Case Studies of Occupational Regulation

LEGISLATIVE PROPOSALS IN 1997 AND 1998

APPENDIX B

We sought to gain a better understanding of the issues concerning occupational regulation that have been before the Legislature in recent years. We first compiled a list of all bills presented to the Legislature relating to occupational regulation in 1997 and 1998. Some proposed creating new regulatory programs, one proposed abolishing an established regulatory board, and others proposed broadening an established profession's scope of practice.[1] In Chapter 2, Figure 2.3 presents a list of these bills. From this list we chose to closely examine 13 case studies listed in Figure 2.4 (Chapter 2).

We conducted 13 case studies of occupational regulatory proposals before the Legislature in 1997 and 1998.

The 13 case studies, while not statistically representative of all occupational regulation issues facing the Legislature, were chosen to illustrate a wide range of issues affecting health and non-health professions. They include proposals that passed and those that did not, occupations regulated by departments as well as those regulated by independent boards (or seeking to be regulated by independent boards). Our research included reviewing the proposed legislation, listening to tapes of legislative hearings, and interviewing people on all sides of the issues including legislators, representatives of professional associations, lobbyists, and board and department staff.

ACCOUNTING

Accountants have long been licensed in many states. Licensure of accountants dates back to the Depression, when it was deemed necessary for some outside agent to certify the legitimacy of the bookkeeping procedures of businesses. Currently, certified public accountants are licensed in 42 states and otherwise regulated in 7 others.[2] In Minnesota there are three types of regulated accountants: certified public accountants, licensed public accountants, and unlicensed or inactive certified public accountants. Illustrating the confusion that often surrounds occupational regulation, certified public accountants (CPAs) are actually *licensed* to do public accounting. Licensed public accountants (LPAs), accountants who practiced public accounting prior to 1979, are also licensed to do public accounting. Unlicensed or inactive CPAs are those who have passed the

1 Scope of practice is defined as the techniques and activities legally reserved for license holders.

2 Lise Smith-Peters, ed., *The Directory of Professional and Occupational Regulation in the United States* (Louisville, KY: The Council on Licensure, Enforcement and Regulation, 1994).

CPA exam, but have not gained the experience necessary to become a licensed CPA, or those who have been licensed CPAs but have allowed their license to lapse. Unlicensed CPAs can use the title CPA, but cannot independently practice public accounting—thus the level of regulation for unlicensed CPAs is certification, as the term is used nationally. In general, accountants are not required to be licensed, certified, or registered with the board and can practice any type of accounting that does not include public accounting, or performing independent audits which result in professional opinions concerning the fairness of a company's financial statement.

A 1997 bill proposed to increase the educational requirement for CPAs.

There have been two notable legislative proposals involving the regulation of accountants in recent years. The first coincides with a national campaign by both the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy (NASBA). It proposes to increase the educational requirements for a CPA from a high school diploma to 150 undergraduate credit hours, which is five years of post secondary education. Forty-four states have implemented the 150 hour requirement. Although the campaign began in the early 1990s and has the support of both the Minnesota Society of Certified Public Accountants and the state Board of Accountancy, this change has not yet won approval from the Minnesota Legislature. The proposal has faced opposition from several groups including state community colleges offering two-year degrees in accounting. The two-year programs fear that the 150 hour requirement would divert students from their programs to colleges and universities offering the full program. They also argue that the added expenses associated with attending a five-year program would unnecessarily exclude poor and minority students from the profession. In recent hearings legislators have tested the proposal against a Chapter 214 criterion by asking whether the proposed changes would actually protect the public. While sponsors of the proposal argue that the 150 hour rule would improve public protection against certain risks, most of their arguments have to do with bringing the standards for public accounting in Minnesota in line with the standards in other states. In 1997, H.F. 301 and S.F. 239 were passed out of the Commerce Committee of both chambers and then referred to the respective education committees, where the bills were stalled.

The second notable legislative development occurred in 1998 when the legislature passed H.F. 2308/S.F. 2014, a bill that broadens the disciplinary capabilities of the Board of Accountancy. The board is now able to discipline accountants who are not licensed or certified as CPAs or LPAs. It is too early to measure the extent to which this will affect the practice of accountancy. In Minnesota this model of regulation has been used to regulate unlicensed mental health practitioners since 1996, with some success.

In sum, the title *certified* public accountant is a good example of the confusing terminology that can be found in occupational regulation. Since this title is used nationally it is unlikely to change. Legislators are likely to face ongoing pressure to raise the educational requirements for a CPA to 150 credit hours as the AICPA and NASBA continue to press nationally for this and other aspects of their model Uniform Accountancy Act. The Minnesota Legislature's resistance to this campaign can be seen as a successful application of Chapter 214, which requires consideration of "[w]hether the unregulated practice of an occupation may harm or endanger the health, safety, and welfare of citizens of the state and whether the potential for harm is recognizable and not remote." However, it may be that

Chapter 214 ought to include additional potentially important criteria, such as the effect of regulatory decisions on inter-state mobility. Finally, the power now vested in the Board of Accountancy to discipline unlicensed and uncertified accountants represents an innovative form of regulation that deserves continued attention as a potential less restrictive form of regulation.

ARCHITECTURE, ENGINEERING, AND ALLIED PROFESSIONS

In Minnesota architects, engineers, land surveyors, landscape architects, geoscientists (geologists and soil scientists), and interior designers are regulated by a single board. Architects, engineers, land surveyors, and landscape architects are licensed in well over half of the states, while geoscientists and interior designers are regulated in fewer states (see Table B.1).

Table B.1: Number of States Licensing Architecture, Engineering, and Allied Professions, 1994

	Number of States Licensing
Architect	50
Land Surveyor	49
Professional Engineer	41
Landscape Architect	34
Geologist	13
Soil Scientist[a]	0
Interior Designer[b]	4

[a]In 1994 Soil Scientist were certified in 2 states.
[b]In 1994 Interior Designers were certified in 7 states, including Minnesota.

SOURCE: Lise Smith-Peters, ed. *The Directory of Professional and Occupational Regulation in the United States* (Lexington, KY: The Council on Licensure, Enforcement and Regulation, 1994).

A 1998 bill proposed abolishing the Board of Architecture.

A 1998 legislative proposal, H.F. 2827, would have abolished the Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design (AELSLAGID). The proposal was inspired by a professional engineer who is also a former AELSLAGID board member. This individual has filed several hundred complaints with the board, typically alleging that certain construction projects do not follow the statutory mandate to include a licensed engineer. The complaints have resulted in only a limited number of disciplinary actions. Thus, H.F. 2827 is based on the premise that the board does not protect the public as a whole, but rather protects certain construction companies by allowing them to break the law. The bill failed to attract any co-authors in the House and it did not receive any hearings.

Given the lack of support for this bill in either the House or Senate, it is likely that the bill was intended as more of a warning to the board than an actual attempt to abolish the board. Overall, the primary point that this case seems to make is that

board performance could be better monitored through increased oversight. With increased oversight, whether through sunset reviews, improved biennial reporting, or by some other means, the Legislature and the public could have more confidence that regulatory boards are truly working in the public's interest.

REGISTERED DENTAL ASSISTANTS

Legislation in 1998 sought licensure for registered dental assistants.

Registered dental assistants have been regulated by the Board of Dentistry since 1977. In 1994 they were registered in 4 states and regulated in 11 states.[3] (Unregulated dental assistants are employed in Minnesota but do not perform any intra-oral functions.) In 1998, S.F. 3408 was introduced. The proposed legislation sought licensure for registered dental assistants. The bill did not change the activities defining the scope of practice for dental assistants, and it would have given registered dental assistants the same level of credentialing as dental hygienists. The Minnesota Dental Assistants Association (MDAA), which represents about 20 to 30 percent of Minnesota dental assistants, supported the bill. The board did not oppose S.F. 3408 because registered dental assistants are required to meet education, exam, and continuing education requirements as do dental hygienists. The bill was introduced late and received no hearings.

The case study of dental assistants provides an example of an attempt to change the inconsistent use of the words certify, register, and license in Minnesota. Since registered dental assistants have a defined scope of practice, education, exam, and continuing education requirements, it is logical that they be licensed. The fact that they are currently referred to as registered dental assistants, yet they have title protection and practice protection illustrates the need for a review and standardization of terminology as we recommend in Chapter 3.

LEAD WORKERS

In 1998, legislation was enacted bringing Minnesota law into line with EPA requirements for licensing lead workers.

Lead workers were regulated in Minnesota in 1993 by the Department of Health's Division of Environmental Health. Only workers doing intentional lead removal are required to be licensed. If an individual or contractor removes lead incidental to a remodeling project, no license is required. Furthermore, these rules only apply to work done on buildings that have the potential to be homes or places frequented by children.

The impetus for regulating this occupational group was the 1992 Federal Housing Act, which mandated regulation of lead removal, and the 1996 Environmental Protection Agency (EPA) requirements that followed. In 1998 H.F. 2334 and S.F. 2108 were introduced to bring Minnesota statutes in line with the EPA standards relating to lead removal. Recognizing the need to update Minnesota's standards, and desiring to avoid the alternative of direct regulation by the EPA, the bills were backed by the Minnesota Department of Health. There were no groups opposed to the changes and the bills were passed with minimal discussion.

3 Ibid.

In this case the state proposal for a change in occupational regulation originated from a federal requirement. Prior to this federal initiative only two states regulated lead workers.[4] It is debatable whether the licensing of lead workers meets the criteria for regulation established in Chapter 214, especially since licensure is only required for specific lead removal projects. However, this case provides an example of how states must sometimes adjust regulatory policies in order to pre-empt federal regulation.

Another issued raised in this case relates to the financing of occupational regulation. The fees generated by licensing lead workers do not cover the costs of regulation. The program receives some support from federal grants, but even with federal funds the licensing program is not self-supporting. This is a problem in light of Minnesota Statutes §16A.1285, which requires occupational regulation to be self supporting.

MORTUARY SCIENCE PROFESSIONALS

In 1994, 35 states regulated embalmers and 46 states regulated funeral directors.[5] Mortuary science professionals are currently regulated in Minnesota by the Mortuary Science section of the Department of Health.

In 1998, the Health Department succeeeded in changing licensure requirements for morticians after trying to get a bill passed for three years.

In 1997, H.F. 367/S.F. 199 was passed, changing the current licensing program. The legislation for morticians and embalmers included changing age and education requirements for licensees, and limiting the number of interns per license holder. This is the first major change to the statute since the 1950s, and it brings Minnesota in line with other states. It also accommodates people who are entering the field as a second career by giving more flexibility to education requirements. Although there was no opposition to the bill, it was presented to the Legislature for three consecutive years before it passed. Health Department staff involved in supporting the bill say the hardest part of the process was managing the bill in the Legislature.

This case study illustrates how difficult and time consuming it can be to pass legislation regarding occupational regulation. The legislative process for the mortuary science profession took at least three years, even without any opposition. We have heard that the Legislature is more likely to pass bills that have consensus among the participants, but that did not happen the first two years mortuary science bills were introduced.

Although the new statute appears to have more stringent education requirements, the department says the requirements in Minnesota mirror standards from other states and make it easier for people to enter the field if they already have some education. Adjusting the requirements to match those of other states indicates a growing awareness of professional mobility among those involved with mortuary sciences, a trend that is also affecting other occupations.

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4 Ibid.

5 Ibid.

NATUROPATHIC DOCTORS

Naturopathic doctors (NDs or naturopaths) are defined as "trained specialists in a separate and distinct healing art which uses non-invasive natural medicine."[6] Naturopathic doctors are currently licensed in nine states,[7] but they are not regulated in Minnesota. Efforts of naturopaths to secure licensure in Minnesota can be traced back to an unsuccessful proposal in 1909. However, after the passage of the Basic Sciences Act in 1927, naturopaths who passed the Basic Sciences Examination were entitled to registration. In 1974 much of the Basic Sciences Act was repealed, including the registration of naturopathic doctors.[8]

Naturopathic physicians have sought licensure in recent years.

Naturopaths have again sought licensure in recent years. In 1987 the Minnesota Association of Naturopathic Physicians (MANP) submitted a proposal for licensure under an independent board of Naturopathic Physician Examiners to the then-operative Human Services Occupations Advisory Council (HSOAC).[9] The HSOAC's final report declined to recommend state regulation, although a tie vote by the council narrowly defeated a recommendation for the registration of naturopathic doctors. According to the HSOAC report, the proposal failed primarily on the cost effectiveness criterion in Chapter 214, since it would have been difficult for the five naturopaths in Minnesota who would have qualified for regulation at that time to provide the fee revenue necessary to support an independent board.

Another proposal for licensing naturopaths was presented to the Legislature in 1997.[10] The proposal was modeled after the acupuncturists' practice act and proposed regulation through an advisory board to the Board of Medical Practices. This proposal was partially motivated by disciplinary actions brought by the Board of Medical Practices against a practicing ND. This particular ND acknowledged that she was performing activities reserved by statute for medical doctors, but correctly pointed out that the practice act for physicians is extremely broad. She argued that as a graduate of a four-year post-graduate program in naturopathy her training was rigorous and adequately prepared her to provide the services that she had provided. Indeed, the extensive training required by the National Council on Naturopathic Education serves as the basic justification

6 Wendell W. Whitman, N.D., M.Di., "What is a Naturopath," WWW document, URL http://www.cnra.org/what.is.a.naturopath.html, December 8, 1998. Mr. Whitman is an associate of the Council on Naturopathic Registration and Accreditation, based in Washington D.C. His definition of Naturopathic Doctors continues: "... Naturopathic doctors are conventionally trained in subjects such as anatomy, physiology, counseling, dietary evaluations, nutrition, herbology, acupressure, muscle relaxation and structural normalization, homeopathy, iridology, exercise therapy, hydrotherapy, oxygen therapy and thermal therapy. Some practitioners are also trained in additional specialties such as acupuncture or natural childbirth."

7 Smith-Peters, *The Directory of Professional and Occupational Regulation in the United States*.

8 *Complementary Medicine: A Report to the Legislature*, (St. Paul, MN: Minnesota Department of Health, Health Economics Program, January 15, 1998).

9 *Human Services Occupations Advisory Council Recommendations on the Regulation of Naturopathic Physicians,* (St. Paul, MN: Minnesota Department of Health, October 27, 1988). The Staff Recommendation and Commissioner's Determination that normally accompanied HSOAC reports were not made in this case since funding for the study was stopped prior to completion.

10 H.F. 396/S.F. 523 and H.F. 780/S.F. 561.

offered by proponents of licensure. Ironically, the educational requirements also served as the greatest impediment to the 1997 proposal. Among the most forceful opposition to the bill was a diverse group of alternative medical practitioners, many who use the title "naturopath." Most if not all naturopaths who actively opposed the proposal would not have met the educational requirements, and feared possible restrictions on their practices if the proposal passed. Ultimately, the 1997 proposal received hearings but did not win approval. However, it did provide impetus for a report on Complimentary and Alternative Medicine by the Minnesota Department of Health, which concluded that there is not presently enough information to justify government regulation of naturopaths or other alternative medical providers.[11]

The case of naturopathic doctors reveals some of the difficulty that smaller professional groups face in attempting to gain state regulation. Given that the most vocal opposition to the bill came from other practitioners of naturopathy, the proposal to license "qualified" naturopathic doctors also illustrates the way occupational regulation can be used to "fence out" potential competitors. However, the same could be said of the long-established regulation of medical doctors: the medical doctors' practice act effectively prevents naturopathic physicians from exercising the full scope of practice in which they have been trained.

The case of naturopaths also provides an example of the Legislature using a report to inform its decisions regarding occupational regulation. In some ways this demonstrates the ability of the Legislature to implement studies on an "as needed" basis, which would seem to negate the need to establish a more institutionalized sunrise review process, as we recommend in Chapter 3. However, the report casted a broad net and concluded with a blanket recommendation against regulating any of the professions providing complementary and alternative medical services. While the report does represent a laudable attempt to bring more objective reasoning to bear on the issue, it was not focused on the particular proposal at hand, as was the more useful HSOAC report issued in response to the 1987 proposal.

NURSING

Nursing is one of the oldest regulated professions in Minnesota. The profession was first licensed in 1907 and is currently one of the largest regulated professions in the state. The Board of Nursing licenses about 80,000 registered nurses and licensed practical nurses. Like the entire health care system, the nursing profession has undergone many changes in recent years. The advent of new technology and new health service organizations has increased the role of nurses, and less trained health workers are now performing some of the duties previously reserved for nurses. These changes were the impetus for two bills presented to the Legislature in 1997.

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11 Complementary Medicine: A Report to the Legislature. The study was mandated through an amendment to the 1997 Omnibus Health and Human Services Appropriations Act - *Minn. Laws* (1997) ch. 203, sec. 3, subd. 2.

The first bill, H.F. 1117/S.F. 898, would have increased the scope of practice for nurses. It would have allowed nurses to pronounce death in a situation when working under anyone currently authorized to pronounce death, and it would allow nurses to implement medical protocols as delegated by a licensed physician. The bill also would have increased the board's ability to revoke temporary permits, and increase the situations warranting automatic suspension of nurses. The bill received no hearings.

The second bill, H.F. 1238/S.F. 131, requested title protection for certified nurse anesthetists. It received no hearings. This bill was part of an ongoing dispute between nurse anesthetists and anesthesiologists over billing practices and the role nurses play in administering anesthesia. This is an example of the scope of practice disputes that are often brought before the Legislature.

Changes in health care delivery have led to legislative proposals affecting the licensure of nurses.

This case study serves as an excellent example of several recurring themes revealed in our study. The first issue is consensus. The bill that would have increased regulated activities for registered nurses and licensed practical nurses was supported by the board, but opposed by the Minnesota Nursing Association. The association was leery of giving licensed practical nurses more responsibility, thus jeopardizing patient care and the jobs of registered nurses. Both groups, the board and the association, say it is difficult to pass legislation without agreement among the participants.

A second issue for nurses is the changing scope of medical actions nurses perform and professional competency. As mentioned earlier, the nursing profession is changing to reflect expanding technology and medical standards as well as the way medicine is practiced in health maintenance organizations. This leads to changes in the duties nurses perform. Questions then arise about what actions nurses can perform without harming a patient. If licensure assures minimal competency, are nurses still competent to protect the public as their roles change? The continual technological evolution in the field of nursing and health care in general lend support to the calls for enacting a more effective means of assessing continued professional competency.

A third legislative issue affecting nurses also relates to other health care professions. There has been an increase in complimentary and alternative medicine groups requesting occupational regulation, and these groups have practices that mirror those of nurses. There is a concern that licensing new groups will prevent nurses from performing some duties, thus raising the cost of health care as consumers seek other professionals to perform specific services. Since there is no longer a HSOAC process review, and the questions of the sunrise provisions of Chapter 214 are often ignored, most groups are not required to answer questions about harm, training, and alternative means of regulation or private credentialing.

OPTICIANS

Opticians dispense eyeglasses and contact lenses.[12] Opticians are currently licensed in 21 states, but have never been regulated in Minnesota.[13] The Minnesota Opticians Society (MOS) has been trying to gain some form of regulation for opticians for a number of years without success. The 1997 proposal for licensure, H.F. 886/S.F. 851, received no hearings in either the House or the Senate.

Opticians have sought regulation in recent years.

Opticians see a need for licensure because, like pharmacists, they are involved with dispensing prescriptions. The MOS argues that improper dispensation of eye glasses and especially contact lenses can be harmful to the eye and cause accidental injuries. Opticians also express a need to upgrade the services provided to the public as well as their professional image.[14] The MOS also points out that opticians require specialized skills and that an exam to assess the necessary skills is already available: the American Board of Opticianry (ABO) offers an examination leading to private certification of opticians and Anoka-Ramsey Community College offers a two-year program in preparation for the ABO exam.

Opposition to regulating opticians comes from many quarters. Large optical stores oppose regulation because of the added labor costs involved with hiring a regulated work force. Ophthalmologists and optometrists are also generally opposed, partially because of the perceived encroachment on their practices. Some ophthalmologists and optometrists dispense contacts and eyeglasses as one part of their business operations and would, therefore, be hostile to regulation which might threaten the viability of their in-house operations.

A similar proposal was submitted to the Department of Health's Human Services Occupations Advisory Council (HSOAC) in 1989.[15] The HSOAC broke opticians into two professional groups: spectacle dispensers and contact lens dispensers. The HSOAC did not recommend any form of regulation for spectacle dispensers, but did recommend voluntary registration for contact lens dispensers. On January 18, 1989 the Commissioner of Health issued a determination that concurred with HSOAC recommendations, setting in motion a system of certification for contact lens dispensers.[16] The MOS appealed this decision, which was subsequently

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12 To avoid confusion *opticians* should be differentiated from *opthalmologists*, who are licensed medical doctors specializing in eye-care and eye surgery, and *optometrists* who are licensed to examine eyes and prescribe glasses, contacts and therapeutic drugs.

13 Smith-Peters, *The Directory of Professional and Occupational Regulation in the United States*.

14 One optician cited a recent 20/20 program which suggested that half of all eyeglasses are made improperly.

15 As discussed in greater detail in chapter 1, the Human Services Occupations Advisory Council is not currently operative.

16 The HSOAC and the Commissioner's use of the term "registration" is consistent with a system of certification, as used in our report. The Commissioner's summary of findings, conclusions and recommendations (January 1, 1989) states: "...contact lens fitters will be placed on a roster maintained by the state after meeting predetermined qualifications and will be permitted to use a specific occupational title(s). The protected title will be "contact lens technician" and close variations of this title."

re-affirmed by the Commissioner. However, during rule making Health Department staff found that there were too few contact lens dispensers in the state to make a certification program financially viable, and the process was dropped.

An optician involved in the HSOAC process indicated that hearings directly before the Legislature would be preferable, but opticians involved with the most recent proposal indicated their frustration with the lack of structure and direction under the current arrangement. Opticians involved with the most recent proposal also indicated frustration with the amount of resources that they needed to spend in order to familiarize themselves with the particulars of getting their proposal introduced. They eventually hired a lobbyist who was successful in finding authors, but unsuccessful in securing a hearing.

Opticianry is not a profession where decisions regarding regulation are clear cut. While many of the materials that are used by opticians do constitute a potential immediate danger to the consuming public, there are some safeguards already in place. For example, contact lens materials and solutions are regulated at the federal level by the Food and Drug Administration. Additionally, consumers who have been wronged by incorrectly filled prescriptions could seek legal remedy through other means, such as small claims court and the better business bureau. Furthermore, consumers can seek out ABO certified opticians if some level of quality assurance is desired. However, if it is true that half of all glasses prescriptions are filled incorrectly, the costs to the public—in terms of blurred vision, headaches, and accidents—may be quite large. Given the countervailing issues involved and the added complications associated with powerful professional groups, the case of opticians provides an example of a proposal that could benefit from the added measure of objectivity that would accompany a more formal review of the proposal. Although a similar proposal received such a review in 1989, the Legislature would have to decide whether the current proposal deserved another review, based on factors including changes to the proposal and changes in the affected profession, such as technological advances.

PHYSICAL THERAPISTS

Physical therapists have asked the Legislature to create a Board of Physicial Therapy.

Physical therapists are regulated in all 50 states and physical therapy assistants are regulated in 36.[17] Minnesota is one of two states that regulates physical therapists through *certification* rather than licensure.[18] Physical therapists have been regulated under the Board of Medical Practices since 1951 and there are currently 2,880 certified physical therapists in Minnesota.

17 Smith-Peters, *The Directory of Professional and Occupational Regulation in the United States*.

18 Minnesota statute provides title protection, but not practice protection, to Physical Therapists; that is, anyone may provide services that are equivalent to those provided by a Physical Therapist, but they may not use the title "Physical Therapist," or anything that resembles it, unless they have been certified by the board (*Minn. Stat.* §148.71). Consistent with *Minn. Stat.* §214.001 this level of regulation is referred to as "registration," which is equivalent to "certification" as used in our report.

A 1997 legislative proposal, H.F. 885/S.F. 303, backed by the Minnesota Chapter of the American Physical Therapy Association (APTA), would have placed the regulation of physical therapists under the auspices of an independent Board of Physical Therapy.[19] The proposal was eventually incorporated into the Health and Human Services omnibus bill that passed through the House of Representatives. However, in conference committee the proposal was replaced by a study. The Health Department is currently convening "a workgroup to study the feasibility and need of creating a separate Board of Rehabilitation Therapy Occupations, including physical therapists, occupational therapists, speech language pathologists, audiologists, hearing instrument dispensers, and any other related occupation group that the commissioner determines should be included."[20] The Minnesota APTA is frustrated with this development since it perceives the study as unnecessarily delaying the creation of an independent Board of Physical Therapy.

PLUMBERS AND WATER CONDITIONING PROFESSIONALS

Plumbers are licensed by the Department of Health, but only need a license to work in cities of 5,000 people or more.

Plumbers are regulated because of the health and safety issues that surround municipal water and sewer systems. Journeymen plumbers are licensed in 29 states and water conditioning installers, involved in the installation of water softeners, are licensed in only two states: Minnesota and North Dakota.[21] In Minnesota, plumbers and water conditioning professionals are licensed by the Environmental Health Services Division of the Minnesota Department of Health, but only required to have a state license when working in cities of 5,000 or more.[22] The distinction between small and larger cities is not related to any public purpose, but has remained in statute since 1933 largely because of the vested interests of various plumbing and water conditioning businesses, unions, and professional organizations.

Recent legislative proposals, H.F. 1795/S.F. 1597 for plumbers and H.F. 3244/S.F. 2857 for water conditioning contractors, would have required state wide licensure of both plumbers and water conditioning contractors. Neither received hearings. These proposals were not put forward by the Department of Health, but the department has supported state wide licensing of plumbers since at least the early 1990s when it was involved with a working group on plumbing and water safety issues. In 1991 this working group forwarded a proposal for state wide licensure

19 The proposal also included a language change which would replace the term "certificate of registration" with "license." This language change could have caused some confusion; although under *Minn. Stat.* §214 licensure is a level of regulation reserved for practice protection, the proposal would not have actually changed the current level of regulation, only the terminology.

20 *Minn. Laws* (1998), ch. 407, art. 2, sec. 108.

21 Master plumbers are licensed in 23 states and apprentices are licensed in 8, registered in 9. Smith-Peters, *The Directory of Professional and Occupational Regulation in the United States*.

22 "Plumbers" includes master plumbers, journeyman plumbers, and apprentices. Apprentices are not licensed but registered. Water conditioning installers include both installers and contractors. In cities of 5,000 or more water conditioning installers are limited to working on one- or two-family dwellings.

of plumbers, partially based on the fact that most code violations investigated by the Health Department result from work done by unlicensed plumbers. The department has reservations about proposals for state wide licensure of water conditioning contractors, because as a group water conditioning professionals have a questionable record in terms of code compliance. In either case the department has not recently been engaged by the Legislature in discussions concerning these issues.

Based on national comparisons, the need for licensure in the case of plumbers and certainly water conditioning contractors is open to debate. However, the Legislature certainly would have a hard time justifying, in terms of the guidelines of Chapter 214, the distinction between cities of more and less than 5,000 inhabitants. Concerns over public health, safety, and welfare take an obvious backseat to the professional turf created by the enduring population distinction. This case illustrates power of professional interests within the Legislature relative to the limited influence of the regulatory bodies themselves.

PRIVATE DETECTIVES AND PROTECTIVE AGENTS

The Board of Private Detectives and Protective Agents regulates about 300 people. Since so few people are regulated by the board, the biennial license fees are among the highest in Minnesota: $415 to $515 for individuals and $815 to $965 for business licenses. If someone practicing as a private detective or protective agent works for another licensed entity, an individual license is not necessary. The professional activities for these occupations are expanding as private detectives and protective agents assume responsibilities previously left to law enforcement personnel.

In 1998, two bills relating to the regulation of private detectives were introduced.

In the last legislative session two bills concerning the board were introduced. The first, H.F. 1552/S.F. 1395, received hearings in the House in 1997. It would have granted the board authority to issue cease and desist orders and impose penalties on unlicensed people. Similar powers have been granted to the Board of Accountancy and the Office of Mental Health Practitioners.

In 1998 the second proposal, H.F. 2533/S.F. 2199, received hearings in the Senate but did not pass. This bill would have explicitly required licenses for people acting as bail bondsmen and bounty hunters. Because the board believes bail bondsmen and bounty hunters require licensure under existing law the board considered the proposal to be a simple clarification of language. However, industry representatives fought the bill, claiming licensure would be a financial hardship.

The 1998 initiative illustrates the confusion of existing legislation. The board and the regulated occupations have different opinions of what activities require a board license. When the board supported legislation to clarify this issue, the bill was defeated largely because of the opposition of the organized industry representatives. Furthermore, the board staff feels there is a misunderstanding of

the board's role because professionals expect the board to lobby for the profession rather than protect the public.

REAL ESTATE APPRAISERS

During the 1997 legislative session the Department of Commerce Omnibus Bill, H.F. 1032/S.F. 501, included a provision to change the licensing requirement of real estate appraisers by increasing the training requirements for two classes of licensees and reducing the requirement for the entry level appraiser.

In 1997, legislation was enacted that brought Minnesota into conformity with national practice in regulation of real estate appraisers.

The Minnesota Association of Professional Appraisers (MAPA) asked Commerce to sponsor this provision because the change was being made across the country in response to a recommendation by the national organization that sets professional credentials and standards for practice. The need for national standards dates from the 1970s when mortgages started to be traded in the secondary market and a need was defined for uniform appraisal standards. The Minnesota legislation was the culmination of a long process nationally and locally.

Once the Commerce Department agreed with the Minnesota Association of Professional Appraisers that a change in licensing and continuing education requirements was needed in order to bring Minnesota into conformity with national standards, the legislative proposal was not controversial. Commerce did not agree with MAPA's request to establish increased requirements for entry level appraisers because it restricted access to the occupation. MAPA was willing to drop that part of the proposal because it was not part of the national compact. Commerce argued against the proposal. MAPA chose to work through the Department of Commerce and get its approval rather than approaching the Legislature directly. This case is an example of the system working reasonably well in that policy issues were studied by Commerce, a satisfactory compromise was reached, and a needed change was made to licensure requirements.

UNLICENSED MENTAL HEALTH PRACTITIONERS

In Minnesota, a diverse group of practitioners offer mental health services including unlicensed mental health practitioners. Unlike adjacent professions such as clinical psychology, social work, and marriage and family counseling, unlicensed mental health practitioners are not licensed, registered, or certified, but they are disciplined by the Office of Mental Health Practitioners (OMHP) in the Department of Health if consumers or other professionals file complaints. The investigation and disciplinary process is funded by general fund allocations. This is different than most other occupations which receive special fund allocations based on expected fee income. One of the potential benefits of this model is that it allows the department to collect statistics about complaints which could indicate whether the group needs a stronger form of regulation.

During the last two sessions, bills were introduced to license professional counsellors.

In the last two legislative sessions bills were introduced to license some mental health practitioners under the title professional counselors and establish education and practice criteria. Professional counselors are licensed in 46 states.[23] The 1995 bill, H.F. 66/S.F. 891, requested licensure for professional counselors but made provisions for people who do not meet the entry requirements to continue practicing as unlicensed mental health practitioners as long as the title professional counselor is not used. Proponents of the bill said that registration is not enough to protect the public. Although the Department of Health did not study the issue and stayed neutral during the hearings, the bill was passed. It was vetoed by the Governor, who commented, "The state should tread lightly when it comes to occupational regulation. If there is a need for regulation, the state should impose the minimum amount of regulation necessary to protect the public." He further commented that this bill would regulate a myriad of professions but exempt other professionals who practice similar services. A similar proposal, H.F. 669/S.F. 925, was introduced in 1997, but received no hearings.

The recent legislation requesting licensure of professional counselors shows the confusion currently surrounding regulation terminology. Although the proposal requested licensure for professional counselors it actually only offered title protection, equivalent to certification under the national terminology. It makes a good case for standardizing language as we recommend in Chapter 3.

SUMMARY

The 13 case studies described above illustrate the variety of occupational regulation legislation presented to the Legislature each year. The case studies represent occupations seeking new regulation such as the naturopaths, and those wishing to expand their scope of practice such as nurses. The issues also represent changes in board authority as when the Legislature granted the Board of Accountancy authority to discipline unregulated professionals. In addition, the case studies show that there can be confusion over terminology and inconsistencies in the proposed regulations. For example, registered dental assistants argue that licensure more accurately reflects the practice protection they have as well as the education, exam, and continuing education requirements needed to practice. Sometimes inconsistencies in regulation become entrenched in statute, as is the case with plumbers only needing licensure in cities of 5,000 or more. Lastly, the issues represent tenacity of the parties supporting occupational regulation proposals. Many of these bills have been brought before the Legislature multiple times. For instance, the mortuary science bill was introduced for three consecutive years before it was passed, despite having no active opposition. The bill to regulate unlicensed mental health practitioners was vetoed in 1996, yet it was re-introduced in 1997. These issues demonstrate the breadth and complexity of occupational regulation proposals facing legislators in recent years.

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