

STUDIES OF LICENSURE AND REGULATION OF VARIOUS STATE BOARDS AND PRACTICES - BACKGROUND MEMORANDUM

LICENSURE AND REGULATION OF ACUPUNCTURISTS STUDY

The 2005 Legislative Assembly approved Senate Bill No. 2171 (attached as Appendix A). The bill provides for a Legislative Council study of the licensure and regulation of acupuncturists practicing in the state, as well as the possibility of multistate joint licensure and regulation programs. There currently is no state regulation or licensure of acupuncturists in North Dakota. The Budget Committee on Health Care has been assigned this responsibility for the 2005-06 interim.

2005 Legislative Assembly

Senate Bill No. 2171, as introduced, would have provided for the State Board of Medical Examiners to regulate and license the practice of acupuncturists. In addition, the bill would have required acupuncturists to maintain a patient record for each patient treated; inquire, before providing treatment, whether the patient has been treated by a physician or other medical professional and, if not, require acupuncturists to advise the patient to consult a physician; obtain a signed informed consent from the patient; and ensure that all nondisposable acupuncture needles and equipment that break the skin are sterilized after each use. The bill was amended by the Legislative Assembly to provide for the current study.

North Dakota Century Code (NDCC) Section 43-17-03, as amended by 2005 Senate Bill No. 2068, provides that the State Board of Medical Examiners consists of 12 members appointed by the Governor, including 9 medical doctors (M.D.), 1 doctor of osteopathy (D.O.), and 2 public members. The functions of the State Board of Medical Examiners are to license physicians qualified to practice medicine and to discipline those who violate the Medical Practice Act.

According to testimony presented by representatives of the State Board of Medical Examiners during the 2005 legislative session, having acupuncturists regulated by the State Board of Medical Examiners would be confusing to the public and would imply that individuals who perform acupuncture are physicians. The testimony indicated that the State Board of Medical Examiners is not familiar with the educational curriculum, training, and skills relating to acupuncture. The State Board of Medical Examiners would incur additional legal and staff costs to regulate a very small number of acupuncturists in North Dakota, which would result in physicians paying part of the cost of regulating acupuncturists. It is estimated that there are

approximately 19 businesses in North Dakota that offer acupuncture and/or acupressure services.

Related Terms

Acupuncture practice is a comprehensive system of health care using oriental medical theory and its unique methods of diagnosis and treatment. Its treatment techniques include the insertion of acupuncture needles through the skin and the use of other biophysical methods of acupuncture point stimulation, including:

- Cupping - Therapy in which a jar-shaped instrument is attached to the skin and negative pressure is created by using suction.
- Dermal friction - Rubbing on the surface of the skin, using topical ointments with a smooth-surfaced instrument that can be sterilized or, if disposable, a one-time only use product.
- Acupressure - Application of pressure to acupuncture points to relieve pain.
- Oriental massage techniques - Use of traditional oriental massage techniques and breathing exercises for treatment purposes.
- Electrical stimulation - A method of stimulating acupuncture points by an electrical current of .001 milliamp to 100 milliamps, or other current. Electrical stimulation may be used to treat the skin without penetrating the skin.
- Herbal supplemental therapies - The use of herbs and patent herbal remedies as supplements as part of the treatment plan of the patient.
- Dietary guidelines and counseling - A diet system used in conjunction with acupuncture to treat and prevent diseases and disorders.
- Breathing techniques - Oriental breathing exercises taught to a patient as part of a treatment plan.
- Exercise based on Oriental medical principles - A system of healing arts that perceives the circulation and balance of energy in the body as being fundamental to the well-being of the individual.

National Certification of Acupuncturists

The National Certification Commission for Acupuncture and Oriental Medicine was established in 1982 to develop and administer a national certification process based on the nationally recognized standards of competence and education. The National Certification Commission for Acupuncture and Oriental Medicine is the only nationally recognized certification available to

qualified practitioners of acupuncture and Oriental medicine. Certification is granted to those who meet the eligibility criteria and pass the examination. Eligibility may be achieved through one of the following:

- Formal education - Applicants must graduate from a program accredited by the Accreditation Commission for Acupuncture and Oriental Medicine, an independent national accrediting agency of professional acupuncture and Oriental medicine programs.
- Apprenticeship - Individuals who have completed 4,000 hours of training with a documented program/preceptor (teacher) in no less than three years and no more than six years. The preceptor must be either a state-approved instructor or must demonstrate a minimum level of practice of 500 patient visits by 100 different patients during each year of the individual's apprenticeship and for at least five years prior to becoming the preceptor. The apprenticeship route is not available for Oriental medicine certification.
- Combination of formal education and apprenticeship - An individual may qualify under this process through a combination of formal education and apprenticeship. This route is not available for Oriental medicine certification.

Since 1985 the National Certification Commission for Acupuncture and Oriental Medicine has been administering a certification examination of an individual's knowledge and skills necessary for safe and effective acupuncture practice. Certification requires a passing score on all required modules/examinations for each desired credential. The modules/examinations include foundations of Oriental medicine, acupuncture, point location, biomedicine, Chinese herbology, and Asian bodywork therapy.

Benefits of certification include:

- National Certification Commission for Acupuncture and Oriental Medicine certification is a requirement for licensure in most states;
- Many third-party payers recognize National Certification Commission for Acupuncture and Oriental Medicine certification as a criterion for reimbursement;
- Employers may require National Certification Commission for Acupuncture and Oriental Medicine certification as a condition for hiring or promotion; and
- Provides an indication that nationally accepted standards of practice are adhered to.

According to the Acupuncture and Oriental Medicine Alliance, there are seven states--Alabama, Delaware, Kentucky, Mississippi, North Dakota, South Dakota, and Wyoming--that do not have statutes which regulate or license acupuncture and Oriental medicine. Acupuncturists are regulated by the Board of Medical

and Osteopathic Examiners in Minnesota and the Board of Medical Examiners in Montana. The directory of acupuncture boards (attached as Appendix B) does not identify any multistate joint licensure and regulation programs.

Proposed Study Plan

The following is a study plan the committee may want to consider in its study of the licensure and regulation of acupuncturists practicing in North Dakota, as well as the possibility of multistate joint licensure and regulation programs.

1. Receive testimony from acupuncturists, and other interested individuals regarding licensing and regulation of acupuncturists practicing in the state.
2. Receive testimony from the State Department of Health and other interested individuals regarding the development of licensing requirements and regulations for acupuncturists practicing in North Dakota and the possibility of multistate joint licensure and regulation programs.
3. Receive testimony from representatives of the State Board of Medical Examiners regarding the possibility of the board licensing and regulating acupuncturists.
4. Receive information from Blue Cross Blue Shield of North Dakota and other third-party providers regarding possible certification or licensure requirements for reimbursement of acupuncture treatment.
5. Develop committee recommendations and any related bill drafts relating to licensure and regulation of acupuncturists practicing in North Dakota.
6. Prepare a final report for submission to the Legislative Council.

STUDY OF ESTABLISHING AN UMBRELLA LICENSING ORGANIZATION FOR COUNSELORS, PSYCHOLOGISTS, MARRIAGE AND FAMILY THERAPISTS, AND SOCIAL WORKERS

Section 2 of 2005 Senate Bill No. 2269 (attached as Appendix C) provides for a Legislative Council study of the fiscal impact and desirability of establishing an umbrella licensing organization for a group consisting of counselors, psychologists, marriage and family therapists, and social workers. The Budget Committee on Health Care has been assigned this responsibility for the 2005-06 interim.

Counselors

North Dakota Century Code Chapter 43-47 defines counseling as an application of human development and mental health principles in a therapeutic process

and professional relationship to assist individuals, couples, families, and groups in achieving more effective emotional, mental, marital, family, and social or educational development and adjustment. The goals of professional counseling are to:

- Facilitate human development and adjustment throughout the lifespan;
- Prevent, assess, and treat emotional, mental, or behavioral disorder and distress which interferes with mental health;
- Conduct assessments for the purpose of establishing treatment goals and objectives; and
- Plan, implement, and evaluate treatment plans using professional counseling strategies and interventions.

In order to be a licensed professional counselor or licensed associate professional counselor in North Dakota, an individual is required to hold a master's degree from an accredited school or college in counseling or other program that meets the academic and training standards adopted by the Board of Counselor Examiners. In addition, a licensed professional counselor is required to have two years of supervised experience under a licensed professional counselor, or its equivalent as determined by the board.

The Board of Counselor Examiners is established pursuant to NDCC Section 43-47-02, consisting of five members appointed by the Governor for three-year terms. The membership is made up of two practicing counselors, one counselor educator, and two members of the public.

The duties and responsibilities of the board include publishing an annual list of the names and addresses of all licensed professional counselors and licensed associate professional counselors, approving and administering an examination for counselors, depositing and disbursing all fees and money collected by the board, establishing continuing education requirements for license renewal, issuing provisional or probationary licenses, and establishing a code of ethics for the practice of counseling. The board may determine and collect a fee, not to exceed \$150, for the filing of each application for a counselor license and, not to exceed \$100, for the renewal of a license.

Psychologists

North Dakota Century Code Chapter 43-32 defines psychology as the observation, description, evaluation, interpretation, or modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior and enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health, and mental health. In order to be licensed to practice psychology in North Dakota, an individual must have a doctorate degree in a program of studies substantially

psychological in nature from an accredited school or college and completed at least two full years of supervised professional experience.

The State Board of Psychologist Examiners is established pursuant to NDCC Section 43-32-02, consisting of five members appointed by the Governor for three-year terms. At least one member must be engaged primarily in providing service in psychology, and at least one member must be engaged primarily in teaching, training, or research in psychology. Board members must be a resident of North Dakota, a licensed psychologist, have received a doctorate degree in psychology at least five years before appointment, and have actively engaged in the practice of teaching or research of psychology for at least five years.

The duties and responsibilities of the board include establishing continuing education requirements; maintaining a record of its proceedings and a register of all applicants for licensing, approving, and administering an examination for psychologists; collecting and disbursing of license fees; and maintaining a code of ethics for licensure. The annual license fee is determined by the board, but may not exceed \$100.

Marriage and Family Therapists

The 2005 Legislative Assembly approved Senate Bill No. 2269 creating NDCC Chapter 43-53 and establishing the North Dakota Marriage and Family Therapy Licensure Board. Marriage and family therapy means the diagnosis and treatment of mental and emotional disorders, whether cognitive, effective, or behavioral, within the context of marriage and family systems. Marriage and family therapy involves the professional application of psychotherapeutic and family systems theories and techniques in the delivery of services to individuals, couples, and families for the purpose of treating such diagnosed nervous and mental disorders.

Senate Bill No. 2269 provides that before January 1, 2008, the qualifications for licensure by the North Dakota Marriage and Family Therapy Licensure Board are that the applicant complete an appropriate graduate degree, as defined by the board, from a regionally accredited institution; at least five years of clinical experience in the practice of marriage and family therapy; and membership or certification by an appropriate organization, as defined by the board.

After December 31, 2007, the qualifications for licensure will be that the applicant have a master's degree or a doctoral degree in marriage and family therapy from a recognized educational institution, or a graduate degree in an allied field from a recognized educational institution and graduate level coursework which is equivalent to a master's degree in marriage and family therapy; and two calendar years of work experience in marriage and family therapy under qualified supervision following receipt of a qualifying degree.

The North Dakota Marriage and Family Therapy Board consists of five members appointed by the Governor for four-year terms. At least three members must be licensed practicing marriage and family therapists with at least five years of experience in providing marriage and family therapy; in the education of training of master's, doctoral, or postdoctoral students of marriage and family therapy; or in marriage and family therapy research. At least one member must be a representative of the general public and may not have any direct affiliation with the practice of marriage and family therapy or another mental health profession.

The duties and responsibilities of the board include adoption of rules, examination of the qualifications of all applicants and issuing a license for each successful applicant, authorization of appropriate expenditures, adoption of a nationally recognized code of ethics for the practice of marriage and family therapy, administration of a national examination as required for marriage and family therapists, establishment of continuing education requirements for license renewals, and publishing a list of the names and addresses of all individuals licensed. The license fee, which is valid for a two-year period, is to be determined by the board. The fees established must be adequate to establish and maintain the operation of the board.

Social Workers

North Dakota Century Code Chapter 43-41 defines social work practice to consist of the professional application of social work values, principles, and techniques in helping people obtain tangible services, counseling, psychotherapy, and providing social casework, social work education, social work research, or any combination of these. An individual may apply for licensure as a social worker, certified social worker, or independent clinical social worker. A licensed social worker must have received a baccalaureate degree in social work or a social welfare program from a college or university accredited by the Council on Social Work Education. A licensed certified social worker must have received a doctorate or master's degree from a school of social work accredited by the Council on Social Work Education. A licensed independent clinical social worker is required to have a doctorate or master's degree from a school of social work accredited by the Council on Social Work Education and successfully complete four years of full-time, post-master's clinical social work experience under the supervision of a licensed certified social worker who has two years of experience, a licensed clinical psychologist, or a licensed psychiatrist.

North Dakota Century Code Section 43-41-08 establishes the North Dakota Board of Social Work Examiners consisting of six members appointed by the Governor for three-year terms. Two of the members must be licensed social workers, one must be a

licensed certified social worker, one must be a licensed independent clinical social worker, and two must be laypersons.

The duties and responsibilities of the board include adoption and administration of rules and regulations, publishing an annual list of names and level of licensure, appointing staff and providing for staff compensation, approving an examination for licensing social workers, proper deposit of and disbursement of fees, establishing continuing education requirements, and adoption of a code of social work ethics. The board is to set by rule license and renewal fees as determined necessary.

PREVIOUS RELATED STUDIES

2001-02 Commerce Committee

During the 2001-02 interim, the Legislative Council's Commerce Committee studied the ability of occupational and professional boards with fewer than 100 licensees to process disciplinary complaints and carry out other statutory responsibilities. An informal survey performed by the Attorney General's office for the committee indicated that the following four North Dakota occupational and professional boards had fewer than 100 licensees or registrants:

1. Board of Hearing Aid Specialists;
2. Board of Podiatric Medicine;
3. North Dakota Board of Reflexology; and
4. State Board of Registration for Professional Soil Classifiers.

In performing its study, the committee reviewed the basic structure of occupational and professional licensing in North Dakota, South Dakota, Wyoming, and Minnesota. In addition to receiving testimony from representatives of the four boards that license fewer than 100 licensees, the committee received testimony from representatives of several professional entities, including the State Examining Committee for Physical Therapists, North Dakota Occupational Therapy Association, and North Dakota Society for Respiratory Care.

The committee compared and contrasted the structure of North Dakota's occupational and professional licensing system with the systems of other states. The committee received testimony that a commonality between North Dakota's occupational and professional boards is that they are primarily stand-alone boards in that the boards are not affiliated with a particular state agency. A commonality between North Dakota's system and the systems of other states is that it is common for professions to regulate themselves.

The committee made no recommendations with respect to its study of occupational and professional boards that license fewer than 100 licensees.

1995-96 Government Organization Committee

During the 1995-96 interim, the Legislative Council's Government Organization Committee studied all boards and commissions of state government and whether any of those entities have overlapping powers and duties; whether any of those entities should be eliminated or consolidated; whether each entity performs the functions for which it was originally created; and whether the membership of each entity is responsible to the people of the state. The study was based on the recommendations of the five-member task force appointed by the Governor in January 1994 to review the necessity and efficiency of approximately 150 boards and commissions to which the Governor makes appointments.

The Governor's task force interviewed representatives from each board and commission and established criteria in examining each entity. The criteria employed by the task force was to determine whether each board or commission had outlived its original mission or funding and whether there is a legitimate need for the entity to remain in existence. The task force also gathered information describing the services provided by and the financial status of each board and commission, the frequency of meetings, the length and location of meetings, and reimbursement practices for attendance at the meetings. The task force recommendations included establishing a board to oversee the activities of all boards and commissions that have a licensing function, submission of financial statements by boards and commissions with a certified audit by an outside independent accounting firm, and establishing requirements to address excess funding of entities that collect fees.

The interim Government Organization Committee considered but did not recommend bill drafts that would have:

- Prohibited occupational and professional licensing boards from using any funds derived from registration, certification, license, or examination fees or any income resulting from those funds for lobbying or political purposes;
- Consolidated the Board of Massage, State Examining Committee for Physical Therapists, State Board of Psychologist Examiners, Board of Examiners on Audiology and Speech-Language Pathology, North Dakota Board of Athletic Trainers, Board of Occupational Therapy Practice, North Dakota Board of Social Work Examiners, State Board of Respiratory Care, Board of Dietetic Practice, Board of Addiction Counseling Examiners, Board of Counselor Examiners, North Dakota Board of Clinical Laboratory Practice, and North Dakota Board of Reflexology into a Board of Health Services;
- Consolidated the Abstracters' Board of Examiners, Board of Barber Examiners, State Board of

Cosmetology, State Board of Architecture, State Board of Funeral Service, Board of Hearing Aid Specialists, State Board of Public Accountancy, State Board of Registration for Professional Engineers and Land Surveyors, Private Investigation and Security Board, North Dakota Real Estate Appraiser Qualifications and Ethics Board, State Real Estate Commission, State Board of Examiners for Nursing Home Administrators, and the State Board of Registration for Professional Soil Classifiers into a Board of Business Practices; and

- Limited the authority of the newly created boards to that of issuing licenses and disciplining licensees if the licensees did not maintain the qualifications to practice required by the boards.

Proposed Study Plan

The following is a study plan the committee may want to consider in its study of the fiscal impact and desirability of establishing an umbrella licensing organization for a group consisting of counselors, psychologists, marriage and family therapists, and social workers.

1. Receive testimony from representatives of the Board of Counselor Examiners, State Board of Psychologist Examiners, North Dakota Marriage and Family Therapy Board, and North Dakota Board of Social Work Examiners regarding licensure and regulation requirements, the number of individuals licensed, revenues and expenditures, similarities and differences between each of the boards, and the feasibility of establishing an umbrella licensing agency for some or all of these organizations.
2. Receive testimony from other interested boards, commissions, and individuals regarding creating an umbrella licensing agency for certain boards and commissions.
3. Develop committee recommendations and any related bill drafts.
4. Prepare a final report for submission to the Legislative Council.

ALLIED HEALTH PROFESSIONS BOARD STUDY

Section 6 of 2005 House Bill No. 1280 (attached as Appendix D) provides for a Legislative Council study of the feasibility and desirability of creating an allied health professions board to regulate the practice of members of allied health professions. The study is to include consideration of the feasibility and desirability of a North Dakota allied health professions board entering joint professional licensure agreements with neighboring states. The Budget Committee on Health

Care has been assigned this responsibility for the 2005-06 interim.

Allied health professionals are boards and commissions involved with delivery of health or related services pertaining to the identification, evaluation, and prevention of diseases and disorders; dietary and nutrition services; and rehabilitation and health systems management. Allied health professions may include professions such as dental hygienists, dietitians, medical technologists, occupational therapists, physical therapists, polysomnographic technologists, respiratory therapists, speech-language pathologists, and radiologic technologists.

Multiple health professions and occupations licensed by a single board in surrounding states include:

- Board of Medical and Osteopathic Examiners (Minnesota) - Acupuncturists, physicians, physician assistants, athletic trainers, respiratory therapists, and nurse midwives.
- Mental Health Professions Licensing Board (Wyoming) - Professional counselors, marriage and family therapists, social workers, and chemical dependency specialists.
- Board of Medical Examiners/Department of Labor and Industry (Montana) - Acupuncturists, medical doctors, nutritionists, physician assistants, podiatrists, telemedicine practitioners, emergency medical technicians, and osteopathic physicians.
- Board of Medical and Osteopathic Examiners (South Dakota) - Athletic trainers, advanced life support personnel, physical therapists, physician assistants, physicians, occupational therapists, respiratory therapists, nurse practitioners, nurse midwives, and dietitians.

OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS OF NORTH DAKOTA

A listing of North Dakota professional licensing boards and occupations licensed by the boards is attached as Appendix E. The information is based on a survey conducted in 2001 for the 2001-02 interim Commerce Committee.

MULTISTATE PROFESSIONAL LICENSURE AGREEMENTS

North Dakota Century Code Chapter 43-51 provides for instances in which a "foreign practitioner" may provide services in North Dakota without a license. A "foreign practitioner" is an individual who currently holds and maintains a license in good standing to engage in an occupation or profession in a state or jurisdiction other than North Dakota and who is not the subject of a pending disciplinary action in any state or jurisdiction.

A foreign practitioner may provide services in this state under the following circumstances:

- Services are provided through consultation with a person licensed by the board and the foreign practitioner has no direct communication with the individual receiving the services.
- Services are provided through a remote means and are a continuation of an existing relationship between the foreign practitioner and the individual receiving the services which was formed in the state or jurisdiction in which the foreign practitioner is currently licensed.
- Upon prior written notice to the appropriate board, a foreign practitioner may provide services in North Dakota which falls within the scope of the practice designated by the practitioner's license, if the services are provided for a period of time not to exceed 60 consecutive days in a calendar year and are provided in response to a disaster declared by the appropriate authority in the state.
- Upon prior written application to the appropriate board, a foreign practitioner may provide services in North Dakota which fall within the scope of practice designated by the practitioner's license, if the services are provided for no more than 30 full or partial days per year.

Pursuant to NDCC Section 43-51-07, a board may establish, by administrative rule, conditions and procedures for foreign practitioners to practice in this state pursuant to written compacts or agreements between the board and one or more other states or jurisdictions or pursuant to any other method of license recognition that ensures the health, safety, and welfare of the public.

An example of a multistate licensure agreement is the Nurse Licensure Compact (NLC), which allows a nurse to have one license (in the nurse's state of residency) and to practice in other states as long as that nurse acknowledges that he or she is subject to each state's practice laws and discipline. States that are actively participating in the NLC include Arizona, Arkansas, Delaware, Idaho, Iowa, Maine, Maryland, Mississippi, Nebraska, New Mexico, North Carolina, North Dakota, South Dakota, Tennessee, Texas, Utah, and Wisconsin. Based on the directory of regulatory boards in North America, it does not appear that there are joint multistate boards that license or regulate occupations or professions.

PROPOSED STUDY PLAN

The following is a study plan the committee may want to consider in its study of the feasibility and desirability of creating an allied health professions board to regulate the practice of members of allied health professions.

1. Receive testimony from representatives of the State Board of Medical Examiners and other state boards and commissions regarding licensure and regulation requirements, the number of individuals licensed, revenues and expenditures, similarities and differences between each of the boards, the feasibility of establishing an allied health professions board or consolidating various boards and commissions under one licensing and regulating entity, and the feasibility and desirability of a North Dakota allied health professions board entering joint professional licensure agreements with neighboring states.
2. Receive testimony from other interested organizations and individuals regarding establishing an allied health professions board and the feasibility and desirability of a North Dakota allied health professions board entering joint professional licensure agreements with neighboring states.
3. Develop committee recommendations and any related bill drafts.
4. Prepare a final report for submission to the Legislative Council.

ATTACH:5