

PROFESSIONAL AND OCCUPATIONAL LICENSING STUDY COMMITTEE

Report to the Legislative Council
and the Members of the
First Session of the Sixty-fifth General Assembly

F I N A L R E P O R T

PROFESSIONAL AND OCCUPATIONAL LICENSING STUDY COMMITTEE

The Professional and Occupational Licensing Study Committee was established by the Legislative Council at its April 12, 1972 meeting for the purpose of studying all of the existing professional and occupational licensing boards, the statutes which apply to these boards, and professions and occupations that should be licensed but are not now licensed under the law. The Legislative Council stipulated that the Study Committee was to complete its study and make recommendations to the General Assembly by January, 1973.

The Legislative Council named the following members of the General Assembly to serve as members of the Committee:

Senator R. Dean Arbuckle, Jefferson
Senator Earl Bass, Malvern
Senator James Briles, Corning
Senator Minnette Doderer, Iowa City
Senator Cloyd Robinson, Cedar Rapids
Representative Tom Dougherty, Albia
Representative Willard Hansen, Cedar Falls
Representative Edgar Holden, Davenport
Representative Elizabeth Miller, Marshalltown
Representative Hallie Sargisson, Salix

At its first meeting, Representative Hansen was elected Chairman and Senator Doderer was elected Vice Chairman. The Committee decided not to select citizen advisory members.

The Committee decided to study the following professional and occupational licensing boards:

Health Care Occupations (Chapter 147)

1. Barbering
2. Chiropractic
3. Cosmetology
4. Dentistry and Dental Hygiene
5. Funeral Directing and Embalming
6. Medicine and Surgery, Osteopathy, and Osteopathic Medicine and Surgery
7. Nursing
8. Nursing Home Administrators

9. Optometry
10. Pharmacy
11. Physical Therapy
12. Podiatry

Other Occupations

13. Accountancy (Ch. 116)
14. Architecture (Ch. 118)
15. Basic Science (Ch. 146)
16. Certified Shorthand Reporting (Ch. 115)
17. Engineering and Land Surveying (Ch. 114)
18. Certified operators of water supply systems and wastewater treatment plants, distribution systems, and wastewater treatment plants. (Ch. 455B)
19. Law (Ch. 610)
20. Real Estate (Ch. 117)
21. Veterinary Medicine (Ch. 169)
22. Watchmaking (Ch. 120)

The Committee determined that there is a lack of uniformity among the statutory provisions relating to the various licensing boards. The number of board members varies from three to nine, and in most cases is composed entirely of persons licensed by the board. The trade association for licensed members is in many cases, especially in the health care professions, authorized to recommend names of persons to the Governor for replacements on the board and if the trade association recommends names, the Governor must select from the recommended names. The Board of Law Examiners and the Board of Certified Shorthand Reporters are appointed by the Supreme Court. The Board of Veterinary Examiners is appointed by the Department of Agriculture.

Some boards employ executive secretaries although a few boards which do not have a large number of licensed members utilize existing state departments to provide administrative and clerical assistance. In addition, some boards are required to utilize the staff of the Attorney General for legal assistance, and other boards employ their own attorneys.

Some boards are authorized to have separate trust funds into which examination fees and renewal fees are deposited, whereas the fees of other boards are deposited directly in the General Fund of the State. In some cases the fees collected exceed expenditures

of the board, but other boards must be subsidized by state funds. If the board has a trust fund, money is allocated biennially by the General Assembly from the trust fund for operation of the board.

The information required on the application forms for licensure or registration varies, as do the qualifications. Applicants for licensure or registration are required in some cases to be citizens of the United States, to submit a certain number of recommendations from licensed members of the profession or occupation, to meet minimum age requirements, and to present proof of good moral character. Questions are asked applicants concerning their marital status and their national origin.

In some cases examinations are given which are written by a national board and these examinations are sent elsewhere for grading. Some examinations are prepared and graded by the board itself. In some cases all of the board members are present during the written examination, but in others, boards use proctors while the examination is being taken. Some boards may conduct as many examinations each year as is necessary, and other boards are limited in the number of examinations which may be conducted annually.

Only the Board of Optometry Examiners and the Board of Examiners of Nursing Home Administrators require the completion of certain educational requirements for renewal of a license, other boards automatically renew licenses.

Some boards are allowed to expend funds for promotion of the profession, but other boards may only expend funds for administrative costs of the board and for conducting examinations. The Board of Pharmacy Examiners remits \$2.50 of the annual renewal fee to the Iowa Pharmaceutical Association to be used for the advancement of the art and science of pharmacy.

PRESENTATIONS TO THE COMMITTEE

Two law students from the University of Iowa had published an article in the April 1972 issue of the Iowa Law Review, entitled "Contemporary Studies Project: Regulation of Health Personnel in Iowa--A Distortion of the Public Interest." Ms. Hannah Arterian and Mr. Edward Nuss, authors of the article, addressed the Committee at the June meeting concerning their conclusions. Representatives from each of the examining boards were also present at the June meeting to explain their application, licensing, examination, and renewal procedures and their reciprocity policies. The representatives were also asked to present the Committee with copies of their application forms. In November, after tentative recommendations had been formulated by the Committee, both representatives of the examining boards and representatives of the trade associations of the licensed members were invited to comment upon the tentative recommendations.

Both Mr. Arthur Claus, State Budget Director of the Office of the State Comptroller, and Mr. Gerry Rankin, Legislative Fiscal Director, appeared before the Committee to explain trust fund procedures of the various boards.

Mr. Julian Garrett, Assistant Attorney General, Consumer Protection Division, spoke to the Committee concerning the subject of consumer fraud as it relates to licensing and made a number of suggestions to the Committee.

The Committee directed Chairman Hansen to request permission from the Legislative Council to broaden the study to include a study of all trust funds, including highway trust funds. Accordingly, Chairman Hansen appeared before the Legislative Council at its September 6, 1972 meeting. The Council directed the Study Committee to confine itself to matters directly related to the function and administration of professional and occupational licensing boards and agencies, including their trust funds but not trust funds of other agencies.

GUIDING PRINCIPLES

In beginning its deliberations, the Committee adopted the following principles for maintaining or establishing licensing boards:

1. The state will engage in licensing procedures for those professions and occupations where it believes it can assure an objective and measurable level of competency concerning the public health, safety, and well-being which other sources cannot effectively provide.

2. The examining board shall pursue a meaningful examination and enforcement procedure which upholds the level of competency of the licensee to insure that the public interest is protected.

LICENSING ADDITIONAL OCCUPATIONS

After adoption of the guiding principles, the Committee decided to confine its study to the presently established licensing boards and not make recommendations for specific occupational groups which have requested that licensing procedures be established by law. The Committee recommends that the General Assembly use the guiding principles in determining whether licensing procedures should be established in the future for specific occupations and professions.

Representatives from the following professions and occupations either appeared before the Committee or provided the Committee with copies of written statements requesting licensure:

1. Hearing Aid Dealers
2. Psychologists
3. Water Conditioning Dealers
4. Sanitarians
5. Social Workers

6. Hypnotists
7. Dealers or Breeders of Animals
8. Accountants other than Certified Public Accountants
9. Marriage Counselors

CONSUMER FRAUD RECOMMENDATIONS

The Committee received several recommendations from Mr. Julian Garrett, Consumer Fraud Division, Attorney General's Office, to strengthen consumer fraud laws, but determined that the recommendations should be referred to the appropriate standing committees of the General Assembly for further consideration and study.

Mr. Garrett's recommendations are as follows:

1. The holder in due course principle of the UCC as adopted in the Iowa Code should be modified so that any defense the buyer has against the original seller, would also be available against any holder in due course.
2. There should be a three-day rescission period on certain types of contracts where the consideration exceeds \$25.
3. More severe penalties should be provided for violation of consumer fraud laws.
4. The laws relating to mechanic's liens should be amended to require third parties to notify the customer that consideration has not been received for material furnished or labor performed.
5. More adequate regulation of out-of-state land sales should be established.

COMMITTEE RECOMMENDATIONS

In order to provide more uniformity and for the protection of the health, safety, and welfare of the public, the Professional and Occupational Licensing Study Committee makes the following recommendations which apply to all boards except watchmakers, basic science, and certification:

1. Each board will contain two members who are not licensed members of the occupation or profession. However, these members will not be involved with the administering of any practical examination of applicants.
2. Character references may be required, but shall not be obtained from licensed members of the profession. The past felony record of an applicant may be considered.
3. United States citizenship will not be required, but the application may request information on citizenship.

4. Questions concerning sex, marital status, race, religion, and national origin should be removed from the application form.

5. Recent photographs should be required on the application form, except where the board considers it unnecessary.

6. Board members will not be required to be present for the written portion of the examination.

7. Boards may conduct as many examinations as are necessary, but must conduct at least one per year. Any applicant failing on his first attempt at taking an exam must be allowed to retake the examination at the next scheduled time, but any further retaking of the exam shall be at the discretion of the board.

8. Fees charged for licenses should be sufficient to sustain the cost of the board. Fees charged for the examination should only reflect the cost of the examination.

9. All trust funds will be abolished and all fees will be deposited in the general fund of the state and funds will be appropriated to each board.

10. Funds shall not be collected by an examining board to be used for the promotion of the profession or to be paid to the professional association.

11. Chief administrators of boards shall have their salaries set by the General Assembly.

12. Board members should be appointed by the Governor and approved by the Senate.

13. Minimum age requirements must be removed, and the boards cannot discriminate on the basis of maximum age.

14. Professional or occupational associations may recommend names of potential board members to the Governor, but the Governor shall not be bound by the recommendations.

15. Each board should recommend to the General Assembly prior to the convening of the Sixty-fifth General Assembly, Second Session, possible requirements for continuing education for its licensed or registered personnel. Requirements for continuing education shall not be recommended or opposed that are not in the public interest, such as promoting educational facilities or limiting competition by maintaining a scarcity of licenses in the licensed field.

16. Members of examining boards are required to have been licensed for five years prior to their appointment and to have been licensed in Iowa for the last two years.

17. Members of examining boards will serve three-year terms of office and will be limited to three terms or nine years.

18. Each board will be required to hold one meeting each year at the seat of government.

19. Boards must make recommendations prior to the convening of the Sixty-fifth General Assembly, Second Session, regarding the use of legal counsel.

20. All boards will be given discretion concerning the renewal dates for annual licenses.

21. Each board must pay for its supplies from its own funds.

22. Annual renewal provisions should be provided.

23. A reasonable period should be allowed to renew a license after the final renewal date without revocation of the license, but the board can establish penalties for late renewal.

24. The boards should establish penalties to ensure the public members on the board do not disclose confidential information.

25. An inherent power of each board is revocation and suspension of licenses or registration and disciplinary action may be taken by the boards.

26. It is not necessary that a person belong to his professional or occupational association in order to be appointed to the board of examiners for his profession or occupation.

Recommendations for Engineering Examiners

1. The Executive Secretary of the Executive Council should not serve as secretary to the Board.

Recommendations for Iowa Real Estate Commission

1. The Commission should be composed of five members, to include at least one licensed real estate salesman and one or two licensed brokers and two members of the general public.

2. Section 117.2 of the Code should be amended to read as follows:

117.2 INDIVIDUAL LICENSES NECESSARY. No copartnership, association, or corporation shall be granted a license, unless every member or officer of ~~such~~ the copartnership, association, or corporation, who actively participates in the brokerage business of ~~such~~ the copartnership, association, or corporation, shall hold a license as a real estate broker or salesman, and unless every employee who acts as a salesman for ~~such~~ a copartnership, association, or corporation shall hold a license as a real estate broker or salesman. At least one member or officer of each copartnership, association, or corporation, shall be a real estate broker.

Recommendations for Architectural Examiners

1. References to a requirement for a high school diploma and completion of courses in mathematics, history, and languages should be removed.

Recommendations for Health Care Professions

1. Board members should be prohibited from being connected with a wholesale or jobbing house dealing in supplies of the practitioner.

2. The Basic Science Board should be abolished.

3. For medicine and surgery and osteopathy and surgery residency should be accepted in lieu of internship.

4. Unprofessional conduct is redefined to include knowingly making deceptive, untrue or fraudulent representations in the practice of his profession, conviction of a felony, or engaging in unethical conduct or practice harmful to the public.

Recommendations for Watchmakers

1. The Watchmakers Board should be abolished.

Recommendations for Lawyers

1. The board members should be appointed by the Governor with the approval of two-thirds of the members of the Senate, but jurisdiction over the license to practice law shall remain within the Supreme Court.

2. Examinations graded by temporary examiners should be reviewed by the Board of Law Examiners.

3. The Attorney General will be removed from membership on the Board.

4. The Board should recommend to the General Assembly, prior to the convening of the Sixty-fifth General Assembly, Second Session, a possible solution for the misuse by an attorney of a fiduciary position, in terms of repayment to beneficiaries of misused sums.

5. Unprofessional conduct is redefined to include knowingly making deceptive, untrue or fraudulent representations in the practice of his profession, conviction of a felony, or engaging in unethical conduct or practice harmful to the public.

6. Sections 610.1 and 610.3 should be combined and reference to the time required for study of the law should be removed.

7. An Attorney General's Opinion will be requested concerning the constitutionality of having the Governor appoint the members of the Board of Law Examiners with the approval of two-

thirds of the members of the Senate, but have the authority to practice law granted by the Supreme Court and the Board would continue to function under the jurisdiction of the Supreme Court.

Recommendations for Veterinarians

1. Section 169.22 should be stricken, but the Board may still authorize the Secretary to attend the meeting of the National Association.

2. Sections 169.24 and 169.25 should be stricken because according to persons in the Department of Agriculture, the list of approved schools is provided by the American Veterinary Association.

Recommendations for Nursing Home Administrators

1. The Board will be composed of four licensed nursing home administrators, three persons who are representatives of the professions concerned with the care and treatment of chronically ill or elderly, and two members representing the general public.

Recommendations for Certified Shorthand Reporters

1. The board members should be appointed by the Governor with the approval of two-thirds of the members of the Senate rather than by the Supreme Court.

2. Sections 115.4 and 115.5 should be repealed since courts are granted the authority to appoint certified shorthand reporters.