
Effectiveness of Occupational Regulation

CHAPTER 3

This chapter presents our findings on the effectiveness of Minnesota’s system of occupational regulation. The question of effectiveness is difficult to answer because there are many regulated occupations and many agencies of government with regulatory authority. It goes without saying that some regulatory programs are working well and others are not. This chapter focuses on the system as a whole and asks:

- **Is Minnesota’s policy on occupational regulation applied consistently?**
- **Does occupational regulation receive adequate oversight from the Legislature?**
- **Are complaints against license holders investigated and resolved in a timely fashion?**
- **Is occupational regulation needed as often as it is used? Are there problems in the way occupational regulation is organized and financed?**

There are problems with occupational regulation that require legislative attention.

In discussing these issues we offer a few recommendations for the Legislature and agency and board managers to consider, but we do not recommend sweeping reforms of the sort that have been proposed by some studies of occupational regulation in the past. Such recommendations have been largely ignored in Minnesota in the past, and our interviews with policy makers suggests that the climate for major organizational changes is probably less receptive now.

In general, we find that there are problems with occupational regulation in Minnesota that require attention. The kinds of problems we see in Minnesota are discussed at length in the national literature and have been the subject of reform efforts around the country and in Minnesota on several occasions in the past. See Chapter 1 for a review of the history of occupational regulation in Minnesota and other states. Many of the problems are chronic and reflect the conflict between opposing interests that occupational regulation attempts to reconcile. Many people we talked with recognize the imperfections in the system but are pessimistic about reform.

We suggest ways to improve the administrative structure and procedures of occupational regulation. We do not, however, make recommendations on the core policy issues of “whether to regulate, and if so, how much.” Those are policy

decisions that must be made by elected officials. And, we think the Legislature already has enacted into law good criteria for making those choices. The “key” is the Legislature’s willingness to apply those criteria more rigorously and consistently, both in deliberations on proposals for new or expanded regulation and in retrospective reviews of regulatory authority already enacted.

MINNESOTA POLICY

Minnesota’s occupational regulatory policy is set out in Minnesota Statutes Chapter 214, and elsewhere in statutes and rules. All proposals for new regulation are supposed to be evaluated against the criteria presented in Chapter 214. On the basis of interviews and 13 case studies of recent proposals for regulation, we have concluded:¹

- **The state’s policy on occupational regulation articulated in Chapter 214 is not applied consistently or effectively.**

Chapter 214 says that no regulation shall be imposed upon any occupation unless required for safety and well-being and lays out four criteria for regulation:²

- Whether the unregulated practice of an occupation may harm or endanger the health, safety, and welfare of citizens, and whether the potential for harm is recognizable and not remote.
- Whether the practice of an occupation requires specialized skill or training and whether the public needs and will benefit by assurances of initial and continuing occupational ability;
- Whether citizens are or may be effectively protected by other means; and
- Whether the overall cost effectiveness and economic impact would be positive.

If regulation is found to be necessary, the statutes require the least restrictive mode of regulation to be used. In ascending order, these are:

- Creation or extension of common law or statutory causes of civil action and the creation or extension of criminal prohibitions;
- Imposition of inspection requirements and the ability to enforce violations by injunctive relief in the courts;
- Implementation of a system of registration (defined in Minnesota as title protection);

Minnesota law outlines criteria for occupational regulation.

¹ A brief description of the case studies is presented in Appendix B.

² *Minn. Stat.* §214.001

- Implementation of a system of licensing (practice protection).

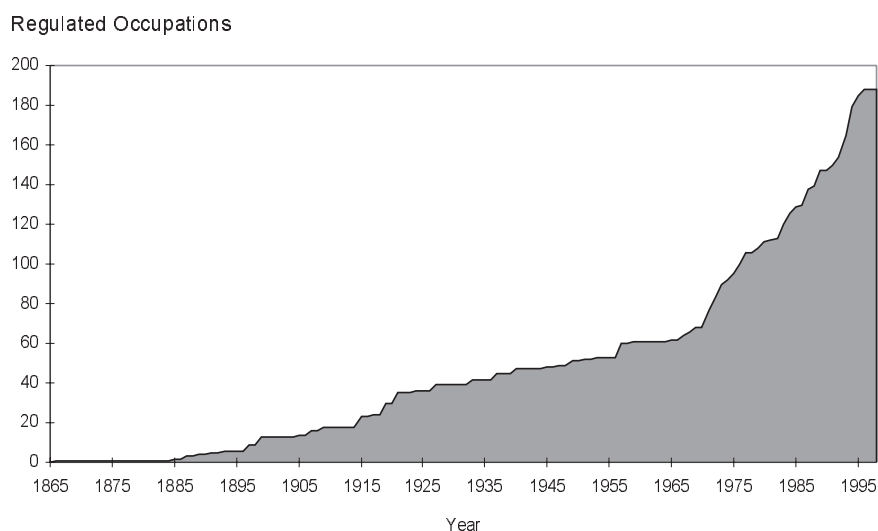
There are several reasons why it has been difficult to apply the policy in a consistent manner:

- **There has been a proliferation of proposals for occupational regulation in recent years.**
- **Legislative committees often have not had time to consider regulatory proposals in light of the criteria and hear testimony that might provide needed information.**
- **Committees often do not have staff or agency reports and recommendations that could provide needed information.**

Legislators and others have observed that there has been a proliferation of requests for licensure in recent years. Figure 3.1 shows the explosive growth of regulated occupations in recent decades in Minnesota. Table 3.1 shows the number of occupations or professions first licensed in various time periods. During the period 1866-99 there were 13 occupations licensed including physicians, dentists, attorneys, and barbers. In the period 1900-09 there were 5 new occupations regulated, in the 1910s there were 12. As the table shows, between 1920 and 1970, the number regulated each decade was 10 or fewer. But there were 40 newly regulated occupations in the 1970s, 39 in the 1980s, and 41 so far in the 1990s.

While Minnesota has a policy governing the regulation of occupations, it does not have a process by which the policy is applied in a consistent fashion. The

Figure 3.1: Cumulative Number of Occupations Regulated in Minnesota by Year



SOURCE: Program Evaluation Division survey.

Table 3.1: Number of Occupations Regulated in Minnesota by Period of Time

	Number of Occupations Gaining State Regulation	Cumulative Number of Regulated Occupations
1865-99	13	13
1900-09	5	18
1910-19	12	30
1920-29	9	39
1930-39	6	45
1940-49	6	51
1950-59	10	61
1960-69	7	68
1970-79	40	108
1980-89	39	147
1990-98	41	188

SOURCE: Program Evaluation Division survey.

Minnesota has a policy governing occupational regulation but no process to apply the policy effectively.

application of the Chapter 214 criteria or the collection of data that might make this possible is not the specific responsibility of any state agency or legislative staff office. Legislative committees can develop some of the information through hearings or staff work, but most of the time occupational regulation issues do not command the time and attention by committees that this would require. Several legislators who we interviewed mentioned that they are faced with making decisions about regulation without enough time or information.

There is another important factor that interferes with the process: political influence by occupational groups and their representatives. This was mentioned by many legislators we talked with and ranked high on the list of problems mentioned in a survey we conducted of board and agency managers responsible for occupational regulation. Whether motivated by a desire to become eligible for third-party reimbursement, protect the right to practice, or pre-empt varying local regulatory requirements, occupational associations are active in the political and legislative process. Some larger occupational groups have considerable power, but even small groups with narrow concerns can be influential over time and can interfere with the process by which statutory policy is applied in a given situation. As the 1998 Pew Commission Report points out, this is an important national concern related to occupational regulation.³

We conclude that there is a need for a mechanism that will help control the number of proposals and provide for better information bearing on the statutory criteria for regulation. We suggest several options for improving the process by which the Legislature handles proposals for occupational regulation. Some of

³ L. J. Finocchio, C. M. Dower, N. T. Blick, C. M. Gragnola, and the Taskforce on Health Care Workforce Regulation, *Strengthening Consumer Protection: Priorities for Health Care Workforce Regulation* (San Francisco, CA: Pew Health Professions Commission, 1998), 21.

Better information is needed on how regulatory proposals meet state policy objectives. We suggest several options for carrying out studies of regulatory proposals.

these are recommendations which have been made before and even tried before but we think there are compelling reasons to try again. Our interviews detected no widespread sense of urgency, however, even among legislators and others who think there is a real problem, so our options include incremental steps that can be taken without any major organizational changes. As one option:

- **The Legislature could require a study of how each major proposal for new regulation or significant increase in regulation meets the Chapter 214 criteria.**

There are several alternatives for conducting the studies. They could be carried out by state agencies, by specialized legislative staff, or by existing committees. As we discussed in Chapter 1, the Minnesota Department of Health (MDH) Human Services Occupational Advisory Council (HSOAC) used to perform such studies for the health-related occupations, and many in the Legislature and elsewhere believe the studies were useful even though the recommendations of MDH were not always heeded.

The following option could be tried without implementing any major organizational changes:

- **Committees hearing bills proposing new occupational regulation could require proponents to submit specific information as a condition for obtaining a hearing.**

The virtue of this idea would be to focus debate on issues relating to the Chapter 214 criteria. The criteria would have to be operationalized in a specific set of questions, however. The questions asked by the Health Department in carrying out the HSOAC studies could serve as a model. Additional models are provided by other states that have institutionalized a sunrise process. For example, the Florida House of Representatives Committee on Business and Professional Regulation uses a “Sunrise Questionnaire” that poses 62 questions that proponents of regulation must address. Florida’s sunrise law is similar to that of Minnesota and other states with such legislation in that the regulatory decision hinges on the extent to which the unregulated practice of the occupation will endanger the public health, safety, or welfare. Maine has put a set of questions into its statute governing occupational regulation.

We think legislative committees could use a relatively simple version of these questionnaires in the first stage of the process by which regulatory proposals are considered, and require a more detailed study for those ideas that make the first cut. Figure 3.2 lists some illustrative questions proponents for occupational regulation could be required to address.

A secondary benefit of requiring specific information would be that some groups seeking regulation would be unable to mount the organized effort to produce a reasonable proposal. The ability to do so is not irrelevant to the issue under consideration because if an occupation or profession has not reached a certain level of maturity and separate identity, it cannot be regulated effectively by enacting a practice act, issuing credentials that have a specific meaning, and enforcing standards of practice. As a practical matter, to be regulated an

Proponents of occupational regulation should be asked to provide more specific information.

Figure 3.2: Illustrative Questions for Proponents of Occupational Regulation

- Identify the associations, organizations, and other groups representing the occupations seeking regulation and estimate the number of members in each.
- Describe the functions typically performed by members of this occupational group. Indicate the functions performed by this occupational group which are similar to those performed by other occupational groups. Indicate the difference between related occupational groups.
- Describe the various levels of practitioner specialization and the qualifications of each. Describe the minimum qualifications for entry into the occupation. Is there a state or national examination currently used for entry? Is the occupation affiliated with an association which enacts and enforces standards? Explain enforcement mechanisms in instances of practitioner noncompliance with established standards.
- Describe and document the physical, emotional, social, or financial consequences to the consumer resulting from erroneous or incompetent care or omission of appropriate care.
- Describe how the public would be protected by regulation of this occupational group.
- What functions performed by the occupational group are unsupervised? What are typical work settings? Is there state or local business, facility, product, or industry regulation that can protect consumers or clients?
- What is the expected impact of the proposed regulation on the existing supply of practitioners? What percentage of current practitioners will be able to meet the proposed eligibility criteria?

SOURCE: Adapted from Minnesota Department of Health Human Services Occupational Advisory Council (HSOAC) questionnaire.

occupation should require knowledge, skills, or abilities that are teachable and testable, the skills should be taught in accredited programs, these programs should be distinguishable from related occupational or professional programs, and the profession should have its own professional association. It should not be unduly burdensome for an occupation or profession that has reached this level of separate organizational identity to respond to a detailed request for information.

The question remains: how should a requirement for information be administered, and should an agency separate from the legislative committees now charged with implementing Chapter 214 be involved in the process? One option is to continue

Analysis of proposed regulation could be carried out by existing legislative committees, new committees, or executive branch agencies.

to have several committees responsible for hearing bills on occupational regulation. Alternatively,

- **The Legislature could create committees or subcommittees specializing on occupational and professional regulation.**

Minnesota has, in the past, organized interim subcommittees to look at occupational regulation, most recently in 1997 and earlier in 1991. In addition, last year a subcommittee on Licensing and Scope of Practice of the House Health and Human Services Committee was organized to hear testimony on alternative and complementary medical professions, but this has not been a permanent subcommittee. The advantage of a specialized committee is that it can become more knowledgeable about Chapter 214 and occupational regulation in general, and it could be assisted by a staff that develops expertise and a focus on occupational regulation that is now lacking. Currently, legislative staff provide an orientation to Chapter 214 periodically, but we have learned from interviews and from listening to tapes of committee hearings that the policies contained in Chapter 214 do not necessarily govern the discussion of regulatory proposals.

As another option:

- **The Legislature could establish a joint legislative commission on occupational regulation to which all proposals for new or increased regulation would be referred.**

As we described in Chapter 1, the legislative task force that looked at occupational regulation in 1991 recommended creation of a joint legislative commission. The Minnesota Legislative Commission on Pensions and Retirement provides a model for this approach. Virtually all bills relating to pensions go through this commission, so it is possible to maintain consistency in policy decisions. This arrangement also facilitates the development of staff expertise.

Arizona and Maine also provide models of a joint committee approach to occupational regulation. Maine has a joint Business and Economic Development Committee that hears bills on occupational regulation (all of Maine's committees are joint committees), however, in practice, bills can be heard in other committees (at least upon occasion) if that suits the bill's sponsors. Arizona also convenes a joint committee to conduct sunrise reviews of regulatory proposals affecting health-related professions. A brief summary of our research into the organization of occupational regulation in eight states is presented in Appendix A.

Alternatively, the studies could be by executive branch agencies with recommendations to the Legislature. Two possibilities are:

- **The Legislature could establish organizational units in the departments of health and commerce for the purpose of carrying out studies of occupational regulatory policy and making recommendations, or**

- **Create a new agency or council in the executive branch independent of the state departments and boards with regulatory responsibilities.**

Some managers in the Health and Commerce departments and elsewhere have pointed out that the functions of enforcement of existing occupational regulations and policy analysis of new regulatory proposals are incompatible activities. A department might lack objectivity in studying proposals that would affect an ongoing program or might be accused of self-interest if it seeks to expand regulatory authority. Despite the potential conflict of interest, one legislator we interviewed suggested that evaluations of regulatory proposals should be done in executive branch departments, since, compared to legislative committees, the departments are less vulnerable to political manipulation. The departments also have a level of professional expertise in various professional areas without the biases often associated with regulatory boards or advisory councils dominated by professionals.

Analysis of regulatory policy should be kept organizationally separate from on-going regulatory programs.

The Legislature could take some specific action to encourage or direct the boards or agencies with regulatory responsibility to take a more active role in policy studies. The departments of Health and Commerce (the two state departments with, by far, the greatest occupational regulatory responsibility) are both reluctant to take the lead in policy studies, at least judging by the interviews we have had, mainly with middle management. MDH has had an occupational policy analysis program at various times between 1976 and 1995. The program was interrupted in part because of reduced funding, but the activity has started and stopped several times over the years and it is clear that MDH has attached a low priority to this activity. Our interviews with middle and upper management at the Commerce Department also suggest that they feel policy studies should be done by another agency. Both departments express a degree of frustration with the fact that their previous recommendations have not been heeded.

We believe that neither Commerce nor Health will be able to contribute much to solving the problem unless a separate organizational unit is created within the agencies, free of ongoing regulatory responsibilities so that a measure of objectivity can be assured and so that occupational policy analysis is the central focus of the unit's work. MDH is currently empowered to establish title protection through the rule-making process and this authority could be extended to the Department of Commerce as well.⁴ Under this arrangement, departmental studies or recommendations for occupational licensure would be made to the appropriate legislative committees.

Over the years there have been proposals to create a new executive branch organization or council to study proposals for occupational regulation and make recommendations. Last year a bill proposed the creation of an interagency task force that would in turn develop a detailed proposal for a permanent council (The Occupational Regulatory Coordinating Council) whose members would be appointed by the commissioners of Health and Commerce.⁵ One of the principal

⁴ Title protection means the use of a title like "athletic trainer" is reserved to credentialled workers, but others can provide the same services as long as they use another job title.

⁵ S. F. 2380.

responsibilities of the council would have been to develop a method of reviewing and evaluating requests for new occupational regulation and to review the structure and organization of the regulatory system. It was also intended that the council would review the application of the Minnesota Data Practices Act to occupational regulation.

Neither this bill nor scaled back versions of it were enacted in the 1998 session, but the options discussed above and similar recommendations over the years are based on a finding that bears repeating here:

- **Application of Minnesota’s occupational regulatory policies is haphazard, and there is a need to improve the process by which the Legislature carries out this responsibility.**

OVERSIGHT OF OCCUPATIONAL REGULATION

A large share of state responsibility for occupational regulation is assigned to the 14 independent boards responsible for regulating 34 health professions and the 10 non-health-related boards that regulate 51 other occupations and professions.⁶ These boards are independent state agencies, all but a few of which are appointed by the Governor. As independent agencies, they require oversight by legislative committees, but oversight is difficult to accomplish consistently since the boards are both numerous and small in comparison to other state agencies. This situation has led some states, including Virginia, Florida, and Colorado, to establish departments of occupational regulation that deal with the Legislature and in some cases represent the interests of independent boards.⁷

The two primary opportunities for legislative oversight of occupational regulation in Minnesota are the appropriations process and biennial reports that are required from 24 boards and agencies prior to each budget session.⁸ Figure 3.3 lists the boards and agency offices that are required to submit reports. Chapter 214 specifies the content of the report in some detail and includes requirements to report on board meetings, participation of board members, the number of license holders, and licensing and examination activity. The reports must also include data on the number of complaints that allege a violation of the statutes the board is empowered to enforce as well as the nature of the complaints and the disposition of complaints by type.

We reviewed the available biennial reports of each of the independent boards. We formally requested the biennial report due in 1996 from each board, and we also examined the 1998 reports that were available by November 1998.

Twenty-four boards and agencies are required to report on their regulatory activities every two years.

⁶ Not counting the two boards appointed by the Supreme Court that regulate the legal profession.

⁷ While many have urged abolishing independent boards, including a study by the Minnesota Department of Administration in 1977, independent boards survive in all but three states.

⁸ *Minn. Stat.* §214.07

Well-prepared biennial reports from the boards could be useful to the Governor and the Legislature.

Figure 3.3: Regulatory Boards and Offices Required to Issue Biennial Reports

Health-Related	Non-Health-Related
Board of Chiropractic Examiners	Board of Accountancy
Board of Dentistry	Board of Architecture,
Board of Dietetics and Nutrition Practice	Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design
Board of Examiners of Nursing Home Administrators	Board of Assessors
Board of Marriage and Family Therapy	Board of Barber Examiners
Board of Medical Practice	Board of Boxing
Board of Nursing	Board of Electricity
Board of Optometry	Board of Teaching
Board of Pharmacy	Peace Officer Standards and Training Board
Board of Podiatric Medicine	Private Detective and Protective Agent Licensing Board
Board of Psychology	
Board of Social Work	
Board of Veterinary Medicine	
Alcohol and Drug Counselors' Licensing Advisory Council	
Office of Mental Health Practice	

SOURCE: *Minn. Stat.* §214.

We found:

- **Several boards or agencies did not submit a report for 1996.**

The Board of Assessors, the Board of Dietetics and Nutrition, the Board of Optometry, and the Office of Mental Health Practice, did not submit reports for 1996 as required.⁹ In addition, the Minnesota Department of Health is supposed to submit a summary of the health-related reports by December 15 of each even-numbered year, but it has not done this in at least the last several bienniums. The Health Department argues that it does not receive funding to prepare the summary called for in statute. The Department of Administration used to be required to publish a similar summary report for the non-health-related boards, but this requirement was repealed in 1990.

These biennial reports could be a useful to the Governor and the Legislature in carrying out their oversight responsibilities and could be useful to the public, but we found:

⁹ These agencies did submit reports for 1998, however.

The biennial reports have not been widely read, but they cover some topics, like complaint investigation and disciplinary action that legislators need to monitor.

- **The biennial reports are not widely read and in many cases they appear to not be read at all. The board staff we interviewed were unable to recall a conversation with legislators or legislative staff about the reports or their contents. The 1996 reports were not used in legislative oversight hearings or hearings on the subject matter they covered.**

The reporting requirements have been little changed since 1976 when Chapter 214 was amended and substantially put into its current form. In our judgment, the Legislature ought to review these requirements and revise them. The reports are required to provide some data that may no longer be of interest, for example, the hours spent by all board members in meetings and other activities, or the locations and dates of examinations. Most of the boards respond quite literally to the statutory specifications, even though the specifications are awkward and the results are less than useful. While the boards are invited to include any information which board members believe will be useful, few reports make an effort to provide such information. Our review of the reports suggests:

- **The quality of the reports needs to be improved.**

The reports vary in quality, but even the best of the reports are not forthcoming and easy to read. There is an absence of needed explanatory notes and considerable expertise is required to understand what the reports are saying. The reports have changed little over the years, and without feedback from users, there has been little incentive for the boards to improve the usefulness and readability of the reports.

There are some topics covered by the report that are of significant interest, however, so our criticism of the reports involves what they do not include as well as what they do include. One example is the statutory requirement to report on the number of complaints against licensed professionals, the nature of the complaints, and the outcome of complaint investigations. We examined the biennial reports to see if they provided information on the volume of complaints, the type of complaints, the outcome of complaint investigations, and the number of open cases. A couple of the reports provided this data, although it was often not presented completely or clearly, and none of the reports provided historical tables drawn from previous reports which would show how the numbers are changing over time. Many reports did not present the number of open cases at the start and at the end of the biennium, essential information if legislators or the public want to know if the “backlog” is increasing or decreasing over the biennium. Another common problem was classifying complaints into catch-all categories such as “unprofessional conduct,” which provided an inadequate breakdown of what the substance of the complaint was really about.

As we have suggested, the unsatisfactory state of affairs we have just described is not solely the responsibility of the boards.

- **Chapter 214 does not require a useful report of complaints, investigations, and outcomes.**

Minnesota Statutes §214.07 specifies that some important information be provided such as the number and type of complaints and the disposition of the complaints, but it does not require information on the number of open cases, including those carried over from previous years, and it does not require information on how long it took to investigate and resolve the cases that were closed, or the age of cases that are still open. The boards could and should, in our view, provide a more useful report whether or not the law requires it. They should be encouraged to go beyond what is narrowly required as many government agencies and private companies do in their annual reports. We recommend:

- **The Legislature should create a task force to reconsider the reporting requirements in Chapter 214, and revise them in order to make the biennial reports more useful.**

The task force should include representatives from the boards subject to the reporting requirements in Chapter 214, plus Department of Health and Department of Commerce representatives and legislative staff. Many of the health boards are required to submit additional information over that required of the non-health boards, and it may be that a separate task force will be needed to handle issues raised by these requirements.¹⁰

The content of the reports should be reviewed and the format improved.

Finally, the Board of Medical Practice and the Board of Nursing are required to provide “specific information regarding complaints and communications involving obstetrics, gynecology, prenatal care, and delivery, and the boards’ responses or dispositions.”¹¹ The reports of the Board of Nursing and the Board of Medical Practice for 1998 make note of several complaints involving obstetrics, gynecology, prenatal care, and delivery, but do not provide any real information, nor do board representatives understand what type of information is required. This point, of no real significance by itself, serves as an example of the nearly total absence of useful communication between the boards and policy makers.

We also think oversight will be easier if the reports adopt common reporting formats to the extent possible where they are providing information required by law. This does not mean that the type of complaints about psychologists will be the same as those against pharmacists. Standardization can only go so far, but informative categories can be developed in either case and defined for the reader in a way that is helpful. Whether or not a broader task force is established to work on the problem, we recommend:

- **The health-related boards should establish a committee or use an existing committee to improve the reports.**

¹⁰ All the health boards except Veterinary Medicine are required to forward all complaints involving sexual contact with a patient to the Attorney General, and each board is required to include summaries of each individual case involving sexual contact.

¹¹ *Minn. Stat.* §214.07 Subd. 1a. This was added by *Minn. Laws* (1990), ch. 568, art. 3, secs. 6 and 7.

The health-related boards or the Health Department ought to produce a summary report.

We also suggest they work to establish common reporting formats and consider publishing a health boards summary report.

MDH does not regard its responsibility to publish a summary report as a high priority. In fairness, over time, its responsibilities relating to the health professions regulated by the boards have diminished. As the state agencies with primary responsibility for the clinical health professions, the boards are more likely to put energy into improving the required reports. The Minnesota Department of Health regulates two professions, unlicensed mental health practitioners and alcohol and drug counselors, for which reports are required similar to those required from the independent health boards. If a single report were compiled, it would be desirable to have data on all the health professions covered by the Chapter 214 reporting requirements including these. It might also be desirable to expand the reporting requirement to include the other occupations regulated by MDH's Division of Health Policy and Systems Compliance, including audiologists, speech pathologists, hearing instrument dispensers, and occupational therapists.

The non-health-related boards are affiliated with several agencies. The Department of Commerce provides administrative services to most of them and could consider producing or coordinating a summary report of complaints received by the non-health boards.

The purpose of an improved summary report is to help revitalize communication between the independent boards and the Legislature on one function that has been a source of legislative concern in the past, the handling of complaints against licensed professionals. The 1997 Legislature reduced the mandatory distribution of the reports by eliminating a requirement that the reports be distributed to the Legislature in accordance with Minnesota law (*Minn. Stat.* §3.195) which requires that copies be sent to the Legislative Reference Library.¹² Our recommendation is to move in the opposite direction.

- **We think the reports should be available through the Legislative Reference Library.**

COMPLAINT INVESTIGATION

Occupational regulation is designed to protect the public in two ways: (1) by establishing a level of competence for those entering a regulated occupation, and (2) by providing a check on the continued competence of practitioners. Although most analysts agree that states do a better job accomplishing the first of these functions, the issue of assuring continued competence is still important. The primary means of enforcing standards on a continuing basis is through the investigation of complaints and imposition of license discipline or other corrective action as appropriate.¹³

¹² *Minn. Stat.* §214.07 Subd. 1.

¹³ As we discussed in Chapter 1, continuing education requirements generally are not viewed as an effective method of assuring continued competence.

There are 188 regulated occupations in Minnesota. The number of license holders or otherwise regulated practitioners varies widely across these professions, and the rate at which complaints are made also varies widely. In order to gain a broad perspective on the effectiveness of complaint investigation we sought to find out:

- **In recent years, which professions have had a high volume of complaints and a high rate of complaints?**
- **How many complaint investigations were open at the time of the survey (August 1998) and how many occupations had a high number of open cases in relation to the number filed annually?**
- **Has the Attorney General's Office kept abreast of the investigative caseload referred to it by the regulatory boards?**

Some occupations attract a relatively high volume of complaints.

Table 3.2 shows the number of complaints made in 1997 and 1998 for the 30 occupations with the highest number of complaints.¹⁴ Table 3.2 also shows the number regulated in each occupation. Attorneys, physicians, nurses, dentists, and psychologists are near the top of the list partly because they are large professions. A few much smaller occupations are on the list: commercial driving training instructor, qualified rehabilitation consultants, building officials, and hearing instrument dispensers.

Table 3.3 presents the top 35 occupations ranked by the number of complaints per 1,000 regulated practitioners. This table contains a diverse set of professions and occupations. Some professions attract complaints for reasons that seem obvious because of the type of services provided and the sensitive nature of the relationship between the provider and purchaser of services. This group includes physicians, attorneys, psychologists, and other mental health service providers.

Our concern is whether complaints are given a timely and competent investigation. One way of looking at this issue is to see how many complaint investigations are currently open in relation to the number of complaints filed annually.¹⁵ If the number open equals or exceeds the number filed each year, it is very likely that there are too many cases to manage properly. Table 3.4 presents data on the number of complaints filed in a two year period and the number of cases open in August 1998 for the 20 regulated occupations with the largest number of open cases. Physicians, attorneys, and psychologists are at the top of this list (ranked by number of open complaints).

¹⁴ We were unable to compile data on complaint investigations for 49 of the 188 regulated occupations since some departments and boards do not track complaint investigations separately for each of the occupations they regulate.

¹⁵ A better way to quickly look at the question is to observe whether the number of open cases is increasing or decreasing over time. We reviewed the biennial reports of the licensing boards and found that only a few reported this information for the biennial period. None reported longer historical trends.

Table 3.2: Regulated Occupations with the Highest Number of Complaints, FY1997-98

	Complaints FY1997	Complaints FY1998	Total Complaints FY1997-98	Number Regulated August 1998
Attorney	1,314	973	2,287	21,476
Insurance Agent*	1,139	829	1,968	49,550
Physician	904	875	1,779	14,771
Registered Nurse	494	462	956	56,731
Real Estate Salesperson*	493	359	852	14,156
Licensed Practical Nurse	368	280	648	22,388
Dentist	208	172	380	3,740
Licensed Psychologist	178	194	372	3,619
Teacher	124	220	344	111,995
Chiropractor	147	179	326	1,764
Pesticide Applicator, Commercial	0	190	190	4,923
Professional Engineer	127	60	187	10,250
Commercial Driving Training Instructor, Auto	80	100	180	372
Cosmetologist*	85	79	164	9,441
Peace Officer	88	67	155	13,759
Unlicensed Mental Health Practitioner	69	85	154	**
Pharmacist	70	68	138	5,254
Cosmetology Manager*	75	55	130	12,834
Qualified Rehabilitation Consultant	78	48	126	345
Certified Public Accountant	72	33	105	6,115
Licensed Social Worker	31	66	97	5,890
Licensed Independent Clinical Social Worker	48	49	97	2,635
Registered Barber	70	26	96	2,667
Notary Public*	46	39	85	96,323
Veterinarian	34	47	81	2,654
Certified Building Official	40	40	80	598
Nursing Home Administrator	33	40	73	935
Pesticide Applicator, Private Certification	30	30	60	25,276
Mortuary Science Professional	30	30	60	1,650
Hearing Instrument Dispenser	36	18	54	300

NOTE: Complaint data unavailable for 49 occupations.

*These occupations are regulated by the Commerce Department. The department reports complaints based on cases closed, whereas other agencies report complaints filed.

**Not available. Unlicensed Mental Health Practitioners are not mandated to register with the state. The Department of Health's Office of Mental Health receives and investigates complaints against mental health practitioners who are not regulated through other agencies such as the Board of Psychology, the Board of Social Work, or the Board of Marriage and Family Therapy.

SOURCE: Program Evaluation Division survey.

Table 3.3: Regulated Occupations with the Highest Annual Rate of Complaints, FY1997-98

	Number Regulated August 1998	Annualized Number of Complaints per 1,000 Regulated Professionals
Commercial Driving Training		
Instructor, Auto	372	241.94
Qualified Rehabilitation Consultant	345	182.61
Chiropractor	1,764	92.41
Hearing Instrument Dispenser	300	90.00
Private Detective	240	83.34
Certified Building Official	598	66.89
Physician	14,771	60.22
Attorney	21,476	53.25
Licensed Psychologist	3,619	51.40
Journeyman Pesticide Applicator, Structural	343	51.02
Dentist	3,740	50.80
Podiatrist	142	45.78
Land Surveyor	478	42.89
Nursing Home Administrator	935	39.04
Real Estate Salesperson*	14,156	30.10
Physician Assistant	398	28.90
Insurance Agent*	49,550	19.86
Pesticide Applicator, Commercial	4,923	19.30
Marriage and Family Therapist	661	18.91
Licensed Independent Clinical Social Worker	2,635	18.41
Mortuary Science Professional	1,650	18.18
Registered Barber	2,667	18.00
Veterinarian	2,654	15.26
Licensed Practical Nurse	22,388	14.47
Licensed Graduate Social Worker	1,046	14.34
Licensed Public Accountant	363	13.78
Pharmacist	5,254	13.14
Tree Inspector	811	12.33
Optometrist	801	11.24
Professional Engineer	10,250	9.12
Cosmetologist*	9,441	8.69
Certified Public Accountant	6,115	8.59
Registered Nurse	56,731	8.43
Abstractor*	361	8.31
Licensed Social Worker	5,890	8.24

NOTE: Complaint data unavailable for 49 occupations. Five occupations with fewer than 65 credential holders were excluded. The annual rate was calculated by dividing the average number of complaints for FY1997 and FY1998 (multiplied by 1000) by the number of regulated professionals in August 1998.

*These occupations are regulated by the Commerce Department. The department reports complaints based on cases closed, whereas other agencies report complaints filed.

SOURCE: Program Evaluation Division survey.

Table 3.4: Regulated Occupations with the Highest Number of Cases Open, August 1998

	Number Regulated August 1998	Total Complaints FY1997-98	Cases Open August 1998
Physician	14,771	1,779	607
Attorney	21,476	2,287	462
Licensed Psychologist	3,619	372	432
Registered Nurse	56,731	956	334
Licensed Practical Nurse	22,388	648	178
Unlicensed Mental Health Practitioner	**	154	151
Pesticide Applicator, Commercial	4,923	190	150
Teacher	111,995	344	112
Dentist	3,740	380	104
Chiropractor	1,764	326	63
Professional Engineer	10,250	187	61
Qualified Rehabilitation Consultant	345	126	52
Licensed Social Worker	5,890	97	44
Pharmacist	5,254	138	37
Peace Officer	13,759	155	30
Hearing Instrument Dispenser	300	54	26
Physical Therapist	2,880	31	26
Certified Public Accountant	6,115	105	25
Architect	3,396	46	19
Licensed Graduate Social Worker	1,046	30	17

**Not Available. Unlicensed Mental Health Practitioners are not mandated to register with the state. The Department of Health's Office of Mental Health receives and investigates complaints against mental health practitioners who are not regulated through other agencies such as the Board of Psychology, the Board of Social Work, or the Board of Marriage and Family Therapy.

NOTE: Complaint data unavailable for 49 occupations.

SOURCE: Program Evaluation Division survey.

It is important to note:

- **A few occupations have a significant number of open cases. Several have more than a year's worth of complaints under investigation. One profession has more than two years worth of complaints under investigation and another nearly this many.**

Some occupations have a high number of cases open in relation to complaints filed, indicating that complaints do not receive a timely investigation.

Table 3.4 shows that psychologists, unlicensed mental health practitioners, social workers, and certain other occupations had a fairly large number of complaints open in relation to the number received in a two year period ending June 30, 1998. The Board of Psychology reported more open complaints as of August 1998 than the total number received in fiscal years 1997 and 1998.¹⁶ The Office of Mental Health Practice also reported nearly as many open cases as complaints filed in a two year period.

We talked with the executive directors and other staff of five health-related boards with a relatively high volume of complaints to discuss complaint data and to learn a little more about their case-tracking systems. We also inquired about the availability of data needed, in our judgment, for proper management of the investigative caseload and for producing the type of information legislators and the public ought to see. We learned that several of the boards are in the process of developing new information systems, and all recognize to some degree that their reporting of complaint investigations could be made more useful. We also learned that the boards of Dentistry, Nursing, and Medical Practice had significantly reduced their backlogs in recent years.

The number of cases open at a particular point in time is not as important as whether complaints are receiving a timely and competent investigation. As we discuss elsewhere, the boards should report trends in the number of open cases. If the number of open cases is large and growing, additional staff may need to be assigned to complaint investigations because there is almost certainly a problem in conducting timely and thorough investigations.

We also reviewed the status of investigations that had been referred to the Attorney General's Office. The Licensing Investigations Division of the Attorney General's Office provides investigative services. A separate division of the Attorney General's Office provides legal services to the boards, reviews all dispositions involving license discipline, and represents the boards in negotiations or litigation subsequent to the investigation of a complaint. The Licensing Investigations Division currently consists of about 15 investigators. In addition to generalists, the division employs nurses and people with expertise in pharmacy, social work, dentistry, psychology, and certain other disciplines regulated by the health boards, because many complaints involve technical issues which require specialized expertise. The Attorney General's Office investigates about 10 to 15 percent of cases filed with the health boards and is required to be involved in all cases alleging sexual misconduct or an active chemical dependency problem. The purpose of the Attorney General's involvement is to assure public accountability in investigations of licensed professionals by boards dominated by professionals

¹⁶ The Board of Psychology did not know if the number of open complaints was growing or shrinking over time and could only put this data together manually through a hand tabulation.

where the substance of the investigations is not available to the public. The Attorney General's Office is not as frequently involved with investigation of cases for the non-health boards, but performs a similar role for several of these boards.

A few years ago, the Attorney General's Office was the target of criticism from many of the boards, because of a backlog of investigative cases and delays in the investigation and resolution of cases. To some extent the boards still complain about the time and money they must spend on legal and investigative services from the Attorney General's Office. We inquired about the current status of the backlog and found:

- **The Attorney General's Office has reduced the backlog of investigative cases that existed a few years ago and has implemented an effective case tracking system.**

The Attorney General's Office has a case tracking system that provides useful reports to management and to the boards so that the status and age of the caseload can be monitored regularly. A summary of the status of investigations referred to the Attorney General from the regulatory boards is shown in Table 3.5. The table shows that there were 170 cases open at the end of fiscal year 1998, down from

Table 3.5: Complaints Investigated by the Attorney General's Office, FY1995-98

<u>Fiscal Year</u>	<u>Cases Opened</u>	<u>Cases Closed</u>	<u>Cases Open at End of Year</u>
1995	241	136	246
1996	352	334	240
1997	444	478	185
1998	336	335	170

SOURCE: Office of the Attorney General.

246 cases open at the end of fiscal year 1995. The number of cases opened has generally increased since 1995, but the number of cases closed has increased even more so that the inventory of open investigations, while still quite high, has declined. The regulatory boards need a case tracking system with similar capabilities, because only 10 to 15 percent of investigations are carried out by the Attorney General, and the boards need to keep track of the rest of the caseload.

REVIEW OF EXISTING PROGRAMS

Since 1976 Minnesota has had an explicit policy governing proposals for new occupational regulation. It is not clear to what extent these principles or criteria should apply to existing regulatory programs, many of which were implemented prior to enactment of the sunrise provisions of Chapter 214. However, we believe

there is a need to periodically re-examine the contemporary relevance of regulatory programs, and the Chapter 214 criteria are a useful place to start.

Recognizing the possibility that some programs are out of date, some other states have enacted sunset laws that require periodic reviews of regulatory programs. However, as we discussed in Chapter 1, in many cases sunset laws have not rewarded the promise that led to their enactment. While sunset requirements have been repealed or scaled back in some states, they are still credited with some modest successes. National analysts of occupational regulation still call for some form of sunset reviews, and many of the people we talked with believe there is a need to take a fresh look at occupational regulation to see if regulatory requirements are still needed in all cases.¹⁷

We recommend a review of existing regulatory programs.

Minnesota has more regulated occupations than most states, and Minnesota regulates some occupations that are regulated in few other states. Minnesota also has some very small occupations regulated by independent boards. While it is beyond the scope of this study to provide definitive answers, this section addresses the following questions:

- **Are there occupations that do not have significant initial or continuing education, experience, or examination requirements and thus may not need to be regulated?**
- **Are some regulatory requirements inconsistent or out of date in terms of coverage? Is there a consistent use of terminology in regulation of different occupations? Are there small or outdated regulatory boards that could be eliminated or consolidated?**
- **Is there a way of reorganizing occupational regulation so that related occupations are located in the same agencies or otherwise affiliated with other similar professions or occupations.**

Education, Experience, and Examination Requirements

The Directory of Regulated Occupations we compiled can help focus this review.

A comprehensive review of the 188 regulated occupations is well beyond the scope of this study. However, we have compiled a Directory of Regulated Occupations (published separately) that presents descriptive information on regulated occupations including data on the education, experience, and examination requirements for each occupation, the number of regulated professionals, and the number and type of complaints filed against license holders. Analysis of this database could be a starting point for a review, or oversight hearings relating to occupational regulation.

¹⁷ Kara Schmitt and Benjamin Shimberg, *Demystifying Occupational and Professional Regulation: Answers to Questions You My Have Been Afraid to Ask* (Lexington, KY: Council on Licensure, Enforcement and Regulation, 1996), 19; Richard C. Kearney, "Sunset: A Survey and Analysis of the State Experience," *Public Administration Review*, vol. 50 (January-February 1990), 56; and Finocchio et. al., *Strengthening Consumer Protection*, 29-3.

One criterion defining the need to regulate in Chapter 214 is whether the practice of an occupation requires specialized skills or training, and whether the public needs and will benefit from assurances of initial and continuing occupational ability.¹⁸ We reviewed regulated occupations in Minnesota to see how many lacked significant statutory requirements for education, experience, examination, and continuing education.

We found:

- **Out of 188 regulated occupations, 82 have no statutory educational requirements beyond a high school diploma, 69 have no requirements for specialized experience, and 32 have no examination requirements. Twelve occupations have neither specialized education, experience, or examination requirements.**

In addition, 75 occupations of the 188 regulated occupations have no continuing education requirements.

Some regulated occupations have no specialized education, experience, or examination requirements.

The issue of whether the state should continue to regulate these or other occupations obviously requires more detailed study, but a review of the database and Directory we have put together can suggest where to start. Table 3.6 lists the regulated occupations with the most limited statutory requirements. Several of these occupations have no educational requirements beyond a high school diploma, no experience requirements, no examination requirements, and no requirements for continuing education. The remainder have requirements in only one of these categories. In addition, many of these occupations are among the 67 reporting occupations that indicated receiving no formal complaints over a two year period, calling into question whether regulation of these occupations is necessary.

A number of the people we interviewed note that the statutes governing occupational regulation are often out of date and in need of revision. We did not attempt to measure the extent of these problems although it is fairly easy to find examples that appear to contradict the basic policy articulated by Chapter 214. For example, the licensure of plumbers is required only in cities over 5,000 population.¹⁹ If licensure is required because of a threat to health or safety (the primary criterion of Chapter 214), it should be required everywhere. In fact, the Minnesota Department of Health has made this argument, so far without success, because it is opposed by representatives of licensed plumbers. If plumbers present a threat to public health that is no greater than that presented by other building trades most of which are not regulated, or if it is judged that other types of regulation such as enforcement of building standards is sufficient, then state licensure of plumbers could be eliminated statewide.²⁰

¹⁸ *Minn. Stat.* §214.001.

¹⁹ The justification for licensing plumbers is based on the potential public health threat conveyed through municipal water and sewer systems. Licensure is not required for plumbers working on houses or businesses served by individual wells or on-site waste disposal systems.

²⁰ See Appendix B for more discussion of this issue.

Table 3.6: Regulated Occupations with Limited Statutory Requirements

	Statutory Requirements				Complaints FY1997-98
	Education	Experience	Examination	Continuing Education	
Amateur Boxing Referee	No	Yes	No	No	0
Amateur Boxing Second/Coach	No	Yes	No	No	0
Amateur Karate Referee	No	Yes	No	No	0
Amateur Karate Second/Coach	No	Yes	No	No	0
Apprentice Steamfitter	No	No	No	No	0
Babcock Milk Hauler	No	No	Yes	No	0
Building Inspector, Class 1	No	No	No	Yes	0
Certified Industry Supervisor (Dairy)	No	No	Yes	No	0
Certified Lab Analyst (Dairy)	No	No	Yes	No	0
Commercial Vehicle Operator	No	No	Yes	No	0
Conditional Journeyman Sprinkler Fitter	No	Yes	No	No	0
Crop Hail Adjuster	No	No	No	No	N/A
Lead Training Course Provider	No	Yes	No	No	0
Notary Public	No	No	No	No	85
Part Time Peace Officer	No	No	Yes	No	0
Pharmacy Drug Researcher	No	No	No	No	0
Pharmacy Intern	Yes	No	No	No	0
Plumber's Apprentice	No	No	No	No	N/A
Professional Boxer	No	Yes	No	No	0
Professional Boxing Manager	No	No	No	No	N/A
Professional Boxing Referee	No	Yes	No	No	0
Professional Boxing Second/Coach	No	Yes	No	No	0
Professional Karate Contestant	No	No	No	No	N/A
Professional Karate Referee	No	Yes	No	No	0
Professional Karate Second/Coach	No	No	No	No	N/A
Public Adjuster Solicitor	No	No	No	No	N/A
Real Estate Limited Broker	No	No	No	No	N/A
Unlicensed Mental Health Practitioner	No	No	No	No	154
X-ray Operator	No	No	Yes	No	0

NOTE: N/A indicates "Not Available."

SOURCE: Program Evaluation Division survey.

Based on these findings, we recommend that:

- **The Legislature should conduct a review of regulated occupations in order to eliminate the unnecessary and outdated regulation of certain occupations.**

Terminology

As we have noted earlier, the terminology relating to occupational regulation is sometimes confusing. Registered nurses are actually licensed. Certified public accountants are usually licensed, but some are not. In reviewing statutes governing occupational regulation and occupational titles in common use we found:

- **There is an inconsistent use of terminology relating to occupational regulation in Minnesota law, and Minnesota’s terminology differs from definitions in national use.**

Nationally, the term *licensure* is usually defined to mean that the right to practice a legally defined scope of practice is limited to license holders; *certification* is defined to mean that the use of a title is restricted to those who are certified; and *registration* means that a roster of practitioners is maintained by the state without any restrictions on the right to practice or the right to use a title. In contrast, Chapter 214 defines registration as “title protection,” so Minnesota departs from recommended national definitions. As a consequence speech language pathologist, audiologist, physical therapist, and athletic trainer, for example, are protected titles, although they are defined as registered in law.

Some professions with “certified” in the title are actually licensed and even if this is not confusing in the case of well-known professions such as certified public accountant, it is confusing in the case of some less well-known professions such as certified building official or certified real property appraiser.

Small Independent Boards

In reviewing the independent regulatory boards we have concluded that a good case can be made that:

- **Some small boards should be eliminated or absorbed by another state agency because they are too small to be effectively overseen as independent entities or because they must charge high fees to relatively small numbers of license holders.**

We recommend that Minnesota adopt nationally-used definitions of licensure, certification and registration.

Some small independent boards can be abolished or subsumed by a state agency.

Although some boards are housed in state departments and use the same administrative support services as organizational divisions of the department, independent boards are essentially separate state agencies.²¹ A critical difference between the board staff and departmental employees concerns who is in charge. The board staff's activities are governed by the appointed board members. In most cases the boards prepare a separate budget on the basis of which they receive an appropriation, and the boards are also required to submit a biennial report under the terms of Chapter 214 as we have already discussed.

Small independent boards buried in the offices of state departments can lose their identity as separate agencies, yet they are not subject to the same administrative and managerial controls as subordinate organizational units within a department. Of course, any decision to eliminate or consolidate boards would have to balance the claims made by proponents and opponents in a judicious fashion, so while we suspect some boards should be eliminated or consolidated, here we are only making the case, on the basis of our work, that a review might be fruitful and should be undertaken at the direction of the Legislature.

One example is the Board of Assessors, created in 1971. The Legislature and the Department of Revenue were concerned about the professional qualifications of assessors working for counties and other local units of government, and the board was created to establish and enforce professional standards in the form of licensing requirements. In its early years the board came under criticism from Department of Revenue officials who were concerned with excessive travel by board members to out-of-state conferences. While this problem was solved by subjecting the board to department policies, the department had to exercise this control indirectly through its power to appoint or reappoint board members. Over the years, there have been other problems where the Department of Revenue and the Board of Assessors had a different view of proper conduct by board members and licensed assessors.

By law, the Board of Assessors is appointed by the Commissioner of Revenue, and its board must include two Revenue Department employees. Currently there is no staff director, one of the Revenue employees on the board serves as executive secretary of the board and supervises a single clerical employee of the board. The board did not submit a biennial report in 1996, and its staff was very vague in conversations with us about this responsibility.²² Revenue department officials with whom we spoke did not oppose the idea of eliminating the independent authority of the board, although they would probably want to retain licensing authority in the department. On the basis of our brief review, therefore, it appears that the Board of Assessors may be one independent board that should be considered for elimination.

²¹ The Board of Assessors, The Board of Private Detectives and Protective Agents, and the Board of Teaching are housed in department offices, and the first two are appointed by department heads. See Table 2.4 on page 34 for additional details.

²² Presumably as a result of the conversation, the Board completed a report for the biennium ending in fiscal year 1998.

Two other small independent non-health boards should be examined as candidates for elimination or consolidation with the departments they already are part of: the Board of Boxing and the Board of Private Detectives and Protective Agents. The Board of Boxing issues very few licenses for boxing and karate participants and officials. The Board is exempt from the general state requirement that it be financed through licensure and other fees. Presumably when the Legislature granted this exemption in 1989 it considered whether the board met a contemporary need and decided to continue it. But every other professional or amateur sport regulates participation and competition through private organizations without state occupational licensure.

The Board of Private Detectives and Protective Agents is housed in the Department of Public Safety, and appointed by the Commissioner of Public Safety. The Department of Public Safety provides administrative services to the board and provided additional services when a board clerical position was vacant. Because it only licenses 300 people it must charge license fees of \$415 to \$515 every two years.²³ High fees are not a problem for a large firm which only needs one license, but can be a problem for sole proprietors who need the same license. Security personnel working for private companies do not have to be licensed. Enforcing the law against unlicensed practice is a problem, and board staff say it is difficult to expand the board's activities into needed areas because of resistance to raising fees. Other states have a larger regulated community and collect more revenue by both licensing agencies and charging a registration fee for employees.

There are further opportunities for joint administrative services to the health-related boards.

Most other states do not have an independent licensing board for Private Detectives, but house the function in the Public Safety Department, State Police, or Attorney General's Office. This might be a better arrangement in Minnesota if the regulatory program is to be expanded to cover additional security industry workers.

There are several health-related boards that employ two or fewer staff and regulate fewer than 1000 professionals that could be consolidated for administrative purposes. The Board of Dietetics and Nutrition and the Board of Optometry use the same staff, but fewer staff in the aggregate could probably serve the needs of several other small boards such as the boards of podiatric Medicine, Nursing Home Administrators, and Marriage and Family Therapy. The health boards' administrative services unit provides some services to the boards, and some health board representatives feel its role could be expanded. As we said earlier, the Legislature should encourage the boards to consolidate administrative functions where possible and cooperate in communicating with the Legislature and the public.

Organization

As noted in Chapter 1, previous Minnesota studies of occupational regulation have recommended sweeping centralization of occupational regulation and elimination of the independent boards. Other states have placed independent boards in departments of occupational regulation or departments of regulated health

²³ Partnership licenses are \$815 and \$865 and corporate licenses are \$915 and \$965.

professions. We do not reach such a conclusion because Minnesota's health boards are already co-located and share some administrative services through a jointly financed administrative services unit, and because the other boards are either located in state agencies or receive some administrative services from state agencies.

However, as we have discussed, we think the number of independent entities involved in occupational regulation makes it very difficult for the Legislature to provide the oversight which is needed. Elsewhere we have recommended that the health boards and Minnesota Department of Health work out a better way of reporting important information (some of which is required by law) to the Legislature. Beyond this, we have concluded:

- **The Legislature should take a further look at how occupational regulation is organized in state government.**

We suggest that regulation of occupations be organized more along functional lines. For example, there is no obvious reason why audiologists, speech pathologists, occupational therapists, alcohol and drug counselors, and unlicensed mental health practitioners are regulated by the Health Department and all other health-related professions dealing with clients or patients are regulated by one or another of the health boards. It might make sense to regulate all occupations with client-patient relationships through the health boards and allow MDH to regulate public and environmental health professions. In the process it might be possible to consolidate boards so there is no increase or even a decrease in the number of small boards.

FINANCING

The method of financing occupational regulation creates some problems.

In Minnesota, as in many other states, occupational regulation is generally financed through credentialing fees including examination, licensing, and renewal fees.²⁴ This arrangement holds some advantages for the regulated occupations and the public. The professions can argue that even if regulation benefits those regulated, the cost of regulation is also borne by those who are regulated. However, the research literature makes it clear that a significant share of the cost of regulation is shifted to consumers of services provided by regulated occupations.

Here we ask:

- **Does the method by which occupational regulation is financed result in adequate funding of regulatory programs?**
- **How do licensure fees vary across regulated occupations?**

²⁴ *Minn. Stat.* §16A.1285, sub. 2 says: "Unless otherwise provided by law, specific charges ... must be set at a level that neither significantly over recovers nor under recovers costs, including overhead costs, involved in providing the services."

While we raise these issues, we do not have definitive answers, but we think there is some evidence to question whether our policy on financing is working well in all cases.

Our survey of 48 agency and board managers responsible for occupational regulation found seven managers' top complaint was about inadequate staffing or inadequate financial resources. There were other complaints about the high cost of investigations and five managers complained about unlicensed practitioners. Several people we talked with thought that regulatory fees alone should not be expected to finance enforcement of laws against unlicensed practitioners, since licensed practitioners were in a sense penalized for the behavior of unlicensed practitioners.

We found two indications that financing regulation through user fees causes problems. First, licensing fees vary greatly in large measure because regulatory financing must be substantially borne by those regulated. Table 3.7 presents a list of the 40 highest licensing fees and the number regulated in each case. Small occupations like hearing instrument dispenser, private detective, and podiatrist are at the top of the list, and most of the 40 listed occupations represent occupational groups of less than 1,000 people. Attorneys and physicians and dentists and other health-related professions also have relatively high fees. There were over 21,000 licensed attorneys in mid 1998, for example, and they paid an annual fee of \$207. Table 3.7 shows, many lower paid professions pay as much or more in annual fees even though they finance regulatory programs that are quite modest.

It is difficult to learn the cost of occupational regulation in state agencies.

Second, when regulation is administered by a state department, it is difficult to know whether the cost of regulation is recovered by fees, because departments vary in how they categorize and report fee income and expenditures. Departments in which occupational regulation is a relatively small part of department operations do not account for regulatory revenues and expenditures in a way that permits a reader of financial reports to understand the cost of regulatory programs and whether the regulatory fees are reasonably close to regulatory expenditures as required by Minnesota law. We reviewed data on fee income in the Departmental Earnings Report published by the Department of Finance, but found it to be inadequate as a source of data on the cost of occupational regulation. Because many independent boards are essentially dedicated to occupational regulation, it is easy to calculate the cost of their programs from regularly published tables, however it is difficult to tell the degree to which fees finance regulatory programs in state agencies, since the expenditure of fee income is not accounted for separately and since there are administrative services that departments provide that are not subject to any formal financial transaction.

ADMINISTRATIVE CONSOLIDATION

As noted in Chapter 2, Minnesota has a relatively large number of regulated occupations and a large number of boards and agencies with regulatory responsibility. Previous analysts have been concerned about the effect of this type of organizational structure on administrative efficiency. For instance, the Department of Administration report in the late 1970s summarized in Chapter 1 recommended that the independent boards be abolished and re-established as

Table 3.7: Regulated Occupations with the Highest Yearly Fees

	Yearly Fee	Number Regulated August 1998
Hearing Instrument Dispenser	\$330.00	300
Private Detective	257.50	240
Podiatrist	250.00	142
Contractor Steamfitter	220.00	306
Protective Agent	207.50	60
Attorney	207.00	21,476
Chiropractor	200.00	1,764
Nursing Home Administrator	200.00	935
Licensed Psychologist	187.50	3,619
Dentist	168.00	3,740
Faculty Dentist	168.00	14
Physician	168.00	14,771
Acupuncturist	150.00	83
Alcohol and Drug Counselor	147.50	65
Licensed Psychological Practitioner	125.00	33
Occupational Therapist	121.00	1,862
Master Plumber	120.00	2,493
Licensed Independent Clinical Social Worker	115.00	2,635
Marriage and Family Therapist	115.00	661
Physician Assistant	115.00	398
Licensed Independent Social Worker	105.00	899
Optometrist	105.00	801
Asbestos Inspector	100.00	479
Asbestos Management Planner	100.00	151
Asbestos Project Designer	100.00	116
Athletic Trainer	100.00	304
Dietitian	100.00	877
Individual Sewage Treatment System Designer II	100.00	558
Individual Sewage Treatment System Inspector	100.00	24
Individual Sewage Treatment System Installer	100.00	1,243
Individual Sewage Treatment System Pumper	100.00	354
Mortuary Science Professional	100.00	1,650
Nutritionist	100.00	78
Qualified Rehabilitation Consultant	100.00	345
Qualified Rehabilitation Consultant Intern	100.00	56
Veterinarian	100.00	2,654
Weather Modifier	100.00	0
Pharmacist	95.00	5,254
Audiologist	80.00	240
Speech Language Pathologist	80.00	763

SOURCE: Program Evaluation Division survey.

**Some boards
impose high
annual license
fees.**

Administrative consolidation was the focus of earlier studies, but we conclude that other problems are more urgent now.

advisory boards in host agencies that would provide administrative services. The CORE study in the early 1990s also seemed motivated by concern with administrative efficiency when it recommended the creation of a central licensing agency to perform administrative functions for the boards that would remain independent.

The Department of Administration made its recommendations after a detailed and lengthy study. However, in some ways its focus now seems quite out of date because the problem driving the recommendation to consolidate the regulatory boards into state agencies was the cost of typing, copying, and similar support services. The availability of less expensive computers and copiers have changed the economics of clerical services in the years since the report was written. Since the late 1970s the health boards have moved in a direction opposite to that envisaged by the Department of Administration report so that now they receive virtually no administrative services from the Minnesota Department of Health whereas in the past they were located in department offices and received various support services from the department. We think the major problem caused by so many independent entities is not administrative inefficiency. Rather it is application of the state's occupational regulatory policy articulated in Chapter 214 and legislative and executive branch oversight. These are serious problems. Organizing the independent boards in some kind of umbrella agency as some other states such as Florida, Virginia, and Wisconsin have done could make it easier for the Legislature and the Governor to oversee the degree to which occupational regulation is achieving its intended purposes. However, as we discussed in Chapter 1, this idea has been proposed in the past and was strongly resisted. In the case of the health boards, there is an evolutionary process that might lead to the same end, without a fight if the administrative services unit is expanded and the boards otherwise cooperate in communicating with the Legislature.

It is an open question whether the health boards will succeed in establishing the type of collaborative process and structure that will achieve greater administrative efficiency, collaboration on common challenges, and improved relations with the Legislature and the public, but since some progress has been made it may be reasonable to continue down the same path.

SUMMARY

We conclude that there are problems with Minnesota's system of occupational regulation that need attention from the Legislature and executive branch agencies. While the problems are not intractable, the Legislature has not usually treated occupational regulation as a major issue, so it has proved difficult in the past to enact reforms and to carry out the work required to make the changes that are needed even in the absence of major legislation.

The most serious problems we found are, first, the Legislature is not applying its occupational regulatory policy (Chapter 214) in a consistent or effective fashion. This is partly because there is a proliferation of proposals for regulation and partly because there is no legislative or executive branch office established to carry out the needed studies. Second, oversight of the boards and agencies responsible for

occupational regulation is inadequate, partly because of the large number of small agencies and programs.

Our recommendations are to establish a more formal approach to carrying out “sunrise” studies of proposals for new or increased occupational regulation. These could be done by the committees now responsible for hearing bills proposing occupational regulation, by specialized legislative committees or a joint commission, or by state departments such as the Minnesota Department of Health or the Department of Commerce. If the studies are done in state agencies with regulatory programs, we suggest that they be carried out by units within these departments not engaged in operating current regulatory programs.

We also believe oversight of regulatory boards and agencies can be improved. We recommend that the biennial reports required by Chapter 214 be improved by reviewing and revising what the law now requires, and by a vigorous effort by the independent boards and agencies involved to produce reports that are meaningful and command public attention. The boards and departments should find a way to produce summary reports so that the Legislature does not have to review numerous separate reports to get an overview of the situation.

Finally, our review of existing programs leads us to conclude that continued state regulation of certain occupations may not be justified by the criteria for occupational regulation contained in Chapter 214. We think a review of the current system, using the Directory of Occupational Regulation we have produced during this study as a starting point, will enable elimination and consolidation of some programs.