

COMMISSION ON CALIFORNIA STATE GOVERNMENT ORGANIZATION AND ECONOMY

11th & L Building, Suite 550, (916) 445-2125
Sacramento 95814



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COMMENTS AND RECOMMENDATIONS
REGARDING
PROFESSIONAL AND BUSINESS LICENSING

STATE OF
CALIFORNIA
January 1979

COMMENTS AND RECOMMENDATIONS
REGARDING
PROFESSIONAL AND BUSINESS LICENSING

Evaluation of the Findings
Reported by the
Regulatory Review Task Force
(Department of Consumer Affairs)

BY THE
COMMISSION ON CALIFORNIA STATE GOVERNMENT ORGANIZATION AND ECONOMY
January 1979

b) Responses to the report came largely from the licensing bodies reviewed and so were subject to some natural bias in perspective. Nonetheless, these responses aided the Commission's evaluation efforts by providing a useful counterbalance to the Task Force report.

c) In 1967 the Commission issued a report on the Department of Professional and Vocational Standards (later renamed the Department of Consumer Affairs). That "P & V" report contains specifically stated recommended criteria regarding appropriate preconditions and guidelines for establishing and operating a professional or business licensing program. These criteria constitute the philosophical foundation upon which the comments and recommendations of this document are based.

Five overall comments and observations are offered regarding licensing and the licensing bodies reviewed:

- 1) The state should license a business or profession only when it is clearly necessary as a means of protecting consumers in the general public interest.
- 2) Once an agency has been established to license and oversee a profession or business, then effective enforcement should be emphasized because it is fundamental to effective oversight.
- 3) The agencies reviewed generally evidenced weak enforcement programs which draws into question their regulatory effectiveness.
- 4) Weak enforcement programs among the agencies may largely be a consequence of the nature of part-time plural bodies and their involvement in administrative operations beyond setting basic policy.
- 5) Special funds for each licensing body should be abolished because they are unnecessary and possibly counterproductive to effective regulation.

In conclusion of these five points, it is suggested that the Legislature consider restructuring the typical organizational design of licensing bodies from agencies closely governed by boards to bureaus with boards which are largely advisory.

Following these overall remarks are comments and recommendations on the individual licensing bodies reviewed by the Task Force. This portion of the document includes recommendations that

- * four licensing operations be subject to legislative review via the sunset process:

Board of Architectural Examiners
 Board of Behavioral Science Examiners
 Board of Landscape Architects
 Tax Preparers Program

- * two boards be abolished outright:

Board of Registration of Geologists and Geophysicists
 Board of Certified Shorthand Reporters

- * two boards be merged into one new licensing body:

Board of Barber Examiners
 Board of Cosmetology

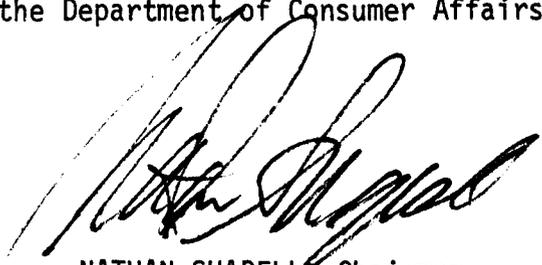
- * four boards be thoroughly reviewed or audited by the Legislature to identify and correct weaknesses in their operation and the laws which they administer:

Contractors State Licensing Board
 Board of Dental Examiners
 Board of Funeral Directors and Embalmers
 Board of Pharmacy

The Commission appreciates the cooperation and assistance of officials of the State and Consumer Services Agency and the Department of Consumer Affairs during the conduct of this review.



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EVALUATION OF THE FINDINGS REPORTED BY THE
REGULATORY REVIEW TASK FORCE--DEPARTMENT OF CONSUMER AFFAIRS

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PART I: INTRODUCTION

On May 31, 1978 the Department of Consumer Affairs issued a report on professional and occupational licensing in California. The purposes of the report were fourfold. "First, to provide educational background for the bureaus, boards, and commissions involved, particularly for new board members, both professional and public. Second, to make suggestions for needed administrative changes or improvements. Third, to lay a foundation for any statutory changes which might be required to better serve the public interest. And, finally, to focus public attention and debate upon the state's licensing and certification activities."¹

Though the report was commissioned by the Department of Consumer Affairs, it "...is not a product of the Department, but of an independent team."² The independent team, the Regulatory Review Task Force, was funded through federal grants and headed by persons who were not permanent employees of the Department. According to the Director of the Department of Consumer Affairs, "The Regulatory Review Project was conducted with a calculated minimum of interference by the Department."³

The Regulatory Review Task Force report consists of seven volumes. Volume I contains a departmental preface and a literature overview of the history of and issues surrounding professional and occupational licensing. Volumes II and III contain separate, broad-based studies covering a total of eighteen of the regulatory boards, bureaus and committees housed within the Department. Three additional regulatory agencies within the Department are reviewed in volume IV by way of case studies which "...illustrate some recurrent themes in analyses of occupational licensing."⁴ Volume V contains a study of the economic impact of professional and occupational licensing, as well as a critique of that study. The sixth volume contains the results of a Field Poll which explored consumer complaints regarding twenty professional and business services. Volume VII, which is not currently complete, contains, and is reserved for, the comments of regulatory bodies reviewed by the study, as well as the comments of any other interested parties. An eighth volume, consisting of departmental comments on both the report and response to the report, is forthcoming.

In June of this year the Secretary of the State and Consumer Services Agency, of which the Department of Consumer Affairs is a part, accepted and offer by the Commission to 1) review the Regulatory Review Task Force report, 2) hold hearings to provide a forum for responses to the findings and recommendations contained within the report and 3) develop suggestions and recommendations at the conclusion of those hearings regarding ways in which the state's licensing programs can be strengthened. In fulfillment of its offer, the Commission has reviewed the Task Force report and conducted two public hearings (June 29 and August 31, 1978) to provide opportunities for the regulatory bodies affected by the report, as well as any other interested parties, to comment on the report's findings and recommendations. This document offers commentary and recommendations regarding licensing issues discussed in the report and at the public hearings.

The Commission's interest in professional and vocational licensing predates by some twelve years its present involvement with the Regulatory Review

Task Force examination of the topic. In September, 1967 the Commission issued a report of its study of what was then titled the Department of Professional and Vocational Standards (renamed the Department of Consumer Affairs in 1970). The "P & V" report, as it is commonly referred to, is similar to the one prepared by the Regulatory Review Task Force in that primary functions of both works include identifying the proper role of licensing agencies and the administrative and organizational mode through which that role can most effectively be executed. However, the two studies upon which these reports are based were quite dissimilar in their approach and level of detail, with the P & V study being somewhat more conceptual and general than that undertaken by the Task Force. The P & V study was premised upon specifically stated recommended criteria regarding 1) the appropriate preconditions for establishing a professional or occupational licensing program and 2) the operational guidelines licensing bodies should follow in administering their licensing and enforcement responsibilities. It was against these fundamental criteria that the P & V study evaluated twenty-six of the twenty-nine regulatory bodies then located within the Department of Professional and Vocational Standards. As a major focus of its study, the Regulatory Review Task Force attempted to establish the operational effectiveness with which eighteen of the regulatory bodies within the Department of Consumer Affairs fulfill their licensing responsibilities of protecting consumers and regulating businesses and professions. Some of the various means through which the Task Force sought to accomplish this involved comparing the statutory authorities and responsibilities of licensing bodies to their actual operations, sampling case files to evaluate the manner and effectiveness with which consumer complaints are handled, assessing the general relationships between particular licensing bodies, their licensees and their licensees' consumers, and judging the effectiveness of licensing qualifications and exams in protecting consumer interests.

PART II: THE BASIS FOR THESE COMMENTS AND RECOMMENDATIONS
REGARDING PROFESSIONAL AND BUSINESS LICENSING

Implicit in this Commission's decision to review the Regulatory Review Task Force report and make recommendations on professional and occupational licensing, was the notion that the Commission would develop such recommendations on the basis of three reference sources: 1) the Task Force's reported findings and conclusions, 2) responses to the report submitted to the Commission in writing or presented at the hearings, 3) the Commission's previous report on and experience with licensing issues. Consequently, the Commission has not sought to establish additional findings beyond those presented in the reports and the hearings, nor has the Commission sought to verify the "facts" presented by either the Task Force or the responding agencies. For the Commission to have engaged in independently establishing additional findings or comprehensively verifying those presented would have been tantamount to conducting its own study of licensing agencies--something the Commission did twelve years ago, and not something it is inclined to undertake again at this time.

However, for reasons explained below, the Task Force report and agency responses have not afforded the Commission a very deep source of reliable or unbiased evidence upon which to evaluate the agencies at issue and to formulate recommendations regarding their continued operation. Therefore, the comments and recommendations on licensure contained in Part III of this document are limited to only those findings and issues which, in the Commission's assessment, appear legitimate on the basis of the evidence presented by the Task Force and the responding agencies, and on the basis of the Commission's previous work and experience in this area.

The Three Reference Sources

1) The Regulatory Review Task Force Report

Volume I. The literature survey contained in volume I states:

Because this study focuses on the "problems" of licensing, its tendency is to be negative in tone. However, the purpose here is not so much to lay blame or to attack the work of licensing agencies but rather to seek improvement where it is both needed and feasible.⁵

This disclaimer notwithstanding, it is worth noting that not only the literature review, but the entire Task Force report, concentrates on the negative aspects of licensure to the virtual exclusion of any mention of positive attributes. Consequently, readers of the report are not afforded counterbalancing impressions of beneficial outcomes or effects resulting from actual licensure activity. It may be questioned whether such a lopsided presentation constitutes a reasonably accurate reflection of "real world" conditions. If it does not, then it may further be questioned whether such a skewed presentation and unbalanced perspective won't ultimately generate reactionary responses which inhibit rather than enhance efforts to "...seek improvement where it is both needed and feasible."

Volumes II & III. As a resource to be considered in evaluating licensing practices, volumes II and III of the Regulatory Review Task Force report are dismayingly unprofessional in both their methodological technique and their format. These volumes contain a number of separate reports covering eighteen different licensing bodies and, while the quality of the separate reports varies, none of them are exemplary. It seems clear from the reports that the Task Force largely failed to employ accepted methodological techniques and procedures for conducting analytical studies of organizational performance. Commonly evident among the reports is the absence of such standard methodological steps and analytical procedures as:

- * specifically stated study objective(s)
- * specifically identified organization (i.e. licensing body) missions or functions
- * specifically defined criteria for assessing organizational performance
- * stated or referenced sources to substantiate findings and assertions
- * clear linkages between stated findings (assertions) and conclusions or recommendations

Also reflecting the unprofessional character of the reports is their pervasive use of highly subjective statements which are neither premised by frank statements of underlying value orientations nor supported by clear associations with specified evaluation criteria.

In addition to these methodological deficiencies, the reports also generally lack format clarity, organization and focus. Typically lacking in the reports are:

- * an orderly presentation of, and flow between, the issues addressed, the findings and the recommendations.
- * an enumeration and distinct articulation of recommendations
- * sufficient and clear relevant background information (e.g. organizational history, structural/functional descriptions of the organizations, descriptions of the milieu of the regulated industry, etc.) which would provide readers with general knowledge and some perspective of the activities and effects of the licensed profession or business and the licensing agency.

These weaknesses of the reports renders their findings and conclusions less than reliable as to their accuracy and their objectivity. This is not to say, however, that the reports do not address some important issues and raise some very legitimate questions. Nor is it to say that none of the reports' conclusions and recommendations are justified or meritorious. Rather, the fact that the reports are of a poor, unprofessional quality simply means that ferreting out what is reliable and meritorious in them becomes a difficult and cumbersome task that must be engaged in cautiously.

Volume IV. The three case studies contained in this volume are intended to "...illustrate some recurrent themes in analyses of occupational licensing."⁶ However, the studies are distinctly different from one another in style and substance, and the extent to which they contribute to a general appreciation for recurrent licensure themes varies markedly.

The case study involving the State Board of Accountancy consists of a heavily subjective presentation of the quite legitimate issues of discrimination and supply control through licensure. Though capped by what may well be a valid conclusion, the strong accusatory--even inflammatory--tone of this report may leave readers wondering 1) whether the issues and conditions are really portrayed with a balanced and reasonable perspective and 2) if they are, whether such blatant and devious abuse is truly illustrative of "typical" licensing activities.

As a description of the legal and organizational changes that have been initiated with respect to the functioning of the Board of Medical Quality Assurance, the "case study" (report) on that Board appears to be excellent. As an illustration of recurrent themes in licensing, however, the report's contribution is unclear. The introduction to the report states: "This report has attempted to provide a current observation of the Board of Medical Quality Assurance and its major program elements. This report does not evaluate the Board..."⁷ Indeed, outside of a few brief references to the conditions which prompted changes in the Board and some problems bearing on the Board's effectiveness, the report provides little assessment of or insight to common licensure issues. Even the references to conditions prompting change may not actually offer general insights since medical licensure issues tend to be somewhat different in degree, if not in kind, from other areas of professional and business licensing.

The third case study, regarding the Tax Preparers Program, is cited as "...a good example of a program conceived with good intentions, passed by the Legislature with tentative high hopes, administered with diligence--and apparently making little difference in the real world."⁸ This seems well illustrated in the presentation of the case study.

Volume V. Volume V includes both an analysis of the economic impact of occupational licensing and a critique of that analysis. A preface to the volume suggests that some readers may find the analysis significantly flawed, as did the author of the critique. In fact, because of questions raised by the critique, the preface also includes a clear departmental disclaimer of any endorsement of the analysis. The Department's stated non-endorsement of the analysis is viewed by the Commission as very prudent.

Even without the benefit of a background in analytical methods or economics, readers of the "analysis" are able to detect in it biased presuppositions and faulty logic. For readers with some familiarity of statistical methodologies and economic theory, the defects evident in the analysis are more numerous.

The Commission finds the economic impact analysis contained in the volume--for all practical purposes--entirely without merit. Its many deficiencies are well exposed by the critique which follows it.

Volume VI. This volume consists of an analysis and interpretation of the statistics generated through a Field Poll survey concerning consumer complaints which was commissioned by the Task Force. The professional reputation of the Field Research Corporation (Field Poll) is of the highest order and the validity of the statistics produced by the survey are confidently assumed to be reliable. Of course, statistics are usually subject to more than one interpretation, and any attempt to attain an accurate understanding of actual conditions through an analysis of statistical data should be undertaken with an open attitude and an objective perspective.

The Task Force interpretation of the survey results draws several lesser conclusions which are not clearly evident from the statistics. In spite of this weakness, the overall conclusion drawn by the Task Force appears valid. The survey results do indeed raise significant fundamental questions about the usefulness and effectiveness of the Department of Consumer Affairs in protecting consumers and regulating professions and businesses. The survey results clearly indicate that very few persons are aware that the Department of Consumer Affairs is available to help resolve consumer problems. This situation obviously limits the Department's ability to assist wronged consumers and detect and act against the misdeeds of licensees.

2) Agency Responses to the Regulatory Review Task Force Report

Upon accepting the responsibility of reviewing the Regulatory Review Task Force Report, the Commission notified the licensing bodies evaluated by the Task Force that the Commission would be conducting public hearings to receive comments and testimony regarding the report. Sixteen of the twenty-one regulatory agencies examined by the Task Force submitted written or verbal testimony responding to the report.⁹ The Commission has reviewed these responses thoroughly and accorded them due consideration in formulating the comments and recommendations contained in Part III of the document.

The Task Force report is quite critical of most of the agencies it reviews, but, as discussed above, the report suffers from analytical deficiencies which make it very difficult to assess the validity of its findings and recommendations. Responses from the licensing agencies consequently aid the assessment process by providing countervailing views and evidence with which to weigh the soundness of the report. Of course, it cannot be presumed that the agency responses are so devoid of bias that they provide all the material necessary to assay reliably the report's merit. Nevertheless, the alternative views offered by the agencies do contribute some ballast to the effort to develop a balanced perspective toward the issues at hand.

3) The 1967 P & V Study

As mentioned above, this Commission's 1967 study of the Department of Professional and Vocational Standards was premised upon specifically stated recommended criteria regarding 1) the appropriate preconditions for establishing a professional or occupational licensing program and 2) the operational guidelines licensing bodies should follow in administering their

licensing and enforcement responsibilities. The Commission finds these criteria to be as relevant today as they were in 1967, and they constitute the philosophical foundation upon which the comments and recommendations in Part III of this document are based.

Although a summarization of the criteria and recommendations contained in the P & V report is appended, it is worth restating here the most basic of the criteria, those defining the preconditions for establishing a licensing program.

Licensing by the State of the members of a profession or vocation should be undertaken only when:

1. Failure to do so would present a clear and definite danger to the general public health, safety, or welfare--as distinguished from the interests of a particular group or segment.
2. Specific pre-qualification standards can be established and there is reasonable assurance that persons meeting such standards will be able to function effectively in the vocation and those who fail to meet the standards could not.

Not only are the P & V report's evaluation criteria still relevant, apparently so are many of its findings and recommendations pertaining to individual licensing bodies. That this is so seems clear from the information produced by the Task Force study and the Commission's public hearings. It is distressing to find that nearly twelve years after issuance of the P & V report many of the inefficient, ineffective and unnecessary licensing practices identified in the report persist.

PART III: COMMENTS AND RECOMMENDATIONS

General Comments and Observations

Before discussing individual licensing bodies, some general comments and observations are in order. In summary, these comments and observations will make the following points:

- 1) The state should license a business or profession only when it is clearly necessary as a means of protecting consumers in the general public interest.
- 2) Once an agency has been established to license and oversee a profession or business, then effective enforcement should be emphasized because it is fundamental to effective oversight.
- 3) The agencies reviewed generally evidenced weak enforcement programs which draws into question their regulatory effectiveness.
- 4) Weak enforcement programs among the agencies may largely be a consequence of the nature of part-time plural bodies and their involvement in administrative operations beyond setting basic policy.
- 5) Special funds for each licensing body should be abolished because they are unnecessary and possibly counterproductive to effective regulation.

- 1) The State should license a business or profession only when it is clearly necessary as a means of protecting consumers in the general public interest. This stance is well stated in the Commission's 1967 P & V report.

In considering what is the appropriate role of a board in the administration of a licensing program, the central issue is that of representing and protecting the general public interest. The justification for the State's controlling entry into a particular profession or vocation and regulating the activities of practitioners is simply, and exclusively, protection of the public. Since licensure is a restriction on the freedom of individuals, the need for government intervention must be clearly demonstrated.

There is no need to belabor the point that a licensing program can be used to the special advantage of the licensed group--by restricting entry even of reasonably qualified persons and thus reducing competition or by protecting licensees who are incompetent, negligent, or acting contrary to the public good. Further, licensing programs have been used in some instances to advance the professional status of occupational groups, with no benefit to the public or even counter to the public interest.

[W]hen the decision is made--by the Legislature--as to whether or not a particular profession or vocation need be licensed by the State, [the] decision must rest on substantial evidence that the public needs this protection...[However] in situations where a case can be made that licensing might have some desirable features from the standpoint of the public, these must be weighted against the broad question of increased government intervention into areas traditionally viewed to be of private concern.¹⁰

On the basis of this philosophical position, the Commission suggests that the Legislature embrace the 'sunset' concept as a means of reviewing the need for questionable licensing agencies. Those which do not provide a necessary consumer protection service should be abolished without hesitation.

2) Once an agency has been established to license and oversee a profession or business, then effective enforcement should be emphasized because it is fundamental to effective oversight. The licensure of a profession or business is premised upon a need to protect the public health, safety, and welfare. To serve as a framework for this protection, a body of statutory and administrative prescriptions is usually established which defines the bounds of acceptable practice and/or the limits of minimum competency. The elemental function of a licensing agency is to ensure that the integrity of these bounds and limits is maintained. This function is fulfilled through a program of enforcement. If oversight is to be effective, then enforcement must be effective.

The ultimate objective of enforcement--in fact, of licensure--is to prevent the consumer from being harmed. To be effective in its preventative function, enforcement programs must deter would-be violators from committing misdeeds. Therefore, enforcement programs should demonstrate that there is a credible and highly probable possibility of a violation being detected, and that willful violations will evoke stringent penalties. Enforcement programs should also include the ability to identify and take necessary action against chronic violators in order to prevent them from continually taking advantage of consumers. Furthermore, enforcement programs should possess the capacity to analyze consumer complaints and other pertinent information to ascertain trends or conditions deserving a greater amount or a different kind of consumer protection attention.

It should be noted that effective enforcement is not necessarily synonymous with numerous disciplinary actions, and no enforcement program should be judged solely on the number of violations it has acted against. In regulating a profession, for instance, a low level of complaint and disciplinary activity may be more indicative of effective methods of screening for minimum competency than reflective of lax enforcement. Nonetheless, even in these situations, the deterrent of a credible threat of punitive measures against unlicensed or unqualified practitioners is essential to the integrity of the screening process as a consumer protection mechanism. Indeed, if there is no danger of unlicensed/unqualified persons practicing the profession, then there is no need to engage the police powers of the State to protect consumers through licensure of the profession.

3) The agencies reviewed generally evidenced weak enforcement programs which, by the rationale of the preceding paragraphs, draws into question their regulatory effectiveness. Typically, agency enforcement efforts are characterized by a) the absence of a systematic and efficient process of assessing and handling complaints and b) an apparent lack of resolve to impose penalties on premeditated violators of the law and eliminate proven incorrigibles from practice.

One of the most common and indisputable conditions found among the licensing bodies is the absence of well-designed and well-administered systems of recording, assessing and processing complaints. Initial review and investigation of complaints is often cumbersome and haphazard. Rarely is there an effort to analyze complaints in the aggregate to ascertain trends or conditions deserving special attention. Nor is there generally any systematic attempt to identify chronic violators who warrant consideration for license revocation or criminal prosecution.

By not developing comprehensive complaint processing systems, licensing bodies limit their enforcement program to a strictly "reactive" mode of operation, pursuing remedies for complainants already damaged. As suggested above, a reactive enforcement mode can be very effective as a deterrent to would-be violators when there is a high probability of both having a violation detected through a complaint and incurring a substantial penalty for committing the violation. However, the regulatory bodies reviewed here generally appear not to seek vigorously to levy penalties on violators nor to be very forceful with the penalties they do impose. Rather, there seems to be a strong tendency to mediate complaints, even in situations involving clear violations.

Mediation, while a reasonable--even preferable--approach to satisfying most consumer complaints arising from honest misunderstandings or errors, is not likely to be effective in preventing consumers from enduring the misdeeds of the unethical and the inept in the first place. For the unprincipled business person and the incompetent professional, mediation is a rather painless way for them to own up to their failings. Although there is a legitimate role for mediation in the complaint handling process, emphasizing mediation at the expense of concerted efforts to firmly discipline premeditated or chronic violators is antithetical to effective enforcement, and hence to effective regulation.

4) This tendency among licensing agencies to have weak and non-systematic enforcement programs appears to stem largely from two aspects of the nature of the plural bodies (i.e. the boards) which govern most of them. First, many of the boards seem overly empathetic toward their licensees, both as individuals and as a group. While no empirical evidence is entered here to support the proposition, it seems reasonable to hypothesize that this condition arises from the biases of the "professional" board members and their "co-option" of the "public" board members. Such biases and co-optive activity could, of course, involve perversity and deviousness motivated by greed. More likely, however, the biases stem from a natural tendency of the professional members to see matters from a licensee's point of view and the co-option results from an indirect socialization process rather than from machinations designed to brainwash or buy off public members.

Some amount of empathy toward licensees is certainly not inappropriate for a regulatory body. A licensing agency which assumes a generally antagonistic posture toward the profession or business it oversees is not likely to be either effective or fair in establishing and enforcing regulations which govern gray areas where the distinction between "proper" and "improper" practices is not clear. Nevertheless, sensitivity to the licensee's perspective should not cloud the focus of the regulatory body's basic role of ensuring consumer protection. Unfortunately, it appears that such clouding has affected the focus of several boards.

The second feature of the regulatory plural bodies (the boards) which appears to encourage weak and non-systematic enforcement is their significant involvement in determining the structure of administrative operations, as well as the general policies which should guide administrative operations. This involvement has typically failed to provide decisive guidance to board staffs in implementing the administrative and regulatory functions of their agencies. This is probably largely a consequence of factors related to the nature of part-time plural bodies including unfamiliarity with the needs and details of administrative procedures, diffusion of responsibility, slowness to act, and division of authority.¹¹

The foregoing comments suggest that there may be a flaw in the basic concept under which most licensing agencies are structured--a flaw which may be affecting their regulatory effectiveness. Most of the agencies are closely governed by a part-time plural body, a board, which has immediate authority over an executive secretary. At the same time, these agencies tend to exhibit weak enforcement and administrative operations. Although the evidence immediately available does not clearly support or refute the proposition, it appears that a more efficient and effective consumer protection program might be achieved if board authority in the regulation process were limited to, where appropriate for the business or profession being regulated, 1) development of minimum competency criteria, 2) establishment of certification criteria for educational or training programs, 3) establishing regulations regarding acceptable business and professional practices and 4) hearing appeals on punitive actions imposed by the administering agency. In all other respects a board would be advisory to an agency chief appointed by the Secretary of the State and Consumer Services Agency.

Some support for this kind of a licensing agency structure may be derived from the functioning of the two agencies reviewed here which are not closely governed by a board. One of them, the Bureau of Repair Services, is described as quite efficient and effective by the Regulatory Review Task Force report, and no information has been submitted which suggests that its operation is other than that.

The other agency, the Bureau of Employment Agencies, is highly criticized in the Task Force report. However, the weakness of the report on this agency coupled with the actions of the Bureau's current chief and recent legislation intended to improve regulation of employment agency practices indicates that the Bureau is progressing toward fulfillment of its role as a provider of effective and meaningful consumer protection.

Evidence in favor of a different, more centralized administrative structure for business and profession licensing agencies appears strong enough

to warrant further examination. It is suggested that the Legislature undertake a focused consideration of such a restructuring of these agencies.

5) Special funds for each licensing body should be abolished because they are unnecessary and possibly counterproductive to effective regulation. In its P & V report the Commission stated its position on this matter. That position remains unchanged.

Because a state licensing program benefits the licensed individual and group, as well as the public, there is ample justification for charging fees for the service. In most categories, but not necessarily all, the fees should be set at a level that would cover the total costs of the program. It does not follow from this, however, that license fees from each activity need or should be placed in a special fund. The existence of special funds unnecessarily complicates the State's financial planning and control processes and limits the effectiveness of executive and legislative review of expenditure programs. Their use in respect to licensing activities tends to fix artificial limits on the scope of regulatory and enforcement programs and influence decisions in specific disciplinary cases. Rather than developing a program based on actual needs, the tendency is to build the program around the amount of fees collected. The alternative to this is to seek frequent legislative approval of changes in the fee schedules...

Recommendations

1. All licensing programs should be financed from the general fund and all fees collected deposited to the credit of that fund.
2. Fees should be set by the Legislature at a level adequate to meet all the program costs, except where such would place an undue hardship on a licensed group.

As noted above these recommendations are not offered as a means of increasing State revenues although there would be a one-time transfer to the general fund... In those instances in which special fund surpluses are now building up, or where more efficient operating procedures are possible and proposed, present license fees could be reduced.¹²

As an augmentation to this recommendation, the Commission also feels that the Legislature should establish a reasonable range for each licensing fee and leave the Director of the Department of Consumer Affairs responsible for setting specific fee charges from within these assigned ranges.

BOARD OF ACCOUNTANCY

This board was the subject of one of the Task Force's case studies. The case study focused on a single, very specific issue involving the Board's license-granting operations. Therefore, comment on the overall operation of the Board is not warranted. Further, the Commission refrains from commenting on the specific issue involved because it turns on quite detailed legal and technical matters which are more appropriately evaluated by technicians and judges.

BOARD OF ARCHITECTURAL EXAMINERS

It seems clear from the information before this Commission that the Board of Architectural Examiners performs little, if any, significant consumer protection function. The evidence strongly indicates that

- * there is virtually no monitoring or enforcement program (and that this is not a consequence of a lack of consumer complaints).
- * exemptions to the professionals covered by the Board's authority constitute a major area of non-regulation.
- * the exams which are prerequisite to licensure provide little assurance that a meaningful minimum competency has been attained, but do significantly inhibit entrance into legal practice of the profession.

A more effective consumer protection function would probably be served by a restructuring of Board operations to emphasize efficient, comprehensive monitoring and enforcement activities, as well as efforts to develop and improve building design laws which serve to enhance the public health, safety and welfare.

Recommendation. This Board should be subject to a legislative review through the sunset approach. The Legislature should determine whether or not there is a public need to license architects and, if no need is found to exist, then the Board should be abolished. If, on-the-other-hand, the Legislature finds licensing architects to be in the public interest, then the Legislature should also specifically identify the primary activities the regulating body should engage in to best serve and protect the consuming public.

Given the information at hand, and subject to the findings of a legislative sunset review, the Commission tentatively recommends abolition of the Board of Architectural Examiners and the establishment of a Board of Construction Designers which would oversee the registration of all persons desiring to provide construction design services for compensation. The activities of this new board would be directed primarily toward 1) ensuring registrant compliance with state building design laws and regulations, 2) consumer education and 3) developing and improving building design standards to enhance the health, safety and welfare of the public.

Competency testing as a prerequisite to licensure would be developed and utilized by this board only when it would clearly serve the public interest, and only when it would be feasible to develop meaningful tests which could be practically administered.

BOARD OF BARBER EXAMINERS AND BOARD OF COSMETOLOGY

The Commission concurs fundamentally with the Regulatory Review Task Force's conclusions that

- * separate licensing boards for barbers and cosmetologists are unnecessary,
- * the great majority of work performed by barbers and cosmetologists does not involve any threat to the public health, safety or welfare,
- * entrance into these vocations is highly over-regulated.

Recommendations. The Board of Barber Examiners and the Board of Cosmetologists should be subject to legislative review through the sunset process. In deliberating on the need for regulating barbers and cosmetologists, the Commission offers for the Legislature's consideration the following alternative to the present arrangement:

The Board of Barber Examiners and the Board of Cosmetologists could be dissolved and replaced by a single Board of Hair Stylists and Cosmeticians. This new board would administer two basic type of registration, one for hair stylists and one for cosmeticians. Those registered as hair stylists would be authorized to work only with hair (i.e. to wash, dye, cut, etc., scalp and facial hair). Registered cosmeticians would be authorized to perform personal cosmetic services other than those covered under the hair stylist registration (e.g. facials, manicures, etc.). Persons wishing to provide both hair styling and cosmetological services would need to register as both a hair stylist and a cosmetician.

The only competency prerequisite to obtaining general registration should be successful demonstration of fundamental shop and tool hygiene and practical knowledge of the laws governing the business of providing these personal services. However, registration alone should authorize only the practice of those operations which do not involve an endangerment of the public health, safety, or welfare beyond matters of basic hygiene.

Those operations which are intrinsically hazardous (e.g. shaving with a straight razor, electrolysis, etc.) should be specifically identified by the Board and a special certification should be required as a precondition for registrants to engage in each such type of operation. Certification should be predicated upon successful demonstration of the registrant's ability to perform the operation safely (assessment of the quality of the registrant's work should not be an issue when determining the registrant's certifiability.)

Quality assessment of hair styling and cosmetological work are inherently subjective and should not be a matter for Board regulation. However, it is the Commission's opinion that it is desirable for the consumer to have at least some minimal indicator by which to measure the competency of a hair stylist or a cosmetician before submitting to their handiwork. Therefore, it is proposed that each type of registration consist of two classes, "apprentice" and "regular". A registrant with a total of less than 1,500 certified hours of combined experience and training would be designated as an apprentice and would be required to clearly display a notice indicating to potential customers that he/she is an apprentice.

Certification of experience should be established by any clear, documentable evidence that the registrant has in fact actively engaged in performing the services in question for the period of time claimed. Certification of training should be established by clear, documentable evidence that the registrant has in fact actively and successfully participated in a Board-approved training program for the period of time claimed.

Training program approval by the Board should be based upon specific Board-established criteria regarding the proper curriculum for such programs. The authority of the Board to approve or not approve a training program, however, should not preclude operation of non-approved programs or training schools.

To the extent that periodic shop inspections are necessary to ensure that sanitary conditions are maintained, these inspections should be performed by city and county health departments.

BOARD OF BEHAVIORAL SCIENCE EXAMINERS

The Regulatory Review Task Force's study and the Commission's P & V study corroborate each others' overall conclusion that the operations of the Board of Behavioral Science Examiners (BBSE) provides no significant level of consumer protection. In addition, it is questionable whether it is even practical to attempt to license the groups under BBSE's purview.

Although it is probably true that consumers can have their mental health and general welfare adversely affected by "unqualified" practitioners of psychotherapy working under one of the titles licensed by BBSE, it seems doubtful that specific standards could be established which would provide "...reasonable assurance that persons meeting such standards will be able to function effectively in the vocation and those who fail to meet the standards could not." This appears so because (1) the state-of-the-art of psychotherapy does not seem developed to the point that widely accepted standards regarding the methods of its practice and administration can be established and (2) successful practice of psychotherapy is largely dependent upon the practitioner's abilities to relate to, diagnose and enlist the confidence of the client (consumer); abilities which are not amenable to objective, standardized examination.

The Task Force report recommends that BBSE licensees (as well as other professions practicing psychotherapy) be subject to regulatory controls which would involve assessing the quality of psychotherapy treatment by including

as "...grounds for prosecution...the area of poor therapeutc treatment" (emphasis added).¹³ The Commission is not optimistic that such assessment standards can be developed; however, if they can be, it would probably be advisable to do so.

Recommendation. The Board of Behavioral Science Examiners should be subject to legislative review through the sunset process. If it is determined that the licensure of the groups under the Board's purview is necessary to protect the public then specific criteria should be clearly established regarding licensure qualifications and standards of practice, and these criteria should be uniformly applied to all applicants for entry into the practice of psychotherapy. (Also see comments and recommendations under "Psychology Examining Committee")

PSYCHOLOGY EXAMINING COMMITTEE

The Task Force discusses the licensure of psychologists by the Psychology Examining Committee (PEC) in the same report which explores licensure of various groups of psychotherapy practitioners by the Board of Behavioral Science Examiners (BBSE). The report contends that psychologists and those licensed by BBSE all practice essentially the same profession (psychotherapy) and therefore should be regulated by a single Board of Psychotherapeutic Sciences and Psychological Occupations.

The Commission acknowledges the logic of this recommended functional approach to reorganization, but would support it only if the Legislature should determine that it is desirable and feasible to regulate meaningfully those professions currently licensed by BBSE (see comments re BBSE above).

Should the Legislature determine that it is not desirable and feasible to regulate those psychotherapy professions now licensed by BBSE and resultantly dissolves that board through a sunset mechanism, the Commission does not at this time believe that PEC should also be dissolved, in spite of the fact that psychologists (PEC licensees) also practice psychotherapy. The Commission makes a distinction here between psychologists and other psychotherapists on the basis of degree rather than kind, and on the basis of practicality rather than theory.

It is believed that the public generally seeks out the services of "psychologist" with significantly different and higher levels of expectations regarding professional training and orientation than when seeking the services of a "counselor" (most of the professions licensed by BBSE include "counselor" as part of their title). In addition, it is thought that this heightened level of expectation tends to lead to greater consumer faith in and reliance on the psychologist, and thereby increases the potential degree of consumer harm that could be caused by "unqualified" or unscrupulous practitioners. Although the extent to which PEC standards truly protect the public admittedly is not clear, in the absence of additional information, it is believed that current psychologist licensure requirements do provide some assurance of general competency and conscientiousness with the profession. It seems that it would be ill-advised to eliminate this assurance, even if it is minimal.

BOARD OF VOCATIONAL NURSE AND PSYCHIATRIC TECHNICIAN EXAMINERS

The Task Force report on the Board of Vocational Nurse and Psychiatric Technician Examiners deals only with the Board's oversight of psychiatric technicians. No specific recommendations are made regarding this oversight operation and the report is ambivalent in its concluding remarks regarding the consumer protection effectiveness of the operation.

The Task Force comments on "psych-techs" are presented as something of an appendage to a larger report which deals with the psychotherapy professions licensed by the Board of Behavior Science Examiners (BBSE) and the Psychology Examining Committee (PEC). In that report the Task Force recommends abolition of BBSE and PEC and establishment of a single new licensing board to regulate all psychotherapy professions. The placement and nature of the comments on psych-techs seems to suggest that the Task Force would also include the licensure of psych-techs under the purview of such a new board, but this is not at all clear. If in fact this is what the Task Force intended to recommend, the Commission would be opposed to such a move. The functions of psych-techs are substantially different from those of psychotherapy practitioners licensed by BBSE and PEC. Furthermore, the Board of Vocational Nurse and Psychiatric Technician Examiners appears to be satisfactorily overseeing the licensure of psych-techs.

CONTRACTORS STATE LICENSING BOARD

The Task Force report on the Contractors State Licensing Board (CSLB) raises many questions about that board's effectiveness in protecting the public through the licensure and regulation of contractors. Although many of the questions are raised on the basis of clearly subjective charges and thus suffer some loss of credibility, CSLB's responses to those charges do not convincingly dispel them. Unfortunately, a lack of undisputed data makes it impossible to pinpoint specific deficiencies in the Board's regulation of contractors and to recommend detailed corrective measures. However, the information at hand does provide the basis for some general observations and conclusions:

- * obtaining a license is not a very difficult task and may well be too easy to ensure competency
- * current bonding requirements appear insufficient to ensure restitution for financially damaged consumers
- * there is a large--unacceptably large--backlog of complaints to be investigated and resolved
- * the complaint handling process is slow and cumbersome, and these conditions are aggravated by an ineffective EDP operation
- * there is no systematic effort to weed out repeat violators
- * there are no reliable data with which to accurately assess the efficiency and effectiveness of the staff or structure of the

complaint investigation operation; however, evidence strongly suggests that this operation is not as effective as it could be.

Recommendation. The Legislature should initiate a performance audit of the regulatory effectiveness and administrative efficiency of the Contractors State Licensing Board. Firm action, including appropriate legislation, should subsequently be taken to rectify deficiencies identified through the audit.

BOARD OF DENTAL EXAMINERS

The Task Force report on the Board of Dental Examiners (BDE) compellingly indicates that the Board is not effective in fulfilling its consumer protection role. Especially convincing is the report's argument that BDE's ability to systematically collect, file, retrieve and analyze complaints is lacking seriously--possibly at an important sacrifice to consumer protection. In addition, the Board appears to lack the focus and direction necessary to develop and implement well-defined programs of enforcement and consumer education.

The Board's response to the report indicates that actions have been taken to correct some of the deficiencies cited by the Task Force. While these actions are encouraging, they are not wholly reassuring because the ability of the Board to improve its effectiveness on its own initiative seems questionable.

Recommendations. 1) The Legislature should review the Dental Practice Act with the objective of determining whether any portions of the Act inhibit the ability of the Board of Dental Examiners to perform regulatory functions necessary to its consumer protection role. Identified impediments should be expeditiously eliminated.

2) The Legislature should initiate a performance audit of the regulatory effectiveness and administrative efficiency of the Board of Dental Examiners. The Board should subsequently engage professional management assistance to rectify deficiencies identified through the audit.

3) The Legislature should review the Board's continuing education program and determine whether or not it serves a public interest worthy of the expenditures involved.

BUREAU OF EMPLOYMENT AGENCIES

Written and verbal testimony presented to the Commission by the Bureau of Employment Agencies (BEA) in response to the Task Force's report on the Bureau forcefully rebut the report's overall charge that BEA is derelict in fulfilling its regulatory responsibilities. Still, it appears that there are aspects of the law and current regulatory activities which need to be improved to provide a full measure of consumer protection in this area. The Bureau is encouraged to continue its efforts to improve the

effectiveness of its operation through the systemization of its complaint analysis process, the enlargement of its consumer education activities and the sponsoring of legislation designed to provide the legal framework necessary to ensure proper consumer protection.

Recommendations. 1) The "just cause" clause (Business and Professions Code, Section 9974.3(b)) relating to placement fee charges should be eliminated from the law.

2) The amount of the surety bond required of applicants for employment agency licensure should be raised to at least \$3,000.

BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

The theme of the Task Force report on the Board of Registration of Professional Engineers was also a fundamental premise of the P & V study: "title" licensing does not protect the consumer and should not be sponsored by the state.

Recommendation. "The State Legislature should rescind provisions of the 1968 Universal Registration Act granting the Board of Professional Engineers authority to establish title protection. All title protection should be ended unless, for good reason, it is linked to a practice act as in the case of structural engineers and civil engineers."¹⁴

BOARD OF FUNERAL DIRECTORS AND ENBALMERS

Gratuitous and subjective statements are especially numerous in the Task Force report on the Board of Funeral Directors and Embalmers, thus severely hampering efforts to objectively assess the Board's effectiveness. Responses to the report effectively counter many of its charges regarding industry abuses and the need for additional regulations. Nonetheless, information contained in the report suggests that this board, like many others, may not be performing its enforcement function to the extent that it reasonably could and should.

Since the consumer of a funeral director's services is likely to be mentally distressed and not fully attentive to the business which must be transacted, it is important that the ethical conduct of the funeral director be of an especially high order. The Task Force report raises serious questions regarding the effectiveness of the Board in promoting and ensuring such ethicalness.

The Board appears to lack a systematic complaint recording and review process which would enable it to 1) establish and assess the ramifications of trends in the nature of consumer complaints received and 2) identify for possible removal from business repeated violators of consumer protection laws. Such a system should be established and utilized.

Recommendation. The Legislature should evaluate the Board of Funeral Directors and Embalmers' enforcement program in terms of its effectiveness in preventing consumers from being subjected to improper and unethical dealings by licensees. Necessary steps including appropriate legislation should be taken to strengthen deficiencies in this preventative function.

BOARD OF REGISTRATION OF GEOLOGISTS AND GEOPHYSICISTS

Licensing of those geologists upon whose work and recommendations decisions are made regarding the viability of a construction project (i.e. engineering geologists) appears warranted. However, there is no compelling evidence to support the licensure of geologists and geophysicists in general.

Recommendation. The Board of Registration of Geologists and Geophysicists should be abolished and its function of regulating the practice of engineering geology should be transferred to the Board of Registration for Professional Engineers.

BOARD OF GUIDE DOGS FOR THE BLIND

The necessity of licensing schools which train guide dogs for the blind is undisputed and the Task Force report on the Board of Guide Dogs for the Blind indicates that the Board's licensure program effectively protects consumers who utilize the services of such schools. However, the Task Force report argues that the same level of consumer protection could be achieved, and the added benefit of a more streamlined government organization realized, if the Board were abolished and its responsibilities transferred to the Department of Rehabilitation.

The Commission disagrees with this argument on two grounds. First, those who utilize the products of guide dog schools are consumers, just as those who utilize eyeglasses or wheelchairs are consumers of those personal aids. Organizationally, therefore, licensure of guide dog schools belongs in the Department of Consumer Affairs.

Secondly, it is doubtful that any existing agency could or would perform the Board's functions as effectively as the Board at less cost than the roughly \$15,000 expended annually by the Board. Fifteen thousand dollars would probably be insufficient incentive for an agency to attempt earnestly to offer the level of service provided by this Board.

The Task Force report also raised the issue of discrimination against users of guide dogs and recommended that "If the Legislature sees the value in the peripheral function of the Board [and so does not abolish it], ... the Board should be empowered to bring legal action against places of public accommodation which discriminate against guide dog users."¹⁵ The Commission disagrees with this recommendation.

Discrimination against guide dog users is much more than a consumer issue; it's a civil rights issue. Proper assignment of responsibility for dealing with discrimination against guide dog users does not belong with the Board, but, rather, with an agency such as the Department of Rehabilitation or the Office of the Attorney General.

BOARD OF LANDSCAPE ARCHITECTS

The need to license landscape architects and the need for a Board of Landscape Architects are questionable on several grounds:

- * Most of those who would employ the services of a landscape architect are sophisticated enough to ascertain an architect's competency without certification assistance from the state.
- * Though commonly referred to as a "practice" act, the law regulating landscape architects contains many exemptions from licensure. As a result, some substantial amount of landscape design is legally practiced by persons who have not undergone the competency tests administered by the Board of Landscape Architects. The Board argues that such exemptions are narrow and relatively inconsequential to ensuring consumer protection because they only permit unlicensed persons to practice landscape design where it is incidental to their primary work. But, it may be asked, if it is truly important to ensure competency in landscape architects, then should any practitioner be exempt from licensure, even if he/she only engages in the activity incidentally to other work?
- * Assessing applicant competency is clearly the Board's major function and activity, there apparently being little need or demand for enforcement or consumer education activity. The primary instrument for assessing competency is a national exam developed by a separate organization and administered by the Board. It would seem that this exam could be administered without utilizing a separate single-purpose regulatory body such as the Board.

Recommendation. The Board of Landscape Architects should be reviewed through the sunset process.

BOARD OF MEDICAL QUALITY ASSURANCE

The Task Force report on this Board did not provide sufficient information to formulate any meaningful comment about its regulatory effectiveness.

STRUCTURAL PEST CONTROL BOARD

Information submitted to the Commission regarding the Structural Pest Control Board is not sufficient to formulate any overall assessment of the Board's effectiveness. However, according to the Task Force report on this agency, the Board has recently embarked on a more active enforcement program which promises to provide an improved level of consumer protection. To the extent that the report's description of this enlarged enforcement program accurately reflects the activity being undertaken, the Board's effort in this area is encouraging.

BOARD OF PHARMACY

The Task Force report on the State Board of Pharmacy is highly critical of the Board, charging it with a general dereliction of its consumer protection responsibilities. According to the report, this dereliction is manifest in many ways including lax enforcement efforts and the approving of "illegal" pharmacy lease agreements. Responses to the report counter that the Board must labor under ambiguous laws, that its enforcement authority is limited and that its inspection force is understaffed.

There appears to be some important truth to both the report's charges and the responses to the report. For instances, it seems that Business and Professions Code sections governing pharmacy lease agreements do in fact lack legal clarity and thus do pose untenable problems of interpretation and enforcement for the Board. However, it also appears that the Board--which has been faced with these difficulties of ambiguity since 1963--has put forth painfully little effort to develop and promote legislative amendments which would correct these statutory weaknesses.

The overriding impression received from the report and the responses to the report is that many changes are necessary--in both the Board's operations and the law--to ensure that pharmacies are not operated at the expense of consumer or taxpayer welfare.

Recommendations. 1) The Legislature should review the effectiveness and effort with which the Board of Pharmacy operates to serve the public interest. In particular, this review should focus on

- a) the Board's efforts to protect consumers from unnecessarily high health care costs resulting from illegal financial agreements between hospitals, pharmacies and doctors,
- b) the possibility that the Board's licensure requirements unduly restrict entry into the pharmacy profession, and
- c) the effectiveness and efficiency of the Board's enforcement operations.

2) The Legislature should review Business and Professions Code Sections 650 and 654--as well as any other pertinent statutes--and clarify their meaning and intent with sufficient specificity to readily guide the Board of Pharmacy's deliberations on proposed pharmacy lease agreements.

3) The Board should develop a records filing and analysis system which would provide reliable, readily accessible information regarding consumer complaint trends, violation trends and repeat violators. The Board should then utilize this system thoroughly to

- a) identify problem areas in consumer protection and
- b) determine the most effective and efficient manner of allocating its resources for the purpose of protecting consumers.

- 4) Contingent upon adequate demonstration that the Board has the resolve and the organization to utilize them effectively, additional inspectors should be made available to the Board.
- 5) The Board should be authorized to impose fines as an option in penalizing violators of pharmacy law.
- 6) The Board and appropriate units within the Department of Health Services should improve and formalize their communications to share information regarding suspected violators of Medi-Cal and pharmacy laws.
- 7) The Legislature should consider authorizing the use of pharmacy technicians.

BUREAU OF REPAIR SERVICES

Nothing presented to the Commission suggests that the Bureau of Repair Services is fulfilling its consumer protection responsibilities in anything less than a highly effective manner. Considering that the Task Force report on this agency was very complimentary of the Bureau, it is somewhat surprising that the Bureau would submit any substantive response to the report. That the response includes a meticulous correction of factual errors and a clarification of ambiguities contained in the report appears to be testimony to the Bureau's conscientiousness. The Commission finds the Bureau's systematic effort to identify and eliminate repeat violators of consumer protection law commendable and exemplary.

BOARD OF CERTIFIED SHORTHAND REPORTERS

In testimony before the Commission, representatives of the Board of Certified Shorthand Reporters argued that a complete and accurate transcript of court proceedings is essential to constitutional due process and to the administration of the legal procedures. Therefore, the representatives concluded, it is imperative that the Board continue to operate and ensure the competency of shorthand reporters. While the Commission fully concurs with the antecedent to this argument, it completely disagrees with the conclusion. The P & V report of 1967 concluded that this Board and its licensing program are "...not providing any essential protection to the public generally." No evidence has been presented which convinces the Commission to conclude otherwise now.

Recommendation. The State Board of Certified Shorthand Reporters and the state licensing of shorthand reporters should be terminated. In addition, the Legislature should remove all legal barriers to the use of electronic recording equipment as a means of securing a record of judicial proceedings.

TAX PREPARERS PROGRAM

As presently constituted, the Tax Preparers Program does not appear to provide a significant level of consumer protection. Its jurisdiction and

regulatory power seem too narrow to effectively regulate the tax return preparation industry in the interest of the consumer.

While there seems little doubt that the consuming public incurs substantial losses each year because of faulty tax return preparation services, findings presented in the Task Force report regarding the Tax Preparers Program suggest that most of the erroneous returns result because of excessively complicated and ambiguous tax laws rather than the workings of unscrupulous or incompetent tax return preparers. In addition, the report's findings raise important questions about the feasibility of developing a method of licensure that would effectively ensure competency and equity in the area of tax return preparation services.

Recommendation. "The Legislature should sunset the [Tax Preparers Program]. The Program should be required to justify continued existence as a registration program with limited authority, or in an altered state to more effectively address consumer protection."¹⁶

(Legislation to enlarge the scope of this program was introduced in the 1977-78 Session. It was passed by the Legislature and vetoed by the Governor. The issues implicitly addressed by that legislation should be reexamined and reconsidered by both the Legislature and the Governor as a part of the sunset review of this program).

FOOTNOTES

- 1 / From testimony of Leonard Grimes, Secretary, State and Consumer Services Agency. Sacramento public hearing of June 29, 1978; page 3 of transcript.
- 2 / California State Department of Consumer Affairs. "Regulatory Review Task Force Report." Sacramento, CA May 31, 1978. Volume I (departmental preface).
- 3 / Ibid.
- 4 / Ibid. Volume IV (cover statement).
- 5 / Ibid. Volume I, p. A-6
- 6 / Ibid. Volume IV (cover statement)
- 7 / Ibid. Volume IV, p. C-1
- 8 / Ibid. Volume IV (unnumbered page)
- 9 / Responses to the Regulatory Review Task Force report submitted to the Commission

v=verbal response presented
at Commission public hearing
of 6/29/78 or 8/31/78

w=written response submitted
to Commission

1. Board of Accountancy (w)
2. Board of Architectural Examiners (v) (w)
3. Board of Barber Examiners (v) (w)
4. Board of Cosmetology (v) (w)
5. Board of Behavioral Science Examiners (none)
6. Psychology Examining Committee (none)
7. Certified Shorthand Reports Board (v) (w)
8. Contractor's State Licensing Board (v) (w)
9. Board of Dental Examiners (w)
10. Bureau of Employment Agencies (v) (w)
11. Board of Registration for Professional Engineers (w)
12. Board of Funeral Directors and Emblamers (w)
13. Board of Registration for Geologists and Geophysicists (v) (w)
14. Board of Guide Dogs for the Blind (w)
15. Board of Landscape Architects (v) (w)

16. Board of Medical Quality Assurance (none)
 17. Board of Pharmacy (v) (w)
 18. Bureau of Repair Services (v) (w)
 19. Structural Pest Control Board (none)
 20. Tax Preparers Program (none)
 21. Board of Vocational Nurse and Psychiatric Technician Examiners (v)
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- 10/ Commission on California State Government Organization and Economy.
"An examination of the Department of Professional and Vocational Standards." Sacramento, CA. September, 1967 pp. 7-8.
 - 11/ Commission on California State Government Organization and Economy.
"The Use of Boards and Commissions in the Resources Agency."
Sacramento, CA. April, 1965, p. 8.
 - 12/ Op. cit. P & V report pp. 22-23
 - 13/ Op. cit. Task Force Report. Volume II, P. I-26
 - 14/ Op.cit. Task Force Report. Volume II, p. L-13
 - 15/ Op. cit. Task Force Report. Volume II, p. J-9
 - 16/ Op. cit. Task Force Report. Volume IV, p. B-9

APPENDIX

July 26, 1967



RECOMMENDATIONS CONTAINED IN THE REPORT ON
BOARDS AND COMMISSIONS IN THE
DEPARTMENT OF PROFESSIONAL AND VOCATIONAL STANDARDS

FINDINGS AND RECOMMENDATIONS -- GENERAL

Groups Requiring State Licensing

Licensing by the State of the members of a profession or vocation should be undertaken only when:

1. Failure to do so would present a clear and definite danger to the general public health, safety, or welfare -- as distinguished from the interests of a particular group or segment.
2. Specific pre-qualification standards can be established and there is reasonable assurance that persons meeting such standards will be able to function effectively in the vocation and those who fail to meet the standards could not.

Licensing by the State of businesses -- as distinct from individual professional or vocational licensing -- is justified only where:

1. A fiduciary relationship exists between the licensee and the public.
2. The nature of the business and the relationship between the licensed business and the public is such that the public requires special protection against fraud.
3. The general law and other remedies available to the public do not afford a reasonable protection or assurance of redress.

A number of the presently licensed groups do not meet one or the other of these criteria, nor do most of the new groups now seeking licensure. It is therefore recommended that:

1. The Legislature, in considering requests for the licensing of new groups, measure the need for such licensing against the criteria set forth in this report.
2. These criteria be applied in considering business and occupational licensing carried out by departments other than the Department of Professional and Vocational Standards.

Mandatory Licensing

If a genuine need exists for protecting the public from persons unqualified by lack of training or good character practicing a particular profession or vocation, and if licensing will give the needed protection, that licensing should be mandatory. To permit unlicensed, i.e., unqualified, persons to function in that capacity is to leave the public unprotected. Specific exclusions or exemptions could be allowed, as, for example, in instances in which an unlicensed person works under the immediate direction of a licensee who accepts full responsibility for the former's actions, or in an institutional setting. It is further believed that so-called "title" or "name-only" licensing does not protect the public.

Multiple License Categories in a Single Occupational Area

Within a given profession or vocation the number of license categories should be held to the minimum essential to protect the public interest. Generally, the public is adequately protected if the licensee meets the basic qualifications for professional or journeyman-level performance in the field. Individuals may specialize within that field but separate licensing should not normally be necessary -- the single license for Physician and Surgeon, regardless of specialty, illustrates the preferred approach.

The Examinations Process

Recommended General Criteria. Recognizing that special situations will need to be accommodated and that a measure of flexibility is desirable, the following criteria are recommended for general observance. Significant deviations from these by a board should be permitted only where the justification is persuasive, and only with legislative sanction or the approval of the Director, Professional and Vocational Standards.

1. Examinations developed or approved by national professional associations and used in a number of states should be used in California unless substantial evidence exists that their use would not provide the public a reasonable protection. Where such national examination does not exist, the subject matter coverage and general content of examinations should be determined by the licensing board and the examinations constructed by specialists and finally approved by the board.
2. The Department of Professional and Vocational Standards should provide a central testing service for all licensing agencies in the Department. This would include, as appropriate, test construction, administration, and grading as well as general examinations consulting services. Such could be provided by a staff unit within the department or under an agreement with the State Personnel Board or outside organizations offering these kinds of services.
3. Wherever feasible, written examinations should be constructed so as to permit economical machine processing and grading.
4. Performance portions of examinations which cannot be evaluated validly by the central examinations staff should be conducted by qualified licensee "commissioners" or, if this is not feasible, by licensee members of the board functioning as an examining committee.
5. Oral examinations should be used only as tests of individual competence and qualifications, as are written examinations.
6. Boards should fix passing grades both for locally prepared and for national examinations used in the State, after consulting with and receiving the recommendations of the central testing service (proposed in Item 2 above).
7. An unsuccessful candidate should be given an opportunity to review his test paper and receive an explanation of any question in doubt; the board should hear and resolve those protests in which its staff is unable to satisfy the individual.
8. Each board should cause to be prepared a summary report on each examination given, including information on the numbers passing and failing, and make the report available to any participant on request.
9. The boards should, in consultation with the Director of Professional and Vocational Standards, develop a uniform policy on the granting of partial credit and the privilege of retaking examinations; this policy could permit variations to meet special situations.
10. The code provisions and board policies regarding reciprocity should be liberalized to permit licensees of states maintaining qualification standards comparable to California's to obtain California licenses without examination or waiting periods.

The effect of the application of these recommended criteria would be to relieve the boards of time-consuming duties of a recurring and technical nature and free them for the policy and deliberative functions which they best perform.

Good Moral Character Requirement

1. The provisions in the several licensing acts imposing good character requirements should be made more consistent and what constitutes "good moral character" explicitly defined. The department should request of the Attorney General a definition of "good moral character" for uniform application in the licensing programs.
2. Individual boards should set clear policy guidelines to aid staff and hearing officers in applying the good character requirements.

Receipt and Processing of Complaints

1. The several licensing boards and the Department should jointly study the present complaint procedures and seek agreement on a uniform method of processing complaints; the possibility of a central complaint recording and screening service should be considered. The need to accelerate the processing must be stressed.
2. Boards should publicize, by all reasonable means, their role of receiving and considering complaints and the kinds of licensee acts or performance prohibited by code provision and board regulation.
3. Licensees should routinely be notified of complaints concerning them whether or not the alleged action constitutes a punishable offense.

Inspectional and Investigative Services

1. All licensing agencies in the Department of Professional and Vocational Standards should utilize the services of the Division of Investigation. ^{1/}
2. To the extent necessary or desirable, subject matter specialization of a portion of the staff of the Division of Investigation should be accomplished.

Legal Services

1. Individual licensing boards should not engage their own legal counsel.
2. All licensing boards should utilize the in-house department counsel for all legal advice other than representation at hearings under the Administrative Procedure Act and litigation in the courts.

^{1/} A Commission-proposed bill to accomplish this is now before the Legislature.

3. The services of the Office of the Attorney General should be used in all hearings under the Administrative Procedure Act and litigation in the courts.

Informal Hearings

The feasibility of introducing this type of proceeding into the licensing enforcement program would be contingent on providing the necessary protection to the individual licensee and to the public served by the licensee. Should this be possible, the use of the informal hearing is recommended. The decision as to whether or not to follow this course and the types of cases to be so processed should rest with each board.

Organizational and Administrative Arrangements

Board Composition.

1. A majority of the members of a board licensing a profession should be drawn from the profession being regulated.
2. The Director, Department of Professional and Vocational Standards, or his designee, should serve as an ex-officio member of each board.
3. On each board licensing a profession there should be a minimum of one public member not a licentiate of any Professional and Vocational Standards licensing agency.
4. Wherever feasible, there should be representatives of professions closely allied to the one being regulated.
5. Letters of appointment to membership on boards should emphasize that each board's activity is a part of a much broader program of licensing and the board is an integral part of the Department, not an autonomous, self-contained entity.

It is appropriate at this point to restate the general criteria for board creation and membership that were developed in the earlier study by this Commission. ^{1/}

1. Appointments to statutory boards or commissions in the executive branch should be made by the Governor.

^{1/} The Use of Boards and Commissions in the Resources Agency, Commission on California State Government Organization and Economy, April, 1965

2. The number of members should not normally exceed seven, with a lesser number on adjudicative bodies.
3. Terms of office should be definitely fixed, preferably at four years.
4. Members should not receive compensation (other than for full-time service) but should receive amply expense allowances.
5. Members should be selected first on their ability to represent the general public interest and only secondarily on their special knowledge of the subject area.
6. Beneficiary or special interests may be represented but only when the need for their special knowledge or support is clearly demonstrated and then only as a minority of the membership.

All of these are recommended for licensing boards with the exception of the minority membership provision in Item 6.

Business Versus Professional Licensing Boards.

1. Boards involved in the licensing of professions and vocations should have policy and regulatory authority.
2. Boards involved in business licensing which meet the criteria set forth in this report should be regulatory and a majority of the members should be non-licensees.

Regulation and Enforcement. In general, licensing boards should be policy, rule-making, and adjudicative bodies. More specifically, they should:

1. Develop, in consultation with the Director, Department of Professional and Vocational Standards, the scope and content of the licensing program for review and enactment by the legislature.
2. Interpret licensing code provisions in their particular areas of competence and develop policies and regulations for implementation of code provisions.
3. Consistent with the licensing code, set education, training, and experience requirements for entry into the profession or vocation. (Requirements of citizenship, residence, character, and the like should be fixed in general licensing code provisions with allowance for exceptions in unusual situations.)

4. In the examination process, and consistent with previous recommendations for use of national examinations, where possible boards should:
 - (a) Determine subject matter coverage and general content.
 - (b) Decide the type of examination to be used.
 - (c) Approve examinations prepared by staff or specialists.
 - (d) Fix regular times and places for giving examinations.
 - (e) Participate to the extent necessary in the conduct of performance tests.
 - (f) Review results and, in consultation with examination specialists, set passing grades.
 - (g) Hear and decide appeals or protests regarding the general validity of examinations.
5. Establish enforcement and disciplinary policies and regulations.
6. Recommend to the Legislature specific causes for license suspension and revocation.
7. Resolve enforcement problems -- general and specific -- referred by staff and others.
8. Sit with hearing officers on cases where professional incompetence or negligence is alleged.
9. Review and make final decision on hearing officer recommendations.

Department-Board Relationships

1. For purposes of continuing liaison, the several licensing agencies in the Department should be grouped as (a) healing arts and related, (b) construction and related, and (c) business and other, and a deputy director assigned to each. Logically, these deputies would serve as members of the boards, representing the Director, should the recommendation that the Director be a member ex officio of each board be accepted. Alternatively, each deputy should attend the regular meetings of the boards in his area of concern.
2. The Department and the boards should jointly carry out intensive studies of code provisions in an effort to achieve a greater uniformity or consistency in licensing requirements common to all. Any proposals for code revision originating with a board should be submitted to the Director for review and comment prior to submission to the Legislature.

3. The Department's administrative analysis section, as well as such service units of central staff agencies, should be used to better serve the boards in the development of more economical and effective administrative procedures and work methods.
4. There should be created a central testing service to provide to all boards the kinds of specialized services proposed elsewhere in this report.
5. The services of the Office of Administrative Adviser should be expanded to provide legal counsel to all boards, short of those of the Attorney-General in connection with formal proceedings.
6. All inspectional and investigative personnel should be transferred to the Department's Division of Investigation, which would then serve all licensing agencies in the Department.
7. In the interests of economy and improved service to the public, those processes susceptible to mechanization should be standardized and programmed for the Department's data processing equipment. A recent study made by outside consultants points to a possible annual savings of \$400,000 by a further mechanization of routine clerical operations. The equipment and systems employed should be compatible and consistent with what is planned elsewhere in the State Government.

Financing of Licensing Programs

1. All licensing programs should be financed from the general fund and all fees collected deposited to the credit of that fund.
2. Fees should be set by the Legislature at a level adequate to meet all program costs, except where such would place an undue hardship on a licensed group.