



TO: The Honorable the Members of the Board of Regents

FROM: Johanna Duncan-Poitier

COMMITTEE: Professional Practice

TITLE OF ITEM: Status of Activities Related to Horizon Issues

DATE OF SUBMISSION: April 12, 2002

PROPOSED HANDLING: Discussion

RATIONALE FOR ITEM: Continued reexamination of horizon issues in light of ongoing developments in health care, the business environment and technology

STRATEGIC GOAL: Goal 3

AUTHORIZATION(S):

EXECUTIVE SUMMARY

Professional regulation in the 21st century was the theme of the Regents Conference on the Professions in 2000. This major event brought together nearly 500 people from the professional community. The Board of Regents and the Department, in partnership with the professional community, discussed major opportunities and challenges for the professions, those who regulate the professions, and consumers of professional services. At the Conference, leaders of the professional community discussed with the Board of Regents and the Department the ten major “horizon issues” identified as having a significant impact on the future of professional regulation and professional practice in the 21st century:

Corporate practice of the professions	Continuing competence
Managed care	Cross-jurisdictional practice
Unauthorized practice of the professions	Rising consumer demands
Expansion of the licensed professions	Technology and telepractice
Expanding scopes of practice	Professional workforce shortages

In keeping with their long tradition of leadership, the Regents anticipated changes in professional regulation necessary to provide effective and relevant oversight over the professions into the 21st century. Because of the complexity and long-term influence of these issues, the Board of Regents recognized the critical need to be at the forefront of these changes. The Office of the Professions provided a series of detailed reports on the ten horizon issues to the Board of Regents. As the Regents examined each individual topic and sought input from partners and stakeholders, they provided guidance and direction on these issues for professionals, consumers, aspiring professionals, professional organizations and other interested parties.

This report briefly describes the horizon issues and highlights a few examples of recent developments in each of these areas. Several creative and innovative advancements have resulted from the Regents focus on these key issues over the last five years. Future discussions of the Professional Practice Committee (PPC) will include a more detailed description of what has occurred since we last reported on these issues.

HORIZON ISSUES

Corporate Practice of the Professions and Managed Care

Professional services can only be offered by a licensed person or an organization otherwise authorized by law (generally, professional corporations or partnerships comprised of licensees). Many business corporations, however, are endeavoring to offer professional services because of the profitable advantages inherent in the licensed professions client base. Because of this interest, corporate practice challenges us to examine the growth of new forms of business practice that may arguably provide greater access and economies of scale to professional services while ensuring that the professional judgment of the licensees remains independent. Large corporations like American Express, Wal-Mart, commercial banks and many others, for example, are very interested in providing professional services. The New York State Legislature, however, has remained committed to the statutory prohibition against the practice of the professions by business corporations, except when certain types of corporations are explicitly exempted or authorized to deliver professional services, such as optometry or pharmacy retail establishments. Together, this prohibition and the measured exceptions balance the need to enhance access to affordable professional services while ensuring that professionals exercise independent judgment free from the influence of a business corporation.

Managed care, which is authorized under the Public Health Law and regulated by the Department of Health, is similar to corporate practice of the professions in that it can affect the delivery of health care, and, therefore, affect how professionals provide services. Both business corporations and managed care organizations seek to link professional practice with related but non-professional services. While this model may modify the role of the independent practitioner, as compared to practice as a single practitioner or a professional corporation, the public does have some protection when exceptions to the general prohibition against professional practice by corporations - like managed care - are subject to sound oversight. Each profession faces unique challenges as it grapples with the various possibilities associated with corporate practice and managed care.

In December 1998, the Board of Regents reaffirmed its commitment to the principle of professional independence when it adopted a formal *Resolution on Corporate Practice of the Professions by Unlicensed or Unauthorized Entities*. The resolution states that the Board of Regents opposes any form of business relationship that affects a licensee's ability to exercise professional judgment when providing professional services. The Regents and the State Education Department continue to engage partners and stakeholders to ensure a clear understanding of what is needed to protect the public's interests.

Examples of Recent Developments Related to Corporate Practice and Managed Care

- The Department proposed an expanded scope of practice to include all professional services rendered by a Certified Public Accountant (CPA) or Public Accountant (PA), making these professionals accountable for all services they provide. The recent Enron/Arthur Andersen debacle has demonstrated the wisdom of the Regents unwavering support of high standards and accountability.
- Chiropractic practice alerts were developed to provide information on interdisciplinary practice structures in which physicians may employ chiropractors. The practice alerts will help over 6,100 licensed chiropractors differentiate between acceptable structures and unlawful business arrangements.
- In support of the *Regents Resolution on Corporate Practice*, numerous State Boards have been discussing concerns about the impact of managed care and corporate practice that may curtail clinically warranted health care. The Department supports managed care as long as it does not interfere with professional decisions or restrict the provision of necessary health care services. In those instances in which such interference is occurring, we are addressing noncompliance.

Unlicensed Practice of the Professions

The illegal practice of a profession involves any person or entity who practices one of the licensed professions without a license authorizing him/her to practice, and/or who falsely represents himself/herself as authorized to practice such a profession. Unlicensed practice of the professions occurs when an unlicensed person performs a function limited by Education Law to a licensed professional. The public is endangered whenever unlicensed individuals illegally perform professional services that the law restricts to licensed professionals. The patient who is ill or injured in a hospital relies totally upon the professional care, observation, assessment, and experience of primary caregivers. Those primary caregivers need to be licensed health care professionals, who are qualified to practice their professions in New York State. Similarly, clients rely on the training,

experience, and skill of licensed business and design professionals who are accountable for the services they provide to the public.

The Office of the Professions receives numerous inquiries on over 500 complaints regarding the use of unlicensed individuals to perform tasks and provide services reserved for licensed professionals. As a greater number of organizations seek to become more efficient, and conform to various pressures to reduce costs, it is essential that public protection not be sacrificed for “bottom line” results.

Examples of Recent Developments Related to Unlicensed Practice

- The Office of the Professions continues to work with the Attorney General's Office to combat illegal practice of the professions. In a recent case, the Office of the Professions assisted the Office of the Attorney General in the arrest of an unlicensed individual working as a physician at the site of the World Trade Center attacks. The Office of the Professions has also established active partnerships with several other organizations including:
 - the Federal Bureau of Investigation (FBI) and the Food and Drug Administration (FDA) to curtail the illegal movement of counterfeit and contaminated drugs and keep them from being distributed to the public;
 - various New York State agencies and District Attorney offices to combat insurance fraud in the health care professions; and
 - the New York City Building Department to uncover illegal practice in the design professions.

- The Office of the Professions' web site now features reports of compliance agreements (cease and desist) reached in cases of alleged illegal practice of the professions. This information enhances efforts to inform the public and professionals *and* shows that subsequent action will be taken against the illegal practice of the professions by unlicensed people.

- Newly enacted laws reinforce the requirement that only licensed professionals can provide services reserved within their scopes of practice.
 - Corporations and special entities are now required to obtain a certificate of authorization prior to providing land surveying services in New York State.
 - A law enacted in 2001 allows an unlicensed person to assist a podiatrist, under the podiatrist's direct supervision, to extend the podiatrist's capacity and, thereby,

contribute to the availability and accessibility of podiatric services. The unlicensed individual may not, however, "provide any service which constitutes the practice of podiatry as defined in Education Law." Supporting standards of practice and public protection are the bottom line.

Expansion of the Licensed Professions

There are a growing number of requests from groups seeking to establish new professions. At the turn of the last century there were only six professions; now there are 39 professions with 653,000 registered licensees. The reasons for this trend are varied. Some may be seeking to increase the stature of an occupation through licensure, while others may be trying to draw a clearer distinction between those trained to offer competent services and those who are not. For others, there may be real public protection issues that may require a service to be regulated. Another powerful factor is that licensure may help practitioners qualify for third-party reimbursements.

The primary concern of the Regents and the Department in taking a position on new professions is whether licensure is needed to protect the public and whether the services being provided require basic qualifications and experience to ensure public safety. From a practical standpoint, a new profession's impact on Department resources - start-up costs and ongoing support - must also be considered in relation to the potential number of licensees.

Examples of Recent Developments Related to Expansion of the Licensed Professions

- After several years of proposals and negotiations with a variety of stakeholders, in December 2001, New York established the profession of medical physics and placed it under the jurisdiction of the Regents. Nominations for appointments to the State Board are being solicited and potential members are being interviewed.
- Recent legislative proposals have sought licensure for home inspectors, geologists, and genetic counselors. The Office of the Professions is carefully weighing the need for these proposed new professions so we may respond to the Legislature's request for our input.
- The Office of the Professions has provided significant technical advice on proposed legislation to expand the mental health professions to include four new groups: marriage and family therapists, mental health counselors, creative arts therapists, and psychoanalysts. The bill also contemplates a protected scope of practice for psychologists. A protected scope of practice for social workers may be proposed in the

near future. If enacted into law, the number of licensed and registered professionals under Title VIII of Education Law could increase from 653,000 to over 800,000, possibly even 1,000,000.

Expanding Scopes of Practice

When a profession gains licensure status by inclusion in Title VIII of the Education Law, the legislation will include a definition of practice, which is commonly referred to as the “scope of practice.” The scope of practice for a profession authorizes the range of services that can be provided by licensees, while determining limits on the permissible services. For example, while the scope of practice for dentistry generally reflects that a dentist can diagnose and treat conditions of the mouth, the scope limits the practice to the mouth and adjacent tissues, therefore, precluding dentists from diagnosing and treating conditions occurring in other parts of the body.

Increasingly, professionals seek to expand the range of services traditionally associated with their licenses. Changing trends, market forces, technological advancements, and other factors prompt these proposed expansions, which can result in greater opportunities for professionals to provide services and greater public access to those services.

The assessment of the proposed expansion requires a determination of whether the public will benefit through greater access, or if it will be endangered by the provision of the expanded services, perhaps by a less qualified practitioner. Critical to this assessment is the degree to which the available education and training for the professionals is sufficient to assure competence in the proposed expanded scope.

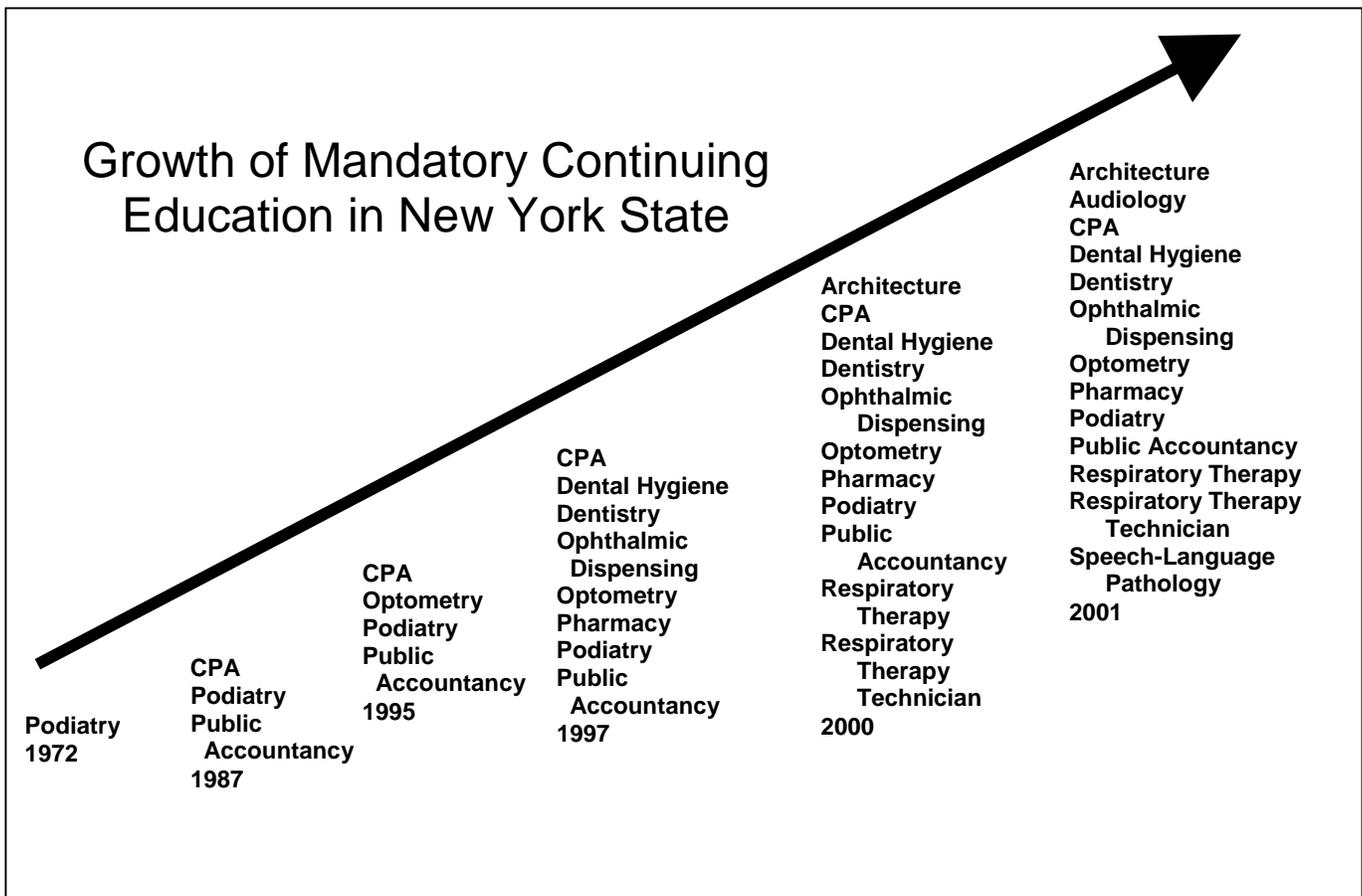
Examples of Recent Developments Related to Expanding Scopes of Practice

- The State Board for Dentistry is developing regulations to implement a new certification authorizing dental hygienists to administer nitrous oxide and infiltration anesthesia.
- The Education Department continues to support a legislative bill (first proposed by the Department in 1999) to expand the scope of practice of public accountancy to include all professional services rendered by CPAs/PAs, to enhance public protection.
- The State Board for Physical Therapy is developing practice guidelines to clarify the practice of physical therapy by licensed physical therapists and certified physical therapist assistants. The guidelines address the growing use of complementary and alternative modalities of treatment and restrictions on the ability of physical therapist assistants to perform manipulations.

Continuing Competence

Today's professionals work in a world of evolving technologies and practice environments, expanding scopes of practice, and increased consumer expectations. Practice in this dynamic environment requires the ongoing development of knowledge and skills. In its simplest form, continuing professional competence means that a licensee: 1) is at least as qualified to practice as at the time of licensure; and 2) has kept current with developments in the profession since the time of licensure. Continuing professional competence is an important component of the public protection equation.

Approaches to continuing competence are also evolving. Several strategies have been identified to ensure continuing professional competence, including mandatory continuing education, periodic re-examination, educational outreach, peer reviews of on-site performance, and self-assessments. Licensees in 13 professions in New York State are required to complete mandatory continuing competence activities. The Board of Regents and the Education Department supplement continuing education with tools like educational outreach and self-assessments. We continue to seek promising strategies to ensure that both existing and proposed competence requirements protect the public and encourage the ongoing development of the professionals who provide vital services to New Yorkers.

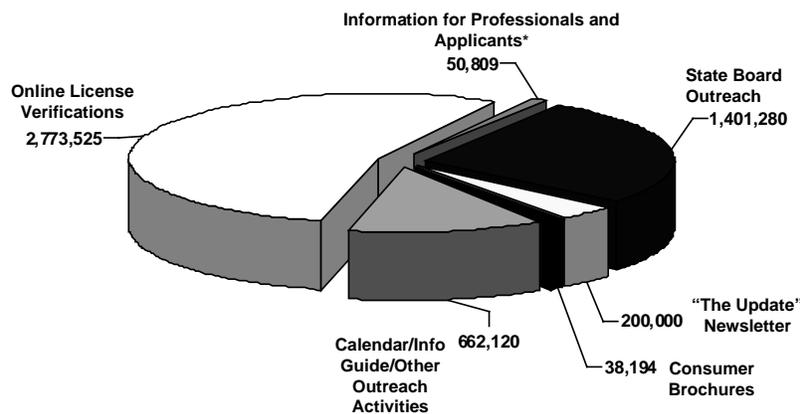


Examples of Recent Developments Related to Continuing Competence

- The continuing competence requirement for the professions of speech-language pathology and audiology defines a flexible approach that encourages professionals to take an active role in defining their development needs, helping to shape an experience that is educational and relevant.
- Consistent with the Department's focus on winning compliance from licensed professionals, OP provides important information to professionals on general policy issues, practice advisories on specific professional practice issues, and routine practice alerts through publications, direct mailings, consumer materials, on the web and through other avenues. In 2001, the Office of the Professions made more than **5.1 million contacts** with its customers: consumers, applicants for licensure, licensed professionals, professional organizations, students, educators, and others.

2001 Office of the Professions Outreach to Licensees, Prospective Licensees, and the Public for January - December 2001

Education Activities to Prevent Misconduct and Support Competent Practice



**Includes general presentations and distributions of practice advisories, guides to practice, application packets, and handbooks.*

Total =5,125,928

- The Office of the Professions' web site now features self-assessment tools for physical therapists and podiatrists. These easy-to-use tools enable professionals to measure

their general working knowledge of Education Law and profession-specific practice requirements. By reinforcing basic professional guidelines, the test helps physical therapists and podiatrists avoid actions that could harm clients or lead to professional misconduct charges. Several other Boards are adapting similar tools for the web.

- A consistent process was instituted within the Office of the Professions for auditing mandatory continuing education (MCE) compliance of licensees for all professions with MCE requirements. In the first comprehensive sample, less than three percent of licensees were found to be out of compliance. These individuals were referred to the Office of Professional Discipline for possible disciplinary action.

Cross-Jurisdictional Practice

All aspects of the licensure process in New York State are designed with one primary purpose – public protection. Licensure standards in New York are established by statute and regulation and based on the defined scope of practice of specific professions and the need for public protection. While the practice of some professions is similar across state lines, scopes of practice for many professions differ from state to state. Accordingly, licensure requirements may differ considerably across the various jurisdictions. Due to technological advancements, the Internet, and a global economy, practitioners can now cross many traditional geographical practice boundaries. With the exception of limited consulting arrangements and specific provisions for physicians living near the State border, all individuals who practice any of the professions in New York State must be licensed in New York – including those who practice via technology. We continue to seek ways of facilitating licensure in New York State while ensuring that New York’s standards are upheld.

Examples of Recent Developments Related to Cross-Jurisdictional Practice

- To facilitate the licensure of out-of-state practitioners, the Office of the Professions is finalizing the process for accepting information electronically from the National Council of Examiners for Engineering and Surveying Record. Electronic transmission will expedite licensure by endorsement for qualified engineering and land surveying applicants. Endorsement is the granting of a New York State license based upon licensure in another jurisdiction.
- The Office of the Professions is continuously reviewing possibilities for authorizing licensees from other states to practice in this State temporarily while providing essential professional services at specific events like athletic competitions or teaching venues.

- A clarifying memorandum on telepractice was sent to licensed physicians and other interested parties emphasizing that professional practice in New York State requires licensure and registration. The memo is available for easy reference on the OP web site.

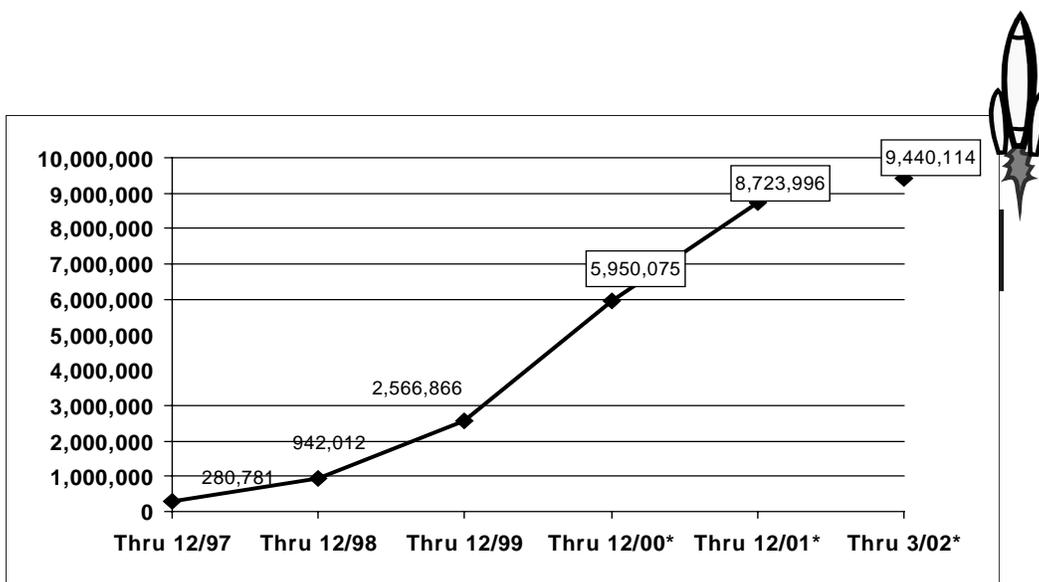
Rising Consumer Demands

Customers have higher expectations than ever for *what* services are offered and *how* they are made available. In exploring and then implementing technology-related enhancements – from web-based services to a state-of-the-art telephone system – technology can provide new or improved opportunities to serve customers. As a result, the Office of the Professions continuously assesses and enhances its customer service tools and features.

Technology is not the only route to meeting customer demands. In re-configuring the steps within the professional discipline process, the Department established a new "Calendar Call" system. A Calendar Call hearing is a preliminary step in the formal hearing process that addresses procedural and legal issues before a three-member panel of State professional Board members is required. This process relieves long-standing concerns of internal customers (State board members, staff) while also yielding benefits for external customers (professionals, consumers).

Examples of Recent Developments Related to Rising Consumer Demands

- The cumulative total number of license verifications completed on the OP web site surpassed 9.4 million; users performed more than 716,118 verifications from January -

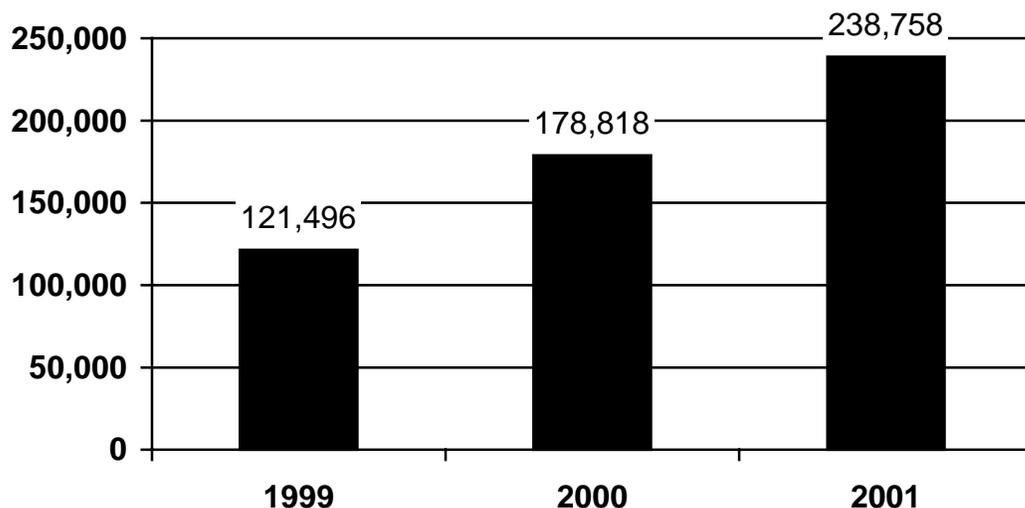


*Includes pharmacies and other professional entities

March 2002, or an average of 238,706 per month. The availability of this service helps to ensure that only licensed, accountable professionals are engaged to perform vital health, design and other services.

- Staff in the Office of the Professions **assisted more than 670,000 callers** to Albany work units in 2001. An enhanced telephone system quickly routed customers to the information and services they needed, offered self-service features such as voice mail and prerecorded information, provided comprehensive call-management data, and **eliminated busy signals**. Close to 103,000 customers served themselves through automated options (requested materials, listened to recorded information, used "fax backs," etc.). Customer Service representatives fielded 238,758 calls in 2001 – nearly twice as many as they had handled in 1999.

Professions' Customer Service Unit Handles More Calls with Enhanced Phone System



- Based upon a sample drawn from six professions, more than 92 percent of new licensees agreed that they received good service from the Office of the Professions. Likewise, 97 percent of State professional board members agreed that their interactions with the Office were very satisfactory in 2001.
- To meet the demands of participants, other agencies, and internal customers, the Professional Assistance Program (PAP) has improved response times by implementing a document imaging system. E-mail or Internet forms are directly imported into the

computer file. The PAP section of the OP web site is being expanded to allow secure completion of PAP monitoring forms, which will also be imported into the imaging database. All imaged documents are linked to individual case files and are immediately available to the licensee's case manager. Advantages include:

- reducing the risk of lost documents
- centralizing all program activities
- eliminating paper files and storage space needs
- eliminating customer service delays by having all information readily available

Technology and Telepractice

The emerging issues in professional regulation are evolving quickly but there is even faster growth in the technologies that support professional practice. Telepractice - the provision of services over geographical distances through telecommunications - is one product of the technology boom. Telepractice can expand consumers' access to the services they need which may not be available locally. The challenge, however, is to have an approach that allows society to reap the benefits of telepractice while ensuring safe practice and accountability.

Several modes of technology are being used in professional practice to improve the quality of services provided, save time and reduce costs. For example, many health care practitioners use Personal Digital Assistants (PDAs) to track staff schedules and patient status in hospitals, nursing homes, and community-based organizations. Computer-aided drafting and the electronic transmission of documents are widely used in the design professions. The Department's job must be to encourage appropriate use of technology while ensuring that safe professional services continue to be provided.

Examples of Recent Developments Related to Technology and Telepractice

- A special issue of *The Update* newsletter featured detailed information on telepractice and a description of its implications for licensure, benefits, challenges, and next steps. The article and the December 1999 report to the Board of Regents on telepractice are easily accessible on the Office of the Professions web site.
- Licensing examinations in 19 professions are offered to prospective licensees electronically via computer; almost 63 percent of 30,000+ applicants each year take computerized licensing examinations. Benefits of electronic examination administration include frequent test administrations, convenient test sites, immediate test results, and increased test security.

- Office of the Professions staff members testified at an Assembly public hearing on telemedicine, highlighting the need to maintain high standards of licensure in New York State. The testimony emphasized that services provided through technology must be delivered by qualified, competent practitioners.

Professional Workforce Shortages

Predicted professional workforce shortages are drawing the attention of regulators, professionals, legislators, educators, administrators, and employers. Around the country and around the world, there are impending shortages - particularly within health care. The Board of Regents and the State Education Department have begun addressing shortages with an emphasis on the nursing profession, the largest of the licensed professions in New York State and the one with the most serious shortage predicted.

All agree that a shortage will impact the quality of nursing care specifically and the quality and safety of the health care system in general. Addressing the nursing shortage will truly require a concerted team effort by *all* stakeholders. The issue is too complex and far-reaching for any one agency or organization to solve. Solutions proposed by the Regents Blue Ribbon Task Force on the Future of Nursing will contribute to the State's efforts to avoid a health care crisis.

The demographic shifts that are contributing to the nursing shortage portend shortages in other professions regulated by the Board of Regents. Investment in measuring the nursing shortage and formulating solutions will help to address supply-and-demand imbalances in all professions. These investments, including the use of research capability within the Department, can be applied to survey licensed professionals and collaborate with government and private agencies to project future need and supply to avoid future crises.

Examples of Recent Developments Related to Professional Workforce Shortages

- Extensive work is under way to implement the recommendations of the Regents Blue Ribbon Task Force on the Future of Nursing. Examples include:
 - a comprehensive survey of registered nurses in New York State
 - a clearinghouse to identify best practices for addressing the nursing shortage
 - identifying scope of practice issues to be clarified in light of workforce shortages
 - engaging the field in discussions on patient abandonment and creating specific guidelines
 - widely sharing the Regents Task Force on Nursing report and engaging stakeholders and grass roots organizations via the Internet, mailings to policymakers, live presentations, etc.
 - developing practice guidelines to address new challenges and opportunities

- Student outreach to promote the professions includes visits to schools, shadowing, mentoring, and outreach by OP representatives and State professional board members.
 - In 2001, representatives of the State professional boards and OP reached over 50,000 students through more than 40 events - typically through classroom presentations, school-based seminars and publications. For example, OP participated in the *2001 Careers in Health Care Educational Forum* in Albany, which promoted professional careers to high school students, college graduates, guidance counselors, teachers, and others.
 - Several outreach initiatives specifically encourage people from underrepresented racial and ethnic minority groups to consider careers in the professions. The Office of the Professions recently partnered with the Office of Higher Education to promote career opportunities at the *Forum on the Future of Hispanic Education in New York State*.
- We recently conducted a survey of pharmacists registered by the New York State Education Department. Results of this **Pharmacy Manpower Survey** are now being analyzed. The Office of the Professions collaborated with several professional associations and colleges to develop and analyze the survey that was sent to a sample of pharmacists in New York City. Preliminary survey results suggest an existing shortage of pharmacists that will be compounded as those currently licensed retire.

CONCLUSION

The ten horizon issues will continue to impact significantly on the important work of the Regents and the Department. It is critical that these issues are kept alive through periodic updates and regular discussions with professionals. We must seize the opportunities presented by these cutting edge issues to improve public protection and enhance professional regulation while maintaining the high standards for which New York is known. For example, while upholding the requirements for licensure and registration in New York State in the face of those advocating for cross-jurisdictional practice, we were able to allow professionals licensed in other jurisdictions to volunteer their services in the wake of the September 11th tragedy.

These horizon issues must continue to be examined in light of ongoing developments in health care, the business environment, and technology. We must marshal the resources of the Department on issues like workforce shortages, through which to use common strategies and opportunities to promote nursing, teaching, pharmacy and other professions. With a careful eye on the future, the Regents can encourage advances within professional practice while ensuring that professional judgment and integrity are never compromised. The public depends on the Regents and the Department for their protection.