no views to offer, there was little comparability from one worksheet to the next. Some individuals gave elaborate responses; others were cryptic. There seemed to be no way to quantify the results.

For purposes of the analysis, all worksheet comments were sorted according to topic. These were later combined with transcripts and notes of discussions dealing with these same or related topics.

Comments made by participants at the various meetings were organized according to major themes. Summary statements were prepared to reflect as accurately as possible the views that had been expressed by participants. An effort has been made to capture the diversity of views expressed and at the same time to indicate which views were widely held or supported and which ones may have been those of a single individual or of a small minority. In keeping with assurances given to participants, no comments or views have been attributed to specific individuals by name.

In developing the summary that follows, topics have been grouped under two broad headings: "Legislative Problems and Issues" and "Administrative Problems and Issues."

LEGISLATIVE PROBLEMS AND ISSUES

PURPOSES AND GOALS OF REGULATION

When the question of "purpose" came up during the group discussions, comments such as the following were heard:

Everything hinges on getting clarification as to why we have licensing in the first place.

Nobody has defined what we're trying to accomplish with licensing. Until we do that, how can we say which things should or should not be licensed? Where do you draw the line? How can you tell which are valid public purposes and which are for the aggrandizement of a particular group?

There is a built-in premise that you need to license to promote proficiency in an occupation or profession. We need to reexamine that premise and try to conceptualize how it can be done without licensing.

You can justify licensing almost anything under the police power... but is it a legitimate exercise of that power? We are interfering with the right of people to work. Such interference can be challenged on constitutional grounds unless you can show a substantial relationship to the public health and safety so as to justify the use of the police power.

Three purposes were frequently mentioned by discussants:

Protecting the Public

Comments suggest that most participants subscribe to the concept that regulation is intended to protect the public health, safety, and welfare against incompetent practitioners. Without licensing, the public might, in some instances, suffer irreparable physical injury.

Closely related to the foregoing is the view that licensing is intended to insure honest professional service by people engaged in various occupations and professions, to insure quality workmanship, and to protect the public against fraud and deception. It was felt that licensing provides a mechanism to police a trade or profession and a means of redress to aggrieved members of the public.

Insuring Competence

Respondents indicated that they believed licensing should seek to insure competence in at least two ways:

- by establishing qualifications for initial entry and by examining all would-be practitioners to determine whether or not they met the standard
- by monitoring licensees to insure that only those who are qualified are allowed to retain their licenses

Many also felt that licensing enhances professionalism and helps to upgrade standards of practice.

Protecting the Occupational or Professional Group

While the foregoing purposes and goals were frequently cited, the comments of respondents indicated that many of them believed that "protecting the industry or occupation" was the underlying motive for much regulatory legislation. Where individuals ranked goals and purposes in order of importance, such statements as "restrict entry," "restrict competition," "control the profession," "insulate the industry from public scrutiny" were frequently ranked higher than "protecting the public."

ACCOMPLISHMENT OF GOALS

Participants were asked to indicate whether they felt licensing had accomplished its goals. About half the respondents answered affirmatively or gave qualified answers such as, "Not in all respects, but in general, licensing serves the public interest." The negative comments tended to be more specific than those of respondents who felt positively toward licensing. Following are a few examples:

Both the professions and the regulators tolerate violations and evasions.

Has failed to keep fraud out.

Main goal has been to serve members of the regulated group -- little concern for the consumer.

Has failed to insure that competency levels are monitored.

Too many regulations have no relationship to the public interest -- are self-serving.

Many enabling acts focus on qualifications and standards -- not on the responsibilities of the licensed practitioner. Laws fail to provide adequate mechanisms for dealing with consumer complaints.

Licensing serves interests of a specific group by limiting competition; they use licensing to enhance their status and economic position.

Doesn't insure quality.

Board hesitant to take disciplinary action against licensees who exhibit incompetence or engage in questionable practices.

Unreasonable experience requirements for entry and grandfather clauses are not in public interest.

Most licensed occupations limit competition and increase costs without any corresponding benefit to the public.

Need more teeth in law, better enforcement to remove incompetents and those who misuse their privileges.

Generally discipline is rare while restrictions on entry and on competition are extremely effective.

Boards have fallen short on ethical considerations.

These comments seem to encapsulate the dilemma faced by those concerned about regulatory reform. On the one hand, there is recognition of what licensing was intended to accomplish as an ideal and, on the other, an awareness of the extent to which it has fallen short of that ideal. The rhetoric required to pass regulatory legislation may have led to unrealistic expectations. But

one could not be sure whether the expectations expressed represented what participants really thought licensing would or should accomplish or whether they were merely giving lip service to time-honored traditional arguments.

Much of the discussion was focused on ways to achieve a better balance between the interests of the public and those of the occupational and professional groups that have sometimes sought to use licensing for their own ends.

DEFINING WHETHER OR NOT TO REGULATE

Legislators and other state officials recognized that many of the problems associated with occupational and professional regulation had their origins during the decision-making process preceding the enactment of legislation. It was noted that the process included such defects as:

- Failure to provide effective checks against proliferation of licensing
- Failure to require adequate demonstration of need
- Failure to consider alternatives to mandatory licensure
- Failure to spell out details of proposed regulatory schemes
- Failure to weigh adequately the potential benefits of regulation against the likely burden on society
- Failure to establish a review process so that "deregulation" or program modification would take place when the need for regulation ceased to exist or when the program was not fulfilling its public purpose in an acceptable manner
- Failure to establish an adequate decision-making process

Each of the foregoing topics will be discussed below. Suggested approaches and possible solutions will be noted when appropriate. However, it should be emphasized that here, as elsewhere, the inclusion of such ideas and suggestions does not constitute endorsement by the author. Various approaches will have to be studied and evaluated to determine their feasibility and applicability under varying circumstances.

Checking Rapid and Unnecessary Proliferation of licensing

There was widespread recognition that the proliferation of licensing may have gotten out of hand. Following are a few quotations that indicate how some participants view the problem:

We have been besieged, as have most legislative bodies, by requests from groups for additional licensure. All kinds of groups are coming to us requesting that they be given the right to license.... obviously the only way the legislation could proceed if there was some public interest at stake.

Another big problem is the preoccupation that we are running into. Everybody wants to be licensed or certified. Don't kid yourself -- they want it because it's a status thing, and we're fighting them as hard as we can.

New licensing -- those who would like to be licensed -- shocks me. When I came into this area I could not believe that everyone in the country felt they needed a license. The stack of licensing bills I have is so high you wouldn't believe. I personally do not see the need for it. I don't think it means better service to the people.

Nobody has defined which things should be licensed and which shouldn't. Where do you draw the line? Which are valid public purposes and which are simply for the aggrandizement of a particular group?

Determining the Need for Regulation

In determining whether or not a genuine need for regulation exists, participants suggested that legislators endeavor to get a precise definition of the problem, clarify who will be regulated, and examine the motives of those seeking regulation.

What problem is the regulatory law supposed to solve? Following are summaries of views expressed:

- Have there been complaints of abuse? How serious? How widespread? How many people involved?
- Do the complaints indicate a real and existing danger? What harm is the public now suffering because the group is not presently regulated? Would licensing have prevented instances where abuse has been demonstrated? Would other remedies have worked as well?
- What potential hazards are proponents seeking to forestall? Are these reasonable predictions or scare tactics?
- Are the abuses cited mainly concerned with fraud, deception, and poor workmanship or has life and property been endangered because of incompetence? If the former, why wouldn't civil or criminal remedies suffice?

For all of the above, legislators were urged to seek hard evidence, not self-serving rhetoric. "Find out specifically who has been hurt, how it happened, how serious it actually was, and how often this sort of thing occurs. Get actual examples that can be investigated."

What group will the legislation seek to regulate?

- Is it a definable occupation or profession?
- To what extent do members of the group work alone and without supervision? If there is a need for regulation, it should apply only to the independent practitioner, not to the subordinate who works under supervision.
- For whom does the person to be licensed customarily work? Is he or she employed by naive members of the general public -- people who have no basis for making informed judgments about qualifications -- or by the sophisticated businessman or institutional employer who does have resources to aid him in making such personnel decisions?

What motives may be involved? While motives are not easy to discern, participants urged that legislators seek answers to questions such as the following:

- What is the source of the demand for regulation? Does it come from the industry or as a result of consumer pressure?
- If industry sponsored, why does the group want to be licensed? Is it seeking to restrict or diminish competition, deny access to others, or protect its own economic interests?
- Is there an intraprofessional conflict in which one group is seeking to gain dominance over another?
- Are proponents seeking to upgrade the profession to attract new personnel? Would this be in the public interest?
- Is there a need for greater stability in the labor force? Will licensing help to insure such stability? Is this a legitimate use of licensing?

Alternatives to Licensure

Where the evidence suggests that a problem exists, legislators were cautioned against concluding that mandatory licensing was necessarily the preferred solution. They were urged to consider less restrictive alternatives. For example, does a distinction need to be made between protecting the public against fraud and deception on the one hand and against incompetence on the other? These problems may call for different solutions. How important is it that everyone be competent? How serious are the consequences to the public if some individuals are not fully competent? If the consequences are not serious, perhaps the marketplace can take care of the incompetents without the need for regulation that will limit entry. If it is necessary

to limit entry, then some type of licensure may be required. If the goal is to enforce certain standards, emphasis can be placed on strict enforcement of standards without restricting entry.

In discussing this topic, participants urged that no new legislation be considered until it was definitely ascertained that the problem could not be handled with existing machinery. The following questions were suggested:

- Are there existing statutory provisions (such as an unfair trade practices law) that may apply? Instead of passing new laws, perhaps the state should seek to enforce those already on the books.
- Do existing agencies already have jurisdiction? Ascertain what changes in their charter or legislative mandate would enable them to deal with the problem. They may already have the authority, but may not be using it because of fiscal constraints.
- What effort has the profession made to deal with the problem on its own? Why hasn't this voluntary effort been successful?

If some type of new regulation appears to be in order, it was suggested that the legislature opt for the least restrictive method, such as registration or certification, rather than mandatory licensing, which is the most restrictive approach. Proponents should be required to file written evaluations of all approaches considered and to state why licensing is the preferred solution and, specifically, why a less restrictive approach would not work as well.

Details of the Regulatory Proposal

Participants urged that legislators inquire carefully into the requirements for licensure as well as into the way in which the program would be operated. Following are summaries of some of the questions that were raised:

- Can the scope of practice be clearly defined? To what extent are there other groups engaged in similar activities (for example, social workers, psychologists, marriage counselors, guidance counselors)?
- How important is competence? Can standards of competence be established? Can it be assessed in a reliable, objective manner?
- How important are education and training? What evidence is there that a particular type of training is required? What alternative methods be recognized?
- Who will be excluded? Who will be "grandfathered" in?
- What will be the composition of the board? Will it be occupationally-oriented? Is there any provision for public members? How will public accountability be assured?

- Does the legislation have teeth to insure effective regulation? Will enforcement activities be adequately funded?
- Is any provision made to insure continued competency?
- Will the law permit qualified practitioners from other states to be licensed by "endorsement"?

One legislator made the following comment: *Make them disclose all requirements and other critical information at the point of sale. Don't go off and leave the important details to someone else.*

The Benefit/Burden Balance

Participants suggested that legislators have sometimes focused too narrowly on the direct cost of installing and operating a new regulatory program and that inadequate consideration has been paid to the indirect costs that might ultimately have to be paid by consumers.

Cost to taxpayers. Assurances that the occupational or professional group was prepared to absorb the entire cost of regulation through the imposition of licensing fees has sometimes been used as an argument that the program would provide protection to the public at no cost to the taxpayer. Such reasoning can be misleading, especially if the cost estimates on which fees are based fail to include the cost of a vigorous inspection and enforcement service. Thus, the occupation may gain benefit from regulation (that is, the right to set standards that may serve to exclude outsiders) without having to pay the price of enforcement or discipline.

Cost vs. benefit to consumers. Consumer representatives frequently pointed out that the direct costs of operating a regulatory program are likely to represent only a small fraction of the social costs. For example, if regulation tends to be exclusionary, how will it affect entry into the occupation or profession? How will it affect the immigration of practitioners? What will the overall impact be on the availability, quality, and cost of services to consumers? Is regulation likely to be accompanied by restrictions on advertising or on other types of competition? What would such practices cost the consumer?

Offsetting possible higher costs, are there likely to be savings to the consumer in the form of better-qualified practitioners, improved service, a decrease in the incidence of fraud, better machinery for handling grievances?

Consumer impact statement. A number of participants urged that proponents of new regulatory schemes be required to provide a Consumer Impact Statement similar to the Environmental Impact Statements that are now required in conjunction with major public works projects.

There is little agreement, at present, as to the factors that should enter into such a statement; nor is there an adequate methodology for collecting data, quantifying it, and presenting it in a form that would be useful to decision makers. Nevertheless, efforts to devise some type of analytic model, even a crude one, might ultimately yield significant benefits to the public.

Periodic Review and Deregulation

Every regulatory program should be subject to periodic review by the legislature. Such a review would serve a two-fold purpose: a) deregulation of occupations and professions in which the need for regulation no longer exists and b) reform of boards that are not operating in the public interest.

Mandatory self-destruct provision. A mandatory self-destruct provision should be built into every regulatory statute. This would terminate the enabling legislation unless specifically continued by the legislature. [The Sunset Law enacted by the Colorado Legislature in April 1976 implements this concept by terminating the authorization of every regulatory board and commission on a six-year cycle. Each agency named in the legislation will cease to exist unless its mandate is specifically renewed by the legislature.]

Under a self-destruct (Sunset Law) approach, the primary emphasis would be on determining whether the need for regulation continued to exist, whether the problem that had given rise to regulation had been ameliorated to a significant degree, whether any undesirable or unanticipated side effects might make the continuation of regulation undesirable.

One individual suggested that the objectives of regulation be stated as precisely as possible at the time each regulatory law is enacted. The extent to which these goals were met would constitute the major basis for deciding whether or not the regulatory law should be continued.

Reform of administrative practices. The review of how well a program is being administered is separable from the issue of termination or continuance. It might be found, for example, that there was a definite need for the continuation of regulation in an occupation or profession, but that the manner in which the program was currently being operated was contrary to the public interest. The review process might examine such factors as the fairness of entrance qualifications, the quality and fairness of examination procedures, whether the rules and regulations served the interest of the public or of the regulated group, and whether the public had been actively involved in the rule-making process. The review might also cover the activities of the board in disciplinary matters to determine whether actions taken were to protect the interests of consumers or to enforce rules whose main purpose was to restrict

competition. Such a review might lead to recommendations for change and the establishment of a mechanism to insure that these were implemented.

The certain knowledge that every program would be reviewed periodically was regarded by some participants as the leverage needed to motivate board members and staffs to show greater concern for the public interest, because "nobody wants to look bad in a public forum." Someone noted that "Unless the threat of termination is credible, it is not likely to have much impact on what boards do." It was suggested that while termination may sometimes occur, a more likely and more constructive outcome of the review process would be the development of a "bill of particulars" for each board covering areas where the legislature considered change desirable. Some of these recommendations would be implemented through legislation or rule changes; others could only be assured by the installation of an effective monitoring system.

The Decision-Making Process

Legislators and other state officials were in substantial agreement that existing procedures for determining whether or not a new group should be licensed were generally unsatisfactory and needed to be strengthened. The problem lies to a large extent in the inability of legislative committees to study requests for licensure in sufficient depth to make sound decisions. Participants observed that legislative committees are overburdened and usually lack the time, staff, and resources to probe as deeply as may be necessary into each request for regulation; proponents of the legislation are usually well-organized and have the resources to develop and present a strong case on behalf of their proposal; opposition is more likely to come from other professional groups seeking to protect their own "turf" than from consumers or the general public; and the public is usually not organized to analyze or to take positions on pending legislation. For these and other reasons, legislators are likely to hear one-sided testimony from witnesses marshalled by the trade or professional group sponsoring the legislation.

To strengthen the decision-making process and to insulate the decision makers from some of the pressures now brought to bear on them, two avenues of relief might be explored:

Create a commission, operating outside the regular committee structure of the legislature, to consider all requests for new regulatory legislation or changes in existing legislation. The commission might be given the responsibility of investigating thoroughly the need for regulation and, if regulation is required, recommending the type most appropriate for the circumstances. The commission should seek to elicit through public hearings the views of all parties of interest, including related occupations and professions as well as consumers. It might also seek information from other states to learn what their experience has been, whether licensing ameliorated the problem, and what lessons might be learned that could make for greater effectiveness.

Commissions of this type already exist in at least two states. In Virginia, for example, the commission makes its recommendations to the legislature, which then acts on the proposals. In Minnesota, the commission is empowered to determine administratively whether the regulation of certain health-related occupations would be in the public interest and, if so, how such regulation should be handled.

Develop guidelines and criteria to aid the decision-making process. As noted earlier, advocates of regulatory schemes can be expected to present the strongest possible arguments in favor of their proposals. They may cite facts that support their position and ignore or play down those that might lead to a contrary conclusion. Emotional appeals are often used, citing examples that cannot be readily documented.

An effort should be made to establish an orderly information-gathering process that might be used in conjunction with a study commission. For example, an Applicant Group Questionnaire might be devised that would elicit from those seeking to become regulated all information deemed relevant by the legislators (or by the commission) to assist them in making informed decisions regarding the merits of the application. Data provided on the questionnaire should be available for examination and challenge by opponents. It should also be possible to develop criteria to aid in interpreting and evaluating the response.

DRAFTING THE REGULATORY LAW

Two viewpoints were expressed with respect to the nature of the regulatory law. One argued that the law should be very specific -- the more specific the better. Another held that the law should be quite general and that specifics should be handled through rules and regulations.

- Those favoring specificity pointed to the way in which boards have often abused general grants of authority to subvert the legislative intent. Given the lack of effective machinery to insure accountability of boards, these individuals feel that a specific law is the only safeguard against abuse. One legislator said: *Government by rule is not what citizens expect.*
- Those favoring more general regulatory laws note that it takes too long to get a law amended. Regulations on the other hand can be modified quite rapidly in response to changing conditions. While legislators are poorly equipped to prescribe specifics, professionals are able to do so on a day-to-day basis. An administrator observed:

Unless you have some latitude in the statutory delegation of authority, you're going to go back to that legislature again and again. And every time you go back, you open yourself up to amendments. You certainly don't want to do that. It's downright dangerous.

The danger of granting too broad authority was recognized. One legislator suggested:

Try to delegate specifics, but be specific in terms of what type of regulations are intended.

Another legislator said:

Legislation should be general only where no critical policy questions are involved.

A consumer official stated that in his state the statutes are too general:

They mandate a broad range of discretion to boards acting under the guise of rule-making power. Boards decide for themselves whether or not they have authority to prohibit advertising -- whether or not that has any relevancy to making an optometrist a good optometrist or protecting the public from incompetents. I'm convinced that the statute must be explicit to prevent boards from going beyond the legislative intent.

A legal officer cautioned against vague or overgeneral statutes:

The statute has got to be pretty definite in order to be sustained. Otherwise it may be declared constitutionally defective. A person has got to know what the guidelines are. He's got to know what he can and can't do. If it's not barred by statute, he'll say you never told him what he could do and what he couldn't do. So it's unconstitutional. He hasn't got due process.

But at the same time you cannot by statute define every act of conduct, every possible event that might occur. We had a case where we charged a physician with 'unprofessional conduct in the practice of medicine.' The man committed some heinous crime, and the court said it doesn't have to be specifically defined, nor does it have to be in the practice of medicine. Some acts are 'unprofessional' per se. But you've got to have guidelines. Otherwise the practitioner is in a never-never land. We have tried to lay out guidelines statutorily and we've laid them out in the regulations. We've gone to the appellate court and all the way to the U.S. Supreme Court, and we now have it down to a point where it is constitutionally sound.

Observations Regarding Specific Elements of Regulatory Law

When participants were asked which elements of a regulatory law should be general and which specific, there was substantial agreement that the following should be specific:

- Purpose of the legislation
- Composition of boards
- Terms of board member
- Grounds for removal of board member
- To whom board is accountable
- "Grandfathering"
- Hearing and appeals procedures

With respect to most of the other topics raised, there were sharp differences. Some thought the following topics should be covered in the law (specific); others felt that they would be better handled through rules and regulations (general):

- Definition of practice
- Authority of the board and scope of its jurisdiction
- Duties and responsibilities of board members
- Qualifications of licensees
- Reciprocity and/or endorsement
- Test content
- Fees and changes in fee structure
- Grounds for disciplinary action

Three topics that generated considerable discussion -- qualifications, grandfathering, and licensing by subspecialties -- will be discussed below.

Qualifications. On their worksheets participants were asked to indicate which qualifications for licensure they regarded as most defensible and least defensible. Education, training, and experience were considered most defensible, while age, sex, citizenship, and residency were judged to be least defensible. The moral character requirement proved to be highly controversial. Some respondents felt that moral standards were relative and that it was difficult to legislate such standards or make objective judgments administratively. Those who did feel it was important to examine this element in connection with the licensing process sometimes indicated that they were aware that rigid requirements might cause undue hardship. For example, the provision for denial of a license if a registrant has been convicted for any cause, even for an offense unrelated to his professional practice, might cause such a hardship. Some participants seemed to favor limiting the conviction requirement (either before or after licensure) to offenses related to the individual's occupational field. The complexity of the moral/turpitude question and the strong views held by some individuals suggest the need for innovative thinking on this issue.

Grandfathering. While most people felt that "grandfathering" should be dealt with specifically in the law, it was not clear what the provision of the law should be. Some felt that grandfathering had to be accepted as a matter of practical politics; otherwise present practitioners might be harmed. Others strongly objected to grandfathering on principle and would require all licensees to meet the prescribed standards. Ways need to be found to prevent the disenfranchisement of existing practitioners. Several people suggested that registration be considered as a possible solution in situations where large numbers of individuals are already practicing. Under a registration approach, all practitioners would be registered and allowed to practice until such time as verified complaints were received. Thus, the regulatory mechanism could facilitate a weeding-out process without subscribing to the fiction that all practitioners had met a specified set of standards.

Subspecialties. Should there be a few broad occupational or professional categories or a larger number of subspecialties? Most participants felt that it was desirable to keep categories broad and the number of boards to a minimum. However, several commented that subspecialties would probably become a necessity as society becomes more complex. It may become feasible for an individual to be expert in some specialized aspect of a profession, without necessarily being licensed to practice in the entire field. One said, *The public ought to receive what it pays for.*

A Guide to Drafting Legislation

Participants recognized that many of the problems inherent in the regulation of occupations and professions stemmed from the way in which the basic legislation had been drafted. Some felt that model legislation or a uniform licensing law might be the answer. Others pointed out that, because of the tremendous diversity among the occupations and professions subject to regulation, it might be preferable to develop a guide for the preparation of licensing legislation. Such a guide might point out the major topics that need to be dealt with, what the issues are, indicate alternative approaches, and suggest what the implications might be should one approach be chosen over another. For example, such a guide might discuss a variety of possible licensing requirements and point out the questionable legal status of certain requirements and arguments for or against others. Thus, the legislator could tailor the legislation to the situation in his own state, cognizant of practices that had been tried elsewhere, recommendations of experts, and alternative strategies open to him and what their possible ramifications might be.

Legislators and legislative service agencies are frequently presented with copies of proposed laws drafted by trade and professional associations or enacted by other states. A guide of the type under discussion would provide a systematic way to review the major provisions of the legislation and ferret

out those that were defective or otherwise undesirable. Alternative provisions could then be drafted that would better satisfy the legislative intent.

REGULATORY BOARDS

More time was devoted to boards than to any other topic. Questions such as the following were raised: What should be the function of boards? Should they be advisory or decision making? How or by whom should they be constituted? What qualifications should members have? How long should members serve? What can be done to make boards more accountable for their actions?

These questions are interrelated and there is no simple way to summarize the diverse viewpoints and concerns expressed by participants at the various meetings. These broad questions as well as others will be discussed below.

Functions of Regulatory Boards

A number of participants asked for clarification on the function of boards. They said that unless one understood what boards were supposed to do, how could one make appropriate appointments or hold boards accountable? The discussion focused on three general areas of responsibility:

- Establishing qualifications and standards. Since boards are expected to protect the public against incompetents, it follows that they have a responsibility to determine the degree of expertise required to provide minimally acceptable service. Should such determinations be left to the subjective judgment of board members or can it be done by some more objective method, possibly utilizing job-analysis data? Boards are also expected to establish procedures for determining competence and to examine individual applicants to determine whether or not they meet the board's standards.

Beyond establishing an applicant's initial competence, boards also have a responsibility for making sure that licensees have maintained their competence.

Setting standards of conduct. A legal officer noted that due process requires that a practitioner know in advance which activities are permitted and which are prohibited. He recognized that it was impossible to set forth everything a practitioner could or could not do. However, he felt that the statute and the rules and regulations should provide clear guidelines regarding the licensee's professional conduct. Violation of the guidelines would constitute the basis for disciplinary action.

Not everyone agreed. Below are the views of two participants:

The problem comes, as I see it, in setting up all the powers to control what he does within his profession: what fees he can charge, whether or not he can advertise, or whether he can make home visits. These restrictions interfere with the free practice of the profession and are not necessarily in the best interest of the public.

I can see checking up on qualifications, but I don't agree that the board has any business monitoring a professional's practice -- especially in areas that are not related to the patient's well-being but more to the economic interests of the group...

Regulating the profession to protect the consumer from incompetence, fraud, and deception and to maintain the standards of professional conduct promulgated by the board. Some participants felt that, to fulfill its responsibility to consumers, the board should serve as an intermediary between the public and the profession when there are complaints of unfair trade practices, unprofessional conduct, shoddy workmanship, and the like. The board should provide the public with a vehicle for maintaining the integrity of the trade or profession vis-a-vis the profession. Participants who did not subscribe to this view maintained that boards were never intended to serve as small claims courts or to adjudicate commercial disputes between buyers and vendors.

Violations of board rules and regulations dealing with professional conduct also need to be investigated and appropriate disciplinary action taken when warranted. Participants differed widely over the extent to which the board itself should conduct investigations and hearings and the extent to which these functions should be delegated to a central investigatory unit and/or to qualified hearing examiners.

Other functions. Occasionally mentioned were such other functions as:

- Upgrade the profession. Improve the public image.
- Disseminate information about requirements to the public.
- Keep industry informed about innovations and new laws passed by other jurisdictions.
- Participate in manpower planning.

Degree of Authority: Advisory or Decision Making?

There were three schools of thought about whether boards should be advisory or decision-making bodies. One group thought that boards should be advisory to an individual or group that had the decision-making power. A second group felt that boards should be autonomous and have full decision-making authority.

The third group held that in practice it made little difference, that either system can work.

Advisory boards. Such boards provide needed professional input regarding such matters as qualifications, standards of competency, and definition of acceptable practice, but they cannot take independent action. Recommendations of advisory boards provide the basis for action by an agency administrator, commission, or some other authority. Such recommendations should be a matter of public record.

While a number of participants said they would prefer to have a qualified administrator with access to an advisory board, a dissenting view came from an administrator who said:

When push comes to shove and the license isn't issued, I'm the one who's responsible. I'd rather have the board involved so there's some give and take. Sometimes I'm responsible -- on administrative matters -- and sometimes they're responsible on professional matters. That's why I steer away from strictly advisory boards. When they have to pass on their own rules or have to decide the fee should be \$10 or that a college degree is required, I find that they are mighty careful to do what they consider right. They know they're answerable for their decisions.

Autonomous decision-making boards. Advocates of this approach felt that once a responsible board was constituted, it should have full decision-making power. It should strive to balance the interests of the profession and the interests of the public and tilt in the direction of the public interest where the two come into conflict.

Some felt that only professional boards should be decision making. All others should be advisory. There was general recognition of the need for autonomous boards to be accountable, either to the agency head, the legislature, or the executive. Abuses are most likely to occur when no provision is made for monitoring the activities of the board or when the accountability machinery breaks down.

Makes no difference. Those who felt that either system could work pointed out that advisory boards are not without political clout. If the administrator ignores their recommendations, board members can bring pressure to bear through legislators or the executive. No administrator wants to get into a fight with his advisory group if he can help it. If they are persistent and have a plausible case, they are likely to get their way eventually. A legislator said, *It doesn't matter as long as all decisions are subject to review by some oversight group.*

Composition of Boards

The precise makeup of boards was not discussed so much as where the nominations came from and who did the appointing. There appeared to be some sentiment for a three-way split in board composition: one third each from the trade or profession, from related occupations, and from the public sector. Under such an arrangement, the occupational members would have to convince either people from related professions or from the public group that what they wanted to do was sound and in the public interest. In addition, consideration should be given to appointing representatives from state agencies and from the educational community, but not from proprietary training schools.

No one with an obvious or apparent conflict of interest should be appointed -- such as a person who sells supplies to practitioners or who has an interest in a proprietary school. Anyone who has been convicted of injuring the public physically or monetarily in the practice of the occupation or profession should also be excluded. There was a difference of opinion as to whether holding office in a trade or professional association should constitute automatic grounds for exclusion or resignation. Several participants thought that the distinction between present officers and former officers was an arbitrary one and that neither group should be automatically excluded. They felt that the appointing authority should be free to select the best qualified person. One person remarked, *If he happens to be an officer, so be it.*

There was some discussion of making boards broadly representative of various interest groups in the occupation or profession. A consumer official said that an effort was being made in her state to put a pharmacist from a cut-rate drug store on the pharmacy board and a chain optician on the optician's board to provide input that has heretofore been lacking. A second consumer official disagreed with that approach.

Both groups are out to maximize profits. Neither group is likely to be charitable as far as the consumer is concerned. There's no reason why every category, such as chain-store druggists, needs to be represented. What you want are practicing pharmacists who understand how the function of a licensing board differs from that of a professional association. The former should look out for the interests of the consumer, the latter for the interests of the profession.

There was considerable discussion on the merits of having public members on regulatory boards and the qualities that characterize an effective public member. The topic of "Public Member" is dealt with on page 31.

Qualifications of Members

A board member needs both technical expertise and broad experience. Five years in the profession and at least two years in the state was suggested as a reasonable requirement. Several participants cautioned against excessively stringent experience requirements because these would automatically preclude the appointment of younger practitioners and women. The tendency to choose older practitioners perpetuates the status quo. One person said that older members should be disqualified "because they are usually out of touch with actual practice and are likely to write obsolete exam questions." A mixture of younger and older members on a board was thought to be best.

Following are a number of other qualifications or attributes that were mentioned:

- Membership in a trade or professional association should not be a requirement. Indeed, it was noted that recent Supreme Court decisions had raised constitutional questions about due process protection of nonmembers when a regulatory board is made up entirely of members of an association.
- Individuals should not be narrowly partisan on behalf of a particular group.
- Members should have an interest in the regulatory aspects of the trade or profession.
- They should be willing to devote the necessary time to board activities.
- They should have above average intelligence.
- They should have a desire for public service and be willing to learn.
- They should be level-headed, conscientious, objective, have a record of fair play, and be active in professional and/or community affairs.

One official who is involved in screening prospective board members said that he regards attitude as a most important characteristic to look for. He always asks a series of questions to get the candidate's views about such things as advertising, entry requirements, and the like. For example, in interviewing a candidate for the Funeral Directors and Embalmers Board, he learned that the candidate was in favor of requiring a bachelor's degree as a condition of licensure. Obviously, he said, *we wouldn't want that man on our board. There's no relationship between such a broad, nonspecific requirement and the public interest.*

Appointing Authority

The predominant view was that board members should be appointed by the governor. Some added, "with the concurrence of the legislature." A number of participants

decried the politics that often come to the fore during the appointive process. One official said, *People who make substantial contributions are often appointed with no scrutiny of their qualifications.* Some felt that there should be "a civil service type of evaluation." Others felt that it would be preferable that appointments be made by the individual to whom the appointee would ultimately be responsible -- such as the agency head. Most participants seemed resigned to the fact that almost any screening process would be subject to political influence.

A consumer official reported that the governor of his state had abolished the patronage office and that all board appointments were being made strictly on merit. *The Governor does not know, nor does he care, to which party the appointee belongs. All he's concerned about are the individual's qualifications and willingness to serve in the public interest.* He stated that no special weight is given to associational or legislative endorsements. Unless the candidate exhibits a positive, public interest orientation, he'll probably be "passed by."

The experience of this official was viewed by others as atypical. Most participants acknowledged that recommendations from trade and professional groups do receive special consideration. In some instances, the appointing authority is required by statute to make appointments from lists submitted by the relevant occupational group. However, even when such consideration is not statutorily mandated, there seems to be a disposition to do so anyway.

Term of Office

Most participants agreed that there was value in turnover. *There should be limits,* said one individual, *so that the same individual doesn't serve for 30 years.* The most common suggestion was a maximum of two (and not more than three) terms of three or four years. There should also be a limit on the number of consecutive terms. These limits should be made clear to appointees at the time of appointment to avoid misunderstandings and hard feelings later.

Grounds for Removal

The following were most frequently mentioned as grounds for removal:

- Failure to attend meetings
- Failure to pay attention to duties
- Failure to function in an effective manner

It was suggested that a code of ethics be drawn up to define for board members their responsibilities and the limits of their authority. Failure to adhere to the code would be adequate basis for removal. The code might spell out

such offenses as: unbecoming conduct, harming the public interest, gross misconduct, malfeasance, and conflicts of interest. The foregoing were recognized as rather general charges. More specific grounds for removal might include such acts as use of position for self-betterment in private life, accepting bribes, and leaking information.

Orientation of Board Members

Board members need to be oriented to their duties and responsibilities in a systematic manner. For example, they need to understand the regulatory statute under which they operate, the rules and regulations of the board, the administrative procedures act, and other general acts that govern their conduct and procedures. To increase the effectiveness of board members, they should be given a clear understanding of hearing procedures and other practices related to regulation and discipline. A background in relevant court decisions and opinions issued by the attorney general's office was also deemed to be helpful.

Board members who must prepare competency examinations or participate in practical examinations should be given training in test construction and an understanding of professional standards that apply in this area.

Accountability

There was no disagreement with the concept that boards should be accountable to someone, but many different ideas were advanced as to whom it should be. One participant noted:

If any accountability exists at present, it is most likely to the practitioners or to the professional association the board is supposed to regulate. In this context it is possible for the profession to create a board, direct its function, and use the board as a means to enhance the profession and protect the practitioners.

A contrary viewpoint was expressed in the following way:

You are assuming that these boards are not going to be generally fair to the public. And you are assuming that they are going to be more susceptible to industry pressure than the legislature. I just don't think that is true. I think you are going to find the same problem with the umbrella agency that you have with independent boards. In fact, if the legislature gets involved in making detailed rules and regulations, it will be worse still. There's no check on what they may do.

Suggested approaches were discussed and are summarized below. It was recognized that all will require further study.

Gubernatorial responsibility. Boards should be responsible to a full-time elected official, who should also have appointment and removal powers. A representative from the governor's office should be present at all meetings. If the governor receives many complaints, or if he receives unfavorable reports about the boards' actions from his representative, he is likely to investigate and see to it that the matter is straightened out. If board members are not responsive, he can remove them.

Agency or departmental responsibility. All boards should be accountable to a public agency that exists on a full-time basis and that has public visibility and public responsibility. The agency should monitor the activities of all boards to see how well they are carrying out their mandates. The agency should have power to review all proposed rules and regulations and to challenge orders that are deemed not to be in the public interest. A representative of the agency or department should be present at all board meetings and a transcript of the meeting should be available for review by the agency staff.

A further tool for effective agency control over boards would be to give the agency director power to hire and fire board staff and to recommend promotions. If a board has power to hire and fire its own staff, the loyalty of the staff can be expected to lie with the board rather than with the state. Staff members beholden to a board for job security and recognition are likely to identify with the occupation and profession rather than with the public. Placing staff members under the agency head increases the likelihood that they will see their primary responsibility to the state and to its citizens, rather than to the association and its members. The agency head can hold his staff accountable for keeping him informed and for administering agency policies with the public interest foremost at all times.

Legislative oversight. Since rules and regulations of boards are really laws, there was considerable support for the idea that the legislature should either review rules beforehand or at the very least approve them after the fact. Critics of this approach point out that legislators are already overburdened and that reviewing all rules and regulations beforehand would be tantamount to amending the statute at every session. After-the-fact review was also questioned on the grounds that legislatures are not in session continuously, so that bad rules might remain in effect for some time until the legislature could act on them. The legislature's control over the purse was also cited as an accountability device. It was suggested that if all boards had to justify their budgets to the legislature, as do other governmental agencies, this might give that body some measure of control over their activities.

Independent commission. To avoid the political pressures to which both the legislative and executive branches are subjected, it was proposed that oversight of boards be delegated to a commission of

outstanding laymen with no ties to any of the regulated professions or occupations. Members would be appointed by the legislature and serve relatively long terms to insulate them from political pressure. Under this plan, boards would be advisory with the decision-making power residing in the commission. Boards would provide professional and technical input as they do at present. Their recommendations would be reviewed by the commission staff to determine whether or not the proposed rules were in the public interest. Critics of this approach called attention to other types of commissions -- such as those responsible for public utilities -- and asked, "Why haven't these served the public interest?"

Attorney general. While the attorney general was not perceived as a total accountability mechanism, many people felt that he could play an important role in protecting the public interest vis-a-vis boards that might be inclined to use their powers for selfish ends. It was suggested that a representative of the attorney general's office be present at all board meetings and advise the board immediately if an action under consideration might not be in accord with the statute or could be considered contrary to public policy.

A number of participants indicated that in their states the attorney general's representative functioned very much like a public member. It was also suggested that all proposed rules and regulations be reviewed by the attorney general's office to determine whether they were within the scope of the law. In some states, no proposed rule can go to the public hearing stage unless it is cleared by the attorney general. However, it is customary for the attorney general to confine his review to the legal aspects of the proposed rule, not to its merits from a public interest viewpoint.

A frequent criticism heard of autonomous boards was that they usually retain their own counsel instead of relying on the attorney general's office. Independent counsel is more likely to do whatever the board wants done, including efforts to circumvent the law or the legislative intent. Such occurrences were less likely when boards had to rely on the attorney general's office for legal services.

Ombudsman. A number of people -- especially consumer representatives -- seemed convinced that the most effective way to maintain accountability was through an aggressive ombudsman-type agency that would be equipped to play an adversary role whenever regulatory boards proposed actions not deemed to be in the public interest. One official noted that it is unrealistic to place the burden on one or two part-time public members who lack the resources to do needed research or to mount an effective counteroffensive that may involve litigation.

To back up the public members (or to act on behalf of the public even when there are no public members on a board), there should be some type of consumer agency with adequate resources to monitor board

activities, do the necessary research, appear at hearings, and institute injunctive action when appropriate. Examples of this approach, cited at the conference, were: 1) the Massachusetts Consumers Council, which is an official agency empowered to intercede on behalf of consumers before all state regulatory boards and commissions, 2) the Public Advocate in New Jersey, an independent official of the state government who works closely with the Department of Consumer Affairs.

PUBLIC MEMBERS ON REGULATORY BOARDS

The prevailing view was that, until recently, public members have not made a significant contribution to the operation of licensing boards. This was attributed to the fact that most appointments have been political in nature, without any serious effort to match the individual to the job in terms of interests or qualifications. As a result, most appointees do not have the background to understand the problems and issues and few appear to have made a serious effort to find out. Attendance records of public members were reported as poor, and there was little evidence that they have been able to contribute to the work of their boards. Typical comments about public members were:

Don't know why they are there.

Uninformed, easily swayed.

Defer to the professional members... often more proindustry than the industry representatives.

Poor attendance record.

Showed more consideration for licensee (in disciplinary proceeding) than circumstances warranted.

There was considerable discussion as to what the role of a public member should be. It was generally agreed that until the role was clarified, there would continue to be controversy about the usefulness of having public members and the qualities needed. Following are some paraphrased observations on this topic:

- He should be a "watchdog" to make sure there is no whitewashing of a professional by his fellow professionals.
- He should "blow the whistle" on a board that is using its powers for selfish ends, either to limit entry or restrict competition.
- Participate in disciplinary hearings, contribute consumer viewpoint, and help make decisions regarding guilt or innocence and appropriate sanctions.

- In policy formulation and rule making, he should see that the public interest is foremost.
- Should not be involved in preparing competency exams, but may raise questions about procedures used -- such as "are they job-related?"
- Should not pass on qualifications of applicants, but may raise questions about qualifications and standards used. When he notes restrictive requirements that are not in the public interest, he may seek to have them modified or eliminated.

As noted earlier, one participant expressed the view that it is unrealistic to place such a burden on the shoulders of one or two part-time public members. "It's more than any one person can handle." This individual suggested that ways need to be found for the public member to tie in with the existing structure. For example, the public member might seek the assistance of the attorney general's office, which often has the right to declare a proposed rule contrary to legislative intent or to give an opinion regarding its constitutionality. The consumers council or public advocate -- at the behest of a public member -- may decide to file a brief or take appropriate legal action to block a board action that does not appear to be in the public interest.

To remedy some of the shortcomings and problems previously noted, action is needed on three points: selection, training, and support services.

Selection. The ideal public member is one who is well-informed, dedicated, and willing to devote time and energy to the assignment. The ranks of retired persons offer an excellent pool of potential talent. In screening public members, the following considerations were suggested:

- Suitable education, experience, and background to understand what is going on
- Interest in participation
- Proper attitude -- strong concern for the consumer
- Record of effective community service; someone who knows how to get things done within the governmental or community structure
- Adequate time to devote to this activity

Orientation and training. Too frequently, the public member is appointed and forgotten. It was suggested that public members be sworn in as a group with fanfare and charged with responsibility of looking after the interests of the public. A "Public Member Caucus" was described as one way to build an esprit de corps among public members and as a way to acquaint them with their duties and responsibilities and the resources available to them.

Support services. Unless public members have access to independent sources of information, they will be dependent on other board members or on industry sources for facts and possible alternatives. Public members should learn how to utilize such agencies as their own Department of Consumer Affairs, the Consumers Council, and the Federal Trade Commission as sources of information. Since clerical, secretarial, and research assistance may not be readily available from the board staff, alternative sources for such services should be provided.

Considerable optimism was expressed that with proper selection, training, and support services public members could make a significant contribution to the work of regulatory boards. However, for the public interest to be served effectively, public members should work closely with other agencies of government since these are usually in a better position than they are to intercede on an administrative or legal level.

FINANCING REGULATORY ACTIVITIES

There were three schools of thought on the topic of financing regulatory activities: that boards should be self-supporting, that all regulation should be paid for out of the general fund, and that a combination of the two approaches should be used.

Regulatory activities should be self-supporting. When regulatory statutes are under consideration, proponents often argue that the activity will support itself and will not constitute a drain on the taxpayers. This suggests that practitioners in an occupation or profession often view the license fee as a special tax on themselves to make regulation possible. Those opposing exclusive reliance on fees argued that under such an arrangement those being regulated became clients of the board. The occupational group may then seek to dictate how funds are used and may resist raising fees even if needed to carry on an adequate inspectional program. Several participants mentioned that exclusive reliance on income from fees ultimately gives the occupational group a sense of control -- that the board is "theirs" to be used to promote their special interests rather than the interests of the public.

Regulation should be paid for out of general funds. Since regulation is intended to protect the public health and safety, everyone benefits. The cost should come from general funds just as police and fire protection do.

Part of the cost should come from license fees and part from general funds. Those taking this position tended to subscribe to the notion that regulation should be self-supporting, but they recognized that in some situations fees might become excessively high because of the small number of practitioners involved. Fears were expressed that

excessively high fees might have undesirable social consequences by serving as barriers to entry into the occupation. In such circumstances, it would be in the public interest to supplement income from fees with public funds.

Should board income be held in a special fund?

Advocates of the first viewpoint -- that boards should be self-supporting -- also tended to favor the idea of special or segregated funds. Under this concept, a board retains control over the funds it collects from licensing fees and fines by placing the money in a special fund.

Proponents of the special-fund arrangement pointed out that the general fund approach, while sound in theory, seldom worked out in practice. Regardless of the amount of income generated by a board, its budget is always at the mercy of the legislature or the agency director. Thus, the board might not be given sufficient funds to conduct a sound program. It could then be criticized for not doing what it is supposed to be doing for reasons that are beyond its control.

A book, *Deceptive Packaging**, was cited as containing a great deal of information about what happens when boards maintain segregated accounts. According to the book, boards ultimately begin to think of such funds as "their money" and feel free to spend it as they wish. Building up reserves can sometimes become an end in itself. Inspectional activities may even be curtailed so that excess income would be available to build up the reserve.

Should the department or agency control funds?

Some states assign all or most of the income from fees to the umbrella agency, which then allocates it to the various boards on the basis of need or under some type of formula arrangement. This approach gives the agency budgetary control, yet assures boards that they will usually have adequate funds to meet their program needs. It was noted that such a pooling arrangement has the further advantage of insuring that all boards -- especially those where the number of licensees is small -- will have adequate funding without having to resort to excessively high fees.

Should fees be set by statute?

Inclusion of fee schedules in the regulatory statute has created serious problems for many boards and umbrella agencies during inflationary periods. It was strongly urged that the statute might establish principles to guide the setting of fees, but the dollar amount should be set by regulation. Among the suggestions heard were: 1) that fees be adjusted periodically

* San Francisco Consumer Action, 26 Seventh Street, San Francisco, CA 94103

to meet the operating costs of the board or agency, and 2) that fees not exceed some specified dollar amount. Either approach would obviate the need for the board or agency to return frequently to the legislature for fee adjustments. In some states the agency director has authority to adjust fees in accordance with need. In at least one state this can be done only after public hearings to explain and justify the need to those involved.

CONTINUED COMPETENCE

Legislators recognize continued competence as one of the thorny issues with which they must deal now and in the years ahead. The rising cost of malpractice insurance and pressures from professional groups for mandatory programs of continuing education are forcing legislators to look closely at an issue that has heretofore been largely ignored. Most of the emphasis in licensing occupations and professions has been on initial competence. Little attention has been paid to the question of continued competence. Now legislators are asking: Has the practitioner kept up with developments in the field? Has he maintained his skills? Is he as qualified to provide safe and effective service as he was at the time of initial licensure? Most regulatory boards have been willing to renew licenses upon the payment of a fee -- almost never inquiring into the matter of continued competence.

Continuing Education

Legislatures have felt increased pressure to require that licensed practitioners participate in programs of continuing education (CE) as a condition of relicensure. Some people believe that this is a tactic to forestall programs that might require practitioners to be reexamined periodically. Regardless of the truth or fallacy of that assertion, some people maintain that one reason some associations are promoting continuing education is that they stand to benefit financially by developing and marketing continuing education programs for their occupation or profession. However, others point out if continuing education was widely adopted it would put an almost intolerable burden on the educational community. For example, in New York State, there are more than 275,000 registered nurses and licensed practical nurses. A shortage of qualified faculty is said to exist even without mandatory continuing education programs. A representative from that state said, *It is hard to imagine what a mandatory program would do to us.*

During the course of the conferences, many questions were raised about the need for mandatory CE programs. One person asked, *Is there proof that anyone has been seriously harmed because of the lack of competency reassessment or mandatory continuing education?* Another asked, *Is it worthwhile to subject a whole discipline to mandatory continuing education when only a small minority may need it?* There was some feeling that continuing education programs should be required only where a specific and justifiable need

can be demonstrated. *Priorities should be established based on need, one participant suggested. We should not try to mandate continuing education for everyone until we have a better feel for what the continuing education approach can accomplish.* Another participant criticized continuing education as window dressing, especially where a person gets credit for attending a meeting or taking a course. *That doesn't necessarily mean he's competent!*

Several individuals expressed concern about the potential cost of continuing education to the consumer. One asked, *What assurance do we have that continuing education will provide the consumer with greater protection against the incompetent practitioner?* A legal officer supported this view. He stated that most complaints do not stem from allegations of incompetence. *Most of the rip-off artists are extremely competent. They are just out to make a fast buck.* Several licensing officials felt that the problem -- if there really was one -- could be better handled by investigating all complaints and by a vigorous enforcement program.

Two practical problems relating to continuing education were raised in the course of the discussion:

- Practitioners in rural areas do not have ready access to seminars and training programs that are readily available in urban areas. If they are required to take the same exam as their urban counterparts, they would probably be at a serious disadvantage. Indeed, some might not qualify for relicensure. This would represent a serious social loss since rural practitioners are in short supply.
- Interstate mobility would be made more difficult if practitioners licensed in a number of states had to meet differing education requirements in each state. One participant said, *We have engineers who are licensed in 17 states. They could make a full-time career of keeping up with continuing education requirements.* Another said, *It would be difficult to implement the concept of endorsement if states had widely differing continuing education requirements!* Someone suggested that the problem should not be dealt with on a piecemeal basis. *It has national implications and a national system should be created. Some sort of credit clearinghouse is a must.*

Periodic Reexamination

The idea of periodic reexamination to establish competence met with considerable resistance and skepticism. Doubt was expressed that written tests could provide trustworthy evidence of competence. *Even if they could, one person said, it would be a nightmare to test everybody.* The problem with testing, several people noted, was that after they leave training most professionals tend to specialize. Hence they probably couldn't pass an examination covering the entire field the way they once could. This

doesn't mean they are incompetent or that taking courses is necessary to insure that they will function properly.

A number of people asked whether it might make sense to license practitioners to render services only in their specialties...and to forego the myth that they are competent to provide services across the entire range. If a person has lost touch with certain aspects, he shouldn't insist that he is still qualified because his original license says so.

Voluntary Certification

As an alternative to requiring reexamination as a condition for relicensure, it was suggested that greater emphasis be placed on voluntary certification in various specialties. Thus, an individual would be licensed and could legally work in any of the specialties, but the public would have a basis for selecting practitioners who had demonstrated their competence by voluntarily meeting the standards of a certification agency. The certification process might include some type of examination as well as evidence of appropriate education and experience.

Performance Audit

Several individuals suggested that boards be given statutory authority to audit the work of licensees in a manner appropriate to the occupation or profession. There might be some tie-in with a Professional Standards Review Organization (PSRO). It was also suggested that investigations or audits should be conducted by an independent agency, not by the same agency that is responsible for licensure.

Legal Issues

A Deputy Attorney General questioned whether it would be constitutional for a licensing board to refuse to renew the license of a practitioner for failure to take certain continuing education courses or for failure to pass a new competency examination. He argued that such an action would be an unwarranted retroactive action. The practitioner could claim, "I met your requirements. You licensed me. I haven't done anything wrong. Yet you are now going to make me take a new exam or take away my license because I didn't take some courses." This legal officer stated that, in his opinion, a board could revoke a license only if it had grounds for doing so -- such as evidence of incompetence. However, he doubted that the courts would sustain a board that refused to renew a license of an individual who has been practicing and who had not done anything wrong. Many of the participants expressed disagreement, but no one cited legal precedents for either viewpoint. There appears to be a clear need for further study of this issue.

ADMINISTRATIVE PROBLEMS AND ISSUES

EVALUATION OF QUALIFICATIONS

It is difficult to draw a line between the legislative role in establishing qualifications and the boards' role in defining them more precisely for administrative purposes. Many participants were troubled by lack of uniformity, inequities, and inconsistencies in the requirements among different occupations and across states.

Trend to Increased Qualifications

A recurrent theme was that boards constantly want to increase the qualifications. One administrator said:

I see this all the time. Every year they come back to raise them. I'm not saying the minimum today should be the minimum 50 years from now, but every year they want something more stringent. At what level can you say that the mutual needs are met -- protecting both the public and the profession?

Another administrator cited problems they were having in cosmetology:

We now require 2,500 hours of training -- which is about 1,000 hours more than the national average. It's supposed to be for the benefit of the consumer, but I think it's for the benefit of the school owners. We actually have a shortage of hairdressers in the state because girls won't take a course that's so long; and many of those who do enroll get bored and drop out. The board wants to eliminate any fixed number of hours of training and license people on the basis of their demonstrated competency. But this idea is being resisted by the school people who have many friends in the legislature.

Reference was made to the Griggs decision.* A participant asked whether a specific educational requirement, such as a high school or college diploma, was a legal requirement. No one had a definitive answer, but it was suggested that educational requirements were likely to be challenged unless they could be shown to be job related.

Arbitrary Experience Requirements

The experience requirement was also challenged. *I think that boards are sometimes arbitrary when they set such a requirement as five years or even*

* Griggs vs. Duke Power Company, 401, U.S. 424, 1971

ten years. Is there any evidence that people with fewer years of experience are not qualified? Shouldn't such requirements be validated?

Evaluation of Out-of-state and Foreign Applicants

The evaluation of qualifications of out-of-state and foreign applicants provoked considerable discussion. In some fields, such as medicine, the decision can be made administratively because candidates all take national exams. "If he has an NBME (National Board of Medical Examiners) certificate, you know he came through an approved residency or intern program and that he is a graduate of an approved medical school." The foreign physician who comes to the U.S. is required to have a certificate of the Educational Council for Foreign Medical Graduates.

The problem of evaluating the nature and quality of training in foreign institutions was discussed by a representative from New York State, which is one of the few states that licenses foreign physicians, dentists, and pharmacists. He stated that New York State has a Comparative Medical Education section within the Department of Professional Licensing that monitors foreign educational institutions. A staff member who speaks seven Hindi dialects as well as other languages actually visits institutions in India and in other countries to study the curriculums and the facilities and to determine whether such programs are comparable to those in the United States. *It's the only way to be sure of what is going on. You can't trust the name of the institution or what they say in their catalogs.* As an example, he cited one "medical school" in Singapore that turned out to be a two-year college.

The ensuing discussion brought out the fact that most states could not afford to establish or maintain their own comparative education capabilities. Interest was expressed in having such a service provided on a national basis. It was also suggested that interested states might be able to contract with New York State to make its findings about institutions available to their state medical boards.

TESTING FOR COMPETENCE

Whenever qualifications for licensure were discussed, concern was expressed about the quality of the examinations used to assess competence. Few people seemed to have confidence in exams prepared by local boards, but many also expressed reservations about national testing programs. A number of individuals suggested that the use of "unassembled exams" be explored for licensing purposes.

Locally Prepared Exams

Locally prepared exams had few defenders among licensing administrators or other state officials. It was observed that such exams were frequently of

inferior quality. They were seldom based on an up-to-date job analysis; questions were often ambiguously worded; there was a tendency to measure obscure points; and both the content and the difficulty of the test often fluctuated from one administration to the next. Many of these problems were ascribed to the fact that, while board members were skilled in their trades or professions, they seldom had any expertise in the field of measurement. A legislator from Florida cited a report of the Florida House of Representatives,* which had involved an analysis of the tests used by several boards in his state. He said the study had concluded that these examinations were not reliable or valid instruments for determining competency.

Locally prepared exams were also criticized as more likely to be exclusionary than national exams. Board members can manipulate both test content and passing score more readily than they can on national exams. A number of participants cited examples of boards using tests as a means of restricting entry.

Guarded optimism was expressed regarding the prospects of upgrading the quality of locally prepared exams. Agency personnel indicated that they would welcome a training package to enable them to do a better job of reviewing and evaluating locally prepared tests and for working with boards to improve the quality of their tests. Several people mentioned that umbrella agencies should perform an oversight function with respect to testing and should either develop in-house consultation capabilities or draw on outside experts for such help. No one seemed certain of how to monitor the testing activities of independent, autonomous boards in states with no umbrella agencies.

If the uniform guidelines currently being developed by the Equal Employment Opportunity Coordinating Council (EEOCC) are adopted -- and if they apply to licensing and certification agencies -- they are likely to have a significant impact on most state regulatory bodies. Boards that use national exams would probably not be affected to any great extent because the organization sponsoring the testing program and the national testing agency would be the ones who would have to defend the examination as job related, valid, and nondiscriminatory. However, state boards would probably have a difficult time doing so. A study in California** revealed that many of the boards in that state would probably be vulnerable. An analysis of pass-fail rates showed that the exams and other assessment

* Florida House of Representatives, Committee on Regulated Industries and Licensing. *Examining the Examiners: An Investigation of Licensure Examination Practices for Florida's Boards of Dentistry, Medical Examiners, Podiatry Examiners and Veterinary Medicine with Recommendations for State and Federal Action.* Prepared by J. Phillip Halstead, Legislative Analyst. March 1975, 212 pp.

** Selection Consulting Center. *Fair Employment Implications of Licensing and Certification Standards in the State of California.* Prepared for Department of Consumer Affairs, State of California. Patrick G. Clelland, Project Director. Sacramento, California; August 1975, 106 pp. plus Appendices

procedures being used by many boards were having an adverse impact on minorities -- that is, the fail rate for minority groups was substantially greater than it was for the majority group. States with umbrella agencies will probably insist that boards bring themselves into compliance with EEOC guidelines. It was felt that independent and autonomous boards are more likely to "sit tight" until challenged.

A licensing administrator said:

Our interest in reviewing the quality of tests should not be from the vantage point that we'd be afraid the Feds were going to come in and raise hell, but out of a sense of equity. Many of the requirements for licensing, as well as the tests, definitely tend to discriminate against minorities.

This view was echoed by another participant who said:

Sooner or later somebody is going to bring a case. It seems to me that it would be better for us to move affirmatively without being forced to do what we know is right to begin with.

National Examinations

National exams were thought to be most appropriate where there is a well-developed educational system national in scope. Such programs tend to have agreed-upon curriculums and standards so that national exams are feasible. They are also appropriate for crafts that operate under uniform national standards, such as the national electrical or plumbing code.

Questions were raised about the appropriateness of national examinations in such fields as insurance and real estate where laws, rules, and regulations differ markedly from state to state. It was noted that, in such instances, the examination usually comes in two parts. The first part deals with practices and principles that are universally applicable, while the other section deals specifically with state laws and regulations and with any other aspects that may be unique to a given situation. Nevertheless, some people expressed skepticism. One man said, *If you have an exam that applies to everybody's situation, it will apply to nobody's.*

There was general acceptance of the fact that national examinations have certain advantages over locally prepared exams. The quality of the tests is usually higher. What is to be covered by the test is usually determined on the basis of a careful job analysis. Questions are written by experts, reviewed by other experts, and subjected to item analysis. Security arrangements are generally good, as is the quality of scoring and reporting services.

Not everyone agreed with these presumed advantages of national exams. A participant from Wisconsin stated that the Architectural Registration Board in his state had serious reservations about the content of the national exam in that field. He said it was seeking to determine when and how the job analysis had been conducted and whether the test reflected all the important

aspects of current practice. The board had also questioned the objectivity of the scoring of certain parts of the examination. To verify the scoring, it had hired experts to rescore certain parts of the exam. There was considerable disagreement between the first and second set of scores. As a result, the legislature had suspended use of the contested portion of the examination.

Discussion of these and similar problems underscored the fact that in adopting national exams, the state board does not relieve itself of responsibility for scrutinizing carefully how the exam is prepared, what it covers, and how it is graded. "The fact that an exam is offered for national use doesn't guarantee that it will be of high quality. It's up to the board to satisfy itself on these points before it adopts the exam; and it should check periodically to make sure that quality has been maintained."

Three potentially serious problems relating to the use of national examinations were brought out at the meetings:

Lack of uniform testing dates. It was noted that the lack of uniform testing dates can give rise to security problems. For example, the national exam in nursing has traditionally been given at the discretion of each state board. The same examination is used throughout the year. Thus, some candidates may travel to a nearby state to take the exam. If they do not pass, they can retake the same exam at a later date in their own state. This raised questions about the integrity of an individual's score and led one state to suspend its policy of licensing by endorsement in this field. The national organization responsible for developing and administering the testing program agreed to prepare a different form of the test for each administration and to require all state boards to adhere to common test dates. This example reinforces the need for boards to be alert to developments that may invalidate the test as a basis for assessing competence.

Public record laws. The passage of public record laws has given rise to requests, on the part of applicants, to review the test and their own answer sheets. They argue that the test is a public record and therefore subject to public scrutiny.

A number of licensing administrators indicated that they were having difficulty complying with the law because national testing organizations refused to make copies of the test available. These administrators were aware of the security problem and recognized that access to the test by candidates would preclude the use of the same questions on future examinations. However, they tended to see the problem as one the national testing organizations would have to solve possibly by providing some type of feedback without disclosing the actual wording of each question. No one was sure whether anything less than full disclosure would satisfy the courts.

A number of participants thought that there was probably a basis for compromise on this point because it would clearly not be in the public

interest for states to turn away from national examinations: first, because the tests are usually better and cost less than locally prepared tests; and second, because such tests provide the basis for licensing by endorsement, which facilitates the mobility of skilled personnel across state lines.

Several people asked, "Why do the candidates want to examine the test?" If it is to find out if it was a fair test, the courts would probably support the contention of the board that it is the prerogative of the board to make that determination. If an individual wants to dispute the test, there are other administrative and legal channels open to him.

There are ways to present information to a candidate as to where he fell down without destroying the security of the test. For example, a board could advise the candidate in which areas he was weak. Such diagnostic information should suffice to enable the candidate to concentrate his attention on those topics on which he had done poorly.

It was hypothesized that many of the requests for access to the test questions were not coming from bona fide candidates but from people who were acting on behalf of proprietors of coaching schools. "They always plant people in the exam so they can accumulate every question that has been asked over a five-year period. If they can come in to review the test questions after the test, they'll build up their files just that much more quickly."

Translating examinations. The matter of translating national exams into other languages also poses a problem in certain states. In Florida, for example, when five or more applicants from a similar linguistic minority request that an examination be translated into their native language, the board must comply. Some asserted that the direct translation of an exam into another language may change its character. It is no longer the same exam. However, a more practical problem may be that the sponsors of national testing programs will not permit translation of their exam for reasons of security.

A financial benefit often overlooked by state boards was cited by one participant:

Boards can reduce their operating costs by requiring candidates to take the national exam. The candidates would pay the fee to the testing organization, and the board would get the scores without having to pay for costs of making the test, administering it, and then scoring it.

He suggested further that boards need not necessarily reduce their fee to the candidate. *Why not use that income to step up enforcement?*

"Unassembled" Exams

While most of the discussion centered around written exams and performance tests prepared locally or by national testing agencies, several participants felt that the use of "unassembled" examinations should be explored. Such examinations rely on a review of an individual's credentials rather than on a test, which is "nothing more than a sample of an individual's behavior at one point in time." The "unassembled" approach permits the evaluation of an applicant's education and relevant experience. Thus, in some respects it provides a broader and more comprehensive basis for assessment than the traditional written or performance test. Advocates of this approach noted that criteria can be developed that result in a high degree of reliability among raters.

One participant recalled that Dr. Albert Maslow, then Chief of the Personnel Measurement Research and Development Center of the U.S. Civil Service Commission, had argued in a similar vein in 1971 when he addressed an NCOL conference in San Diego.

*In our work with federal staffing systems....we allow the measurement to fit the individual. People train to a point of occupational entry by different routes. Thus, it makes sense to use alternate but equally appropriate and relevant evaluation methods. For example, an individual who has come up through a formal training discipline, where we feel confident about the quality of training, can be examined on his training record. An individual who has come up through an experience discipline, not organized training, can be evaluated on that basis. An individual who has done neither of these, but might have gained knowledge in a variety of ways, can be asked to demonstrate his knowledge through a test. So, in licensing, it is conceivable that by providing alternate examining methods you could better serve all applicants and be less susceptible to charges of inadvertent locking-out of some of them.**

RECIPROCITY/ENDORSEMENT

The licensing of out-of-state or foreign applicants has been a vexing problem for legislators and licensing officials. Initially candidates had to qualify in each state regardless of any license that they might already hold. To facilitate mobility, some boards worked out reciprocity agreements which said, in effect, "We'll license anyone who holds a valid license from your state if you'll honor our license in a similar way." However, if a licensed individual wished to migrate to a state with which his home state did not have a reciprocity agreement, he had to satisfy the new board as to his qualifications and take a new examination to demonstrate his competence no matter how long he had been in practice. One participant said, *I really feel this is a bad thing because what we should be looking at are the*

* Quoted in *Occupational Licensing: Practices and Policies* by Benjamin Shjoberg et al. Washington, D.C: Public Affairs Press, 1972. pp. 208-209.

people and their qualifications -- not whether we have reciprocal agreements.

Most participants seemed to feel that licensure by endorsement is a more equitable procedure. Under such an arrangement, a licensed individual submits his credentials to the state to which he wishes to migrate. If the training and experience qualifications are comparable and if the individual has passed the same national examination required of residents, he or she could be licensed by endorsement; that is, the state would endorse the evaluation made by another state board and issue a license without requiring the candidate to take a new examination. One woman said:

If people meet the same qualifications that we accept in our state, then we ought to accept those people.

A man put it this way:

We're looking at qualifications and criteria for licensure as they exist in our state. Does the applicant meet them or not, regardless of where he comes from? Why put him through the hurdles again?

It was alleged that certain "sunshine states" use the licensing apparatus to discourage mobility. A representative from one such state said:

It has nothing whatever to do with protecting the people; it's an exclusionary device to protect the economic interests of the people who are already there. They know they have a good thing and they want to keep it that way... Our state ranks 30th in the nation in our supply of dentists and we're declining in that regard. We have many counties in the state that don't have even one dentist; yet the board is keeping qualified people out. The dental exam is restrictive and not job-related. As an example, the Dental Board requires dentists to build a plastic mock-up of the mouth. Most dentists have that sort of thing done by a laboratory. It's certainly not the hallmark of a qualified practitioner.

The reciprocity/endorsement issue was characterized as "political dynamite" by one participant and it was clear that many others shared this view. There were intimations that trade and professional associations have such close ties to the legislature that it is unlikely that exclusionary practices will be modified any time soon. The fear was expressed that states in the sun belt would be overrun by people from "up north" who had retired or were approaching retirement. These outsiders, it was said, constituted a threat to the economic well-being of practitioners who were already residents of the state. It was repeatedly stated that trade and professional groups work closely with licensure boards to "keep standards high" so as to keep out the incompetents from other states. When someone noted that even distinguished practitioners from other states were often excluded, the reply was along the lines of "Well that's too bad. We apply

the same standards to in-state candidates as we do to those from out-of-state."

Some doubt as to the latter assertion was raised by a licensing official who stated that, in investigating a discrepancy in the fail rate for in-state and out-of-state dentists, he had discovered that candidates from out-of-state were given a different colored smock to wear during the practical examination. Thus, the examiners could tell which ones were from in-state and which from out-of-state. The use of different colored smocks has since been discontinued, and the fail rate for out-of-state applicants has decreased markedly.

A number of consumer officials indicated that the weakness and fragmentation of the consumer movement was in part responsible for the fact that various trade and professional groups have been able to continue exclusionary practices for so long. One official said:

A gullible public was taken in by the propaganda about protecting consumers from cheats and incompetents. Now consumers are beginning to see that they are being forced to pay a very high price for protection of dubious value.

HANDLING COMPLAINTS FROM APPLICANTS

When an applicant is denied the opportunity to sit for a licensing exam on grounds that his qualifications failed to meet the requirements set by the board, what recourse, if any, does he have against arbitrary standards or unfairness on the part of board members? When an applicant fails to pass a licensing exam, can he challenge the fairness of the exam or the standards used in grading his paper?

In discussing how various states safeguard the constitutional rights of applicants, it was evident that practices varied widely. Most states allow an applicant who has been denied an opportunity to take the exam to appeal to the board for reconsideration. This is tantamount to asking a group to pass judgment on its own actions. One legal officer stated that even when the right of appeal is not spelled out in the law, the Attorney General will usually advise the board to grant a hearing to review the information in the file and to ask the applicant if he has any additional information beyond that already in hand.

States that have adopted Administrative Practices Acts (APA) frequently provide for a hearing before a third-party hearing officer. Boards know that once they have turned down an applicant, they will be required to give specific reasons and to defend their action in an adversary proceeding. The safeguards established under an APA tended to temper the tendency of boards to act in an arbitrary manner. Several legal officers stated that it was difficult to upset a board's ruling either before a hearing officer or in the courts, because, to do so, the applicant usually had to show that

the board's action had been arbitrary and capricious -- an abuse of the statutory authority vested in the board by the legislature. Boards need help in drafting their rules and regulations so that requirements for licensure and grounds for disciplinary action are spelled out as specifically as possible. Such specificity benefits both the applicant and the board.

When the fairness of an examination is at issue, boards tend to have the last word. There are usually no administrative remedies open to the applicant. Several participants stated that boards frequently permit applicants to review their test papers and to present arguments as to why their answers should be graded as "correct." If the board decides that the complaint has merit, it may grant extra points. However, the decision is usually up to the board. In the event of an adverse ruling by the board, the only recourse left to the applicant is in the courts. His chances there are not considered very good.

If the proposed EEOCC guidelines are found to be applicable to licensing and certification agencies, there might be a basis for injunctive action. However, it would first be necessary for the complainant to show that the examination had an adverse impact on members of minority groups. The burden would then fall on the board to demonstrate that its test met the validity standards set forth in the guidelines.

A number of participants felt that the umbrella agency should monitor test development activities of boards and see to it that examination procedures meet professional standards regardless of whether the EEOCC guidelines are extended. Some channel for administrative review should be provided so that the courts would not be the only recourse open to applicants with complaints about examinations.

While the legal route is available, relatively few applicants seek redress in the courts. Among the reasons mentioned were 1) legal action is expensive and time-consuming, and 2) few applicants have the resources to carry litigation through the lengthy appeals process, which is almost certain to follow any reversal of a board in the courts. *Time is on the side of the board, said one person. It can stick to its guns almost indefinitely. In the meantime, the applicant cannot pursue his trade or profession. With odds so slim, is it any wonder that so few applicants initiate legal action?* Some applicants may also be reluctant to challenge a board's decision out of fear of retaliation. One participant observed: *It's easier to comply than to run the risk of being branded as a troublemaker.*

ENFORCEMENT

The lack of effective enforcement was viewed as a serious weakness in the licensing process by many of those who attended the conferences. A number of participants cited instances in which boards had been lax about taking

action against licensees. One person quoted from an article in the *Christian Science Monitor** in which a veterinary board had "failed to act against veterinarians who charged excess fees, refused to provide help in emergencies, kept animals in filthy cages, and performed an operation on the wrong dog." According to the article, the strongest action taken by the board against any of the practitioners involved was a reprimand. It was reported that boards frequently claim that they have no jurisdiction in matters involving prices or workmanship -- or they may refuse to act in the absence of a formal complaint.

In the case where the veterinarian had operated on the wrong animal, the board had taken no action because the veterinarian had arranged a monetary settlement with the dog owner so that charges were withdrawn. A participant asked:

Isn't this still a disciplinary matter? Shouldn't the board do something with or without a formal complaint?

A consumer official familiar with the case said:

Our agency interceded in that case. The board is always looking for excuses not to prosecute its licensees. They said, in essence, 'We can't do anything because the complaint has been withdrawn.' We told them, 'You are absolutely incorrect. This man is a license holder. The act he committed is a violation of your own rules and regulations, and you have an obligation to proceed on it.' They ultimately suspended the veterinarian's license and the matter is now being appealed in the courts.

Several participants noted that many boards avoid taking disciplinary action by interpreting the law very narrowly. Some boards see their role differently; they do not hesitate to call in offending licensees and persuade them to make adjustments, including financial restitution.

One participant, a legal officer, came to the defense of boards with the following observation:

The public has the impression that members of the profession seek to protect their own. Nothing could be further from the truth. When a complaint comes in about an accountant, for example, the board really rides herd on the guy. It realizes that it is in its own interest to be tough because the actions of a few can give the whole profession a black eye.

Despite the recognized importance of enforcement, conditions are not likely to be improved significantly unless legislators can be convinced of the need for well-trained enforcement staffs. Legislators tend to think of licensing in terms of screening applicants to insure that only those qualified are licensed. They need to be educated regarding the importance of investigations. In New York State, only seven investigators monitor

* *Christian Science Monitor*, May 12, 1975. First of five articles on regulatory boards.

55,000 physicians. Some states have no trained investigators at all. The growing interest of consumer groups in licensure might provide the needed impetus for strengthening the enforcement machinery. One man said:

Without vigorous enforcement the occupational group has the best of both worlds... protection from competition and assurance that no matter what they do, it's unlikely that anyone will lose his license.

A consumer official acknowledged that getting more money to increase enforcement would be difficult:

We need to make people realize that society is now paying for the lack of enforcement every time a consumer gets ripped off by an unethical tradesman or professional.

Suggestions for Improving Enforcement Operations

In exploring ways to improve enforcement, several participants expressed the view that discipline should not be a board responsibility. Boards should concentrate on setting standards and making rules, but should leave the investigation and enforcement to others. A number of people questioned whether it was possible for boards to maintain their objectivity and respect due process when the same individuals conducted the investigation, held hearings, ruled on admissibility of evidence and on objections, determined guilt or innocence, and decided on the penalty.

It was noted that after the appeals court had ruled against the Medical Board in Wisconsin in the case of *Witherow vs. Larkin*, many states had made an effort to keep the board "uncontaminated." For example, investigations were conducted without involvement of board members and charges were heard before administrative hearing officers. Ultimately the board would review the case and take action on the basis of the facts brought out in the hearing -- "untainted by hearsay and unproven allegations." Some people expressed regret that the U.S. Supreme Court had reversed the appeals court.* They said that the decision had taken "some of the steam out of their efforts" to reform the process and that they were now having difficulty getting needed funds..

Many states appear to have moved toward having investigations conducted by a central unit rather than by individual boards. When the investigator finds that there may be a basis for the complaint, the matter goes to a hearing officer who follows rules and procedures established under the Administrative Practices Act or by the department. One licensing official described due process as follows:

The hearing officer rules on the admissibility of evidence, findings of facts, and conclusions of law. If the board desires, he can also recommend sanctions; or the board can review the record and impose its own sanctions. However, the board can't override the hearing officer's conclusions -- such as saying a man is guilty when the hearing officer had concluded that he wasn't.

* *Witherow vs. Larkin*, U.S. 43L Ed 2nd 712, 95 S Ct.

Other suggestions for improving the enforcement process included the following:

- Boards should provide practitioners with a statement giving reasons for their decision.
- The accused should have access to the agency's records prior to the disciplinary hearing.
- Guidelines are needed for setting sanctions; that is, which infractions carry what type of penalty?
- Sanctions should include monetary fines in addition to suspension or revocation of a license.

CONSUMER COMPLAINTS

Conferees frequently noted that the consumer is in a relatively weak position vis-a-vis the occupational and professional groups that control the regulatory machinery. Whereas these groups enjoy a cohesiveness that comes from a unity of purpose and mutuality of benefits, consumers form a very diffuse group. Their primary interests usually lie elsewhere. They lack funding, effective channels of communications, and the machinery for planning effective action.

Most consumers do not understand the structure of government or the channels they can use to file and pursue a complaint. Even when a complaint is lodged with a board, the complainant has little or no leverage he can use against a board that is reluctant to move. Boards are themselves in a difficult position. While they have power to suspend or revoke a license following a lengthy due process procedure, they usually have no statutory authority to provide redress to a wronged or injured party.

The consumer's interest might best be served through the establishment of an ombudsman-type of agency that could pursue consumer complaints against licensees. The ombudsman would know how to use the resources and powers of government on behalf of the consumer. The Massachusetts Consumers Council was cited as an example of how an ombudsman might operate. The Consumers Council is an official agency with broad statutory authority to disseminate information to legislators, the executive branch, to the courts, and to regulatory boards and commissions. It also has standing as an intervenor before regulatory boards. A representative of the council explained,

We can provide arguments before the board to support things that we believe are in the consumer's interest, and we can argue against things that we believe are detrimental. When the Optometry Board was considering a rule prohibiting price advertising, we submitted a brief to the board expressing our opposition. They rejected our argument; so we are now in the courts challenging their authority to make such a rule.

The need for an outside force was underscored by one consumer official who said:

I'm only one person -- a state employee who is appointed by the governor and who can be removed at will; yet I've got to stand up against attorneys, lobbyists, and members of the association board who are experts in their field -- all of them very important people with good political connections.

Consumer concerns were also explored with respect to such issues as pharmaceutical pricing and generic identification of drugs, prohibition against competitive bidding by architects and engineers, and prohibitions against price advertising for eyeglasses, funerals, and so forth. In general strong support was shown for full freedom of information on costs and services in an open market. Some of the possible dangers and drawbacks of price advertising that might not be in the best interest of the consumer were also noted.

Boards are not likely to act on their own to rescind rules relating to price competition. Hence the issue may have to be resolved in the courts, in the legislature, or by federal regulatory agencies acting under the doctrine of supercession. A number of participants suggested that the best way to get action would be for consumer groups to put pressure on the legislature. One consumer official said,

Up 'til now, the people have been very quiet while the professions were arranging things to suit themselves.

Another commented,

A few years ago there was no support in the legislature for regulatory reform. Today it's a whole new ballgame. I have legislators calling me up to ask if they can sponsor legislation that will strengthen our department's role in licensing.

A legislator told how he had gained considerable TV and press coverage against the Optometry Board's ban against price advertising for eyeglasses. He had dramatized the impact of the ban on the pocketbooks of his constituents -- most of whom were elderly. The press had given the story extensive coverage, and this had caused the legislative committee, which had refused to take action against the ban, to reverse itself. He urged that consumers look for ways to dramatize the impact of exclusionary practices in licensing on the cost and availability of services:

Once people see the relationship and realize that excessively high standards are not in the public interest, legislators will get the message and do something about the situation.

The exchange of information among consumer groups -- especially suggestions of ways to influence legislative action -- was mentioned as a high priority item for any follow-up project.

IV. INTEREST IN PARTICIPATION

One of the major reasons for undertaking the feasibility study was to ascertain whether state officials would be interested in participating in cooperative projects.

At the first meeting, unstructured questions relating to "interest in participation" were incorporated into the worksheets. Participants were asked to identify potential resource people who might assist with the project and to indicate whether or not they would personally be interested in participating. The response was overwhelmingly positive.

For the second meeting, two questionnaires were developed -- one for the administrative group and another for the legislative group. Both groups were asked whether they would be interested in participating in future stages of the project. Nine of the ten legislators or legislative aides who returned questionnaires responded affirmatively. All the administrative and legal officers also responded affirmatively.

Participants were then asked to indicate the topic of greatest interest to them. A majority of administrators responded to problems related to the authority structure. The other areas of interest were the accountability issue, dealing with consumer concerns, and administrative and operational topics. The legislative group was most interested in the decision-making process -- whether or not to regulate a new occupation. Other topics, in descending order of interest, were protecting interests of the consumer, composition and authority of boards, financial aspects of licensing, insuring that procedures used to assess competency meet quality standards, insuring due process to applicants and licensees, role of a centralized agency -- advantages and disadvantages, reciprocity and endorsement, maintenance of competence, accountability of boards, and qualifications.

For the final two meetings (San Francisco and Newark), a new and more comprehensive questionnaire was developed. Twenty-nine of the 31 attendees at the San Francisco conference turned in their questionnaires, while 14 of the 19 state officials at the Newark conference did so.

The crucial question regarding participation was stated as follows:

If one or more cooperative projects are undertaken during the next phase, would you and/or members of your staff be interested in participating by sharing information and ideas, critiquing drafts of materials, helping to identify qualified consultants, and possibly pilot testing materials to determine their usefulness?

	Yes	No	Not sure
San Francisco	29	0	0
Newark	13	0	1

The balance of the questionnaire concerned specific areas of interest.

Which of the topics raised on the worksheets or discussed today were of greatest interest to you? Check as many as apply and add others in the blank spaces.

<u>Legislative Aspects</u>	<u>SF</u>	<u>Newark</u>
	N = 29	N = 14
Purposes of licensure	18	9
Deciding whether or not to regulate: guidelines,	23	9
Boards: composition, authority, accountability.	20	11
Organizational structure: centralized vs. decentralized	10	7
Financial aspect: general vs. special funds	11	3
Qualifications: which ones to include . . .	10	8
Continued competence: how to implement . .	21	8
Due process: safeguarding rights of applicants, licensees, and public	9	10

Space was provided for listing other topics. The following were suggested:

- Deregulation
- Laymen on boards
- Self-interest vs. public interest
- Protecting consumers
- Enforcement
- Alternatives to licensing
- Resolution of consumer conflicts against licensees

<u>Administrative and Operational Aspects</u>	<u>SF</u>	<u>Newark</u>
	N = 29	N = 14
Communication with applicants	3	1
Evaluation of training, experience, and other qualifications of in-state, out- of-state, and foreign applicants	16	7
Examinations: how to insure quality and security	13	6
Dealing with complaints of those denied licensure	7	8

	<u>SF</u>	<u>Newark</u>
	N = 29	N = 14
Responding to inquiries for diagnostic information, such as reasons for failure on test, areas of weakness. . . .	5	5
Staff development for board personnel . . .	6	1
Investigations and enforcement activities .	13	9
Insuring due process for applicants and licensees	10	7
Dealing with privacy issue: public access to board records	11	6

Public Interest and Consumer Aspects

Public members on licensing boards	22	14
Accountability of licensing agencies to the public	23	11
Allegations about anticompetitive features of licensing	18	10
Role of licensing agencies in supporting nondiscrimination policies of state with respect to employment and services to the public	11	6

Other topics listed were:

Screening and orientation of board members
National examination programs
Model legislation
Cost of licensed services
Affirmative action

The raw numbers, in themselves, probably have little practical significance except as crude indicators of the topics that interest state officials. Nearly everyone was interested in public members; authority structure and accountability of boards; deciding whether or not to regulate; the issue of continued competence; and evaluation of qualifications, training, and experience. Few expressed interest in improved communication with applicants or in staff development of board personnel. From a cursory inspection of these responses, a substantial pool of talent is interested in participation and likely to do so if offered an opportunity to work on topics of real concern.

V. EVALUATION OF THE CONFERENCES

Although no formal evaluation was made of the first conference, informal feedback (comments written on worksheets, postmeeting discussions, and letters of appreciation) indicated that most participants were enthusiastic about the meeting. They mentioned specifically the opportunity to meet with officials from other states, to learn what other states were doing, and to explore the possibility of cooperative action in dealing with common problems.

Following the Chicago meeting, the Advisory Committee suggested that an evaluation form be developed for use at future meetings. Such a form was devised and was used at the last three meetings. Out of a total of 72 state officials who participated in the Atlanta, San Francisco, and Newark meetings, 63 turned in questionnaires.

There were six questions on the evaluation form. These covered the participant's overall reaction, whether the meeting had contributed to his or her understanding of licensing, the "mix" of participants, adequacy of time available, value of the worksheets, and likelihood that the participant's state would benefit from an implementation project of the type under consideration.

1. To what extent did this conference conform to your expectations?

	<u>Atlanta</u> N = 18	<u>SF</u> N = 29	<u>Newark</u> N = 16	<u>Total</u> N = 63
Better than I expected	8	17	7	32
Just about what I expected	10	10	8	28
Not at all what I expected, but glad I came	0	1	1	2
Not at all what I expected, sorry I came	0	1	0	1

For most participants, the conference came up to or exceeded their expectations. Only one individual expressed disappointment. Following are a few typical comments written after this question.

I didn't know what to expect. Glad I came.

It was a beneficial meeting.

I came expecting to be enlightened and I was.

Developed discussion on more important basic issues than I expected.

2. To what extent did the conference contribute to your understanding of licensing problems and issues?

	<u>Atlanta</u> N = 18	<u>SF</u> N = 29	<u>Newark</u> N = 16	<u>Total</u> N = 63
A great deal	8	21	7	36
To a modest degree	10	8	9	27
Very little	0	0	0	0

Nearly everyone reported that they had gained useful insights from the meeting. One legislator wrote: *I am very new at this as are most legislators. With your help I can begin to educate back home.*

Another legislator wrote: *It brought out questions and issues in this area that I had not considered before.*

3. What did you think of the "mix" of participants in terms of their experience, background, and functions?

	<u>Atlanta</u> N = 18	<u>SF</u> N = 29	<u>Newark</u> N = 16	<u>Total</u> N = 63
Good mix -- many viewpoints represented	13	28	12	53
Would have preferred group with more diversity	5	1	4	10
Would have preferred group with less diversity	0	0	0	0

Most participants seemed to be pleased with the diversity of backgrounds and functions represented at the conferences. Those who said they would have preferred more diversity explained that they would have liked to have had some board officials present to give their side of the case. A few participants at the Atlanta meeting said that they would have liked to have had some legislators present at their session.

4. Considering the purpose of the meeting, do you feel that time available for discussion was

	<u>Atlanta</u> N = 18	<u>SF</u> N = 29	<u>Newark</u> N = 16	<u>Total</u> N = 63
Adequate	12	0	12	24
Inadequate	6	28	4	38

75

Many participants stated that they would have preferred at least a two-day conference. One person said: *The topics required much more time for even a cursory understanding of the issues.*

However, most of those who wrote comments made positive statements, such as:

A great deal was covered in a short period of time. I have never attended an out-of-state meeting which had such a great proportion of productive time.

I personally felt the time was inadequate, but the workshop accomplished a great deal in a very short time.

The time available was used very well.

Would have liked more time so that we could learn from those who were so much more knowledgeable. People had a lot to share with one another. Too bad we couldn't continue for another day.

It is interesting to note the differences in the pattern of responses at the various meetings. In both Atlanta and Newark, among those returning questionnaires, there was a tendency to say that the time available had been "adequate." However, the San Francisco group expressed a contrary viewpoint. All 28 respondents said that there had not been sufficient time. One possible explanation is that the worksheets which had been sent to participants in advance of the San Francisco meeting generated unrealistic expectations. Participants may have come to the conference anxious to talk about certain topics only to find that these could not be dealt with because of time limitations. Although the same worksheet was sent out in advance of the Newark conference, participants had been cautioned beforehand that not all topics would be covered. They were urged to write their comments on the worksheet so that these would become part of the record.

5. Do you feel that the use of worksheets made the discussion ...

	<u>Atlanta</u>	<u>SF</u>	<u>Newark</u>	<u>Total</u>
	N = 18	N = 29	N = 16	N = 63
- More productive	17	26	10	53
- Less productive	0	0	0	0
- Made no difference	1	2	5	8

The response indicates a strong positive reaction to the worksheets. Those who wrote comments indicated that the worksheets had provided coherence and direction for the conference. One person said: *Provided an excellent method of focusing the discussion without making it rigid.*

A number of people commented that the discussion leaders should have stayed closer to the worksheets. Such comments suggest that the worksheets were one of the factors that made for a successful conference.

6. If a project is implemented along the lines discussed, what do you think is the likelihood that it will yield benefits to your state?

	<u>Atlanta</u>	<u>SF</u>	<u>Newark</u>	<u>Total</u>
	N = 18	N = 29	N = 16	N = 63
Good likelihood of benefits to my state	10	14	8	32
Some likelihood of benefits to my state	7	12	7	26
Little or no likelihood of benefits to my state	0	0	1	1
No opinion/not applicable	1	1	0	2

The response to this question may be viewed as highly encouraging. Out of 63 respondents, about half felt that there was good likelihood that their state would benefit, while an additional 40 per cent felt there was some likelihood of benefit. Thus, better than 9 out of 10 participants anticipate benefits from a follow-up project.

VI. RECOMMENDATIONS FOR A COOPERATIVE ACTION PROGRAM

The discussions that took place during the four feasibility study conferences convinced the project staff that there is a substantial body of support for regulatory improvement within the governmental structure itself. Legislators expressed dismay about the increased pressure they are getting from new groups that want to be regulated. Administrators of umbrella agencies are concerned about the high degree of autonomy and the lack of public accountability enjoyed by various occupationally dominated boards. Legal officers are worried about the procedures used by virtually autonomous boards in conducting investigations, hearings, and appeals. They are asking whether due process and the interests of the public are adequately protected. Consumer officials are looking into the impact of regulation on the cost and availability of services and whether regulatory boards are actually giving legal sanction to anticompetitive practices.

While state regulatory officials may be regarded as potential change agents, their ability to initiate change is limited. They participate only in a nominal way in national organizations, such as NCOL. They are distracted by other responsibilities, and often uninformed about what might be done in a specific situation because there is no information system or national clearinghouse. They may be familiar with problems and issues in their own states, but they seldom know what's happening even in nearby states or what efforts have been made to deal with problems and concerns similar to their own. This information gap leads to a wasteful duplication of effort. The state official who does not know what has been tried elsewhere, what the experience has been, or how such experience might be applied to his own situation is likely to repeat the mistakes of others or to reinvent a wheel that may already exist in another jurisdiction.

READINESS FOR COOPERATIVE ACTION

The project staff perceived a growing awareness among state officials that many of the regulatory problems they have in common are more likely to be solved by states working together rather than in isolation. Individual states -- even the largest -- lack the resources to undertake the research and development required to devise workable solutions. Yet cooperation is resisted because of the strong feeling among state officials that since states are seldom exactly alike, no single solution is likely to apply. States are not interested in cooperating unless they can be assured that whatever emerges from a joint effort will be sufficiently flexible that they will be able to draw from the outcome those elements that fit their own situation or that can be adapted in a suitable way.

A further complicating factor that hampers interstate cooperation is the relatively high turnover among administrators of licensing agencies. These administrators are usually gubernatorial appointees who change with each administration. Whatever knowledge and experience they may have acquired

during tenure on the job is lost when they leave and must be gained anew by each appointee. This can be a slow, wasteful process with each incumbent finding that he must take three steps backward before he can ever think about taking a step forward. The foregoing observation also applies to legislators.

The project staff discerned a high level of suspicion among state officials that the federal government intends to intervene in the regulatory arena to impose its standards and wishes on the states. Fears are expressed that federal funding, especially in health related programs, will be used as a club to bring about compliance with federally determined standards. Any federally funded initiatives concerned with regulatory reform must expect to encounter suspicion, if not outright hostility, from state officials.

It was, therefore, highly encouraging for the project staff to find participants at the regional meetings expressing a positive attitude toward cooperative projects. As previously noted, 97 per cent of those responding to a questionnaire indicated that they would be interested in participating in cooperative projects "...by sharing information and ideas, critiquing draft materials, helping to identify qualified consultants, and possibly pilot testing materials to determine their usefulness." The high degree of interest shown is further reinforced by a conviction on the part of nearly all participants that the results of a cooperative effort are likely to yield benefits for their states.

THE PROPOSED HANDBOOK

In the light of the information and insights gained during the feasibility study, the project staff has concluded that regulatory improvement in the states would be substantially enhanced by the development of a handbook or resource file that would provide state officials with practical organizational and procedural guidance in both legislative and operational matters. The handbook would describe how a particular problem had been handled elsewhere and the elements that existed in that situation, what experts think might be done or should be done, what a preferred approach might be under various circumstances, and what standards, if any, may apply to a particular situation.

Such a guide could reflect the wide diversity among the states by providing information, examples, case studies, and recommendations of experts about a number of alternative approaches to a given problem. The pros and cons of each approach might be outlined, along with information about the demographic and situational factors under which it had been found to work or not work. By having available a range of positive working alternatives, a state could select an approach that best suited its needs, or it could draw elements from among the options presented to tailor a unique solution that might better fit its circumstances than any of the proposed alternatives.

In developing a preliminary outline for the proposed handbook, the project staff has been guided by responses on the interest questionnaire and by suggestions made during the course of the meetings. It seems clear that the

major dimensions of the handbook should encompass problems and solutions in both the legislative and the administrative/operational areas. The public interest/consumer problem area (which was listed separately on the interest questionnaire) appears to cut across both domains. For this reason, it can probably be dealt with effectively under one or the other of the two broad rubrics mentioned earlier.

Following is a brief, annotated outline of topics that might be covered in the proposed handbook. The outline is not intended to be all inclusive or prescriptive. Rather, it seeks to illustrate the questions that such a handbook might try to answer and problems for which solutions might be sought.

A. Legislative Problems and Solutions

1. Purposes of Regulation

2. Deciding Whether or Not to Regulate

Both of these topics (1 and 2) impinge on the concerns expressed regarding the rapid proliferation of licensing. Legislators recognize that they need to reexamine the purposes of occupational and professional regulation and to consider alternative approaches that may accomplish the desired social goals in a less restrictive manner.

To facilitate the decision-making process, it has been proposed that the handbook include guidelines or criteria that legislators may use in evaluating all new regulatory proposals. These same guidelines may also be useful when legislators consider the deregulation of certain occupations and professions under the "sunset law" approach.

3. Authority Structure

4. Organizational Structure

Authority structure and organizational structure (3 and 4) are closely related. There was considerable interest in knowing about alternative patterns for organizing regulatory activities to insure both effective administration and adequate accountability. What are the pros and cons of centralized administration as compared with a decentralized approach? How should boards be constituted? Should they be decision-making or advisory? What role, if any, should the public play in regulating occupations and professions?

The most troublesome question is that of accountability. How can the legislature be sure that the various regulatory boards are acting in the public interest? Various approaches for achieving a higher degree of accountability need to be identified and evaluated.

5. Financing Regulatory Activities

Should boards be self supporting or should their activities be paid for in whole or in part out of general funds? Where should income from fees go -- into the general fund or into special accounts under control of the various boards? These are crucial questions with which legislators are grappling. Much more is at stake than dollars. The decisions made with respect to financing will almost certainly determine the degree of autonomy enjoyed by boards and the extent to which they can be held accountable for what they do -- or fail to do.

6. Qualifications for Licensure

Nearly everyone agrees that training, experience, and demonstrated competence are legitimate qualifications for licensure. But what about other requirements such as age, education, citizenship, and "good moral character"? Should these be included in new legislation? What can be done to remove unnecessary restrictions from existing statutes?

How specific should the statute be with respect to such matters as qualifications or the content of examinations? And how much should be left in the hands of boards through the delegation of authority to promulgate rules and regulations?

7. Continued Competence

A major criticism of licensing, as it exists today, is the inability of boards to insure that licensees have maintained their competence. It has been proposed that practitioners be subjected to periodic re-examination or to some type of performance audit as a condition of relicensure. Trade and professional groups have favored a continuing education approach. Legislators are raising many questions in this area: Is there evidence that people have been hurt by the failure of boards to monitor continued competence? What will the cost of continuing education be to the consumer? Is it likely to be worth the cost? What impact will differing continuing education requirements have on interstate mobility of skilled workers and professionals?

8. Public Interest and Consumer Protection

What mechanisms have states devised for insuring that consumers' interests are adequately protected vis-a-vis regulatory boards? How effective have these been? Should there be public members on regulatory boards? How many? What can be done to increase the likelihood that they will be able to play a constructive role? Would changes in administrative procedures increase the likelihood of greater public and consumer participation in hearings on proposed rules and regulations?

Are boards doing as much as they could to discipline practitioners who demonstrate incompetence or do shoddy work? Are there legislative

remedies that would strengthen the mandate of boards to function on behalf of consumers? What can be done to prevent boards from fostering anticompetitive practices now or in the future?

B. Administrative Problems and Solutions

1. Evaluation of Qualifications

How valid are the training, experience, and other qualifications currently used by boards? What steps can be taken to insure that requirements are job related and appropriate (that is, not excessive or exclusionary)? Are procedures for evaluating qualifications of out-of-state or foreign applicants equitable? Is the system sufficiently flexible to accommodate qualified individuals who may have received their training or acquired experience in nontraditional situations?

2. Assessment of Competence

How good are the written and performance tests used to assess competence? How can the agency staff monitor the testing activities of boards and provide training when needed to insure the tests meet professional standards? What responsibilities do board members have with respect to tests when national examinations are used? Does the board have responsibility for providing applicants with "feedback" regarding areas of weakness? If so, how can such diagnostic information be summarized and transmitted to candidates? Considerable interest was shown in the proposed BECC guidelines. In the event that these guidelines are adopted and are found to apply to licensing agencies, what steps should state agencies (and individual boards) take to insure that they are in compliance?

3. Investigations and Enforcement

4. Insuring Due Process

Investigations, enforcement, and due process (3 and 4) were identified by many participants as critical, but relatively weak links in the regulatory chain. How can this aspect of licensing be strengthened? What are the advantages and disadvantages of a centralized investigatory unit? What role, if any, should board members play in investigations, hearings, determining guilt or innocence, and deciding on sanctions for licensees found to be guilty? Are there enforcement and disciplinary procedures that provide adequate safeguards to the public while at the same time protecting the constitutional rights of licensees?

5. The Privacy Issue

Public record laws have raised questions as to which records of boards should be kept confidential and which ones should be open for public scrutiny? "Sunshine laws" have raised similar questions about meetings. Administrators want to know whether other states have developed policies related to the privacy issue that might be helpful in their own states.

6. Increasing the Effectiveness of Boards

Interest was expressed in ways to orient new board members so that they would have an appreciation of the issues involved in regulation as well as an understanding of their specific duties and responsibilities. Board members often need help in formulating and evaluating rules and regulations, in understanding administrative procedures, and in developing competency tests. Public members of regulatory boards may need additional orientation so that they will gain an understanding of the occupation or profession and of informational resources available to them both in and out of state government.

7. Public Interest and Consumer Aspects

- Administrators see a need to strengthen procedures for dealing with complaints of consumers. The development of better record keeping and tracking procedures for complaints was accorded a high priority. Boards should be more responsive to inquiries from applicants and the general public. Ways need to be found to obtain greater input from the public when rules and regulations are under consideration. Interest was also expressed in strengthening the role of regulatory agencies in support of affirmative action policies of the state -- not only as it affects licensing and employment, but services to the public as well.

AN APPROACH TO DEVELOPMENT

Experience has shown that providing resource materials -- even good materials -- is rarely sufficient, by itself, to stimulate change unless pressure for change and support for change are also evident. One of the assumptions underlying the proposed project is that a climate for change can be generated by involving key people in the state in the developmental process.

It is proposed that, in developing a handbook, task force groups of state officials be constituted to assist in delineating the content, identifying states where exemplary practices may be found, suggesting names of individuals who might be able to provide information, and serving as contributors and critics. Other state officials -- especially regulatory agency personnel involved in exemplary programs or with innovative practices -- should be invited to share their experiences with respect to the problems and issues covered in the handbook. Where appropriate, state agency personnel might be asked to undertake small-scale developmental projects or to conduct field tests to determine whether the materials under development are practical and usable.

While most of the material for the handbook would be generated by state officials, there are likely to be some topics where the degree of expertise needed or the degree of integration required goes beyond that available from these sources. In such instances, it might be advisable to seek out an authority in the field and commission him or her to prepare a paper specifically for the handbook. It may also be advantageous to develop cooperative

relationships with such organizations as the Council of State Governments, the National Conference of State Legislatures, and the National Association of Attorneys General to assist with specific aspects of the project.

To insure that the content of the handbook is accurate and that the proposed approaches are sound, all material should be subjected to critical review by task force members and by other qualified persons drawn from among conference participants and others who have been identified subsequent to the conferences.

DISSEMINATION: THE KEY TO CHANGE

It is urged that dissemination strategies be devised and budgeted as an integral part of the developmental effort. The dissemination process should begin long before the handbook is in its final form. The groundwork for utilization must be prepared by sensitizing state officials to the problems and involving them in the quest for solutions. Key legislators and other officials should play an active role in the developmental process -- by serving as planners, contributors, and reviewers. As draft materials are generated, state officials should be asked to react to them and to seek suggestions from those most likely to make use of the materials. Such a review process should increase the likelihood that the materials will be sound, realistic, and attuned to the needs of the field.

Information about the project, its nature, scope, methods, and anticipated outcomes, should be brought to the attention of appropriate groups. This might be done by means of a newsletter, journal articles, progress reports, and speeches at national and regional meetings.

The project staff might consider serving as an informal clearinghouse during the life of the project. Staff members could answer inquiries about sources of information or suggest places where certain recommended practices were already in use. On some occasions, it might even be appropriate for the staff to share materials while these were still in draft form. Such sharing (with appropriate safeguards) could help to meet some of the immediate needs of states and, at the same time, provide the project staff with feedback of a very practical nature.

Consideration should also be given to establishing a mechanism for periodically updating the handbook to prevent it from becoming obsolete. A flexible, loose-leaf format would seem desirable, possibly coupled with some sort of subscription service to insure that users would automatically receive new materials as issued.

The ultimate test of the handbook's effectiveness will be how widely the materials are accepted and used and what impact they have on policies and practices in the states.

Attendees

ETS/NCOL Conference on
Occupational and Professional Licensing

O'Hare Airport, Chicago
April 11, 1975

Dr. Joan Arnoldi
Chairman
Veterinarian Examining Board
201 E. Washington Avenue, Rm. 252
Madison, Wisconsin 53702

Ms. Cathy Ashley
Administrative Assistant
House of Representatives
State House
Columbus, Ohio 43215

The Honorable Linda Berglin
Vice Chairman House Health
Subcommittee
Chairman Education Services
Subcommittee
217 State Office Building
St. Paul, Minnesota 55115

Dr. William Blockstein
Director of Health Sciences
University of Wisconsin
610 Langdon St., Room 415
Madison, Wisconsin 53706

Mr. Larry Blumberg
Assistant Attorney General
State Capitol
Des Moines, Iowa 50319

Mr. Richard J. Carlson
Associate Director of Research
The Council of State Governments
P.O. Box 11910
Iron Works Pike
Lexington, Kentucky 40511

Ms. Sarah Dean
Secretary, Dept. of
Regulation and Licensing
201 E. Washington Avenue
Madison, Wisconsin 53702

The Honorable William Faust
Chairman, Senate Committee on
State Affairs
State Capitol
Lansing, Michigan

Mr. Herman Fishman
Chief Deputy Director
Dept. of Licensing and Regulation
1033 S. Washington Avenue
Lansing, Michigan 48926

Mrs. Karen Greene
Manpower Administration
U.S. Department of Labor
601 D Street, N.W., Room 9100
Washington, D.C. 20004

Mr. Marvin D. Gregersen
Chief, Bureau of Occupational
Licenses
2404 Bank Drive, Room 312
Boise, Idaho 83705

Mr. Richard V. Griesinger
Executive Secretary
National Council on Occupational
Licensing
1033 S. Washington Avenue
Lansing, Michigan 48926

Ms. Pattie Hall
Research Assistant
Judiciary and Governmental
Reorganization Committee
State House
Indianapolis, Indiana 46204

Dr. J. Phillip Halstead
Committee on Regulated Industries
and Licensing
Florida House of Representatives
House Office Building, Room 414
Tallahassee, Florida 32304

Mr. Phil Harvey
Director of Advisory Services
Educational Testing Service
960 Grove Street
Evanston, Illinois 60201

Mr. David Hase
Deputy Attorney General
State House
Madison, Wisconsin 53702

Ms. Peggy Hedden
Ohio Legislative Service
Commission, Research Attorney
State House
Columbus, Ohio 43215

Mrs. Ruth J. Herrink
Director, Dept. of Professional
and Occupational Regulation
Ninth Street Office Building
P.O. Box 1-X
Richmond, Virginia 23202

Mr. Mike Horn
Administrative Hearing Commission
State House
Jefferson City, Missouri 65101

Mr. Cass Hurc
Administrator, Dept. of
Regulation and Licensing
201 E. Washington Ave., Rm. 252
Madison, Wisconsin 53702

Mr. Douglas Johnson
Administrative Assistant
State House
Madison, Wisconsin 53702

Ms. Linda Joy
Executive Director
Michigan Consumers Council
414 Hollister Building
Lansing, Michigan 48933

Mr. William Kandler
Administrative Assistant
Senate Committee on State Affairs
State Capitol
Lansing, Michigan

Mrs. Corinne W. Larson
Director, Health Manpower Program
Minnesota Department of Health
717 Delaware Street, S.E.
Minneapolis, Minnesota 55440

The Honorable Joan Lipsky
State Capitol
Des Moines, Iowa 50319

Ms. Janice Lundberg
Testing Officer
Dept. of Registration and
Education
628 E. Adams Street
Springfield, Illinois 62786

Mr. Richard Masek
Principal Research Associate
Ohio Legislative Service Commission
State House
Columbus, Ohio 43215

Dr. Albert Maslow
Director, Center for Occupational
and Professional Assessment
Educational Testing Service
Princeton, New Jersey 08540

The Honorable William Monroe
Chairman House State Government
Committee
State Capitol
Des Moines, Iowa 50319

The Honorable Mary Lou Muntz
Chairman, Environmental Quality
Committee
State Capitol
Madison, Wisconsin 53702

Mr. Walter L. Penn, III
Assistant Attorney General
Richmond, Virginia 23219

Mr. Joel Platt
Legal Counsel to the Consumer
Advocate
Office of the Governor
160 N. LaSalle Street
Chicago, Illinois 60601

Dr. Raymond D. Salman
Director of Professional Licensing
New York State Dept. of Education
99 Washington Avenue
Albany, New York 12210

Mr. Neal Samors
Educational Testing Service
960 Grove Street
Evanston, Illinois 60201

Dr. Benjamin Shimberg
Associate Director
Center for Occupational and
Professional Assessment
Educational Testing Service
Princeton, New Jersey 08540

Ms. Vivian L. Solganik
Federal Trade Commission
1339 Federal Office Building
Cleveland, Ohio 44199

Mr. Ronald E. Stackler
Director, Dept. of Registration
and Education
628 E. Adams Street
Springfield, Illinois 62786

Mr. Alec Sutherland
Council of State Governments
203 North Wabash Avenue
Chicago, Illinois 60601

Mr. Paul Sweet
National Conference of State
Legislatures
1150 Seventeenth St., N.W.
Suite 602
Washington, D.C. 20036

Mr. Ray Tillman
Assistant Director
Dept. of Registration and
Education
628 E. Adams Street
Springfield, Illinois 62786

Mr. Tom Triplett
Senate Legal Counsel
State Capitol
St. Paul, Minnesota 55115

Mr. George Uffmann
Director, Professional Registration
P.O. Box 1335
Jefferson City, Missouri 64101

Mr. Richard Wexler
Special Assistant Attorney General
Minnesota Dept. of Health Building
717 Delaware Street, S.E.
Minneapolis, Minnesota 55440

Miss Deanna Zychowski
Administrative Secretary
Medical Examining Board
201 E. Washington Avenue, Room 252
Madison, Wisconsin 53702

Attendees

ETS/NCOL Conference on
Occupational and Professional Licensing

Air Host Inn, Atlanta, Georgia
May 15, 1975

Mr. Clyde L. Ball
Legislative Services Officer
2129 State Legislative Building
Raleigh, North Carolina 27611

Mr. C. L. Clifton
Joint Secretary
State Examining Boards
166 Pryor Street, S.W.
Atlanta, Georgia 30303

Mr. Ralph K. Disser
Director, Division of Health-
Related Boards
360 Capitol Hill Building
Nashville, Tennessee 37219

Mr. Kenneth Golden
Deputy Director
Commission on State
Governmental Management
6 North 6th Street
Richmond, Virginia 23219

Mrs. Karen Greene
Manpower Administration
U.S. Department of Labor
601 D Street, N.W.
Washington, D.C. 20213

Dr. J. Phillip Halstead
Committee on Regulated
Industries and Licensing
Florida House of Representatives
Room 414
House Office Building
Tallahassee, Florida 32304

Mrs. Ruth J. Herrink
Director, Department of Professional
and Occupational Regulation
Ninth Street Office Building
P.O. Box 1-X
Richmond, Virginia 23202

Mr. D. Patrick Lacy, Jr.
Deputy Attorney General
1101 E. Broad Street
Supreme Court Building
Richmond, Virginia 23219

Mr. Joseph Muth
Acting Director, Division of
Occupations and Professions
P.O. Box 456
Frankfort, Kentucky 40601

Ms. Bonnie Naradzay
Federal Trade Commission
6th and Pennsylvania Aves. N.W.
Room 409
Washington, D.C. 20580

Mr. Raymond D. Salman
Director of Professional Licensing
New York State Department of Education
99 Washington Avenue
Albany, New York 12210

Dr. Benjamin Shimberg
Associate Director
Center for Occupational and
Professional Assessment
Educational Testing Service
Princeton, New Jersey 08540

IRS/NCOL Licensing Meeting
May 15, 1975

Mr. Rod Tennyson
Attorney General's Office
State Capitol
Tallahassee, Florida 32304

Mr. James D. Whisenand
Assistant Attorney General
Office of Attorney General
Tallahassee, Florida 32304

Attendees

ETS/NCOL Conference on Occupational and Professional Licensing

Air Host Inn, Atlanta, Georgia
May 16, 1975

Dr. Scarvia B. Anderson
Vice President and Director,
Atlanta Office
Educational Testing Service
17 Executive Park Drive, N.E.
Atlanta, Georgia 30329

Mr. Clyde L. Ball
Legislative Services Officer
2129 State Legislative Building
Raleigh, North Carolina 27611

Mr. John A. Banks, Jr.
Director, Division of
Legislative Services
Commonwealth of Virginia
P.O. Box 3AG
Richmond, Virginia 23208

The Hon. Gene Campbell
Florida House of Representatives
House Office Building, Room 434
Tallahassee, Florida 32304

Mr. Thomas Dorman
Committee Staff Coordinator
Interim Committee on Business
Organizations & Professions
State Capitol
Frankfort, Kentucky 40601

The Hon. James T. Edmunds
Virginia Senate
P.O. Box 387
Kenbridge, Virginia 239

Mrs. Karen Greene
Manpower Administration
U.S. Department of Labor
601 D Street, N.W.
Washington, D.C. 20213

Dr. J. Phillip Halstead
Committee on Regulated Industries
and Licensing
Florida House of Representatives
Room 414
House Office Building
Tallahassee, Florida 32304

Mr. Dick Herman
Legislative Aide
1230 Healey Building
Atlanta, Georgia 30303

Mrs. Ruth J. Herrink
Director, Department of Professional
and Occupational Regulation
Ninth Street Office Building
P.O. Box 1-X
Richmond, Virginia 23202

Mr. John Karrh
Governor's Office
State Capitol
Montgomery, Alabama 36104

Mr. Tom Lang
Legislative Staff
Florida House of Representatives
Tallahassee, Florida 32304

Mr. Lynn Luallen
Administrative Assistant
to the Governor
Capitol Building, Room 104
Frankfort, Kentucky 40601

The Hon. Terry L. Mann
Chairman, Subcommittee on
Professions
Kentucky House of Representatives
19 Douglas Drive
Newport, Kentucky 41071

The Hon. Thomas W. Moss, Jr.
Chairman, General Laws Committee
Virginia House of Delegates
830 Maritime Tower
Norfolk, Virginia 23510

Mr. Ken Mullikin, Jr.
Legislative Aide
537 Maple Avenue
Newport, Kentucky 41071

Ms. Bonnie Naradzay
Federal Trade Commission
6th and Pennsylvania Avenue, N.W.
Room 409
Washington, D.C. 20580

Dr. Raymond D. Salman
Director of Professional Licensing
New York State Department of
Education
99 Washington Avenue
Albany, New York 12210

Dr. Benjamin Shimberg
Associate Director
Center for Occupational and
Professional Assessment
Educational Testing Service
Princeton, New Jersey 08540

Mr. Gray Sidwell
Assistant to the Director
Atlanta Office
Educational Testing Service
17 Executive Park Drive, N.E.
Atlanta, Georgia 30329

The Hon. Daisy Thaler
Kentucky Senate
5804 Lovers Lane
Louisville, Kentucky 40291

Mr. Samuel Lee Tucker
Legislative Counsel
New Capitol Building, Room 110
Jackson, Mississippi 39205

Attendees

ETS/NCOL Conference on
Occupational and Professional Licensing

San Francisco, California
June 20, 1975

Ms. Sharon Andrew
Director, Division of
Occupational Licensing
Department of Commerce
Pouch D
Juneau, Alaska 99811

Senator John M. Barker
Route 4, Box 422
Buhl, Idaho 83316

Senator Philip E. Batt
Box 423
Wilder, Idaho 83676

Mr. Henry Block
Assistant Commissioner
Education & Publications
State Department of Real Estate
Sacramento, California 95814

Mr. Chris C. Christensen
Director of Administrative Services
Department of Commerce
158 12th Street, N.E.
Salem, Oregon 97310

Ms. Maxine Daly
Assistant Director, Business and
Professions Administration
Department of Motor Vehicles
Highways Licenses Building
Olympia, Washington 98504

Mr. David Gabriel
Special Assistant to the Director
Council of State Governments
85 Post Street, 400
San Francisco, California 94104

Mrs. Jo Garceau
Special Assistant for Personnel
and General Government
Office of the Governor
Olympia, Washington 98501

Senator Mary Gojack
3855 Skyline Boulevard
Reno, Nevada 89502

Mrs. Karen Greene
Manpower Administration
U.S. Department of Labor
601 D Street, N.W.
Washington, D.C. 20213

Mr. Marvin D. Gregersen, Chief
Bureau of Occupational Licenses
Department of Self-Governing Agencies
2404 Bank Drive, Room 312
Boise, Idaho 83705

Dr. John Helmick
Vice President
Educational Testing Service
1947 Center Street
Berkeley, California 94704

Mrs. Ruth J. Herrink
Director, Department of Professional
and Occupational Regulation
P.O. Box 1-X
Richmond, Virginia 23202

Mr. Joe Hill
Attorney General's Office
State Capitol
Pouch K
Juneau, Alaska 99811

ETS/NCOL Licensing Conference
June 20, 1975

Mrs. Virginia Honeywell
Administrator
Oregon State Board of Cosmetic Therapy
Labor and Industries Building, 4th Floor
Salem, Oregon 97310

Mr. William C. Hoop
Deputy Director
317 Main
Statehouse
Boise, Idaho 83720

Mr. John Keith
Assistant Attorney General
Temple of Justice
Olympia, Washington 98504

Mr. Alfred C. Kelley
Chief, Office of
Administrative Services
Oregon State Health Division
P.O. Box 231
Portland, Oregon 97207

Ms. Elisabeth Kersten
Deputy Director
Department of Consumer Affairs
1020 N Street
Sacramento, California 95814

Mr. Howard Manning
Federal Trade Commission
11000 Wilshire Boulevard
Suite 13209
Los Angeles, California 90024

Senator William McCoy
State Capitol Building
Salem, Oregon 97310

Mr. John S. McGroarty
Administrative Assistant
to the Governor
Executive Chambers, State Capitol
Carson City, Nevada 89701

Mr. Richard McManus
Chief Deputy Director
Department of Consumer Affairs
1020 N Street
Sacramento, California 95814

Mrs. Wanda Merrill
Administrator
Consumer Services Division
Labor and Industries Building
Salem, Oregon 97310

Mr. Richard P. Milanese
Management Consultant
Department of Administration
Management Services Section
The Capitol
Phoenix, Arizona 85007

Ms. Bonnie Naradzay
Federal Trade Commission
6th and Pennsylvania Aves., N.W.
Room 409
Washington, D.C. 20580

Mr. David M. Newman
Federal Trade Commission
450 Golden Gate Avenue, Box 36005
San Francisco, California 94118

Mr. Sy Newmark
Consumer Service Officer
1111 Las Vegas Boulevard S.
Suite 219
Las Vegas, Nevada 89104

Mr. Chatham Odum
Assistant Commissioner
Administration and Licensing
State Department of Insurance
1407 Market Street
San Francisco, California 94103

Mr. Bill F. Payne
Assistant Attorney General
Statehouse
Boise, Idaho 83720

Dr. Raymond D. Salman
Director of Professional Licensing
New York State Dept. of Education
99 Washington Avenue
Albany, New York 12210

ETS/NCOL Licensing Conference
June 20, 1975

Mr. Alan Seder
Associate Program Director
Educational Testing Service
1947 Center Street
Berkeley, California 94704

Dr. Benjamin Shimberg
Associate Director
Center for Occupational and
Professional Assessment
Educational Testing Service
Princeton, New Jersey 08540

Mr. Phil Stoufer
Management Consultant
Department of Administration
Management Services Section
The Capitol
Phoenix, Arizona 85007

Mr. Taketsugu Takei
Director, Department of
Consumer Affairs
1020 N. Street
Sacramento, California 95814

Assemblywoman Sue Wagner
845 Tamarack Drive
Reno, Nevada 89502

Mr. Ronald M. Weiskopf
Deputy Attorney General
Department of Justice
3580 Wilshire Boulevard
Los Angeles, California 90010

Representative Gary Wilhelms
3869 Madison Street
Klamath Falls, Oregon 97601

Mr. Ted Williams
Legislative Liaison
Office of the Governor
Phoenix, Arizona 85007

Attendees

ETS/NCOL Conference on
Occupational and Professional Licensing

Newark, New Jersey
October 6, 1975

Mrs. Virginia L. Annich
Director
Division of Consumer Affairs
1100 Raymond Boulevard, Room 504
Newark, New Jersey 07102

Ms. Donna Caruso
Administrative Aide to
Senator Chester G. Atkins
State House
Boston, Massachusetts 02133

Mr. Barton A. Fields
Deputy Secretary of the
Commonwealth of Pennsylvania
Department of State
302 North Office Building
Harrisburg, Pennsylvania 17120

Mr. William J. Geary
Assistant to the Secretary
of Consumer Affairs
McCormack State Office Building
One Ashburton Place
Boston, Massachusetts 02108

Mr. Paul Gitlin
Executive Secretary
Massachusetts Consumers Council
100 Cambridge Street
Boston, Massachusetts 02202

Ms. Paula W. Gold
Chief, Consumer Protection Division
Office of the Attorney General, Room 167
State House
Boston, Massachusetts 02108

Mrs. Karen Greene
U.S. Department of Labor
Manpower Administration
601 D Street, N.W.
Washington, D.C. 20213

Mrs. Ruth J. Herrink
Director, Department of Professional
and Occupational Regulation
P.O. Box 1-X
Richmond, Virginia 23202

Mr. Elia J. Malara
Director, Division of Licensing
Service
270 Broadway
New York, New York

Mr. Thomas E. Marshall
Assistant Secretary, Department of
Licensing and Regulation
One South Calvert Street, 3rd Floor
Baltimore, Maryland 21202

Mr. Joseph M. McDonough
Deputy Commissioner
Department of Consumer Protection
State Office Building
165 Capitol Avenue
Hartford, Connecticut 06115

Mr. Walter P. McHale
Deputy Director
Division of Consumer Affairs
Room 504, 1100 Raymond Boulevard
Newark, New Jersey 07102

Mrs. Evvajeane Mintz
Director, Division of Registration
Leverett Saltonstall Building
100 Cambridge Street
Boston, Massachusetts 02202

Mr. Frederick Nack
Assistant Attorney General in
Charge Education Bureau
New York State Department of Law
261 Madison Avenue
New York, New York 10016

Mrs. Bonnie Naradzy
Research Analyst
Regional Operations
Federal Trade Commission, Room 409
Washington, D.C. 20580

Mr. David E. Ormstedt
Counsel, Department of Consumer
Protection
165 Capitol Avenue
Hartford, Connecticut 06115

Mr. Francis X. Pugh
Assistant Attorney General
Counsel, Department of
Licensing and Regulation
One South Calvert Street
Baltimore, Maryland 21202

Mr. Edward W. Robinson, Jr.
Commissioner Designate
Professional and Occupational
Affairs
State Department
Harrisburg, Pennsylvania 17120

Mr. John N. Ruth
Chief, Consumer Protection
Division
One South Calvert Street
Baltimore, Maryland 21202

Dr. Raymond D. Salzman
Director of Professional Licensing
N.Y. State Department of Education
99 Washington Avenue
Albany, New York 12210

Dr. Benjamin Shimberg
Associate Director
Center for Occupational and
Professional Assessment
Educational Testing Service
Princeton, New Jersey 08540

Sister Arlene Violet
Chief Counsel, Consumer
Protection Division
Office of the Attorney General
56 Pine Street
Providence, Rhode Island 02903

Mr. Saul Barry Wax
Senior Policy Analyst
Massachusetts Consumers Council
100 Cambridge Street, Room 2109
Boston, Massachusetts 02202

Mr. Joel Weisberg
Director, Bureau of Consumer
Protection
301 Market Street, 9th Floor
Harrisburg, Pennsylvania 17101

NAME _____

STATE _____

October 6, 1975
Newark, N. J.

Appendix B

WORKSHEETS

These worksheets are intended to serve a dual purpose: 1) to stimulate your thinking on a variety of topics related to licensing, and 2) to provide the project staff with a record of comments and ideas that might not emerge during the discussion.

- The questions and statements on the left-hand side of each sheet cover problems and concerns expressed at previous meetings by licensing administrators, legislators, legal officers and others.
- In the blank space on the right please jot down any ideas you have on the topic, note any additional concerns, and give us your suggestions for dealing with the problem.

This is not a formal questionnaire. We do not expect you to respond to all of the questions. We hope that you will share your thoughts on those topics that are of special interest or concern and on which your experience can be helpful.

Since time for discussion will be limited, we shall be able to deal with only a limited number of questions. It will not be possible for participants to bring up all of the points that merit consideration. That is why your notes on the worksheets will be of special value. After the meeting, we will review the "jottings" of all participants and incorporate them into our report. If we are not sure what you had in mind, we may call you or write for clarification.

You have our assurance that nothing said during these meetings or noted on the worksheets will be quoted or attributed in a way that would permit an individual participant to be identified. Any reports issued by this project will deal with categories of respondents, not with the views of individuals.

TOPIC I: Purpose of Licensing

1. What should be the major purposes in regulating an occupation or profession?
2. Do you feel that, on the whole, statutory regulation in your state has accomplished these purposes?
If not, in what specific respects has it fallen short?
What do you think might be done to correct these shortcomings?

TOPIC II: Deciding Whether or Not to Regulate

3. What should you look for when you are considering regulatory legislation?
 - What questions should you ask?
 - What evidence should be required to justify the need for statutory regulation?
4. How can you be sure that proponents of licensure have considered other less restrictive alternatives and that their reasons for rejecting them are sound?
5. What are the toughest problems you face when you must decide whether or not to support a proposal to regulate an occupation for the first time?
6. What forces or factors do you see as major influences in promoting the licensing of additional occupations and professions?

7. Is it reasonable to expect that circumstances might arise where the continued regulation of an occupation or profession might no longer be necessary or desirable? What might such circumstances be? What might be done to bring about "deregulation"?

TOPIC III. Writing a Licensing Law

8. Which elements of a licensing statute do you think ought to be very specific in the law, and which ones left quite general, i.e., details left for board or agency determination? Check which you think it should be and add any comments.

<u>Element</u>	<u>Specific</u>	<u>General</u>	<u>Comments</u>
Purpose			
Definition of Practice			
Board composition, terms, appointment/removal			
Scope of jurisdiction/authority of board			
Duties and responsibilities of members			
To whom accountable? When? How?			
Qualifications of licensees			
Endorsement of licenses from other states or countries			
Test content			
Grandfathering			
Exemptions			
Fees and changes in fee structure			
Hearings and appeals			
Grounds for disciplinary action			
Administrative procedures			
Other aspects:			

9. Which of the following qualifications should (should not) generally be included in a licensing statute?

<u>Qualification</u>	<u>Should</u>	<u>Should Not</u>	<u>Comments</u>
Education			
Training			
Citizenship			
Competency			
Moral Character			
Age			
Residency			
Sex			
Other _____			

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10. What should be the major functions of a regulatory board?

11. How should boards be constituted?

	What Proportion?	Comments
Members of regulated occupation		
Representatives from State societies or other occupationally-related organizations		
Representatives from related occupation		
Representative from relevant State agency		
Public or consumer representation		
Other _____		

12. Should boards be primarily

_____ advisory bodies

_____ decision-making bodies

If advisory, where should the final decision-making authority be lodged?

If decision-making, how can one be sure that boards will be accountable to the public and the profession?

13. Should boards be administratively autonomous or should they be part of a department or agency (umbrella organization)?

☐ autonomous
☐ part of a department or agency
☐ other _____

14. If board is part of an umbrella agency, where should authority reside for the following functions?

Services

Should common services provided by the agency be

☐ optional: i.e., used at discretion of boards

☐ mandatory: use required by all boards

Personnel

Should authority to hire and fire executive officers of boards and board staffs reside with:

☐ agency director
☐ individual boards

Finances

Should expenditure of board funds be

☐ at discretion of the board
☐ subject to budgetary controls of the agency

Policy

Should rules and regulations be

☐ strictly the business of the board
☐ subject to review and approval by the agency

B-6

15. How should a state's regulatory activities be financed?

Each board should support its activities out of fees collected from its licensees. Funds would be held in a "special account".

Regulatory activities should be supported by pooling fees of all boards. Income from fees should be controlled by the umbrella agency.

Regulatory activities should be supported out of general funds; subject to the usual budgetary process. All income from fees should go into the general fund.

Other approaches:

16. Should regulatory functions be income-producing, i.e., bring in more than it costs to operate the programs?
17. Should regulatory activities be essentially self-supporting or should part of the cost be defrayed out of general funds?
18. How should the law deal with people who are already engaged in practice (grandfathers)?
19. Should the law provide for "evidence of continued competence" after a person has been licensed? How might such a requirement be implemented?
20. Continuing education is often suggested as one way to deal with the issue of continued competence. Can you suggest alternative approaches that merit consideration? Please explain.

TOPIC IV: Implementation of the Law

What problems have arisen in your state with respect to the following operational aspects of licensing? Please explain.

21. Is there a tendency for boards to be overly restrictive? Do they set standards for licensure beyond those generally required? If so, what might be done to counteract such tendencies?
22. Are boards in your state required to have on record clear guidelines for evaluating qualifications of applicants?
23. What problems (if any) are you encountering in evaluating the qualifications of applicants from other states or foreign countries?
24. What problems have arisen (or are likely to arise) in the use of national testing programs?
25. What problems have arisen (or are likely to arise) in the use of tests prepared by board members?
26. Should knowledge of English be a prerequisite for a license?

Do any boards in your state endeavor to assess the competency of candidates who are not literate in English or who have difficulty reading English?

How is this being done?

Should they be doing this?

27. What's done about complaints from applicants who feel that they have been improperly denied licensure on the basis of qualifications or testing standards?

28. How do boards respond to inquiries from candidates as to why they failed or what their specific areas of weakness may be?

Do you feel boards have an obligation to provide candidates with such information?

29. Is there a need for in-service training for board and agency staff personnel? In what areas?

30. What should be the role of boards with respect to the disciplinary function?

____ Set standards and make rules, but leave implementation to others.

____ Play active role in investigations, hearings and decision process.

____ Other _____

31. If investigations are to be turned over to a separate unit, how should such a unit be constituted?

To whom should it be accountable?

32. How may the rights of licensees and those of the public be protected during the investigatory/enforcement process?

33. When there is a civil or criminal issue involved in a disciplinary matter, should the board take action independently of the courts or should it await the outcome of the judicial proceedings? Explain.

TOPIC V: Public and Consumer Interest

34. If you have public members on your boards, what has been the net effect? (What difference has their presence made?) Explain.
35. What do you think might be done to increase the effectiveness of public members?
36. Have you encountered any conflicts between the public's "right to know" on the one hand and the licensee's right to privacy (or due process) on the other? Explain.
37. What types of information about licensees is the consumer entitled to seek from a licensing agency?
38. What can be done to resolve questions related to those aspects of the regulatory process that consumers maintain are anti-competitive--such as restrictions on advertising and price posting? How and by whom?
39. Are there other aspects of consumer involvement in licensure that should be considered?

40. What might this project do to assist states in dealing with consumer aspects of licensing?

TOPIC VI: Forces For and Against Change

41. What do you think might be done to bring about needed changes in the structure and operation of licensing boards?
42. Which interest groups or organizations are likely to support the status quo? (Be as specific as possible.)
43. Can you identify any groups or organizations which are interested in seeing changes in the status quo? (Be as specific as possible.)
44. What major problems will need to be overcome in bringing about change?
45. What suggestions do you have for dealing with these problems?
46. How might the issue of changes in licensure be presented to the legislature so as to increase the likelihood of success?
47. What might be done to make the public more aware of the impact of licensure and more concerned about the need for change?