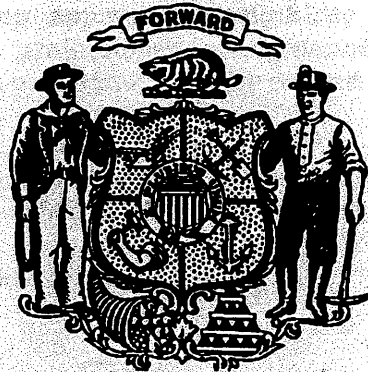


STATE OF WISCONSIN
Tommy G. Thompson, Governor

**DEPARTMENT OF
REGULATION AND LICENSING**

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Madison, WI 53703



Marlene A. Cummings, Secretary
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Committed to Equal Opportunity in Employment and Licensing

DEPARTMENT OF REGULATION
AND LICENSING

STRATEGIC BUSINESS PLAN

OUR MISSION...

....is to safeguard the general well being of Wisconsin Consumers of state regulated occupational and professional services.

The mission will be accomplished by:

- Establishing appropriate eligibility requirements, and ensuring professional competence by establishing evaluation procedures clearly related to safe and effective practice;
- Setting the practice parameters and standards of conduct to achieve safe and effective practice; and
- Enforcement of the standards.

OUR VISION

To be an efficient, effective and fair umbrella regulatory agency consistent with serving the public interest and goals of the Kellee Reorganization Act and of the SAVE Commission to achieve optimum provision of services.

NOTE:

The business plan is used by a consortium of public bodies that share a mutual and well defined responsibility. The credentialing authorities include examining boards, boards, advisory boards, affiliated credentialing boards, advisory committees, councils and the department.

WHY REGULATION?

TO PROTECT THE PUBLIC'S HEALTH
SAFETY, AND WELFARE.

QUESTIONS TO BE ASKED:

DOES THE UNREGULATED PRACTICE
OF AN OCCUPATION POSE A SERIOUS
RISK TO THE CONSUMER'S LIFE,
HEALTH, SAFETY OR ECONOMIC WELL
BEING?

WILL POTENTIAL USERS OF THE
SERVICE BE EXPECTED TO POSSESS
THE KNOWLEDGE NEEDED TO
PROPERLY EVALUATE THE
QUALIFICATIONS OF THOSE
OFFERING THE SERVICES?

WILL PUBLIC BENEFITS OUTWEIGH
ANY POTENTIAL HARMFUL EFFECTS
SUCH AS A DECREASE IN THE
AVAILABILITY OF PRACTITIONERS,
HIGHER COSTS OF GOODS AND
SERVICES, OR RESTRICTIONS ON
OPTIMUM UTILIZATION OF STAFF?
PERSONNEL?

ARE WE PROPOSING ONLY THE
MINIMUM LEVEL OF REGULATION?

LICENSURE...

RESTRICTS, MAKING IT ILLEGAL FOR
UNLICENSED PERSONS TO PROVIDE
SPECIFIC SERVICES.

There are education, examination and
experience requirements.
Protects both title and practice.
Standards of conduct and practice
scope are defined in the statutes or
authority is granted to the credentialing
authority to do by rule.

CERTIFICATION...

PROTECTS TITLE.

Requires applicants to prove that they have met certain standards of conduct and requires them to have standards of conduct. Certification is also used by practitioners who have acquired a skill.

REGISTRATION...

PROTECTS TITLE.

Beneficial to public in that they can acquire a list of providers that have met certain standards and they will have a place to submit complaints.

None of the credentials are exactly alike. There is a menu of other requirements that often accompany the most well intended, least restrictive legislative proposal. They are as follows:

- mandatory continuing education
- approval of schools and instructors (pre-credentialing and continuing ed.)
- additional experience requirements, if from out of state
- layers of credentials

WE REMEMBER:

Many groups overlap in the service they are qualified to deliver, therefore an overly broad scope of practice will create fragmented services, under utilization of human resources and proliferation of new professions.

We avoid exclusions when we avoid non-competency based requirements such as age, citizenship, high license fees, and residency, that have little or no relationship to public protection.

THE DEPARTMENT PROVIDES PROMPT SERVICES TO LEGISLATORS. SINCE WE REGULATE EVERY OCCUPATION FROM BEFORE BIRTH TO AFTER DEATH, ALL LEGISLATORS ARE LIKELY TO HAVE SOME CONTACT WITH A CONSTITUENT THAT WANTS MORE ADVICE, MAKE RECOMMENDATIONS OR SEEK INFORMATION.

DEPARTMENT OF REGULATION AND LICENSING

Marlene A. Cummings, Secretary, (6-8609)
June Suhling, Deputy Secretary, (7-2435)
Myra L. Shelton, Executive Assistant, (6-8608)

Div. of Health Professions and Services Licensing: Patrick Braatz, Administrator (6-0483)

Bureau of Health Professions: Patrick Braatz, Bureau Director, (6-0483)

Controlled Substances Board
Dentistry Examining Board
Dietitians Affiliated Credentialing Board
Hearing and Speech Examining Board
Medical Examining Board
Occupational Therapy Examining Council
Physician Assistants Council
Respiratory Care Practitioners Examining Council
Pharmacy Examining Board
Physical Therapists Affiliated Credentialing Board
Podiatrists Affiliated Credentialing Board
Veterinary Examining Board

Bureau of Health Service Professions: Kimberly Nania, Ph.D., Bureau Director (7-7223)

Acupuncturists
Chiropractic Examining Board
Massage Therapists and Bodyworkers
Music, Art and Dance Therapists
Board of Nursing
Optometry Examining Board
Psychology Examining Board
Examining Board of Social Workers, Marriage and Family Therapists
and Professional Counselors

Division of Business Licensing and Regulation: Cletus Hansen, Administrator (6-5439)

Bureau of Direct Licensing and Real Estate: Cletus J. Hansen, Bureau Director (6-5439)

Auctioneer Board
Amateur and Professional Boxing
Cemeteries
Charitable Organizations
Professional Fund-Raisers and Fund-Raising Counsels
Interior Designers
Home Inspectors
Private Security Persons
Private Detectives and Private Detective Agencies
Real Estate Board
Timeshare Salespersons

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Regulated Professions

Bureau of Business and Design Professions: Alfred J. Hall, Jr., Bureau Director (6-3423)

Accounting Examining Board

Barbering and Cosmetology Examining Board

Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors

Examining Board of Professional Geologists, Hydrologists and Soil Scientists

Funeral Directors Examining Board (Contact Person: Cletus Hansen, Administrator (6-5439)

Nursing Home Administrator Examining Board (Contact Person: Cletus Hansen, (6-5439)

Real Estate Appraisers Board

Division of Education, Examinations, and Public Information:

Richard Berg, Administrator (7-1815)

Barbara Showers, Ph.D., Director, Office of Exams, (6-7703)

Tom Neumann, Director, Office of Education, (7-2357)

Division of Enforcement:

General Office Informational Voice Mail (6-7482)

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Stuart Engerman, Investigator Supervisor (6-3315)

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Prepared By: Myra Shelton, Executive Assistant

Document Date: January 11, 1999

DEPARTMENT OF REGULATION & LICENSING

Secretary's Office

Board/Advisory Committee/Council Communications

Date: Month _____

Year _____

/	/	/	/	/	/
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ID	Board/Section/Advisory Committee/Council						
ACC	Accounting Board						
A-E	Examining Bd of Architects, Landscape Architects, JT BD Pro. Eng., Designers and Land Surveyors						
ARC	Architects Section of the Joint Board						
AUC	Auctioneers Board						
BAC	Barbering & Cosmetology Examining Board						
NUR	Board of Nursing						
CSB	Controlled Substances Board						
CPC	Prof. Counselors Sec-SWMFTPC Bd.						
CHI	Chiropractic Examining Board						
DEN	Dentistry Examining Board						
DSN	Designers Section of the Joint Board						
DAB	Dietitians Affiliated Credentialing Board						
PGHSS	Examining Bd of Professional Geologists, Hydrologists and Soil Scientists						
SWMFTPC	Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors						
FDR	Funeral Directors Examining Board						
HAS	Hearing & Speech Examining Board						
HYD	Hydrologists Section of Exam. Bd.						
LSR	Land Surveyors Section of the Joint Board						
LSA	Landscape Architect Section of the Joint Board						
MFT	Marriage & Fam. Ther. Sec-SWMFTPC Bd.						
MED	Medical Examining Board						
NHA	Nursing Home Administrator Examining Board						
OTC	Occupational Therapy Examining Council						
OPT	Optometry Examining Board						
PHM	Pharmacy Examining Board						
PTA	Physical Therapists Affiliated Credentialing Board						
PAC	Physician Assistants Council						
POD	Podiatrists Affiliated Credentialing Board						
ENG	Professional Engineers Section of the Joint Board						
GEO	Professional Geologists Section of Exam. Bd.						
PSY	Psychology Examining Board						
RLA	R&L-Acupuncture						
RBC	R&L-Barbering & Cosmetology Schools						
RBX	R&L-Boxing						
RLC	R&L-Cemeteries						
RCO	R&L-Charitable Organization						

DEPARTMENT OF REGULATION & LICENSING

Secretary's Office

Board/Advisory Committee/Council Communications

Date: Month _____ Year _____

ID	Board/Section/Advisory Committee/Council	Date: Month _____ Year _____					
		/	/	/	/	/	/
RHI	R&L-Home Inspectors						
RID	R&L-Interior Designers						
MTBW	R&L-Massage Therapists & BodyWorkers						
RMAD	R&L-Music, Art, Dance Therapists						
PDA	R&L-Private Detective Agencies						
PDI	R&L-Private Detectives						
PSP	R&L-Private Security Personnel						
RFR	R&L-Registered Fund Raisers, Fund-Raising Counsels						
RTS	R&L-Timeshare Salespersons						
APP	Real Estate Appraisers Board						
REB	Real Estate Board						
RCP	Respiratory Care Practitioners Examining Council						
SOC	Social Workers Sec-SWMFTPC Bd.						
SSS	Soil Scientists Section of Exam. Bd.						
VET	Veterinary Examining Board						

Misc. Info: _____



State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

1400 E. WASHINGTON AVENUE
P.O. BOX 8935
MADISON, WISCONSIN 53708
608 266-2112

CRITERIA FOR DECISIONS

GOAL: The department and boards have been charged with the responsibility of protecting the broad public interest.

OBJECTIVES: The department and boards have been charged with rather specific functions to achieve this goal: **BOARDS** are to regulate and discipline the professions they represent. **DEPARTMENT** is to provide support to the boards, administer the department and to monitor all initiatives, work and projects of the boards and department to ensure accountability to the governor, the legislature, and the public.

ASSUMPTIONS:

1. Professions can regulate themselves and can be accountable to the public they serve by:
 - a. Responding to complaints with just, speedy and effective discipline.
 - b. Enacting entry qualifications and regulations of practice which protect the public's health and safety.
 - c. Putting the public interest ahead of professional interest where the two may be in conflict, e.g., avoiding regulation which unnecessarily restricts competition in the workplace.
2. The department and the boards can have a cooperative working relationship provided that both understand their responsibilities and how they are interrelated.
3. The department can be expected to adhere to the following criteria in determining whether to support a board action, initiative, or proposal.

CRITERIA:

1. The action, initiative or proposal should address the safety and welfare of the public.
2. The action, initiative, or proposal should provide choice for the consumer and not limit choice without strong counterbalancing public welfare rationale.
3. Regulations which result in increased cost to the public should be avoided, if possible. If increased cost is a potential impact, strong public welfare justification will be required. Regulations which result in economic benefit or hardship to individuals or groups must be shown to be fair to all parties. Strong public welfare justification will be required.
4. Regulations which adversely affect the business climate by resulting in increased costs to business, increased reporting to government bodies, or increased supervision by government will be carefully scrutinized to determine if public benefits gained outweigh problems to business.
5. The action should fit within the defined scope and purpose of board responsibilities.

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Regulatory Boards

Accounting; Architects; Professional Engineers, Designers and Land Surveyors; Barbering and Cosmetology; Chiropractic; Dentistry; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Psychology; Real Estate; Real Estate Appraisers; Social Workers; Marriage and Family Therapists and Professional Counselors; and Veterinary.

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Criteria For Evaluating Need To Draft A
Regulatory Legislative Proposal

CRITERION ONE

Regulation should address the single purpose of promoting the general welfare of the consumer of services Please respond to the following questions:

1. Has the public been harmed because this profession/service entity has not been regulated?

_____Yes _____no

2. What constitutes harm? Please list examples:

3. To what extent has the public's economic well-being been harmed? Is the harm wide-spread or isolated? Please explain.

4. Is potential harm recognizable or remote? If yes, provide examples to support answer.

5. To what can the harm be attributed?

- a) Lack of knowledge
- b) Lack of skills
- c) Lack of ethics
- d) Other

6. Can potential users of the service be expected to possess the knowledge needed to properly evaluate the quality of the service?

_____Yes

_____No, Why not?

CRITERION TWO

The functions and responsibilities of individuals working in the occupation shall require independent judgment and action based on a substantive body of skill and knowledge.

The questions to be raised in regard to this criterion have to do with autonomy and accountability.

1. What is the extent of autonomy of work?
2. Is there a high degree of independent judgment required?
3. How much skill and experience is required in making these judgments?
4. Do practitioners customarily work on their own or under supervision?
5. If supervised, by whom, how frequently, where, and for what purpose?
6. If the person is infrequently, or unsupervised, to whom is he/she accountable? To whom is the supervisor accountable?

CRITERION THREE

The public cannot be effectively protected by means other than regulation.

This criterion can be viewed in two stages:

- 1) Can existing problems be handled through strategies on the part of the applicant group?
 - a) Has the occupational group established a code of ethics? To what extent has it been accepted and enforced?

b) Has the group established complaint handling procedures for resolving disputes between practitioners and the consumer? How effective has this been?

c) Has a non-governmental certification program been established to assist the public in identifying qualified practitioners?

2) Could the use of existing laws or existing standards solve problems?

a) Use of unfair and deceptive trade practice laws.

b) Use of civil laws such as injunctions, cease and desist orders, etc.

c) Use of criminal laws such as prohibition against cheating, false pretense, deceptive advertising, etc.

CRITERION FOUR

Benefits of regulation should outweigh potentially adverse effects.

- 1) What are the potential BENEFITS?
 - a) How will regulation help the public identify qualified services?
 - b) How will regulation assure that practitioners are competent?
 - c) What assurance will the public have that the individuals credentialed by the state have maintained their competence?
 - d) How will complaints of the public against the practitioners be handled?
 - e) Will licensure increase the availability of services and decrease costs?
 - f) What is the impact of this action on consumer choice? Are choices increased, or maintained, or limited?

- 2) What are the potential ADVERSE EFFECTS?
 - a) Will the occupational group control the supply of practitioners?
 - b) Will regulation act as an entry barrier?
 - c) Will regulation prevent the optimal utilization of personnel?
 - d) Will regulation increase the cost of services to the consumer?

Consider: License fees, bonding costs, record keeping
 - e) Will stringent and/or additional educational requirements increase the cost of entry into the occupation and subsequently increase the cost of the services? .
 - f) Will regulation decrease availability of practitioners?

DO THE BENEFITS MORE THAN COMPENSATE FOR POTENTIALLY ADVERSE EFFECTS?



State of Wisconsin
DEPARTMENT OF REGULATION AND LICENSING
CORRESPONDENCE/MEMORANDUM

Date: February 2, 1999

Memo To: Boards, Advisory Committees and, Department Staff

From: Marlene Cummings, Secretary *Marlene*

Subject: Timelines in the Enforcement Complaint Handling Process

The new Timelines Policy is enclosed. The policy identifies a period, in days, for processing complaints through each step of the complaint handling process and describes the steps that will be taken if handling a complaint is not completed in the prescribed time. These Timelines apply to both department staff and board members. The policy covers all complaints received after February 1, 1999.

The Timelines Policy itself is an important achievement for which we must thank many contributors, especially the Ad Hoc Enforcement Advisory Committee.

Handling complaints is one of the most important programs of the agency. Timely processing of complaints is important for a just result and to meet reasonable public expectations. The Timelines are an important tool for measuring progress and identifying adjustments needed in the complaint handling system.

Ultimate success requires continued cooperation of over 300 board members, other advisors and staff. Over the next several weeks I plan to meet with boards and staff to discuss progress in implementation and to affirm your enthusiastic commitment to the Timelines.

POLICY

SUBJECT

Timelines in the Enforcement Complaint Handling Process

PAGE 1 OF 6

Statement of Policy

In order to improve the efficiency and effectiveness of the complaint handling process, the department is establishing timelines for each step in the process. Staff and regulatory authority members who work on cases (complaint files) which are logged in on, or after, February 1, 1999, are expected to perform their respective responsibilities in order to comply with these timelines at each stage in the complaint handling process.

The timelines, are as follows:

SCREENING STAGE - Two Tracks

- (1) 45 days (No Records Requested)
- (2) 60 days (Records or other Additional Information Requested)

INVESTIGATION STAGE - Two Tracks

- (1) Simple, 90 days
- (2) Complex, 180 days

LEGAL ACTION STAGE - Two Tracks

- (1) Simple, 90 days
- (2) Complex, 180 days

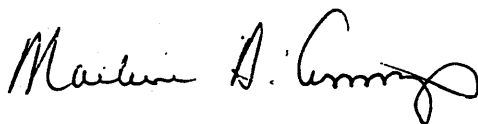
HEARING STAGE - Two Tracks

- (1) Simple, 90 days
- (2) Complex, 180 days

These timelines will be used to monitor the complaint handling process for the regulatory authorities, each Division of Enforcement (DOE) team and the individuals within that team. Reports of the cases (complaint files) which exceed these timelines in each stage will be run on the 5th of each month and will be reviewed by the DOE administrator and the DOE Administrative Team. A report showing processing statistics for the work of case advisors will also be prepared for review by the regulatory authorities. The timelines for the "Hearing Stage" will also be used to review this stage of the process.

STATE OF
WISCONSIN

AUTHORIZED BY



1/29/99

SECRETARY

DEPARTMENT OF REGULATION AND LICENSING

POLICY

	EFFECTIVE
SUBJECT Timelines in the Enforcement Complaint Handling Process	PAGE 2 OF 6

All DOE team members will be expected to complete file maintenance on each case to which they are assigned within two working days of the event. Training will be provided on an as-needed basis to ensure that staff are adequately trained to use all applicable features of the Complaint Tracking System (CTS).

The Group to Review Empowered Enforcement Teams (GREET) will review and evaluate the timeline reports on a monthly basis. Enforcement of these timelines by the DOE administrator and the GREET team will provide a means of identifying and correcting impediments to the attainment of the expected outcome. Decisions will be governed by factual data providing a common base of knowledge and understanding.

The regulatory authorities will be regularly provided with updates on this information. In addition, the Ad Hoc Enforcement Advisory Committee will be convened on a semi-annual basis to discuss the implementation and progress of all the recommendations contained within the report and to provide feedback and recommendations to the Secretary so that modifications in the process can be made as necessary.

Definitions

The determination as to whether a case should be placed in the simple or complex track is a matter of judgment. Simple track cases will generally be characterized by one or more of the following criteria:

1. One or two respondents.
2. One or two primary allegations.
3. Readily available investigative information.
4. Limited or no field contacts.
5. Potential candidate for stipulated resolution.
6. Limited or well-settled legal issues.
7. Limited witnesses required at hearing.

DEPARTMENT OF REGULATION AND LICENSING

POLICY

EFFECTIVE

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Timelines in the Enforcement Complaint Handling Process

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Complex track cases will generally be characterized by one or more of the following criteria:

1. Multiple respondents.
2. Multiple allegations.
3. Multiple current investigations.
4. Investigative field contacts required.
5. Necessity of use of an expert witness.
6. Uncommon or multiple legal issues.
7. Multiple witnesses required at a hearing.

Procedures

1. The teams will utilize the CTS tickler system to provide reminders to assist in meeting the timelines associated with the process. The administrator and administrative staff will use the global reports feature of the CTS for review and enforcement of the timelines.

SCREENING STAGE

2. The Screening Stage track of "No Records Requested" or "Records or Additional Information is Needed" will be designated by the DOE administrative support staff who log in cases and send for records. When additional information is requested from a respondent or complainant, no more than 10 days shall be allowed for a response.
3. The report on complaints not screened within the designated timelines will be processed on the 5th day of each month and will be reviewed by the DOE administrator or designee within two working days.
4. The "No Records Requested" track of the Screening Stage requires that the complaint be screened within 45 days of DOE receipt of the complaint. If it is not screened within this time frame, the DOE administrator, or designee, will use the Default Review Procedure, which is, either: (1) Open or close the complaint file, if it is a direct licensing related complaint or a complaint involving unlicensed practice; or, (2) follow the specific procedure identified by the regulatory authority if the complaint appears within the jurisdiction of a regulatory authority.

DEPARTMENT OF REGULATION AND LICENSING

POLICY

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[Note: The “specific procedure” that the department recommends for regulatory authorities is that the DOE administrator or designee contact the chairperson of the regulatory authority and if there is agreement, open or close the complaint file, and if they do not agree, convene a meeting of the screening panel as soon as practicable either in person or by telephone conference call to decide if the complaint should be opened or closed.]

5. The “Records or Additional Information Is Needed” track of the Screening Stage requires that the complaint be screened within 60 days of DOE receipt of the complaint. If the complaint is not screened within this time frame, the DOE administrator or supervisor will use the Default Review Procedure.
6. A report will be run by the DOE administrative staff on the 5th day of each month to identify which cases do not comply with the Screening Stage timelines. The DOE Administrator, or designee, will review this report within two full working days and contact assigned staff to determine the action to be taken.

INVESTIGATION STAGE

7. One of the two tracks of the Investigation Stage, the “Simple” track and the “Complex ” track, will be designated as such by the investigative supervisor and will be determined based on the criteria identified previously.
8. A report will be run by the DOE administrative staff on the 5th day of each month to identify cases in the Investigation Stage that do not comply with the designated timelines. The DOE investigative supervisor will review this report within two working days and contact assigned staff to determine the action to be taken.
9. The “Simple” track requires that the case be investigated within 90 days of opening for investigation. If the case is not investigated within this time frame, the DOE investigative supervisor will contact the designated staff, and the case advisor if he or she is directly involved in the delay, and set a deadline for when the Investigation Stage is to be completed.
10. The “Complex” track requires cases be investigated within 180 days of opening for investigation. If a case is not investigated within this time frame, the DOE investigative supervisor will contact the designated staff, and case advisor if he or she is

DEPARTMENT OF REGULATION AND LICENSING

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_____, 199__

SUBJECT

Timelines in the Enforcement Complaint Handling Process

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directly involved in the delay, and set a deadline for when the Investigation Stage is to be completed.

LEGAL ACTION STAGE

11. The Legal Action Stage begins when the case advisor makes a final recommendation to pursue disciplinary action.
12. One of the two tracks of the Legal Action Stage, the "Simple Track" and the "Complex Track" will be designated by the attorney supervisor as each case moves to this stage.
13. A report will be run by the DOE administrative staff on the 5th day of each month to identify which cases in the Legal Action Stage do not comply with the designated timelines. The attorney supervisor will review the report within two working days and contact assigned staff to determine what action should be taken.
14. The "Simple" track requires that a case be pursued for disciplinary action (which means that a formal complaint has been filed or other proposed disposition of the case has been given to the Respondent) within 90 days from when placed in the Legal Action Stage. If the case does not meet this time frame, the DOE attorney supervisor will meet with the designated staff and consult with the case advisor if he or she is directly involved in the delay, and set a deadline for when the Legal Action Stage is to be completed.
15. The "Complex" track requires that the case be pursued for disciplinary action within 180 days from when placed in the Legal Action Stage. If a case does not meet this time frame, the DOE attorney supervisor will meet with the designated staff and consult with the case advisor if he or she is directly involved in the delay, and set a deadline for when the Legal Action stage is to be completed.

HEARING STAGE

16. The scheduling of cases is done by the administrative law judge initially on the basis of the track of the case, either "simple" or "complex".

DEPARTMENT OF REGULATION AND LICENSING

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17. The standards for evaluation the performance of administrative law judges with respect to the time for processing contested cases is measured as follows:
 - a. Conduct Scheduling Conferences and Establish Hearing Schedule in Contested Cases:
Within 30 days after the filing of a formal complaint.
 - b. Prepare Proposed Decisions:
 - (1) In single issue cases, 21 days from the close of the hearing, final briefs or transcripts;
 - (2) In limited issue and multiple issue cases, 30 days from the close of the hearing, final briefs or transcript.
18. ALJ's will schedule hearings, issue scheduling orders and hold scheduling conferences at times so that timelines standards are routinely followed and cases tried within established time frames.
19. A report will be run by the department legal counsel at the end of each month to identify cases that do not comply with the timelines. Legal counsel shall meet with the appropriate ALJs to discuss ways of expediting cases that have been delayed.
20. Assurance that the time standards for cases in the hearing stage will be followed are the responsibilities of the administrative law judges, DOE attorneys, DOE attorney supervisor and administrator and department legal counsel.

Questions A Legislator Should Ask

Second Edition

Benjamin Shimberg
and

Doug Roederer

Kara Schmitt, Editor



The Council on Licensure, Enforcement and Regulation

QUESTIONS A LEGISLATOR SHOULD ASK

Second Edition

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Foreword

The original edition of Questions a Legislator Should Ask is considered a classic among state policy makers. The centerpiece and certainly the most widely quoted portion of that book is the list of suggested questions that legislators can ask when confronted with a request for professional or occupational regulation.

Since Questions was first published in 1978, a number of major changes have occurred in the field of regulation. Despite that, the list of questions has remained an important tool in state houses across the country. In this newly revised edition, the initial list of questions is presented basically intact, followed by a glossary of terms and a brief, current bibliography containing additional resources for learning more about professional and occupational regulation.

I have no doubt that you will find the second edition even more useful than the first.

William L. Marcus
1993-1994 CLEAR President
March, 1994

Introduction

Licensing is a process by which a government agency grants individuals permission to engage in a specified profession or occupation upon finding that individual applicants have attained the minimal degree of competency required to ensure that the public's health, safety and welfare will be reasonably well protected.

Of the various regulatory options available to states, licensure imposes the most stringent requirements. Once a profession obtains licensure status, it is illegal for anyone who does not hold a valid license to practice that profession or occupation. In essence, when states have the power to grant licensure status to individuals, they also have the power to deny individuals the opportunity to earn a living in that profession if they fail to meet all of the initial, and continuing, licensure requirements. This is an impressive power that states possess and one that must be exercised judiciously.

The first state-level professional regulation in the United States was accomplished through Virginia's medical practice act in 1639. It was not until the late 1800's, however, that state licensure activity began in earnest, and by 1900 most states had licensed attorneys, dentists, pharmacists, physicians, and teachers. Between 1900 and 1960, most states also granted licensure to 20 additional groups, including accountants, nurses, real estate brokers,

barbers, chiropractors and funeral directors. Since that time, states have been deluged with requests for licensure by a broad range of traditional, specialty and emerging professions and occupations.

Over the years, the public has become more accustomed to and more accepting of licensing as a restriction needed to protect society from incompetents and charlatans. Proponents of licensing, particularly the individual occupational and professional associations, maintain that licensing benefits the public by assuring consumers of high-quality goods and services. Critics of licensing argue otherwise. Licensure is intended to protect the public by screening out individuals who would do harm and disciplining those who have inflicted harm. The basic question surrounding these debates is: "Who benefits most from licensing -- the public or the regulated profession?"

The following guidelines for planning or reviewing a regulatory program, originally developed through a series of regional meetings in 1975 and 1976, remain valid nearly twenty years later. These guidelines, along with the series of essential questions that should be asked, provide a basic framework for identifying ways in which professional and occupational regulation can be improved.

Guidelines for Regulation: Should States Regulate Professions and Occupations?

Regulation should meet a public need.

Requests for licensure rarely come from an outraged public seeking to end some intolerable abuse. Typically, they are made by professional and occupational associations acting on behalf of their members.

If regulation is intended to meet the needs of the public, a basic premise of regulation, the public's opinions should be heard during the legislative decision making process. Unfortunately, consumers are rarely present during legislative hearings when regulatory proposals are being considered. There are a variety of possible reasons for the public's absence: (1) being uninformed of the hearings, (2) being poorly organized, (3) assuming that their opinions would not matter, and (3) lacking the skills and resources to assemble and effectively present data showing the likely impact of regulation on their pocketbooks.

As stated previously, proponents of licensure frequently argue that regulation is needed to protect the public's health, safety, and welfare. The actual result of licensure, however, may be that the licensees are the beneficiaries of such a law. Licensed practitioners gain an exclusive right to deliver services. They may then ask the board, made up of fellow practitioners, to use its powers to restrict entry into the field by setting high education and

experience requirements, giving difficult tests, and erecting barriers to keep out practitioners from other states. Thus, the licensed group may establish monopolistic conditions that enable it to control the availability and cost of services and restrict competition by prohibiting advertising and competitive bidding. If these practices exist, they may raise costs to consumers without necessarily providing the public any additional protection.

To determine whether a professional or occupational group should be licensed, each proposed licensure program should be scrutinized carefully to determine the precise nature and seriousness of the need. There are many situations where the public needs to be protected from dangers posed by unqualified practitioners, but not every service represents a direct threat to the public even if a practitioner is unqualified.

The overriding questions that a state must answer when evaluating the need for licensing are:

- (1) whether the unlicensed practice of an occupation poses a serious risk to the consumers' life, health, safety or economic well-being;
- (2) whether potential users of the service can be expected to possess the knowledge needed to properly evaluate the qualifications of those offering the services; and
- (3) whether benefits to the public outweigh any potential harmful effects such as a decrease in the availability of practitioners, higher costs of goods and services, or restrictions on optimum utilization of personnel.

Government should provide only the minimum level of regulation.

Even when a careful analysis of need shows there are compelling reasons to regulate a profession or occupation, it does not necessarily follow that licensure is the most appropriate mechanism for doing so. Licensure restricts the scope of practice so that it becomes illegal for unlicensed individuals to provide specific services. For this reason, licensure should be used only as the remedy of last resort.

Before legislators agree to licensure for a specific group, other regulatory approaches short of licensure should be explored. The method of regulation and the degree to which it restricts practice should bear some relationship to the seriousness of the harm that is likely to result from the absence of regulation.

In some cases, the legislative decision should be that no form of regulation is necessary because the potential harm is not great and the public is able to determine whether an individual is competent. If, however, some form of regulation is believed to be necessary, two less restrictive approaches than licensing should be considered - registration and certification.

Registration is an appropriate form of regulation when the threat to life, health, safety, and economic well-being is relatively small and other forms of legal redress are available to the public. In its simplest form, registration requires an individual to file his or her name and address

with a designated agency. There is usually no pre-entry screening by a regulatory agency. Registration, in this form, does little more than provide a roster of practitioners. It is also possible, however, to have registration requirements that include minimum practice standards set by the agency. Thus, while registration would not be exclusionary, it would subject registrants to minimum standards and thereby provide some protection to the public.

Certification is a form of regulation that grants recognition to individuals who have met predetermined qualifications set by a state agency. Only those who meet the qualifications may legally use the designated title. Non-certified individuals may still offer similar services to the public as long as they do not describe themselves as being "certified" or use a specific title. Certification is sometimes granted by states to individuals who are also licensed, but who have demonstrated advanced, specific knowledge within the general area of practice.

There is considerable confusion surrounding the terms "registered" and "certified". Indeed, they are sometimes used interchangeably with the term "licensed". For example, "registered nurses" are actually licensed nurses because it is illegal for anyone to practice nursing unless licensed by a nursing board. "Certified Public Accountants" are actually licensed rather than certified by states. In some states, a profession or occupation may be licensed; in others, the same group may only be registered. Confusion is further compounded by the fact that many non-governmental agencies, such as professional societies, grant "certification" to those who meet predetermined qualifications, including passing an examination.

The confusion surrounding the definition and use of these terms may never be resolved partially because of the historical use of the terminology. Nevertheless, it is important for legislators to impose only the minimal level of regulation necessary to protect the public.

If an occupation or profession is to be licensed, its scope of practice should be coordinated with existing statutes to avoid fragmentation and inefficiency in the delivery of services.

Groups seeking mandatory licensing usually argue that their scope of practice must be defined broadly in order to prevent unqualified persons from engaging in any aspect of their practice. This view may indeed protect the particular profession, but it does not necessarily provide any greater protection for the public. As technology expands and new professions emerge, the public may be hindered from receiving reasonably priced, competent care because of previously worded broad scopes of practice. Accordingly, these new groups may be unable to practice even though they possess the necessary education and experience qualifications to be of service to both the public and other licensed groups.

Restrictions imposed by overly broad scope of practice statements stem, in part, from a failure to recognize that many groups within a system have overlapping functions. When a group is granted licensure based on broad scope of practice statements, certain undesirable

consequences, such as fragmentation of services, underutilization of human resources and proliferation of new professions, may result.

A field may become fragmented when many discrete specialty groups, each with its own scope of practice statements, obtain licensure. Fragmentation may be signaled when an already licensed group seeks to prevent an emerging group with specialized training from sharing the work.

Underutilization occurs when paraprofessionals, support personnel or groups which combine parts of several already regulated practices find that their utilization within the delivery system is impeded by jurisdictional conflicts and prohibitions against the delegation of functions. Requirements for licensure should be on competence and efficiency and the avoidance of exclusive allocation of functions to certain named groups.

Proliferation or pressure to license new occupational categories sometimes happens when practice restrictions of one group prevent members of another group from providing services that the latter group is qualified to provide. The group prevented from practicing is then likely to seek its own licensure law in order to gain statutory recognition that would legitimize its activities.

Requirements and evaluation procedures for licensure should be clearly related to safe and effective practice.

Regulatory laws often appear exclusionary because they include non-competency based requirements such as age, citizenship, high license fees, and residency, that have little or no relationship to public protection. Irrelevant requirements should be eliminated.

The completion of an approved training program and certain experience requirements may be reasonable requirements depending upon the group being licensed. Yet even such requirements can become exclusionary if the time involved in training is excessive or if needless restrictions are imposed. For example, a requirement that an applicant's experience must be obtained in a specific state or only at a limited number of institutions would be difficult to justify as reasonable.

While many licensure applicants usually apply after completion of an approved program of training, the law should make allowances for those who may have acquired their competency outside a formal educational system or outside of the United States. It should also be recognized that in some instances, formal training programs do not exist. Procedures need to be developed to evaluate such individuals, not in terms of their formal training, but in terms of their demonstrated competence to perform the functions required on the job.

All pre-licensure evaluation procedures, including competency examinations and education/experience reviews, must be reasonable and fair to candidates, including those with a disability. According to the Americans with Disabilities Act, disabled candidates should have reasonable accommodations made so that their disability is

not a negative factor in determining their level of competency.

If an examination is required it must meet nationally recognized testing standards. It should also be designed to measure only the knowledge, skills and abilities required for entry-level competent practice. The decision to require a written, oral and/or practical examination should be based upon the job requirements. The goal of licensure examinations should not be to pass only the best, but rather to pass those who demonstrate the necessary minimal level of competence, as determined by practitioners, in order to protect the public.

Every out-of-state licensee or applicant should have fair and reasonable access to the credentialing process.

With the signing of the North American Free Trade Agreement (NAFTA), fair and reasonable access to the credentialing process is required not only for individuals licensed in other states, but also for those licensed in Canada and Mexico. As a result of this new legislation, each state's regulatory body needs to evaluate more closely the process for licensees to move into that state. Which requirements are necessary for public protection and which requirements only serve to keep licensees, even if they are competent, from moving into that state?

It is unreasonable to require licensed individuals, regardless of experience or qualifications, from one state to undergo the entire licensing process, including initial

examination, for entry into another state. Such requirements impose a hardship on qualified practitioners who have been out of school for many years because examinations used for initial entry tend to emphasize what is currently being taught in the educational system. With the passage of time, most professionals forget many of the theoretical concepts and minute details that they learned while in school, especially if those facts are seldom used in their day-to-day practice. However, as they encounter new problems and situations in the course of their practice, they acquire new knowledge and skills in order to meet these challenges competently. Thus, the test used to screen recent graduates may not be the best or the most effective way to assess the competence of those who have been out in practice for a number of years.

Under licensure by endorsement, individuals who are already licensed in one state submit their credentials for evaluation by the state to which they now wish to be licensed. Out-of-state licensure applicants who initially met requirements comparable to those required in the new state should be eligible to endorse into that state.

In order for endorsement to work and not create a burden for the applicant, states need to adopt comparable standards for entry into practice. If there are questions regarding the comparability of a required examination, the new state should evaluate the examination initially taken by the applicant to determine similarity to the one that was required by applicants at the same time.

To further assist states in assessing the comparability of examinations, a number of professions and occupations rely upon national examinations. If an applicant has

already passed an examination which is substantially equivalent to the examination given by the new state, the need for reexamination should be questioned. There may, however, be a need to examine the applicant on the law and rules specific to the new state if these have a major relationship to one's competency to practice.

States that adopt standards substantially higher than those that prevail elsewhere should be required to demonstrate that these higher standards are clearly in the public's interest and not designed to exclude qualified practitioners from entering that state. As practitioners become more mobile, states need to take a closer look at their requirements to ensure that they are not exclusionary.

At the same time, states have a responsibility to ensure that entering practitioners are not being disciplined in another state. An individual whose license has been revoked or suspended in one state should not be able to move freely to another state and immediately resume practice. Communication among the states regarding disciplinary actions taken against practitioners is critical for public protection. A number of national professional associations as well as the federal government (National Practitioner Data Bank) have established disciplinary data bases for use by state regulatory boards.

Once granted, a credential should remain valid only for that period during which the holder can provide evidence of continued competency.

Regulatory boards and agencies usually make a strenuous effort to ensure that applicants are initially competent, but they are often much less zealous in monitoring the competence of practitioners after they have been licensed. Thus, the public may have no continued assurance that licensees have kept abreast of developments and can still provide safe and effective practice.

One problem related to the issue of continued competency is that inactive practitioners can preserve their right to practice by simply paying the renewal fee. By keeping their licenses active, they are able to resume practice at any time even though they may have failed to maintain the minimal level of competency deemed necessary for safe practice. States should attempt to identify practitioners who have been inactive in their practice for a substantial period of time. Once identified, these practitioners should be required to demonstrate that they have maintained an appropriate level of competency prior to having their license renewed.

A number of strategies have been proposed for assuring continued competence. While many states have adopted mandatory continuing education as a condition of relicensure, there is no strong research support indicating that mandatory continuing education assures long-term continued competency. For this reason, consumer advocacy groups are asking whether the cost of such education, ultimately borne by the public, provides consumers with any added protection against incompetent practitioners.

The concept of reexamination as a condition for relicensure has been discussed by many professions and occupations. Although not typically implemented at the

state level, a number of private certifying agencies are imposing this requirement on their certified members in order for them to remain certified. Because there are so few examples of requiring reexamination to assure continued competence, it remains to be seen whether this is a practical and cost-effective way of dealing with the public's concerns.

A non-punitive approach to assure the competence of physicians has been instituted in the Province of Ontario and is jointly sponsored by the medical colleges, the Ontario Medical Society and the Ontario regulatory body. This program is unique in that it provides assessment and remedial education not only for physicians who have been referred by hospitals, peer review panels or the board, but is also available to physicians who refer themselves because they are returning to practice after a prolonged absence, are changing the nature of their practice or simply want to enhance their skills. The goal of the program offered at McMaster University is to identify a practitioner's areas of weakness through an extensive assessment procedure and then to establish a focused program of educational remediation tailored to match the individual's needs. Following the educational phase, an evaluation is made to verify that the program has accomplished its intended purpose.

Peer reviews, by direct observation or a review of records, has been initiated by some groups as an alternative method to periodic reexamination. While this method provides the public with some assurance that the practitioner is competent, there are doubts about the dependability of peer review procedures. Some studies

have shown that qualified experts neither agree as to what constitutes acceptable performance nor do they apply standards uniformly. For peer review to be beneficial, greater attention must be given to objectively defining "acceptable performance" standards and the training of evaluators in the use of these standards.

A vigorous enforcement and discipline policy for those individuals found unfit to practice has also been instituted by many boards and agencies. This approach assumes (1) that most practitioners, acting in their own self-interest, make an effort to remain competent; and (2) only a small minority, for a variety of reasons, fail to maintain a necessary level of competency. A problem inherent in this approach is that very few licensees ever have complaints filed against them either because the public is not knowledgeable about what to expect or is unaware of where a complaint should be filed. Professional peers and employers are also hesitant to file complaints. Accordingly, the number of licensees against whom complaints are filed are small and may not accurately reflect the number of practitioners who have not maintained a reasonable level of competency.

Complaints should be investigated and resolved in a manner that is satisfactory and credible to the public.

Once complaints are received, they should be reviewed and acted upon promptly and efficiently. If the complaint is not a violation of the law and rules, the

complainant should be notified of such and informed of other available avenues. If the complaint appears valid, a thorough investigation should be undertaken to substantiate or refute the complaint immediately. At the same time, the licensee deserves to receive due process protection.

Whether the board members are involved in the investigation or independent investigators are used, the process should be fair and impartial.

Once a determination has been made that a violation has occurred, the licensee should have the opportunity to present his or her view of the situation. In some states, the entire board hears the case and determines the penalty, if any, to be imposed. In other states, a hearing officer or administrative law judge hears the case, summarizes and presents the facts and findings, and recommends appropriate sanctions to the board. The board may then agree, modify or disagree with the penalty suggested. In other states, a combination of these two procedures are used. Regardless of the process, fairness, promptness, accuracy and a recognition of public protection should be maintained.

In terms of the penalty imposed, a number of states are now granted the authority to do more than just suspend or revoke a license. They may also impose fines, require additional education, mandate supervised practice or even require restitution be made to the individual(s) harmed. The determination of the penalty is based on the seriousness of the violation.

The public should be involved in the regulatory process.

When licensing boards were first formed, the philosophy was that only members of the profession or occupation were qualified to make judgments about entrance standards, examination content, or disciplinary matters. Defenders of this professional mystique argued that the public had no real role to play in the regulatory process.

During the past two decades, this view has been challenged. Because regulation has a direct impact on the public, consumer advocacy groups believe the public should be actively involved in the regulatory decision making process.

This challenge has been met and most boards now include public members or auxiliary personnel. The addition of individuals who are not members of the regulated group should assist the professional board members in more fully recognizing the needs of the public. They also provide a point of view which might otherwise be absent if a board is composed solely of licensees. While public members may not know much about the technical aspects of the regulated group, they can make a contribution by raising questions and concerns about certain decisions.

The regulatory structure should promote accountability and public confidence.

Throughout the history of state licensure, the primary mechanism for administering regulatory statutes has been through boards composed of members of the licensed profession. In some instances, boards have operated

autonomously; in other instances, a number of boards are administered by a centralized agency.

Some form of centralized agency was in place in five states prior to 1930: Board of Regents of the University of the State of New York (1892), Illinois Department of Registration and Education (1917), Washington Department of Licenses (1921), Pennsylvania Bureau of Professional Licensing in the Department of Public Instruction (1923), and California Department of Professional and Vocational Standards (1929). Since the early 1900's some of these agencies have been reorganized and other centralized agencies have been created.

The establishment of central licensing agencies is generally based upon four principles of public administration:

- (1) Grouping agencies into broad functional areas;
- (2) Establishing relatively few departments to enhance the span of control and pinpointing responsibility to the chief executive and the legislature;
- (3) Delineating single lines of authority to the top; and
- (4) Administering departments by an individual and not by boards or commissions.

Based on responses from 113 agencies, five regulatory models were identified in 1979. These five basic structures were reconfirmed by a 1990 survey and are shown in Table 1. Table 2 includes the primary structure in each state.

Regardless of the structure, the following characteristics should be present in every regulatory entity:

- (1) Appropriate professional expertise in the decision making process;

- (2) Input from the public who are ultimately impacted by any regulatory decision;
- (3) Fiscal accountability to the citizens of the state;
- (4) Decisions made with the public's interest, as opposed to the profession's interest, in mind;
- (5) Avoidance of unnecessary bureaucratic "red tape" for current or future licensees as well as the public;
- (6) Staffing that includes individuals with the relevant expertise to handle the administrative details of regulation;
- (7) Avoidance of political pressure and influence in decision making;
- (8) Appropriate checks and balances included in the overall operations;
- (9) Automation of administrative functions, as appropriate;
- (10) Impartial review and resolution of jurisdictional disputes;
- (11) Clear delegation of authority from the executive and legislative branch to the regulatory body;
- (12) Timely and appropriate orientation of new board members as to their role and responsibilities;
- (13) Timely investigations of complaints;
- (14) Timely and appropriate disciplinary action taken against licensees who violate the law or rules; and
- (15) Periodic assessment of the regulatory law and rules.

Table 1
Models Describing the Organization of
Professional and Occupational Regulation in the States

Model A Boards are autonomous. They hire their own staff, make decisions about office location, purchasing, and procedures. Each board receives and investigates complaints and disciplines licensees. Each board is responsible for the preparation, conduct, and grading of examinations or the contracting out of these tasks. Each board sets qualifications for licensing and standards for practice. Boards collect fees and maintain financial records. Board staff prepares and mails applications for licensing and renewal, licenses and answers inquiries from licensees and the public.

Model B Boards are autonomous, but less so than in Model A. They set policy and determine standards regarding licensing and professional practice. They prepare or approve exams and decide who is qualified for licensure. They handle complaints and discipline licensees. The board has responsibility for hiring and supervising staff. A central agency may be responsible for housekeeping matters such as providing space, answering routine inquiries, collecting fees, issuing licenses, and renewals.

Model C Boards are autonomous and have decision making authority in many areas. The central agency, however, has greater authority over certain functions than in Model B. Its powers go beyond housekeeping. For example, board

budgets, personnel, and records may be subject to some control by the agency. Complaints and investigations and adjudicatory hearings may be handled by a central staff, even when boards continue to make final decisions with respect to disciplinary actions.

Model D Boards are not fully autonomous. That is, they do not have final decision making authority on all substantive matters as do boards in the preceding models. While the central agency provides a wide range of services, in practice, boards may be delegated responsibility for such functions as preparing or approving exams, setting pass/fail points, recommending professional standards, and recommending disciplinary sanctions. A crucial distinction, however, between Model D and the preceding models is that certain board actions are subject to review by the central agency.

Model E The regulatory system is run by an agency director, commission, or council, with or without the assistance of a board. Where boards do exist, they are strictly advisory. The agency director, commission, or council has final decision making authority on all substantive matters. Boards may be delegated such functions as preparing or approving exams, setting pass/fail points, recommending professional standards, and recommending disciplinary sanctions. A crucial distinction between this model and Model D is that where boards exist, they serve only in an advisory capacity.

Table 2
 Primary Organizational Model Used in Each State for
 Professional and Occupational Regulation

STATE	MODEL TYPE				
	A	B	C	D	E
Alabama.....	*
Alaska.....	*
Arizona.....	..	*
Arkansas.....	*
California.....	*
Colorado.....	*
Connecticut.....	*	..
Delaware.....	*
Florida.....	*	..
Georgia.....	*
Hawaii.....	*
Idaho.....	*
Illinois.....	*
Indiana.....	*
Iowa.....	*
Kansas.....	*
Kentucky.....	*
Louisiana.....	*
Maine.....	*
Maryland.....	*
Massachusetts.....	*	..
Michigan.....
Minnesota.....
Mississippi.....	*
Missouri.....	*
Montana.....	*
Nebraska.....	*
Nevada.....	*
New Hampshire.....	*
New Jersey.....	*

STATE	MODEL TYPE				
	A	B	C	D	E
New Mexico.....	*	..	..	..	..
New York.....	..	..	..	..	*
North Carolina.....	*	..	..	..	..
North Dakota.....	*	..	..	..	..
Ohio.....	*	..	..	..	..
Oklahoma.....	..	*	..	..	..
Oregon.....	*	..	..	..	..
Pennsylvania.....	..	..	*	..	..
Rhode Island.....	..	..	*	..	..
South Carolina.....	*	..	..	..	..
South Dakota.....	*	..	..	..	..
Tennessee.....	..	..	*	..	..
Texas.....	..	..	*	..	..
Utah.....	..	..	..	*	..
Vermont.....	..	..	*	..	..
Virginia.....	..	..	*	..	..
Washington.....	..	..	..	*	..
West Virginia.....	*	..	..	..	..
Wisconsin.....	..	..	*	..	..
Wyoming.....	..	..	*	..	..
Totals.....	17	3	21	6	3
%	34%	6%	42%	12%	6%

NOTE: Only the predominant model is reported for each state. In any given state, a number of boards may reside outside of the "traditional" professional and occupational licensing organizational system. Primary examples of these include professions and occupations related to agriculture, the environment and insurance. Based on 1989 data.

Questions Legislators Should Ask

In the mid-1970's, Educational Testing Service and Council of State Governments staff synthesized material from a variety of sources in order to provide a comprehensive list of questions that legislators may wish to ask of groups sponsoring regulatory legislation. Not all questions will be applicable in every situation; however, the topics provide a useful checklist not only for legislators, but also for groups sponsoring legislation. The questions should prove beneficial for states with formal Sunrise and Sunset reviews as well as for states who do not have such reviews.

The primary guiding principle legislators should remember as they evaluate requests for new regulation is whether an unregulated profession or occupation presents a **clear and present danger to the public's health, safety and welfare**. If the potential for harm exists, some form of regulation may be necessary; if it does not, regulation is probably unnecessary and a waste of the taxpayers' money. A similar principal is true when legislators review requests for a revision to regulatory statutes -- does the request provide greater protection for the public or does it merely serve the profession?

Today, the number of professions and occupations regulated by states through licensure, certification and registration is over 1,100. Approximately 600 of these categories are regulated through licensure; however, fewer than 60 are regulated by more than half the states. The lack of uniform requirements among the states raises concerns about the quality and meaning of consumer protection (Brinegar and Schmitt, 1992).

What Is The Problem?

- ✓ Has the public been harmed because the professional or occupational group has not been regulated?
 - To what extent has the public's health, safety, or economic well being been endangered?
- ✓ Can the claims made by the proponents of regulation be documented?

Why Should the Profession or Occupation Be Regulated?

- ✓ Who are the users of the services offered?
 - Are they members of the general public who may lack the necessary knowledge to evaluate the qualifications of providers and the outcome of the service provided?
 - Are they institutions or qualified professionals who have the knowledge to evaluate qualifications and outcomes?
- ✓ What is the extent of autonomy of practitioners?
 - Is there a high degree of independent judgment required of practitioners?
 - How much skill and experience are required in making these judgments?
 - Do practitioners customarily work on their own or under supervision?
 - If supervised, is the supervisor covered by regulatory statute?

Note: For many professions and occupations, if practitioners work under licensed supervision, licensure of the supervisee may not be necessary.

What Efforts Have Been Made to Address the Problems?

- ✓ Has the profession or occupation established a code of ethics?
 - To what extent has it been accepted and enforced?
- ✓ Has the profession or occupation established complaint-handling procedures for resolving disputes between practitioners and public?
 - How effective has this been?
- ✓ Has a nongovernmental certification program been established to assist the public in identifying qualified practitioners?
- ✓ Could the use of applicable laws or existing standards solve problems?
 - Could unfair and deceptive trade practices laws be used?
 - Could civil laws such as injunctions, cease and desist orders, etc., be used?
 - Could criminal laws such as prohibitions against cheating, false pretenses, deceptive advertising, etc., be used?
 - Could existing standards such as construction codes, product safety standards, etc., be used?

- ✓ Would strengthening existing laws or standards help to deal with the problem?

Have Alternatives to Licensure Been Considered?

- ✓ Could an existing agency be used to regulate the profession or occupation?
- ✓ Would regulation of the employer rather than the individual practitioner. e.g., licensing restaurants rather than cooks or waiters/waitresses, provide the necessary public protection?
- ✓ Could registration of practitioners coupled with minimum standards set by a state agency be used?
- ✓ Would certification of practitioners be an acceptable alternative? The use of a title would be restricted to those who have demonstrated competence, but they would not have sole control of the field of practice.
- ✓ Why would the use of the above not be adequate to protecting the public's interest?
 - Why would licensing be more effective?

Will the Public Benefit from Regulation of the Profession or Occupation?

- ✓ How will regulation help the public identify qualified practitioners?
- ✓ How will regulation assure that practitioners are competent?
 - What standards are proposed for granting credentials?
 - Are all standards job related?
 - How do these standards compare with those required by other states?
 - If standards differ from those of other states, can the difference be justified?
 - Are there training and experience requirements?
 - Are these requirements excessive when compared with other states? Why?
 - Does training include supervised field experience? If so, is an additional experience requirement justified?
 - Are there restrictions on where or how experience may be acquired? Why?
 - Will alternative routes of entry be recognized?
 - Will applicants who have not gone through prescribed training/experience be eligible for licensure?
 - Will licensure in another state provide an avenue for an individual to be credentialed in this state?

- Will applicants for licensure be required to pass an examination?
 - Does an examination already exist?
 - Does it meet national, professional and legal testing standards?
 - If no test exists, who will develop it and how will development costs be met?
 - What are the qualifications of the individual or group that would develop the test?
- Is there a "grandparent" clause in the proposed regulation?
 - Why is it necessary?
 - Will such practitioners be required to take a test at a later date?
- ✓ What assurance will the public have that the individuals credentialed by the state have maintained their competence?
 - Will the regulation include an expiration date for the licenses?
 - Will periodic license renewal be required?
 - Prior to renewal, will the practitioner be required to take an examination, be subject to peer review, show evidence of continuing education or other evidence of continued competence?
- ✓ How will the public's complaints against practitioners be handled?
 - Will there be a method for receiving complaints?
 - Will there be a timely and thorough investigation of complaints?

- Will there be an effective procedure for disciplining incompetent or unethical practitioners?
 - What grounds will there be for suspension or revocation of credentials?
 - What other disciplinary options, such as fines or restitution, will be available?
- ✓ Is it feasible to establish a restitution fund so that the public will be able to recover money lost through actions of unscrupulous practitioners?

Will Regulation Be Harmful to the Public?

- ✓ Will competition be restricted by the regulated group, e.g., prohibiting price advertising?
- ✓ Will the regulated group control the supply of practitioners?
- Are standards more restrictive than necessary?
 - Will entry by those from other states who have substantially similar qualifications be unreasonably restricted?
- ✓ Will regulation prevent the optimum utilization of personnel?
- Will the intended "scope of practice" prevent individuals from other professions or occupations from providing services for which they are qualified by training and experience?

- ✓ Will regulation increase the cost of goods and services to consumers?
- ✓ Will regulation decrease the availability of practitioners?
- ✓ Are there safeguards in the proposed law to ensure that the regulated group does not use its power to promote their own self-interest over that of the public?

How Will the Regulatory Activity Be Administered?

- ✓ Who will be responsible for administering the regulation?
- ✓ What will be the composition of the board, if required in statute?
- Will there be public members or auxiliary professionals on the regulatory entity? If so, what proportion will be non-professional members?
- ✓ What power will the regulatory entity have?
- Will it review qualifications, develop or approve examinations, conduct investigations, and/or discipline practitioners?
 - Will it promulgate rules and codes of conduct?
- ✓ Will actions of the regulatory entity be subject to review?
- By whom?

- Will the reviewing authority have the power to override the regulatory entity's actions? If only some actions can be overruled, which ones?
- ✓ How would the cost of administering the regulatory entity be financed?
 - How will fees be set?
 - Will income from fees go into general fund, agency fund, or a special account controlled by the regulatory entity?

Who Is Sponsoring the Regulatory Program?

- ✓ Are members of the public sponsoring the regulatory program?
 - ✓ What associations, organizations, or other groups in the state represent the practitioners?
 - Approximately how many practitioners belong to each group?
 - What are the different levels of practice in each group?
 - Are different philosophies of practice expounded by the various professional groups?
- ✓ Which of the above groups are actively involved in sponsoring regulatory programs?
 - Are other groups supporting the effort? If not, why?

Why is Regulation Being Sought?

- ✓ Is the profession or occupation seeking to enhance its status by having its own regulatory law?
- ✓ Is the profession or occupation claiming it is prevented from rendering services for which its members are qualified because of the "scope of practice" statement of another group?
 - If so, what efforts have been made to resolve differences?
- ✓ Is the profession or occupation seeking licensure in order to gain reimbursement under federal or state programs or private insurers?
- ✓ Is the public seeking greater accountability of the profession or occupation?

Definition of Selected Key Terms

Americans
with
Disabilities
Act

The Americans with Disabilities Act (ADA) is a federal law that became effective January, 1992. The ADA mandates that all examination candidates with a disability covered by the Act be given the opportunity to take an examination that does not discriminate on the basis of that disability. Both the state and any private organization developing or administering the examinations are covered. The Act also requires that licensure, registration or certification denials not be made solely on the basis of the disability.

Certification

May be granted by either a state regulatory body, or a non-governmental agency or association. Title protection is granted to persons who have met the predetermined qualifications. Those without the title may perform the services of the profession or occupation, but may not use the title.

Credentialing

A generic term for licensure, certification, and registration. Can also be used as a term for a voluntary process under the auspices of private sector associations.

Disciplinary Actions

Sanctions taken against licensees or unlicensed individuals by licensing boards or agencies following notice and an opportunity for a hearing on the violation(s) of licensing laws and regulations. Disciplinary action may include:

Censure

Similar to a reprimand. The agency makes an official statement of displeasure concerning the individual.

Fine

A monetary penalty imposed by the administrative agency for a violation of an administrative rule or regulation.

Probation

Conditions imposed upon an individual's practice. Once a specified time period has elapsed, the individual may resume unconditional practice.

Public

Reprimand

Similar to censure. The agency makes a public statement of displeasure concerning the individual's behavior.

Restricted
License

A reduction in the licensee's permitted scope-of-practice.

Revocation	The professional's license is involuntarily terminated.	North American Free Trade Agreement	An extension of the earlier General Agreement on Tariffs and Trade (GATT) designed to eliminate barriers to trade in goods and services among Canada, Mexico and the United States of America, including mutually licensed and certified professions.
Suspension	The licensee is not permitted to practice for a specified period of time.		
Endorsement	The acceptance of a licensee's qualifications based on the fact that the requirements met initially were substantially equivalent to those required in the new state.		
Licensure	The most restrictive form of state regulation. Under licensure laws, it is illegal for a person to practice a profession without first meeting the standards imposed by the state. It is illegal for unlicensed individuals to perform acts within the statutorily defined scope of practice.	Reciprocity	An arrangement through which a practitioner in one state may practice in another if the two states have a reciprocal agreement.
National Practitioner Data Bank	A national data bank on disciplinary actions taken against dentists and physicians, implemented by the U.S. Department of Health and Human Services. The data bank, as originally conceived, was to contain information on all clinical privileges, licensure disciplinary actions, malpractice payments and professional membership society losses of all licensed health practitioners. Plans for this comprehensive data bank have not been realized.	Registration	The least restrictive form of state regulation, usually consisting of requiring individuals to file their name, address and qualifications with a government agency before practicing the profession.
		Sunrise	Proposed regulatory legislation and supporting materials are drafted by the professional group seeking regulation and reviewed by a legislatively-enacted body that recommends to the legislature whether regulation is appropriate and, if so, the type of regulation.
		Sunset	The periodic, automatic termination of regulatory boards and agencies unless legislative action, based on review and recommendation of a legislatively-enacted body, is taken to reinstate them.

Suggestions For Further Reading

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Charts 1 and 2 show the number of complaints received each year for the last 21 years. The department has little control over the number of complaints received. A significant observation is that the number of complaints received for each of the last 10 years has consistently been over 2,000. It would appear that the department will continue to receive 2,000 or more complaints per year in the future. One unknown is the increase that may occur due to the addition of new areas of regulation, such as security guards.

Chart 3 shows the number of cases closed at screening. The clear trend is for a greater number of cases to be closed at screening. This increase is the result of the creation of screening panels. Screening panels are a success story and have greatly increased efficiency.

Chart 4 shows the number of cases closed after an investigation. The decline in cases closed at this stage is due in part to the increase in cases closed at screening. The chart also shows an increase in months to close. Two factors are responsible. The cases which are now opened for investigation are in general more complex as many simple cases are closed at screening. The second factor is that staff have now been able to complete and close some of the oldest files that had remained open for many years.

Chart 5 shows the number of cases closed following a formal board action. The figures for 1998 represent an all time high for the number of formal disciplines. The months to close also was improved. A significant factor in achieving these figures is likely the addition of paralegals in the last few years.

Chart 6 shows the number and percent of cases closed at each stage in the process as well as the total closed for each year. The most significant observation regarding this chart is the inverse relationship between cases closed at screening and cases closed after investigation. As more cases are closed at screening, less are closed after investigation. Moving the resolution to an earlier point in the process greatly increases efficiency.

Charts 7 and 8 show the number of cases pending at the end of the last 21 years. The most significant observation about these charts is the reduction in pending cases over the last 6 years.

Chart 9 shows the relationship between the complaints received and the complaints pending. Year 1998 represents by far the lowest ratio of pending to received in the last 10 years. This reduced ratio suggests an overall increase in efficiency.

Chart 10 shows the authorized positions by type. The most significant aspect of this chart is the addition of paralegals in the last few years. The staffing level has remained fairly constant in the last 10 years.

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

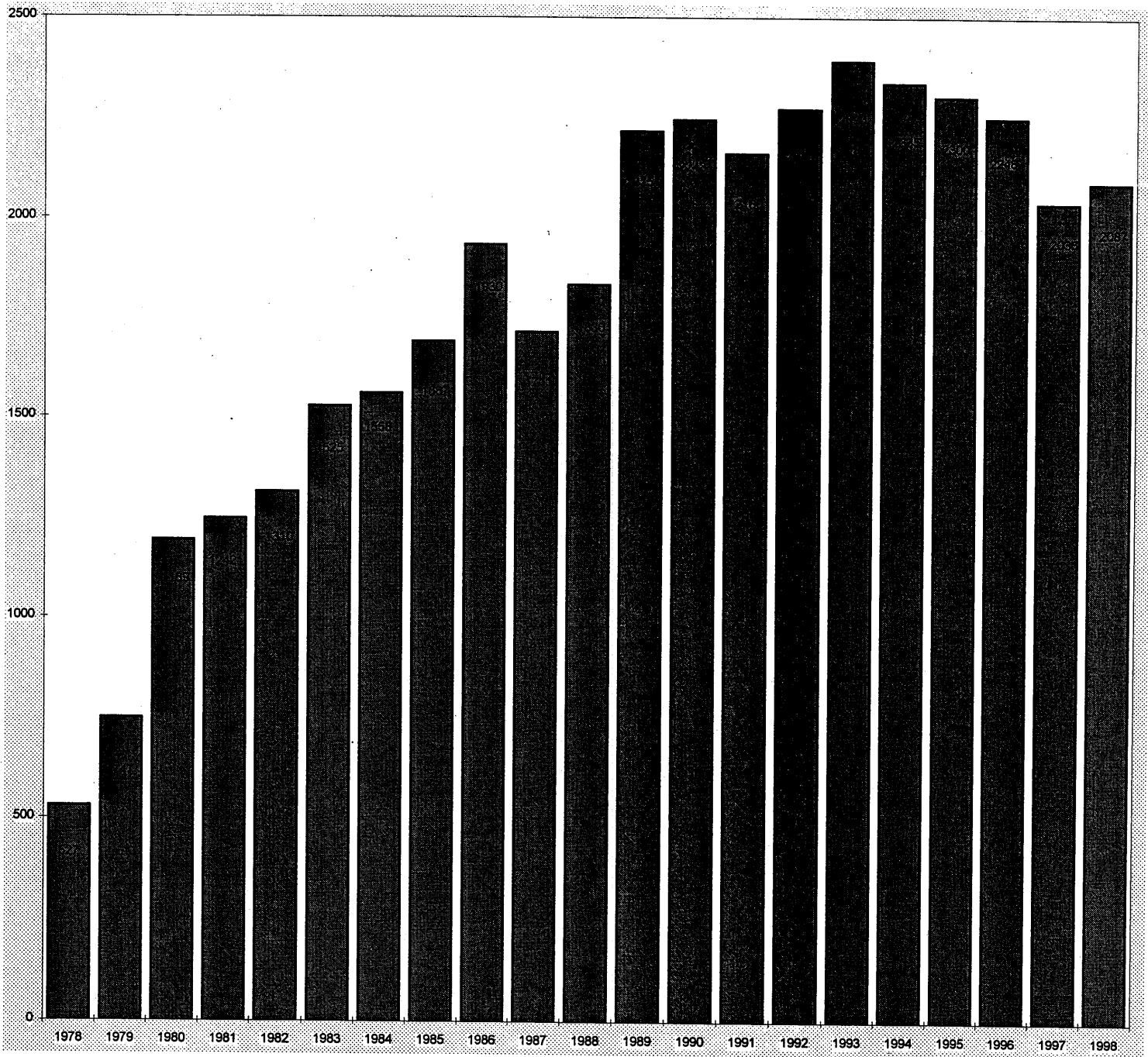
NO. OF COMPLAINTS RECEIVED

1978-1998

YEAR	NUMBER OF COMPLAINTS RECEIVED
1978	527
1979	747
1980	1189
1981	1242
1982	1310
1983	1525
1984	1558
1985	1687
1986	1930
1987	1711
1988	1830
1989	2215
1990	2243
1991	2160
1992	2270
1993	2390
1994	2335
1995	2300
1996	2248
1997	2036
1998	2087

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

NUMBER OF COMPLAINTS RECEIVED
1978-1998



**STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING**

NUMBER OF CASES AND AVERAGE NUMBER OF MONTHS TO COMPLETE THE COMPLAINT HANDLING PROCESS

COMPLAINTS SCREENED AND CLOSED AT SCREENING
“NOT OPENED”

**INVOLVING THE DEPARTMENT OF REGULATION AND LICENSING
AND ALL OF THE REGULATORY AUTHORITIES ATTACHED TO IT COMBINED**

Year	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012			
# Complaints screened	NA	NA	NA	NA	NA	NA	NA	NA	504	592	498	473	531	651	763	897	948	774	1122
Average number of months to process*	NA	NA	NA	NA	NA	NA	NA	NA	2.3	2.2	2.1	2.2	2.2	2.7	3.8	2.6	2.5	3.6	3.3

*FROM DATE THE COMPLAINT WAS RECEIVED IN THE DEPARTMENT'S DIVISION OF ENFORCEMENT UNTIL THE DATE THAT THE REGULATORY AUTHORITY COMPLETED SCREENING OF THE CASE. TIME IS ROUNDED TO THE NEAREST 1/10TH.

**STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING**

AVERAGE NUMBER OF MONTHS TO COMPLETE THE COMPLAINT HANDLING PROCESS

**COMPLAINTS CLOSED AFTER AN INVESTIGATION WAS CONDUCTED
AND NO DISCIPLINARY ACTION WAS COMMENCED
"INFORMALS"**

**INVOLVING THE DEPARTMENT OF REGULATION AND LICENSING
AND ALL OF THE REGULATORY AUTHORITIES ATTACHED TO IT COMBINED**

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	Total	
# Complaints closed	363	387	344	855	911	1082	902	940	1128	1353	1186	875	1220	1220	1534	1190	1304	1503	1362	894	721	885									
Average number of months to close*	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	14.2	12.0	10.4	12.0	11.7	12.8	11.3	11.6	13.0	15.8	18.1									

*FROM DATE THE COMPLAINT WAS RECEIVED IN THE DEPARTMENT'S DIVISION OF ENFORCEMENT UNTIL THE DATE THAT THE REGULATORY AUTHORITY CLOSED THE CASE.

**STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING**

**NUMBER OF ACTIONS AND AVERAGE NUMBER OF MONTHS TO COMPLETE THE COMPLAINT
HANDLING PROCESS**

COMPLAINTS CLOSED INVOLVING FORMAL ACTIONS

**INVOLVING THE DEPARTMENT OF REGULATION AND LICENSING
AND ALL OF THE REGULATORY AUTHORITIES ATTACHED TO IT COMBINED**

	1 9 7 7	1 9 7 8	1 9 8 9	1 9 8 0	1 9 8 1	1 9 8 1	1 9 8 0	1 9 8 8	1 9 8 8	1 9 8 8	1 9 9 0	1 9 9 1	1 9 9 2	1 9 9 3	1 9 9 4	1 9 9 4	1 9 9 5	1 9 9 6	1 9 9 7	1 9 9 8		
# Complaints closed	52	63	90	69	117	202	151	149	157	170	223	141	206	263	313	331	318	318	330	255	294	352
Average number of months to close*	9	10	12	14	15	13	13	16	14	24	26	34	28	24	15	24	21	20	19	18.9	22.6	17.8

*FROM THE DATE THAT THE COMPLAINT WAS RECEIVED IN THE DEPARTMENT'S DIVISION OF ENFORCEMENT UNTIL THE DATE THAT THE REGULATORY AUTHORITY CLOSED THE CASE. THE TIME IS ROUNDED TO NEAREST 1/10TH OF A MONTH.

**STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING**

NUMBER AND PERCENT OF COMPLAINTS CLOSED AT DIFFERENT STAGES OF THE COMPLAINT HANDLING PROCESS

1977-1998

YEAR	# COMPLAINTS CLOSED AFTER		% COMPLAINTS CLOSED AFTER		# COMPLAINTS CLOSED AFTER		% COMPLAINTS CLOSED AFTER		# COMPLAINTS CLOSED AFTER		% COMPLAINTS CLOSED AFTER		TOTAL # COMPLAINTS CLOSED
	SCREENING	SCREENING	INVESTIGATION	INVESTIGATION	FORMAL DECISIONS	FORMAL DECISIONS	INVESTIGATION	INVESTIGATION	FORMAL DECISIONS	FORMAL DECISIONS	FORMAL DECISIONS	FORMAL DECISIONS	
1977	NA		363	87%	52	13%						415	
1978	NA		387	86%	63	14%						450	
1979	NA		344	79%	90	21%						434	
1980	NA		855	93%	69	7%						924	
1981	NA		911	89%	117	11%						1028	
1982	NA		1082	84%	202	16%						1284	
1983	NA		902	86%	151	14%						1053	
1984	NA		940	86%	149	14%						1089	
1985	NA		1128	88%	157	12%						1285	
1986	NA		1353	89%	170	11%						1523	
1987	NA		1186	84%	223	16%						1409	
1988	504	33%	875	58%	141	9%						1520	
1989	592	29%	1220	60%	206	10%						2018	
1990	498	25%	1220	62%	263	13%						1981	
1991	473	20%	1534	66%	313	13%						2320	
1992	531	26%	1190	58%	331	16%						2052	
1993	651	29%	1304	57%	318	14%						2273	
1994	763	30%	1503	58%	318	12%						2584	
1995	897	35%	1362	53%	330	13%						2589	
1996	948	45%	894	43%	255	12%						2097	
1997	774	43%	721	40%	294	16%						1789	
1998	1122	48%	885	38%	352	15%						2359	

[Note: 1977-1987 complaints that were closed at screening were included with those closed after investigation because there was not a separate category for screening closures during those years.]

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STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

NUMBER OF COMPLAINTS PENDING AT THE END OF THE CALENDAR YEAR

1978-1998

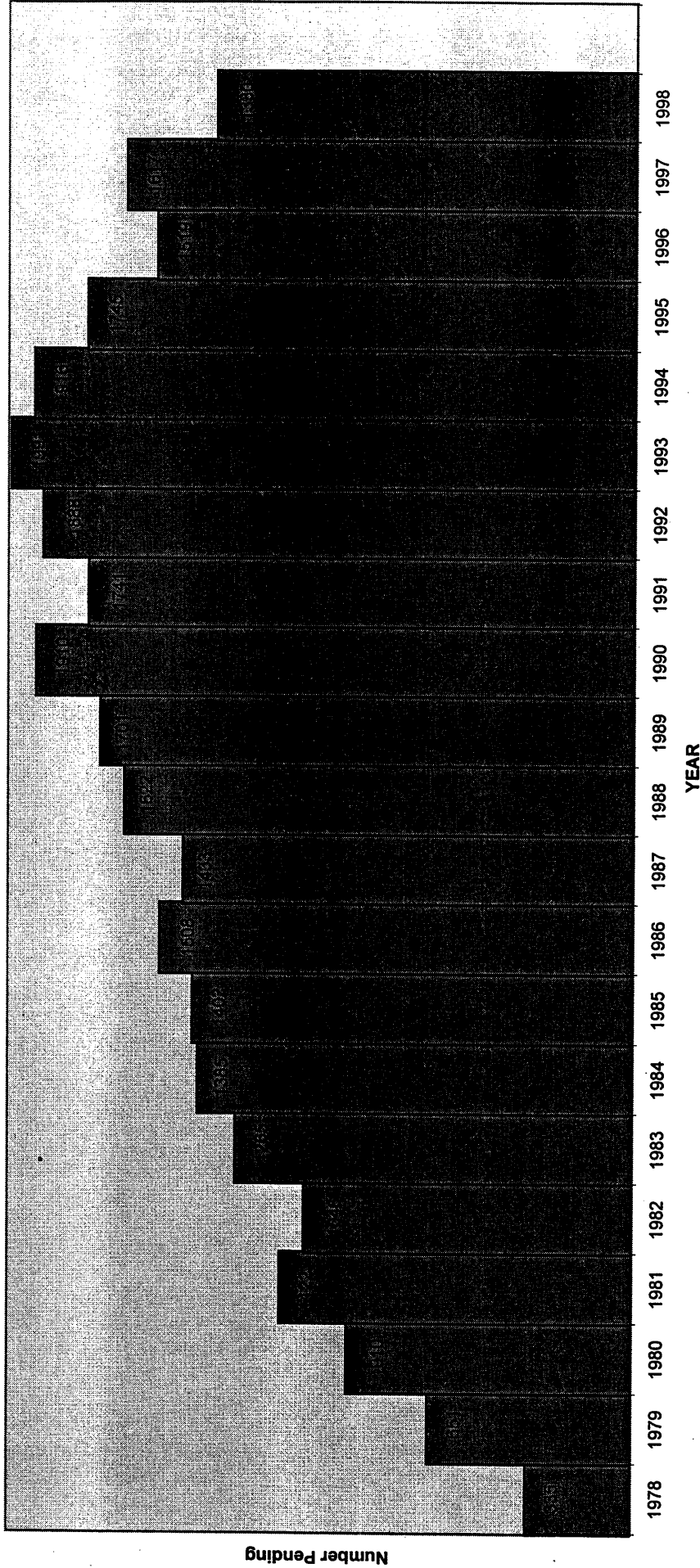
YEAR	NUMBER PENDING
1978	335
1979	651
1980	910
1981	1122
1982	1046
1983	1265
1984	1385
1985	1402
1986	1508
1987	1433
1988	1622
1989	1701
1990	1910
1991	1741
1992	1888
1993	1991
1994	1916
1995	1745
1996	1519
1997	1617
1998	1330

Data is from year end reports in most cases; if such reports were unavailable, data from reports close to the end of the year were used .

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

COMPLAINTS PENDING AT THE END OF THE CALENDAR YEAR

1978-1998



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STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
COMPLAINTS RECEIVED AND PENDING AND RATIO OF ONE TO THE
OTHER

1979-1998

YEAR	COMPLAINTS	COMPLAINTS	RATIO OF COMPLAINTS
	RECEIVED	PENDING	PENDING TO COMPLAINTS RECEIVED
1979	747	651	87%
1980	1189	910	77%
1981	1242	1122	90%
1982	1310	1046	80%
1983	1525	1265	83%
1984	1558	1385	89%
1985	1687	1402	83%
1986	1930	1508	78%
1987	1711	1433	84%
1988	1830	1622	89%
1989	2215	1701	77%
1990	2243	1910	85%
1991	2160	1741	81%
1992	2270	1888	83%
1993	2390	1991	83%
1994	2335	1916	82%
1995	2300	1745	76%
1996	2248	1519	68%
1997	2036	1617	79%
1998	2087	1330	64%

[NOTE: Pending complaints data is from on, or about, December 31 of the year in question.]

STATE OF WISCONSIN DEPARTMENT OF REGULATION AND LICENSING

DIVISION OF ENFORCEMENT

AUTHORIZED PERMANENT, FULL-TIME EQUIVALENT STAFF

1977-1998

YEAR	ADMINISTRATIVE & SUPERVISORY POSITIONS	ATTORNEY POSITIONS	AUDIT AND INSPECTION POSITIONS	INVESTIGATIVE POSITIONS	PARALEGAL POSITIONS	TOTAL AUTHORIZED	
						PERMANENT, FULL-TIME EQUIVALENT STAFF	EQUIVALENT STAFF
1977	3.00	3.00	0.00	7.00	0.00		13.00
1978	3.00	5.00	0.00	6.00	0.00		14.00
1979	3.00	5.00	16.00	5.00	0.00		29.00
1980	4.00	8.00	15.00	7.00	0.00		34.00
1981	4.50	7.00	10.00	9.00	0.00		30.50
1982	4.50	7.00	7.00	12.00	0.00		30.50
1983	4.50	7.00	7.00	12.00	0.00		30.50
1984	4.50	7.00	7.00	12.00	0.00		30.50
1985	5.50	7.00	7.00	11.00	0.00		30.50
1986	5.50	12.00	7.00	13.00	0.00		37.50
1987	5.50	12.00	7.00	15.00	0.00		39.50
1988	7.50	11.00	7.00	14.00	0.00		39.50
1989	7.50	12.00	4.00	17.50	0.00		41.00
1990	8.50	12.00	4.00	18.00	0.00		42.50
1991	8.50	12.00	4.00	17.00	0.00		41.50
1992	10.50	12.00	3.00	17.00	0.00		42.50
1993	10.50	12.00	3.00	17.00	0.00		42.50
1994	11.50	12.00	3.00	17.00	0.00		43.50
1995	12.00	12.00	3.00	17.00	1.50		45.50
1996	12.00	12.00	3.00	17.00	1.50		45.50
1997	10.75	12.00	3.00	17.50	2.00		45.25
1998	9.25	12.00	3.00	18.50	4.00		46.75

[NOTE: Figures are for the end of the calendar year in question.]

[NOTE ALSO: Figures for 1998 do not include 5.0 FTE paralegal and 2.0 FTE investigator positions that are project positions.]