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ITEM FOR DISCUSSION (Information, General)

TO: The Honorable the Members of the Board of Regents
Committee on Professional Practice

SUBJECT: Briefing on Current Professional Licensure Issues -
Cross-Jurisdictional Professional Practice

Executive Summary

This report on licensure issues is the second in a series of informational reports on emerging issues in professional regulation. These reports are designed to keep the members of the Regents Professional Practice Committee apprised of the full range of issues being discussed among regulatory bodies and professional communities across the nation.

This is a follow-up to the [December 1999 Regents report](#) that described recent initiatives in telepractice, including the advantages and concerns related to the use of technology in the practice of the professions across state borders. As noted in that report, New York State Law requires full licensure and current registration for any professional who practices in New York State. Licensed professionals are responsible for adhering to the same laws, rules and regulations and for upholding the same standards and competencies when engaging in telepractice as they are when practicing face to face. Except for limited exemptions, anyone who practices in New York must be licensed in this State whether providing professional services in person or over distance via technology. Any approaches to cross-jurisdictional practice must adhere to the statutory requirement for full New York State licensure as it is the public protection vehicle supported by the Legislature and the Department.

Because the use of technology and the Internet have eliminated many geographic boundaries, there have been numerous national and statewide discussions about

professional licensure, the need to ensure public protection, and ways to maximize the benefits of technology. This report describes: the current statutory structure of professional licensure; the importance of this structure to public protection; different approaches to professional regulation across the country, such as upholding individual State regulatory authority, endorsement, reciprocity, multi-state licensure, and national licensure; several possibilities for addressing practice across state lines; and New York State's position on this issue to ensure the protection of its citizens through the full licensure requirement.

This report notes that, just as in the area of telepractice, where a number of regulatory options exist, there are numerous approaches being considered to address cross-jurisdictional professional practice. However, there are just as many concerns and unanswered questions with respect to cross-jurisdictional professional practice. Without compromising our commitment to the requirement for full New York State professional licensure, we are assessing all aspects of cross-jurisdictional professional practice and the impact each proposal will have on public protection, on current licensure and discipline standards, and on resources.

I. Licensure Process in New York State

All aspects of the licensure process in New York State are designed with one primary purpose -- public protection. We are also aware of the need for access to qualified and competent professional services by all New Yorkers. Licensure standards in New York are established by statute and regulation and based on the defined scope of practice of specific professions and the interest of 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.

Ensuring that requirements for education, experience and examination are met, together with profession-specific moral character requirements, is our first level of public protection. Competence is expected of New York's licensed professionals. This means that those who have **not** met our basic standards for licensure in any of these areas cannot legally provide professional services in our State. The standards for performance in professional education, experience, and examination are reflected in the [Vision Statement](#) for the Office of the Professions:

A REGULATORY SYSTEM THAT PROMOTES THE HIGHEST QUALITY OF PROFESSIONAL SERVICES FOR PUBLIC PROTECTION.

Direct verification of educational credentials is required from the professional schools that prepare licensure candidates to assure authentic documentation of each candidate's educational preparation and training. Credentials are then reviewed against the qualitative standards set in Commissioner's Regulations.

In those professions with an experience requirement, similar direct verification procedures are used and staff or State professional board members review each applicant's experience to assure that it meets New York's requirements. The licensing examination is the third major requirement for the majority of professions. The New York professional boards and the State Education Department work with national examination developers and providers to ensure relevant licensing examinations that accurately assess the applicant's knowledge to practice safely in New York. In some professions, New York State develops its own examination if a suitable national examination is not available.

New York also has a moral character requirement for licensure in most professions. This standard is another means of protecting the public by screening out individuals who may be morally unfit to practice a licensed profession in New York because of a personal history that may include criminal activity and/or other questionable behavior.

All the steps in the licensure process are designed to ensure that we are issuing professional licenses only to those who have met New York's standards for competence.

II. Licensure among States through Endorsement and Reciprocity

Endorsement is a mechanism in use in many states, including New York, to facilitate licensure for qualified professionals who move from state to state. Although entry-level requirements in some jurisdictions differ from New York's, this licensure process is available for those jurisdictions in which the requirements are equivalent and for those cases in which individuals have demonstrated years of unblemished practice of the profession in that jurisdiction before applying for licensure in New York. Endorsement can eliminate the need to repeat some licensure requirements, such as the examination, while ensuring that candidates meet New York State licensure standards.

- In medicine, for example, a physician who was licensed in another state prior to the existence of a national licensing examination (FLEX and/or National Boards), which is required in New York, may be eligible for licensure in New York by endorsement of the other state license. This may be possible if all other New York State licensing requirements are satisfied, the other state's licensing examination is acceptable, and the physician has at least two years of satisfactory professional practice.
- In public accountancy, a CPA licensed in another jurisdiction at a time when the licensing requirements in that jurisdiction (education, examination, or experience) were not fully equivalent to New York State may qualify for licensure in New York by presenting evidence of at least five years of professional practice acceptable to the Department.

As technological developments and the broader use of telepractice increasingly stimulate licensees to pursue licensure in multiple jurisdictions, OP will explore establishing further profession-specific regulations for endorsement of professional licensure requirements already met in other jurisdictions whose standards are comparable to those of New York State.

Reciprocity, or the agreements that award a license solely on the basis of a license in another jurisdiction, is not authorized by current New York State law. Various other jurisdictions are exploring or may use the reciprocity approach in some professions. Reciprocity usually involves a contractual relationship between or among states in which the requirements are recognized as comparable and licensure is granted to persons pursuing a license in a reciprocal state. This generally excludes licensees who have a disciplinary history. The Western Governor's Association has established a task force to explore the possibility of expanded interstate reciprocity.

III. Licensure Standards Differ across Jurisdictions

Licensure standards may differ considerably among the states. These differing standards must be addressed in any effort to promote cross-jurisdictional practice. They are addressed on a state-by-state and profession-by-profession basis when licensure decisions are made by regulatory bodies. New York's licensure requirements may be similar to those of other jurisdictions for some professions, but may exceed the requirements of other jurisdictions for the same professions. In some jurisdictions, there may be no comparable licensed profession. The following examples reflect this variability:

- For licensure as a Licensed Professional Nurse (LPN), the California Board of Nursing accepts persons who have completed programs not acceptable by New York State standards, such as 12-week Navy Corpsmen programs. Also in California, Licensed Vocational Nurses (LVNs, as California's LPNs are known) may be licensed as RNs with 30 additional units of nursing courses but without a nursing degree. In New York State, Commissioner's Regulations require graduation from an approved registered nursing program.
- For the profession of medicine, New York's education and postgraduate requirements may exceed those of some other states. Some states, for example, accept graduation from Traditional Chinese Medical programs that do not provide a western medical education. While the Educational Commission on Foreign Medical Graduates will certify the Traditional Chinese Medical education as qualifying for its certificate, New York will not accept this as meeting the educational requirements for licensure.
- Also in medicine, New York requires three years of postgraduate hospital training for graduates of schools that are neither accredited by the Liaison Committee for

Medical Education (LCME) nor registered by the Department. In some states, only one year of postgraduate hospital training may be required.

- For licensure as a Delaware CPA, candidates may take all accounting coursework at the community college level. In contrast, New York requires taxation, advanced financial accounting, and auditing to be completed in the upper division of a four-year institution.
- In massage therapy, the New York educational requirement includes 1,000 hours of instruction, but some states require only half that amount of education.
- In the profession of midwifery, some states have nurse midwives and a separate category of lay midwives where equivalent nursing education is not required. In New York State, Commissioner's Regulations require nursing education in specific content areas as part of the professional education required for licensure as a midwife.
- Some of the professions that are licensed in New York are not regulated through licensure in all other states, (e.g., athletic training, massage therapy, dietetics-nutrition, ophthalmic dispensing, and occupational therapy assistant).

To ensure public protection, New York's licensure requirements must be satisfied and a New York license issued before any professional services are rendered.

IV. More Than Gatekeepers: Professional Responsibility

The oversight of the professions extends beyond the initial licensure process to regulation of professional practice. Licensing requirements ensure the knowledge and skills of those who apply for licenses to offer professional services. Once licensed, professionals must offer safe and competent services over the course of their active careers. Professional regulation to assure competence on an ongoing basis demands substantial resources to continually and diligently protect the public. The regulation of professional practice varies by state as well. Approaches to "professional responsibility" include everything from moral character reviews of applicants to full disciplinary proceedings against licensed professionals. As with differences in licensure standards, there are often differences with professional discipline standards across states.

The variable nature of licensing requirements and regulatory structures across states also results in unique practice requirements. Each state holds professionals accountable according to the specifics of these requirements. Cross-jurisdictional practice must not only take into account relatively straightforward licensing requirements; it must also address the complex interplay of law, rule, regulation, and policy that defines appropriate professional practice in each state. This interplay reflects the unique history

and issues of professional regulation that developed as individual jurisdictions anticipated and responded to the needs of its citizens. In New York, for example, professional discipline processes include the following components, which may not be aspects of the disciplinary process in other states:

- The Office of the Professions investigates about 6,000 complaints or reports of professional misconduct against New York State licensees every year.
- Investigators, prosecutors, legal services staff, state professional board members, and members of the Board of Regents are all involved in the professional discipline process to ensure thoroughness, equity, efficiency, and fairness to professionals and the public.
- Serious cases of misconduct are addressed through full, public Regents disciplinary actions that follow a professional board hearing.
- Cases of "minor and technical" misconduct are addressed through administrative options that are alternatives to full Regents disciplinary actions.
- An ongoing campaign is under way to promote sound practice and to help prevent professional misconduct by providing clear information to licensees and the public about sound professional practice in all of the professions.

Current geographic boundaries are very important to the discussion regarding the discipline of professional misconduct. It would, for example, be more difficult and complex to fully respond to or follow-up on complaints of professional misconduct if the patient or consumer is located in New York but the licensee is physically located in another state.

V. Professional Fees Support Professional Regulation

Substantial funding is required to support the staff, facilities, materials, and all of the other resources needed for professional regulation. New York State's professional regulatory system, which has been nationally recognized for excellence, is self-supporting. All of the revenue that funds OP comes from licensure, registration and penalty fees. The State Education Department has not had a fee increase for professionals in more than a decade, while services to licensees and the public have grown as a result of the addition of new professions and a huge increase in licensees. Any move to multi-state or national licensure would dramatically impact those fees and the availability of necessary resources. Revenues would decrease because fewer out-of-state licensees will register in New York, while costs increase because of the projected growth of out-of-state licensees seeking to practice in New York and the additional administrative challenges involved in any system of multi-state or national licensure. The regulatory functions supported by OP's revenues are extensive and include the following:

- 25 State Boards for the Professions: General operation of State board functions so that board members may assist the Department and the Board of Regents in regulating the professions, such as: board meetings, application evaluations, examination review, practice guidelines, disciplinary process involvement, and ongoing responses to the questions from professionals and the general public.
- Professional Education Program Review: Site and application reviews of professional programs in post-secondary institutions across the country.
- Professional Examinations: Examination: Development, review, assessment and administration of professional exams.
- Comparative Education: Annual review of 12,000 credentials for applicants from non-registered programs all over the world.
- Professional Licensing Services: Processing of 37,000 new applications for licensure, 210,000 re-registrations annually and 2,500 professional corporation applications. This operation also includes records retention for more than one million New York State licensees, FOIL requests, archives and the like.
- Customer Service: Over three quarters of a million direct customer contacts annually (with licensees and the public) requesting licensure information, discipline history, continuing education requirements, and status of application/registration.
- Professional Responsibility: Follow-up on more than 6,000 complaints of professional misconduct, illegal practice and restoration petitions.
- District Office Operation: Operation of nine regional offices for statewide service.
- Professional Assistance Program: Providing services for nearly 700 professionals with substance abuse and related problems annually.
- Communications: Annual outreach to over 1,706,000 consumers and professionals.
- Office of the Professions Administration: Providing research, policy development, professional practice and scope issue clarification, regulatory issue resolution, legislative activities, etc., with assistance from State professional boards.
- Central Administration Services: Legal services, computer support, human resources, technology development, computer hardware, software, Web development and maintenance.

V. Proposals to Regulate Practice Across State Lines

Different approaches to cross-jurisdictional professional practice are being evaluated by various licensing bodies, professional associations and the federal government. Among these are:

- a. Discussions among federal agencies regarding a national license for each profession
- b. A proposal by the National Council of State Boards of Nursing for a mutual recognition model for nurses called the "compact"
- c. Legislative activities in states, particularly large ones, to reinforce current regulatory structure in individual states
- d. Collaboration among U.S. regulatory agencies to develop equivalent standards and examination for licensure
- e. Discussions about a special form of telepractice licensure
- f. National associations of state boards drafting "model licensure laws" to support nationwide consistency within a profession
- g. Definition by the National Council of Examiners for Engineers and Surveyors (NCEES) of a model engineer and land surveyor law to be nationally recognized by all licensing jurisdictions.

In general, interest among the states in national licensure or a mutual recognition model is limited at this time. In fact, some states have taken a position against a major change in the current approach to licensure or a national licensing system. Although many examples in this report are based primarily on health-related professions, the design and business professions are actively involved in issues of cross-jurisdictional practice extending beyond state borders to national boundaries. Selected approaches are described more fully below:

- **Discussions Among Federal Agencies of a National License for Each Profession**

In the Balanced Budget Act of 1997 the federal government increased its efforts to remove or ease barriers to telemedicine's implementation. While discussions continue, the federal government has not yet addressed the current system of interstate, professional licensure as it relates to medical reimbursement.

- **Proposal by the National Council of State Boards of Nursing**

In 1997, the National Council of State Boards of Nursing (NCSBN) endorsed a mutual recognition model for nursing regulation. This model would allow states choosing to participate to mutually recognize the licenses of nurses in compact states. In the compact states, nurses secure licenses in their home states and can practice in any compact state without obtaining additional licenses, provided they follow that state's laws and regulations. While some states have this proposal on their legislative agenda, the following six states have enacted the

compact into law: Arkansas, Maryland, Texas, North Carolina, Wisconsin and Utah. Our State Board for Nursing has advised the Department on the various aspects of this proposal and indicated its support of the concept. At this time, however, the compact proposal is not supported or endorsed by the New York State Legislature, the State Education Department, or the New York State Nurses Association.

- **Legislative Action in Some States**

The majority of states, like New York, require professionals engaging in telepractice to apply for and receive a full and unrestricted state license, in accordance with state law. This is supported by the majority of state and national professional associations, including the American Medical Association, the American Dental Association, New York State Nurses Association, and the Medical Society of the State of New York. States including Alabama, Arizona, Connecticut, Florida, Illinois, Indiana, Kansas, Mississippi, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Oklahoma, Utah, West Virginia, and Wyoming have either proposed or passed legislation in 1999 requiring full licensure for out-of-state physicians. Colorado, Texas, Hawaii, Idaho and California also require full licensure for physicians in specific situations.

- **Coordinated Activities Among Regulatory Agencies**

The **Center for Telemedicine Law's Licensure Task Force** recommends that if states do not move toward a uniform interstate licensure system that is state-based, a national licensing system should be considered. However, they note that "**it may be best for the disciplinary authority to remain with the states which, by nature of their size, are more accountable to their citizens.**"

VI. Challenges Associated with Proposals to Change from State-Based Licensing Jurisdictions to Multi-State Licensure

New technology and the demands of the marketplace are pushing against traditional practices and boundaries. More than ever, professionals have the desire to expand their services. The tools that allow them to do so also give them easy access to a greater number of consumers. For some entities, these tools provide the potential to significantly increase profits. Nevertheless, the Regents charge to protect the public remains the focus of professional regulation, even as practice rapidly evolves. In considering cross-jurisdictional licensure proposals or any emerging issue, we must ask how it can benefit the consumer by protecting the health and safety and by enhancing access to competent professional services. Dealing with these issues is not simple. We will, however, meet these challenges directly, with objectivity and fairness, while also taking the time to make certain that these fundamental questions are answered fully. Some of the issues and public protection concerns related to cross-jurisdictional licensure include:

Professional Standards

State regulators share the common goal of protecting the public. New York's system of professional regulation, headed by a citizen body - the Board of Regents - is particularly well suited to ensuring the protection of the public. Despite similarities among states in regulating professionals for the public safety, states have set individual and often unique standards intended to safeguard their citizens. To protect the public, states have adopted the practice of licensure. How those standards are defined and implemented varies significantly.

Since licensure standards vary, New York is unwilling to accept any standards that would be lower than our basic entry level requirements. To do so would make cross-jurisdictional professional practice easier, but it would not serve the interests of the public - our primary concern.

Ability to Regulate New York Practice of Licensees Who Are Licensed in Another State or across the Country

In overseeing the regulation of licensed professionals, we are responsible for protecting the welfare of our citizens. Essential to that is our authority to hold licensed professionals accountable. In considering the many variations of cross-jurisdictional licensure, this is a pivotal concern. Within our State, we not only need to consider standards of conduct, but also how to deal with geographic obstacles. At this time, follow-up investigations in cases of negligence, incompetence or fraud are extremely difficult if the respondents are located across the country. We will continue to be responsible for professionals who serve the people of New York, and we need sufficient staff and resources to be effective. The issue of geographic boundaries is a serious one.

Significant Loss of Revenue That Funds Regulation

The "resource" question cannot be ignored. We must meet the public protection needs and expectations of our citizens and provide quality services to licensed professionals. Professional regulation in New York is self-supporting (no tax base) through the licensure, registration, and other fees we receive. This is not true in many other jurisdictions. Under the various multi-state licensure proposals, professionals could obtain licenses and pay fees to another state yet choose to practice in higher salaried states like New York. In addition, New York State residents could choose to seek licensure in jurisdictions with lower fees and avoid paying fees in New York. While this scenario would result in significantly less revenue than is available to New York, the pool of professionals for whom the State Education Department would have regulatory responsibility would be greater. Public protection needs would not diminish and might even be complicated by the need to take disciplinary action against someone licensed in another state. The revenue base for licensure functions is a major factor that states must address to ensure that current service levels are maintained without a serious erosion of revenues.

The general concerns for the competence and accountability of individuals are even more focused when a group of licensees is able to practice in a New York State setting for a short period of time. An example of this is our experience involving labor actions. On several occasions, OP has directly received requests from employers to facilitate New York licenses for professionals from other states who are willing to accept lower pay when labor strikes have been threatened or are under way. Concerns related to familiarity with New York practice and standards are exacerbated in these situations.

Confidentiality

The confidentiality of information and appropriate access to information are critical to the professional regulation process and equally important to maintaining public trust. The logistics of where and how confidential licensing and discipline data are collected, processed and stored is a delicate and complex matter. Cross-jurisdictional licensure proposals raise significant questions concerning the broad dissemination of confidential licensure, investigative, and discipline data. How to provide needed accessibility to such highly sensitive information on a very broad scale is unclear. Restricted access to crucial data, on the other hand, could impede the investigation and discipline processes. We are seriously examining this issue, as we are concerned that breaches of confidentiality could jeopardize professionals and create an impossible situation for regulatory bodies.

Keeping Professionals and the Public Informed

New York State regularly contacts licensees for whom we maintain records (over half a million) with information about practice, law and regulatory changes. OP has made a commitment to expand the direct distribution of up-to-date information to licensees to promote high quality practice. Proposals for cross-jurisdictional licensure would make this a more complicated and a more expensive process. Professional and consumer education is a fundamental element in preserving the quality of professional services, as well as preventing practitioners from unknowingly engaging in acts of professional misconduct.

VIII. NEXT STEPS

- During the last annual CLEAR Conference, the Office of the Professions Deputy Commissioner delivered the keynote address regarding professional regulation in the 21st century. The emerging regulatory issue of cross-jurisdictional professional practice was part of this presentation. The Office of the Professions solicited and received the unofficial commitment of the regulatory bodies of other states to work together to develop a comprehensive strategy across the country to address this important issue.
- At the same time that we will be working with our partners in other states, OP will be working with the members of each of our State professional boards and professional associations to seek their advice, input and identify critical considerations for our professionals and the public.

- This important topic will also be a subject of discussion at the upcoming Office of the Professions Leadership Forum (February 24, 2000) and the Regents Conference on the Professions (October 3, 2000).

As this report indicates, numerous ways to address cross-jurisdictional practice are being explored or proposed in various jurisdictions. At this point, the Department and the Legislature agree that upholding New York's existing statutory authority for professional regulation is in the best interest of public protection. While the majority of states also seek to retain and reinforce their current statutory authority for professional regulation, the Office of the Professions will continue to monitor all developments in this area. We will carefully examine all proposals and work with key stakeholders in New York as well as across the nation, to ensure that the Board of Regents continues to have the best possible regulatory system for the protection of the citizens of our State.

The Office of the Professions will continue to brief the Regents as activities develop. Staff will be available for questions.

Respectfully submitted,

Johanna Duncan-Poitier

Approved:

Date