



NORTH DAKOTA OCCUPATIONAL LICENSING REVIEW AND REFORM PHASE 2: FINAL REPORT

EXECUTIVE SUMMARY

When it comes to providing for the licensing of professions and occupations, state government has dual and sometimes conflicting responsibilities. On the one hand, the state is responsible for ensuring that licenses are issued in a manner responsible to its citizens. Proper training, experience, education, and ethics must be enforced, so as to protect the public and ensure the professional delivery of goods and services. On the other hand, the state is also responsible for providing the requisite ingredients for a robust economy, free from unnecessary regulation and bureaucratic redundancies. Governor Burgum’s 2020 State of the State Address touted a North Dakota that is “strong, growing and full of boundless opportunity.” He pledged to reinvent state government to maximize the potential for economic progress and business development. The occupational licensing environment must be complementary to and reflective of these goals.

The need to balance effective occupational licensing with the need to ensure portability and convenience of licensure is encountered by members of the military and by military spouses. Often, military personnel and families lead itinerant lifestyles, moving from place to place as a military career progresses. One recent census of military personnel in North Dakota counted 6,583 active-duty military in the state, nearly all of whom resided at Minot Air Force Base¹. The spouses of these active-duty military often build careers of their own. Ensuring that these professionals can secure licensure expeditiously is in the best interests of the economy of North Dakota.

To that end, the 2019 North Dakota Legislature passed Senate Bill 2306. Among other requirements, Senate Bill 2306 required that each occupational licensing board or commission in North Dakota adopt new rules regarding the licensure of military spouses, and specifically required that boards automatically issue a provisional license or temporary permit to a military spouse in the event that a completed application not be processed within a maximum thirty day timeframe. The Department of Commerce was required by this legislation to track compliance with this requirement.

Understanding the current occupational licensing environment in North Dakota is important for anyone wanting to maximize the potential of the private sector. To that end, Job Service North Dakota secured an Occupational Licensing Review and Reform grant, and engaged the Council on Licensure, Enforcement and Regulation (CLEAR) to study the current state of occupational licensing in North Dakota. The Department of Commerce, under the leadership of Commissioner Michelle Kommer, was tasked by the Governor to take the lead in managing this contract and working to ensure a productive analysis of the current licensing environment.

The ongoing COVID-19 crisis makes the need for regulatory reform even more acute. The national economy has been thrown into a tailspin, amid soaring unemployment and professional uncertainty spanning a great many professions. In response to this ongoing crisis, Governor Burgum issued Executive Order 2020-5 on March 19, 2020, which sought to waive some license requirements for those in healthcare professions.²

CLEAR built a team of outside professionals and occupational licensing experts, who spent about four months studying the occupational licensing environment in North Dakota. A first phase of research was conducted in 2017 by Saint Francis University, identifying 61 governmental entities with occupational licensing responsibilities in North Dakota. Building from this list, CLEAR’s team was responsible for four primary deliverables:

- Create a directory of occupational and licensing boards and commissions.
(Scope of Work 3.2.A.1)
- Provide communications to these boards, and conduct a survey of these boards to better understand the current occupational licensing environment.
(Scope of Work 3.2.A.2-3.2.A.4)
- Provide an analysis to include identification of trends and opportunities.
(Scope of Work 3.2.A.5)
- Prepare a report to include findings, recommendations for reform based on best practices, and a recommended reform strategy.
(Scope of Work 3.2.A.7)

¹DoD Defense Manpower Data Center, cited at <https://www.governing.com/gov-data/public-workforce-salaries/military-civilian-active-duty-employee-workforce-numbers-by-state.html>

²Executive Order language can be reviewed on the North Dakota website. <https://www.governor.nd.gov/sites/www/files/documents/executive-orders/Executive%20Order%202020-05.pdf>

This report fulfills the final of these deliverables. The deliverables required in Scope of Work 3.2.A.6 (a mid-project status report), Scope of Work 3.2.A.8 (presentation of this report to the Workforce Development Council), and Scope of Work 3.2.A.9 (status reports every thirty days of the project) were fulfilled separately.

We begin this report by examining the current occupational licensing environment nationwide. In an era of increasing professional mobility, and with the need to maximize efficiency and strengthen the business environment evident throughout the nation, occupational licensing is a very active topic in legislatures and statehouses throughout the country. The issue intersects with other prominent topics. Some states have taken a hard look at criminal background questions and so-called “good moral character” questions, which some argue needlessly exclude some applicants from potential career paths and some believe may be discriminatory. Other states have aggressively pushed to reduce obstacles to entry for potential applicants, working with other states and with regional and national associations to create new pathways to licensure that open opportunities but also raise questions of liability.

Next, in this report we look at North Dakota’s current occupational licensing regulatory environment, and how it compares with other states. We define North Dakota as a prime example of what we call a fully autonomous “Model A” environment, in which occupational licensing boards and commissions act with clear independence, empowered to chart their own course and set their own policy agenda. We examine the benefits of this approach, but also some of the perceived pitfalls that stem from the lack of a central organizing bureau or agency.

Lastly, as we look at how the national occupational licensing regulatory environment is impacted by the COVID-19 pandemic. North Dakota’s state government has been highly responsive in this area, and the pandemic casts a bright spotlight on the potential to promote reciprocity for occupational licensing across states. The economic impact of the pandemic only serves to hasten the need for this conversation to take place.

Next, we report on the twin deliverables of the Scope of Work under which we have worked. The Occupational and Professional Board Directory, which was initially seen as a potential “One Stop Shop” for those seeking more information about occupational licensing boards and commissions in North Dakota, required a change of course after we learned of a parallel effort already underway by the Governor’s Office. We report on the spreadsheet we created to fulfill the need for a comprehensive and up-to-date list of current points of contact, while also reporting on how we are supporting other, parallel efforts already underway.

But the bulk of this report is spent focusing on survey efforts undertaken by CLEAR to measure the current occupational licensing environment in North Dakota. Over the course of two months, CLEAR worked with dozens of occupational licensing professionals, who it should be noted were highly responsive during a highly uncertain time for us all. Much of the work undertaken under this contract coincided with the heights of the COVID-19 pandemic. Despite some initial concerns, lengthy delays or difficulties related to the pandemic never materialized.

A pilot survey was developed and field tested with eight boards and commissions identified by the Department of Commerce as likely to provide good responsive feedback, so as to lay the groundwork for the final survey. The pilot survey was disseminated on April 14, with a due date of April 21. The pilot survey had an 88% response rate. One governmental entity did not respond to the survey, but they did provide extensive feedback via email and telephone calls.

Based on the feedback received and lessons learned from the pilot survey, the final survey was developed and deployed to all 61 boards and commissions identified in the Saint Francis University report. The final survey was disseminated on May 13. Non-response follow up began in earnest two weeks later.

During the non-response follow up period, CLEAR staff and Department of Commerce staff agreed that 11 entities identified in the Saint Francis Report were in fact not properly included in the survey cohort and could be removed. This was mostly because these offices were either subsumed within larger offices already on the list, or because it was determined that they did not in fact issue occupational or professional licenses.

The final survey was closed on June 3. Of the 50 entities that were determined to properly remain in the survey cohort, the final survey had a 96% response rate. Only two entities refused participation, with one indicating (after board consideration) that they did not believe they were bound by the mandate to report under the auspices of SB2306, and another entity refusing to participate for indeterminate reasons. Despite these two abstentions, CLEAR felt the survey response far exceeded

expectations. The survey provided robust data on a variety of topics. Respondents should be commended for the obvious care they put into their responses.

The survey findings point to a regulatory system that is well positioned for enhancements to maximize reciprocity across jurisdictions. Board vacancies are rare, measured at 2.4%. Board meetings are happening regularly, most commonly quarterly, but we measured widespread use of “special meetings” to handle boards’ workloads between meetings, with over 70% of boards holding at least one special meeting in the last twelve months. With fully-constituted boards and enough board meetings to handle the demands of licensing, we measured license application times that appear very reasonable. (Mean time to licensure was measured at nineteen calendar days, while median time to licensure was just seven calendar days.) We also found that North Dakota boards and commissions employ a variety of strategies designed to enhance mobility and portability of licenses; of the options we measured, the use of endorsement provisions (37.9%), a shortened application process for out-of-state applicants that provides for licensure verification in good standing, was the most common. We also measured significant utilization of reciprocity agreements with other states (20.7%) and multi-state licensure compacts (10.3%). Eighty-nine percent of respondents reported that they manage complaint processes, which clearly shows that a culture of accountability is already in place.

One of the most surprising findings from the survey response was the time to licensure for military spouses, the target audience for the expedited licensure provisions of SB2306. Our survey identified just 58 military spouses who were identified by survey respondents as military spouses, since the implementation of this new requirement in 2019. Only 1 of those 58 was granted a provisional license under the law. Our survey did not identify why the need for provisional licenses was so low; we believe it plausible that the provisions of SB2306 increased awareness of the need to expedite military spouse licensure and therefore accomplished its goals without the need for provisional licensure. Another explanation — entirely consistent with our findings — is that the licensure environment in North Dakota is operating well enough that a wait beyond thirty days is uncommon.

In the concluding section of this report, we interpret the survey responses and place them in a national context. While we assess the overall occupational licensing environment in North Dakota as operating well, we do recognize a variety of potential obstacles to promoting licensing reform. Some of those obstacles are national and not specific to North Dakota (nor fixable by North Dakota state government, operating independently). Among these national obstacles are the “gradations of licensure” which have been implemented inconsistently across the country. In forging interstate compacts or reciprocity agreements, we discuss the issues inherent in trying to implement national standards in an environment that has been historically resistant to national solutions. We discuss our findings with regard to the criminal conviction and good moral character provisions employed by many North Dakota licensing boards and commissions, and provide specific examples of how some boards are already working to reform their own policies. We provide a menu of options that policymakers may consider, to improve the occupational licensing environment in North Dakota. We outline potential new options for North Dakota’s occupational licensing supervision and coordination model, should the stakeholders conclude that they wish to provide for a more harmonious environment and more consistency across occupational licensing board practices. And we outline vital considerations for public outreach and consensus-building, to ensure that any new policies find receptive audiences.

Altogether, CLEAR measured North Dakota’s occupational licensing environment to be efficient, well-staffed, and conducive to reform. We sincerely appreciate the support we received from Department of Commerce staff and from Job Service North Dakota. We would particularly like to thank the 48 points of contact that responded to the survey. Their responses were detailed, insightful, and very well thought through. This study could not have been a success if not for the evident care they put into their professional responsibilities.

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I. INTRODUCTION OF THE PROJECT TEAM

The Council on Licensure, Enforcement and Regulation (CLEAR) is a 501(c)(3) not-for-profit corporation based in the Commonwealth of Kentucky. A membership association, with representation from 48 states, Canada, Western Europe, Asia and Oceania, it is guided by a mission to promote regulatory excellence.

During its forty-year history, CLEAR has served as an information clearinghouse and education and training provider for organizations and individuals involved in professional and occupational licensure. Since September 2018, CLEAR has been engaged as a consultant by the State of New Hampshire, as it undertakes regulatory reform efforts that are funded by a grant from the U.S. Department of Labor. CLEAR has also recently completed a study funded by the National Conference of State Legislatures to explore regulatory models that are in place across the United States. To date, CLEAR has provided training for 21,000 regulatory investigators and inspectors, and also offers two educational programs for regulatory board members, and a course for executive leaders.

CLEAR's principal consultant for this project is David Byerman, who most recently served as Director of the Kentucky Legislative Research Commission. In this role David managed the nonpartisan legislative staff in Kentucky and oversaw an agency with approximately 400 employees and a \$70.4 million annual budget. Earlier in his career, he served as the 40th Secretary of the Senate for the Nevada Senate.

David has been assisted by Cory Everett, Colorado Director, Latino Coalition for Community Leadership, where she oversees operations of criminal justice reinvestment projects including the Work and Gain Education and Employment Skills (WAGEES) program totaling approximately \$6 million annually. Cory is the former Deputy Director of Programs and Policy for the Colorado Division of Professions and Occupations, where she advanced workforce development policy for occupational licensing in healthcare and trades through alternative pathways utilizing apprenticeship, internship, and experiential learning, led policy development across healthcare professions with the dual goals of promoting patient access and protection. She was also involved in the design of workforce pathways for veterans transitioning to civilian professions, overseeing policy implementation for 50 professions. Cory also served as CLEAR's 2017-18 President. In addition, the project has benefited from the involvement of Ronne Hines, Director of the Colorado Division of Professions and Occupations, which provides oversight to more than 50 healthcare and non-healthcare boards and programs, including more than 475,000 licensees. The project has also received the administrative support of CLEAR staff members Adam Parfitt, Executive Director, Jodie Markey, Director of Strategic Initiatives, and Shawn Rogers, Director of Operations.

II. STATUTORY GENESIS FOR THIS SURVEY AND REPORT

Senate Bill 2306 of the Sixty-Sixth Legislative Assembly of North Dakota was sponsored by Senators Meyer, Anderson, Burckhard and Hague and Representatives Nathe and Ruby. It received unanimous approval in both the House and Senate and was signed by the Governor on April 25, 2019. Among other provisions, the bill included a requirement that occupational licensing boards include on each licensure application and renewal form a question as to whether the applicant was a member of the military or the spouse of an active member of the military. For these applicants, the bill required that a provisional occupational license be issued if thirty days had elapsed since the receipt of a completed license application. The bill also included a provision requiring each occupational licensing board to ensure compliance with the act, and for the Department of Commerce to develop a form for each board to submit, reporting on their compliance.

Job Service North Dakota and the North Dakota Department of Commerce collaborated on a Scope of Work to fulfill the reporting requirements of SB2306. CLEAR was selected to fulfill this Scope of Work after a competitive process. The Department of Commerce decided that the reporting requirements of SB2306 would be fulfilled by the licensing boards' participation in the Occupational Licensing Survey that is the subject of this report. The Department felt that this approach would ensure some consistency in reporting on the outcomes of SB2306, while the statutory requirement would likely increase participation by the occupational licensing boards.

III. AN OVERVIEW OF NATIONAL TRENDS

Occupational licensing has been a subject of significant interest for much of the last decade. At a federal level, the previous and current administrations have actively supported reform, with significant legislative proposals included in the 2015 report *Occupational Licensing: A Framework for Policymakers*³. Much of the recent activity has been in response to the growth in occupational licensing during the last sixty years, and to some of the unintended consequences that may result from regulatory programs.

There has been bipartisan support for initiatives that support military spouses and transitioning members of the military. Military spouses experience challenges caused by frequent moves between states, and the need to meet additional licensing requirements and expenses that may result. Transitioning members of the military see challenges in having the skills gained in their military service be inconsistently recognized as they transition to civilian life.

Numerous states have enacted legislation in this area. For example, a bipartisan bill aimed at reducing occupational licensing issues that military personnel and their spouses encounter passed unanimously in North Carolina's state Senate. SB717⁴ requires applications from military personnel and spouses be addressed within seven business days, following receipt of the application. Denials must be accompanied by reasons for the decision. Beginning October 31, 2021, the bill also requires each licensing board to complete an annual report, for presentation to the General Assembly and the secretary of the Department of Military and Veterans Affairs, to include the number of applicants, licenses granted, provisional approvals, denial statistics and summaries of denials.

Meanwhile South Carolina SB455⁵ (signed May 26, 2020) mandates the issuance of temporary professional and occupational licenses to military spouses and requires the acceptance of military education, training and experience to satisfy professional and occupational licensing requirements of certain state regulatory boards.

Accessibility to Criminal Records

Recent legislative activity to address barriers to employment faced by those with criminal records has continued apace, with several states adopting legislation to prevent regulatory boards from automatically rejecting licensing applicants based solely on their criminal history. Recent legislation has included:

- Alabama's SB163⁶, permitting petitions to state courts to secure an Order of Limited Relief, and prevent regulatory boards from rejecting a licensing application based solely on a criminal record.
- Maryland's HB22 of the 2019 Session⁷ prohibited the denial of a licensure application based only on a criminal record.
- Illinois' HB2670⁸, provided a guide to regulators about what criminal history should be considered when an application is received.
- California's AB2138⁹, with an effective date of July 1, 2020:
 - Restricts the discretion of the umbrella agencies' boards in using prior criminal history as grounds for denying a license.
 - Bars criminal convictions older than seven years from serving as the basis for denying a license application.
 - Clarifies that criminal convictions must be "substantially related" to the qualifications or duties required by the license or profession in order to be a basis to deny, revoke, or suspend a license.
 - Forbids licensing boards from deny licensing applicants on the basis of a conviction that was expunged, dismissed, pardoned or if the applicant made a showing of rehabilitation for a felony conviction.
 - Licensing boards may no longer require that applicants self-disclose prior convictions unless the license type does not require fingerprint background checks.
 - Licensing boards must now track and publicly report licensure denial and appeal data.

³Report prepared by the Department of the Treasury Office of Economic Policy, the Council of Economic Advisers, and the Department of Labor: https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf

⁴Bill information can be viewed at the North Carolina legislative website: <https://www.ncleg.gov/Sessions/2019/Bills/Senate/PDF/S717v0.pdf>

⁵Bill information can be viewed at the South Carolina legislative website: https://www.scstatehouse.gov/sess123_2019-2020/bills/455.htm

⁶Bill information obtained from LegiScan: <https://legiscan.com/AL/bill/SB163/2019>

⁷Bill information can be viewed at the Maryland General Assembly website: <http://mgaleg.maryland.gov/mgaweb/legislation/Details/HB0022?ys=2019rs>

⁸Bill information can be viewed at the Illinois Legislature website:

<http://www.ilga.gov/legislation/BillStatus.asp?DocNum=2670&GAID=15&DocTypeID=HB&LegID=118862&SessionID=108&GA=101>

⁹Bill information can be viewed at the California legislature website: https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2138

Risk Assessment

The splintering of occupational licensing means that there is a highly diverse approach within states regarding the regulation of different professions, and across states regulating the same professions and occupations. The range of approaches taken can reduce professional mobility, with the potential to harm both businesses seeking employees and individuals wishing to fill job vacancies. To address some of the challenges posed by the current patchwork of regulatory arrangements, several states (initially Arizona and Pennsylvania) have adopted universal reciprocity legislation. These initiatives, as set forth in Arizona's HB2589¹⁰ and Pennsylvania's HB1172¹¹, have been the subject of national attention. Broadly, both pieces of legislation allow for reciprocity for many licensed occupations, provided the applicant pays licensing fees, is licensed and in good standing in another state, and is a resident of the state.

More recently, during the 2019-20 session, Iowa's House File 2627¹² waives initial licensing fees for initial applicants from families below a certain income threshold, permits recognition of three years of work experience as a substitute for education, training and work experience requirements, and creates a uniform standard of review for denial of licensure based on conviction history.

Alternatives to universal reciprocity legislation have typically seen states consider participation in one of the profession-specific multi-state compacts that already exist.

Issuing several license types for practitioners in a single professional field may complicate attempts to streamline reciprocity arrangements and broaden professional mobility initiatives. Unless national standards are in place that define what constitutes, for example, an 'advanced' practitioner in a given field, determinations are likely to differ from state to state, complicating automatic recognition of another state's licensing arrangements.

State Models for Occupational Licensing

States organize their regulatory functions along a continuum of five traditional models that address how decision-making and operations are shared between state employees and regulatory board members, typically representatives of the profession in which they regulate and practice.

The five regulatory models described by Kara Schmitt (2018) in *Questions a Legislator Should Ask*¹³ are

- fully autonomous/independent (Model A);
- autonomous but with a central agency responsible for housekeeping/ administrative functions (Model B);
- autonomous/independent decision-making authority but with a central agency responsible for housekeeping/ administration, budget, personnel, investigations, and discipline (Model C);
- central agency with decision-making authority on all substantive matters while boards are delegated responsibility for some functions (Model D); or
- central agency, commission, or council with final decision-making authority and boards serving only in an advisory capacity (Model E).

North Dakota exemplifies a "fully autonomous" or Model A state. North Dakota boards operate independently and control state policy-making following the powers vested in the board by North Dakota's Legislative Assembly. The boards are the chief decision-making bodies related to issuance of a license, and have a primary role with regard to discipline, revocation and other regulatory rules that define how a person may engage in the profession.

In the past, the primary impetus to establish a centralized agency over autonomous boards was attributed to operational efficiency and centralized data. Since the Supreme Court Decision in *North Carolina Dental Board v. Federal Trade Commission*¹⁴, interest in regulatory models has reemerged to address state oversight of private market actors. A recent survey of U.S. states conducted by CLEAR revealed an array of benefits and challenges of the regulatory model focusing on themes of efficiency, funding and budget, decision-making authority, streamlining and standardization, communication and collaboration, oversight, and political authority.

¹⁰Bill information can be viewed the Arizona Legislature's website: <https://www.azleg.gov/legtext/54leg/1R/bills/HB2569P.pdf>

¹¹Bill information can be viewed at the Pennsylvania General Assembly's website: <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2019&sInd=0&body=H&type=B&bn=1172>

¹²Bill information can be viewed at the Iowa Legislature's website: <https://www.legis.iowa.gov/legislation/BillBook?ga=88&ba=hf2627>

¹³Schmitt, K. (2018). *Questions a legislator should ask*, 3rd edition. Nicholasville, KY: Council on Licensure, Enforcement and Regulation. p. 53-54

¹⁴The Supreme Court's ruling can be viewed at https://www.supremecourt.gov/opinions/14pdf/13-534_19m2.pdf

Interestingly, of the boards that have reported a recent or proposed change to consolidate to a more centralized authority or to move from centralized authority to more autonomous boards, all parties have attributed the need for change due to efficiency and cost-savings. Those changing to a centralized authority also noted antitrust concerns, free-market support, job creation, and other factors as drivers for the change. Those changing to a more autonomous authority also noted the desire for better customer service as an impetus.

Regardless of the model, state policymakers, regulatory staff and board members are establishing a wide range of best practices and reforms to reduce unintended consequences of licensure, while promoting consumer protection. These include various policy mechanisms beyond the regulatory structure and power sharing to address matters of anticompetitive conduct. It is worth reiterating that autonomous, centralized and blended regulatory models may all be exposed to anticompetitive conduct and all share opportunities to limit anticompetitive behavior and other economic impacts through policies and reforms unrelated to regulatory board structure.

Because the federal government allows states to establish their own occupational regulation regime (based on *Dent v. West Virginia*¹⁵), the structure of licensing boards and oversight can vary widely and is responsive to the unique political infrastructure found in each state. North Dakota is no exception and must consider its unique circumstances, economic realities, workforce needs, and governing mechanisms, while also evaluating the benefits and challenges of utilizing an autonomous/independent regulatory model. While such analysis is beyond the scope of the survey discussed in this report, extrapolating the trends noted in survey responses evince certain challenges North Dakota policymakers may face related to its regulatory model. These challenges may include barriers related to:

- Data and evidence-informed decisions, especially to inform state workforce and economic policy;
- Sharing best practices and helpful reforms across siloed boards; and
- Ensuring effective education and onboarding for new board members, including “public” members and those in chair/ leadership positions, on their role, powers, and awareness of unintended impacts of certain licensing policies.

Likewise, North Dakota’s regulatory model may be associated with certain benefits noted as broad trends across licensing boards such as:

- Relatively quick application processing times; and
- Responsiveness of boards to address emerging priority matters, as reflected by the frequency of regular and special meetings.

Survey findings related to the impact of SB2306, which set forth an expedited licensing process for military spouses, could be viewed in this light. The good news is that survey responses appear to indicate an expedited process is not necessary for military spouses – that military spouses and the general public are licensed quickly and typically able to practice within thirty days of initial application. The passage of SB2306 likely reflects an environment in which policymakers were unaware of this efficiency, leading to an assumption that a particular challenge faced in other states must also characterize the licensure process in North Dakota. Our findings show this not to be the case.

This experience leads to a useful conclusion: that data and information sharing are important levers to craft effective policy.

COVID-19 Impacts

It seems timely and important to note the unique challenges that come when considering the occupational licensing environment in the COVID-19 Era. Occupational licensing responses to COVID-19 have seen the reduction in, and of, barriers to enabling a “surge workforce,” which can assist with increased patient numbers in the healthcare system. Most states have enacted legislation or used Executive Orders to permit volunteers from other states to practice without meeting state-specific licensing requirements. North Dakota has been a leader in this regard. Executive Order 2020-5¹⁶, executed on March 19, 2020, suspended “the licensure requirements for health care or behavioral health professionals licensed” under a number of chapters of statute. In addition, some licensing requirements for hospitals and other health care facilities were also suspended, subject to temporary emergency requirements established by the State Health Officer and the Adjutant General, in consultation with the North Dakota Department of Human Services.

¹⁵The Supreme Court’s ruling can be viewed at <https://supreme.justia.com/cases/federal/us/129/114/>

¹⁶Governor Burgum’s Executive Order can be viewed at the North Dakota website:

<https://www.governor.nd.gov/sites/www/files/documents/executive-orders/Executive%20Order%202020-05.pdf>

Some states in the region have taken similar approaches. In South Dakota, Executive Order 2020-07 removed restrictions on telehealth and telemedicine and fully recognized licenses held by a medical professional from a compact member state in accordance with the uniform Emergency Management Assistance Compact (EMAC). In Montana, health professionals licensed in another state can register to work immediately and without licensing fees during the state of emergency. Minnesota's Executive Order 2020-23 temporarily relaxed several mandatory licensing requirements, including delaying expiration and renewal deadlines for health care provider licenses. In addition, the Board of Nursing has permitted the use of temporary permits while the declared state of emergency remains in place.

¹⁷Executive Order language available via the South Dakota website:

<https://sdsos.gov/general-information/executive-actions/executive-orders/assets/2020-07.PDF>

¹⁸Memo from Governor Steve Bullock:

<https://covid19.mt.gov/Portals/223/Documents/4-21-20%20Health%20Care%20Licensing.pdf?ver=2020-04-22-140815-253>

¹⁹Executive Order language available via the State of Minnesota website: https://mn.gov/governor/assets/E0%2020-23%20FINAL_tcm1055-425466.pdf

IV. DIRECTORY OF OCCUPATIONAL BOARDS AND COMMISSIONS

The Scope of Work for this contract required the production of “a directory of all occupational and professional boards that license occupations in North Dakota,” envisioning a “One-Stop State Web Page” including contact and other information deemed useful. CLEAR incorporated the production of the board contact information into early versions of its survey instrument.

During the Pilot Survey process, CLEAR and Department of Commerce staff became aware of a parallel effort that was planned by the Governor’s Office. Utilizing funding that had been earmarked for this specific purpose during the 2020 Legislative Session, the Governor’s Office was preparing to update its own “Boards and Commissions” database in an effort that paralleled the Department of Commerce effort. The database update undertaken by the Governor’s Office would involve all boards and commissions, of which the occupational licensing boards and commissions were a subset. The database update was planned to be “self serve” for points of contact for boards and commissions, allowing each board to update its own information in real time.

This produced a bit of a quandary as CLEAR staff coordinated with the Department of Commerce. If their effort was successful and completed on time, the Governor’s Office would produce a dynamic, real-time, always-up-to-date database of all boards and commissions (and, as a subset, of all occupational licensing boards and commissions). The Commerce Department’s “one stop web page,” by contrast, would need to be manually updated and would be largely redundant to the more robust Governor’s Office directory.

In light of these developments, CLEAR and the Department of Commerce changed course and included in the final survey a question that asked survey respondents to verify that the information on the North Dakota Boards and Commission website for their board or commission was up to date. The survey asked that respondents specifically review the following information: the breakdown of voting vs. nonvoting members, the length of terms for members, the term limits for members, the statutory authority for the board or commission, the website for the board, and the board description. Respondents affirmed that the information on the Governor’s Office directory was correct, and provided any corrections, if needed.

At the direction of the Department of Commerce, CLEAR staff combined information from the Governor’s Office website with the information collected in the survey, to produce a North Dakota Occupational Licensing Board Directory in the form of a spreadsheet²⁰. This deliverable was provided to the Department of Commerce in its final form on June 25, 2020.

²⁰At the time of this writing, this spreadsheet can be viewed online at <https://bit.ly/ND-OLBD>

V. SURVEY OF OCCUPATIONAL LICENSING BOARDS

Initial Planning and Scope

The Scope of Work that laid out the responsibilities under this contract required, “a form to collect information which allows for the evaluation of each occupational and professional board’s laws and rules to be captured in a uniform manner to assist in the evaluation of this initiative and which complies with the new law.” During a Survey Development Team meeting on April 2, 2020, the Survey Monkey service (surveymonkey.com) was determined by the Research Team to fulfill the requirements for this project.

The objectives of the survey were agreed to as follows:

- Providing a convenient and seamless option for participation by survey respondents, who would likely vary considerably in their tech-savviness;
- Providing cross-platform versatility, accommodating those who wish to respond to the survey using a variety of web browsers, devices, and operating systems;
- Providing brevity and customizability by including question logic and survey branching, as not all questions planned for the survey would apply to all boards and commissions identified in the survey cohort;
- Obtaining necessary contact information for a directory of occupational licensing boards and commissions in North Dakota;
- Measuring the occupational licensing environment in North Dakota, specifically as to its ability to accommodate enhanced reciprocity for license applications by applicants already licensed in other jurisdictions; and
- Fulfilling the statutory reporting requirements of SB2306 of the 2019 Legislative Session.

SB2306 Compliance

Among other requirements, Senate Bill 2306 of the Sixty-Sixth Legislative Assembly in North Dakota required that each occupational licensing board or commission in North Dakota adopt new rules regarding the licensure of military spouses. Boards were directed to “grant on a case-by-case basis exceptions to the board’s licensing standards to allow the spouse to practice the occupation or profession in the state,” based on specifically-delineated requirements. In these cases, the legislation required that the boards automatically issue a provisional license or temporary permit to a military spouse in the event that a completed application was not processed within a maximum thirty day timeframe. The legislation included a provision requiring every licensing board to review its licensure laws and rules to determine compliance, and to report to the Department of Commerce before August 2020 on the status of that board’s review of its laws and rules. During an early dialogue with the CLEAR Survey Design Team, Commissioner Kommer confirmed that she intended to have the survey fulfill this legislative requirement. It was agreed that this would be noted in the introductory message, and would likely thereby increase the response rate.

Development of a Pilot Survey

Though it was not part of the original scope of work, the Survey Design Team discussed and ultimately agreed on the feasibility of adding a pilot survey to the project timeline. The advantages gained through utilization of a pilot survey were as follows:

- Testing survey responses with respondents likely to provide constructive feedback;
- Identifying issues that need to be addressed and included in the final survey;
- Deploying non-response follow up strategies in a controlled environment with the ability to refine the approach before a final survey was attempted with a wider audience;
- Testing communications surrounding the survey, and identifying the efficacy of specific messaging strategies; and
- Defining best strategies for disseminating and evaluating survey responses.

The Department of Commerce identified eight licensing boards and commissions that they believed would be ideal partners to assist with the pilot survey. These boards were identified based on their potential to provide constructive feedback, their

likelihood to be willing to participate in a full survey after having already participated in a pilot survey, and their diversity in size and scope. The eight pilot participants included:

- North Dakota Board of Social Work Examiners
- State Board of Psychologist Examiners
- Education Standards and Practices Board
- State Board of Registration for Professional Engineers and Land Surveyors
- State Board of Cosmetology
- State Board of Pharmacy
- State Board of Nursing
- North Dakota Real Estate Commission

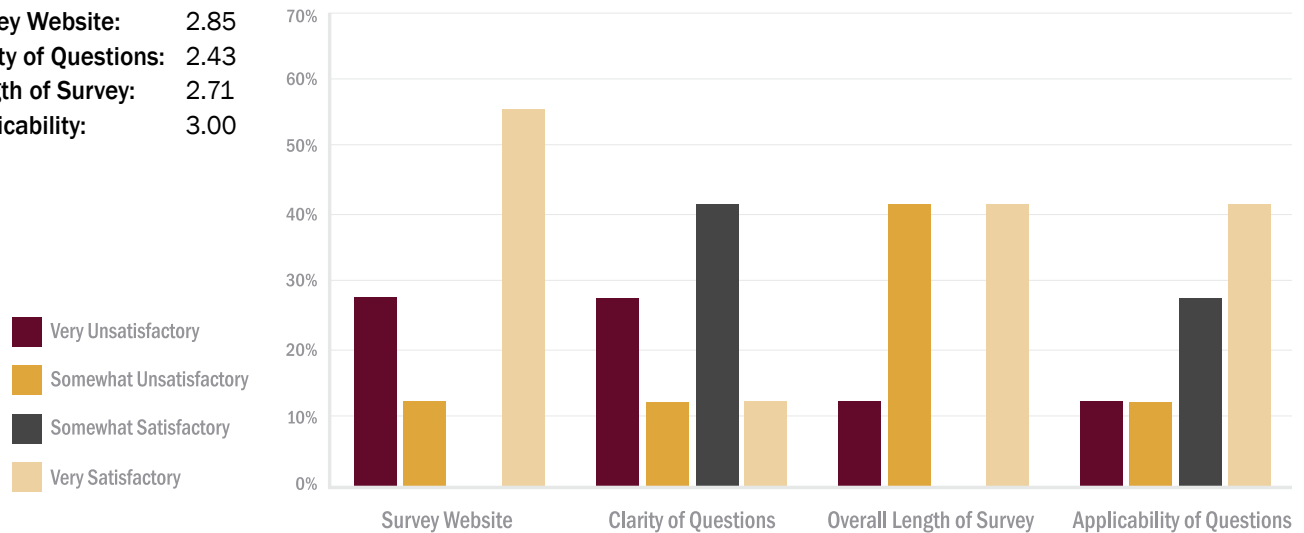
Execution of the Pilot Survey and Results

The Survey Development Team met on April 2. A variety of topics and survey question types were discussed, and the general scope of the survey was developed. The Research Team was informed of the selected pilot survey participants on April 6. Eleven pilot participants were originally identified, but this number was pared down to eight as the survey was finalized. An early draft of the pilot survey was circulated internally on April 6, and based on feedback from the Survey Development Team, the pilot survey was finalized on April 14. It was agreed that a welcome message from Commissioner Kommer would be helpful, in that it could convey the importance that the Administration placed on this assessment, while also communicating that response to this survey would fulfill the statutory requirements of SB2306. This introductory message was drafted by CLEAR staff, and refined by Department of Commerce staff. The pilot survey was disseminated on April 14, with a due date of Tuesday, April 21.

CLEAR was very pleased with the quality of the responses to the pilot survey. Seven of the eight respondents submitted successfully via the website, while the eighth respondent opted to call back with detailed feedback and suggestions. Non-response follow up was virtually unnecessary; none of the pilot survey participants were completely unresponsive, and the only needed follow-up took the form of answering questions and having discussions about areas for improvement.

In a post-survey questionnaire, respondents were asked to rate different components of the survey on a scale of 1 (very unsatisfactory) to 4 (very satisfactory). Average ratings were as follows:

Survey Website: 2.85
Clarity of Questions: 2.43
Length of Survey: 2.71
Applicability: 3.00



While the overall ratings provided by the pilot survey participants showed overall satisfaction in the survey experience, the Survey Design Team was surprised that the website rated relatively poorly. The dissatisfaction in the “clarity of questions” category was understandable, as the pilot survey included untested language that had not yet been reviewed by occupational licensing boards.

The pilot survey revealed a number of refinements that would be necessary in the final survey design:

- 1. Respondents needed better direction on how to start and stop the survey.** In follow up conversations with several pilot survey respondents, the Survey Design Team learned that respondents believed that they had to begin and complete the survey in one sitting. The survey never clearly explained that the website tracked survey responses and would return a respondent back to where they left off, if they closed the survey window.
- 2. The method of dissemination of the survey would need to be revised in order to facilitate non-response follow up.** The pilot survey was sent out with a common web link that all respondents utilized. While this was convenient and allowed for the survey to be freely forwarded from one party to another, it did not make possible any tracking on whether a given survey had been completed, nor whether the email had even been opened. By disseminating the survey via unique URLs, specific to each respondent, tracking survey response (and identifying those respondents that required non-response follow up actions) would be much easier.
- 3. Gradations of licensure needed to be anticipated in the question design.** Many licensing boards and commissions handle multiple levels of licensure (with one specific example identified during the pilot survey being the different levels of nursing licensure: RN, LPN, Clinical). The answers to subsequent survey questions may be different for different levels of license.
- 4. Asking questions about regular meetings wasn't sufficient because of the disproportionately important role that special meetings play in North Dakota.** The pilot survey design did not ask any questions about special meetings, but it turns out that fully 42% of all meetings held by occupational and professional licensing boards are not regular meetings, but instead occur at special meetings as called by the chair.
- 5. Questions about delegated authority needed to be expanded to anticipate the issuing of licenses by Board members and staff on their own authority.** One interesting practice identified during the pilot survey was the practice of delegating authority to issue licenses to specified board members and staff members for routine applications. In many cases it appears that these decisions, in routine cases, need not be ratified by the boards and commissions themselves. This was a surprise to the Research Team and required the rewording of several questions.
- 6. Questions about SB2306 compliance needed to be rephrased to address several scenarios not originally contemplated.** The primary question posed in the pilot survey was a compound question: "How many military spouses have successfully obtained licensure due to the reciprocity provisions of SB2306?" But several pilot survey respondents provided feedback that the question was difficult to answer because of the meaning of "due to" – who was to say whether the bill had made it possible for applicants to achieve licensure? Did this include all military spouses who received licenses? Or was a specific nexus between the applicant and the provisional licensure provisions of the bill necessary? In the final survey, it was decided to break this compound question into its component parts: to measure how many military spouses had applied, and how many provisional licenses had been issued.
- 7. Questions that were intended to help build the Occupational Licensing Board Database were redundant to a parallel effort underway within the Governor's Office, and thereby unnecessary.** During the pilot survey process, we learned that the Governor's Office had been funded by the 2019 Legislature to redesign its Boards and Commissions Database. The database – which already stored much of the information that this project hoped to collect – would be self-managed by the boards and commissions themselves after the redesign. This created the unpalatable scenario where any database created as a result of this survey would be rendered almost immediately obsolete by any changes made by those boards and commissions, changes which would then be self-reported and self-managed on the redesigned Governor's Office database. It was therefore decided by the Department of Commerce that the effort to produce a database would be subsumed under the already-underway project, and that any information collected during this survey process would be shared with the Governor's Office to do with as they saw fit.

Development of the Final Survey

Armed with the results of the pilot survey, the Survey Development Team convened again on April 24 to make decisions on the scope and design of the final survey. The cohort of licensing boards and commissions to be surveyed was determined by the 2018-2019 Job Service North Dakota Workforce Programs Occupational Licensing Review, performed by The Knee Center for the Study of Occupational Regulation at Saint Francis University. That study identified 61 boards and commissions that handled all occupational and professional licensing in North Dakota. This list was reviewed by Department of Commerce staff, who confirmed that the list remained up to date and would comprise the initial survey cohort. Primarily utilizing online resources, CLEAR staff then created a database of email points of contact for each one of the identified boards and commissions.

Commissioner Kommer's introductory message was updated and incorporated into the final survey, which was emailed to all 61 boards and commissions on Wednesday, May 13. Respondents were given three weeks to complete the survey, with a due date of Wednesday, June 3.

Non-Response Follow Up

CLEAR staff and Department of Commerce staff collaborated while the survey was in the field on the task of non-response follow up. There were two automated messages that went out at weekly intervals, reminding non-respondents to participate and reiterating the deadline.

With one week to go before the due date, non-response follow up started in earnest. At that point, 22 completed surveys had been received and 6 surveys were partially completed. One of the first tasks undertaken was to review the non-respondents to determine if they should be removed from the survey cohort altogether. There were two scenarios when this was deemed appropriate: either because the invitee did not, in fact, issue occupational licenses (that is, they should not have been included in the Saint Francis Report list in the first place) or when one invitee was redundant to another (most commonly, when one office on the list was fully contained within another). Under these two rationales, 11 non-respondents were ultimately removed from the survey cohort.

Non-response follow up started with communications from Department of Commerce staff. It was felt that first contact with non-respondents should initially come from an Executive Branch point of contact. This would pave the way for the external consultant to do further follow up as needed. Initial contact was made, either via email or telephone call, late the week of May 25th. CLEAR staff then followed up (in nearly all cases via telephone call) during the final push to the deadline, the week of June 1. During this final follow-up process, a number of points of contact were changed and new invitees were added.

Ultimately, CLEAR staff and Department of Commerce staff realized a 96% response rate. Of the 50 boards and commissions appropriately included in the survey cohort, 48 responded to the survey. Only two refused: the North Dakota Commission of Combative Sports responded, through Secretary of State Al Jaeger, that they would not be completing the survey. And the State Board of Law Examiners, after meeting to discuss the question, elected not to participate because they are not covered by SB 2306 or N.D.C.C. 43-51.

VI. SURVEY FINDINGS

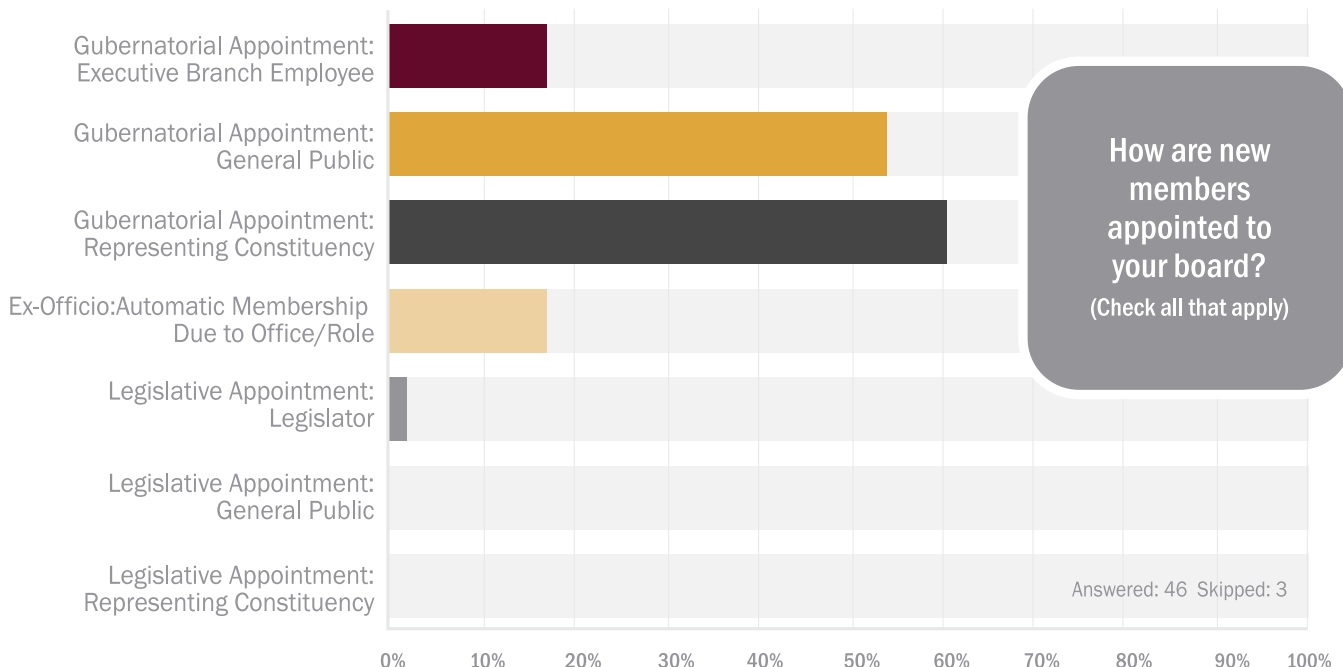
Overview

The Research Team was unsure what to expect from survey response. There were many factors that mitigated against this effort. First and foremost was the issue of timing. The Occupational and Professional Licensing Pilot Survey went into the field on April 13 and the full Occupational Licensing Survey went into the field on May 14. During this timeframe, the COVID-19 pandemic had thrown the workplace upside down; all state-employed office employees were working from home, if they were working at all. Many employees had taken on new responsibilities, and existing responsibilities were being undertaken using all new office practices. If ever there was a challenging environment to conduct a survey, this was it. The survey response time was expanded to three weeks, in part because of uncertainty about how the invitees would respond to the survey request, and whether they would be available to respond to the survey at all.

Given all of these caveats and lowered expectations, the Research Team was profoundly impressed with the quality of the survey response. The pandemic did not seem to stifle response. Quite the contrary. Survey response was in many cases prompt, and most late-window non-response follow up focused more on identifying the right points of contact, rather than persuading recalcitrant invitees to respond to the survey. The survey responses, particularly to the narrative questions, were answered completely, with well-explained rationales. Altogether, the Research Team believes that the resulting survey data is robust and provides an optimal starting point for determining the best path to reform.

Finding 1: Board Vacancy Rates

At its meeting of April 29th, the Occupational Licensing Reform Subcommittee heard a status report about this survey initiative. One member of the subcommittee raised a concern about vacancy rates among boards and commissions, and requested that a question be added to the survey that would assess the current vacancy rate of occupational licensing boards and commissions. With the caveat that the survey represents a snapshot in time, the Research Team finds that the current occupational licensing board vacancy rate is measured to be quite low. Questions 3 and 4 ask for the statutory size of the board, and the current composition of the board. (These numbers would be identical if the board were at present fully constituted.) Through the survey, the current number of board seats for occupational licensing boards was measured to be 293 members. The current number of board seats filled at the time of the survey was measured to be 286 members. This means that 97.6% of board seats, at the time of the survey, were filled.



Finding 2: Board Composition

Question 5 measured how new members were apportioned on occupational licensing boards and commissions. The survey found that the vast majority of seats are filled with gubernatorial-appointed members. A far smaller proportion serve ex-officio (due to the nature of their office) or as a result of legislative appointments. This confirmed the environment that we expected to observe in North Dakota, which is known to be a state with independent boards and commissions that are primarily staffed by and accountable to the Executive Branch.

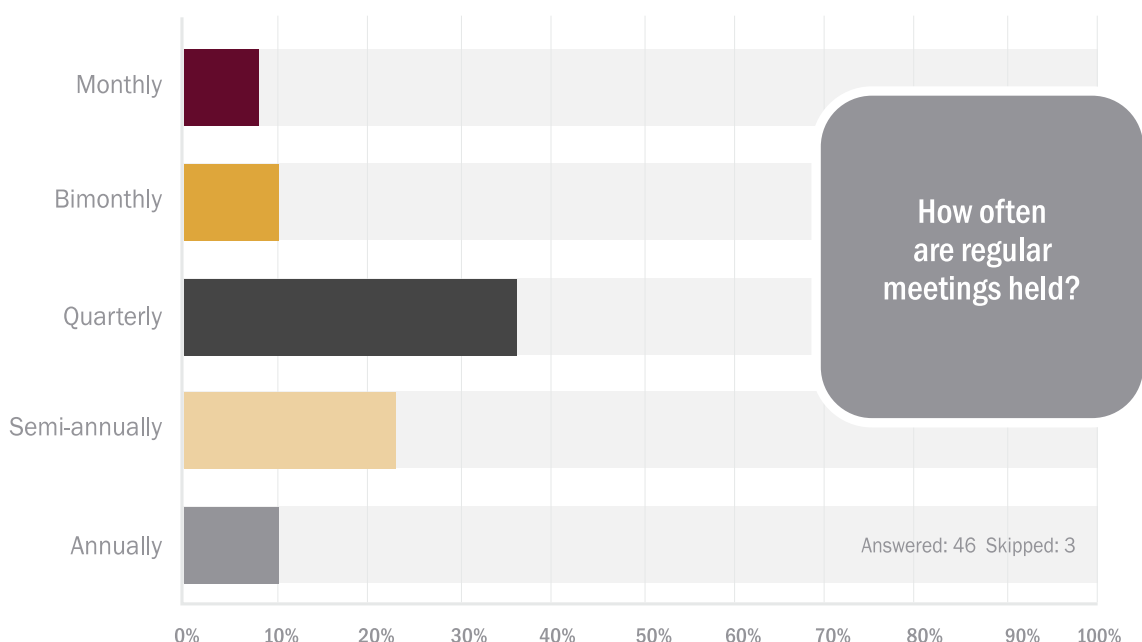
Question 6 asked, “Of your Board or Commission membership, how many members are themselves not current licensed professionals in that field? (this can include retirees and those outside the profession).” The responses to this question were varied. 11 of the 47 respondents (23.4%) answered “0” to this question, indicating that the board was entirely composed of those within the industry. In total, respondents indicated that 81 seats were not current licensed professionals in the field. This represents 27.7% of the total seats.

Finding 3: The Nature and Frequency of Board Meetings

Questions 8-10 sought to better understand the nature and frequency of board meetings. The pilot survey had informed the structure of these questions, as the pilot found that there was a common practice among the boards and commissions to call special meetings to handle the workload of the board in between regularly-scheduled regular meetings. Of the 48 responses to Question 8 on regular board meetings, the 48 boards reported a total of 176 regular meetings, or roughly 3.67 meetings per board.

For regular meetings of the boards and commissions, the survey found that the most common cadence of these meetings was quarterly. The next most-commonly reported cadence was semi-annually. Again, these rates of meetings only represent the regular board meetings. Special meetings were found to be an important part of the workload as well.

Question 10 asked the frequency of special meetings. These are meetings that are called by the chair in between regular meetings, in order to better and more equitably manage the workload of each board. The survey found that only 14 of the 47 boards and commissions reported no special meetings; this means that over 70% of occupational licensing boards in North Dakota hold these special meetings as a matter of standard operating procedure. A total of 132 special meetings were reported in the responses to Question 10. When added to the 176 regular meetings that were reported in Question 9, a total of 308 meetings were reported. Thus, 132 special meetings represent 42.9% of all occupational licensing board meetings.



Finding 4: Payment to Board Members

Questions 11-13 sought to measure whether occupational licensing board members were paid and reimbursed for out of pocket expenses, and to measure in detail these pay and reimbursement policies. Of the 48 survey respondents who answered Question 11 on member pay, 40 (83.33%) responded that board members were, indeed, paid. The rates of pay varied greatly. The daily rate ranged from \$50 per meeting day to \$300 per meeting day. The hourly rate ranged from \$10 to \$25 per hour, with hourly pay typically reported for work outside of regular meeting days.

Expense reimbursements were reported to hew closely to state rates and guidelines, and were often explicitly regulated by statute. Mileage reimbursement (currently \$0.58 per mile), reimbursement for meals according to the state's per diem policies (currently \$7/\$10.50/\$17.50), and lodging for overnight stays (\$86.40 per night), and incidentals (\$5) were referenced by most respondents. Some respondents also indicated that conference attendance was reimbursed, as authorized by the board or commission chair. For these boards and commissions, airfare, conference registration, and ground transportation were also reimbursable expenses for conference travel.

Finding 5: Gradations of Licensure

Questions 15-16 sought more information on gradations of licensure. Many boards and commissions license individuals at different levels. These different levels of licensure may represent differences in academic preparation, levels of responsibility, and, in some cases, differing branches within the same profession. The survey found that 20 boards and commissions (43.5% of those responding) oversee different gradations of licensure. In many cases, the different levels of licensure are North Dakota-specific distinctions, often codified in statute. In some cases, there are national standards that North Dakota adheres to. For example, North Dakota is one of 25 jurisdictions adhering to NNAAP standards for unlicensed clinical personnel in nursing, meaning that those certified under North Dakota's Board of Nursing could take that certification with them to any of the other jurisdictions and attain licensing there.

Finding 6: Typical Time to Licensure

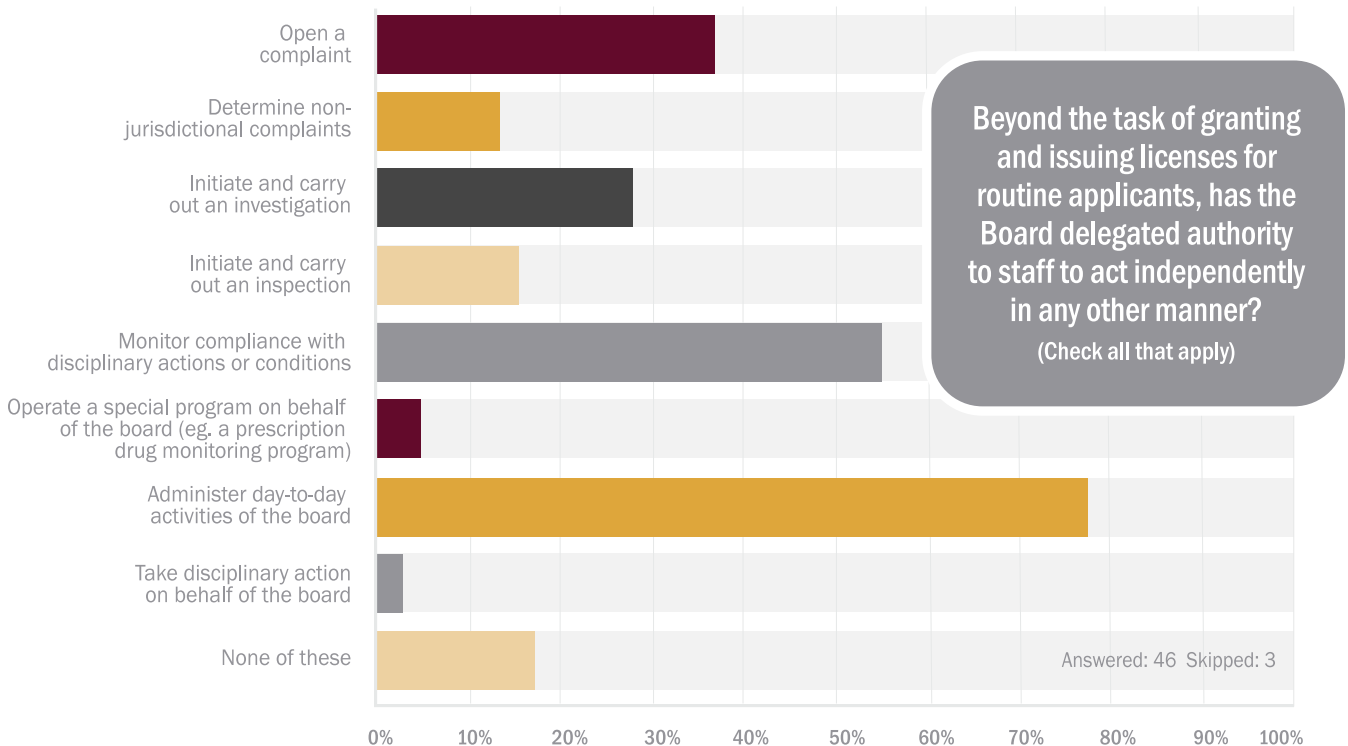
One of the fundamental questions as to the health of any occupational licensing board and commission structure is its ability to efficiently process license applications. Question 18 of the survey asked, assuming a complete application and no delays on the part of the applicant, "what is the typical processing time for licensure from your Board or Commission, from completed application to the license being issued?" Respondents were explicitly asked not to include the time between initial application and completed application, in the case of incomplete applications. There were a wide range of responses, from same-day license approval to processes which could stretch up to 4-6 months. Referencing against the timeframe referenced in SB2306, only 7 boards indicated that their process would typically last longer than one month. These longer timeframes skewed the average response upward; the mean of the survey responses was 18.72 calendar days, while the median response was just 7 days.

Finding 7: Designation of Licensing Authority to Board and Staff Members

One major difference between the pilot and final surveys was the addition of questions designed to measure designated authority to grant licenses for routine applicants. One of the most surprising findings of the pilot survey was that this practice seemed widespread; the final survey confirmed that this was indeed the case. Questions 19 and 20 sought to measure the practice of North Dakota licensing boards and commissions when it came to such delegation. The survey measured that 14 boards designated the ability to grant licenses to typical applicants to a board member (typically the chairman) while 28 boards reported that such authority was designated to staff members. These findings were surprising to the Research Team, especially because the survey specified that such routine applications would receive designated approval "without input or ratification from the full board."

Finding 8: Other Designated Tasks Undertaken by Staff

Question 21 sought to measure the many other duties, besides granting or denying licensure, that may be designated to board and commission staff. The question, “beyond the task of granting and issuing licenses for routine applicants, has the Board delegated authority to staff to act independently in any other manner” yielded a variety of ways in which staff operates independently in between regular or special board meetings. The most common response was, predictably, “Administer day-to-day activities of the board,” which was affirmed by 78.3% of respondents. Among other common areas of delegation were monitoring compliance with disciplinary actions, opening complaints, and undertaking inspections.



Finding 9: Allowing Military Experience to Count in Lieu of Education Requirements

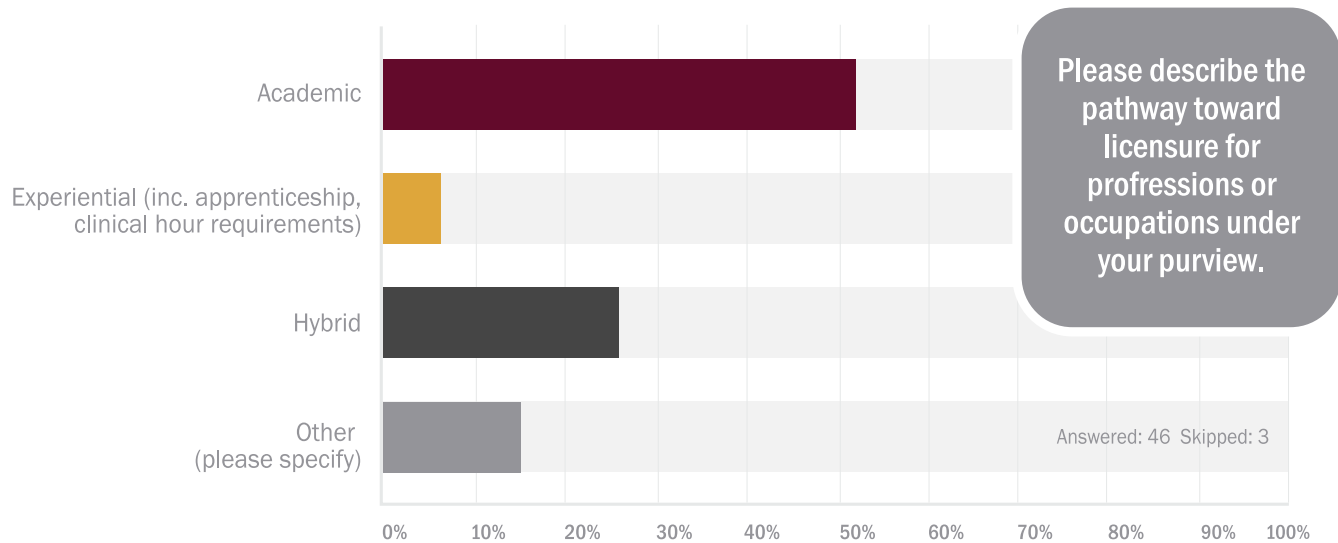
Given this survey’s connection to SB2306, one area of study was whether the occupational licensing boards and commissions were allowing military experience to count in lieu of education requirements for licensure. The survey measured only eight respondents who answered yes to this question. However, further review of the survey respondents revealed that several of these responses seem to have been in error. For example, one respondent reported that military experience enables the applicant to request a waiver, but does not automatically replace education requirements. A different respondent indicated that military experience can count in lieu of education requirements only if the applicant worked under a supervisor with a specific type of certification (again, not an automatic occurrence).

Finding 10: Criminal Conviction and Good Moral Character Clauses

Questions 23 and 24 sought to measure the extent to which applicants are automatically rejected for criminal convictions or and whether boards consider so called “good moral character” clauses. The survey identified only six boards that “automatically disqualify applicants on the basis of a criminal conviction” — most of those boards do so because a criminal conviction would make it impossible to obtain security clearances that would allow the applicant to perform successfully in the profession. Good moral character clauses were quite a bit more common. A clear majority of occupational licensing boards and commissions employ good moral character clauses, with 28 respondents (62.2%) reporting that their board employs a “good moral character” (or similar) clause as part of its licensure process.

Finding 11: Pathways to Licensure

Questions 25 and 26 sought to identify the pathways to licensure available to applicants for occupational and professional licenses. A majority of boards (52.2%) reported pathways that were wholly academic in nature, requiring specific degrees or certificates. The second most common pathway was a hybrid arrangement that required both experience and education prerequisites. A minority of boards and commissions reported purely experiential pathways. Other license requirements vary greatly from profession to profession, but can include internships, apprenticeships, and national certification tests.



Finding 12: Initial and Continuing Education Requirements

Questions 27 and 28 sought to gather information on initial and continuing education requirements for licensure. Predictably, the initial education requirements run the gamut. Some professions require no formal education, but instead rely on apprenticeship and education. Some professions require advanced degrees. There was near universality in at least some continuing education requirements; only four respondents indicated that their occupation did not have continuing education requirements. Those boards and commissions that did report continuing education requirements reported those requirements using a variety of measurements, from hours to credits to courses. Ethics training is a common requirement.

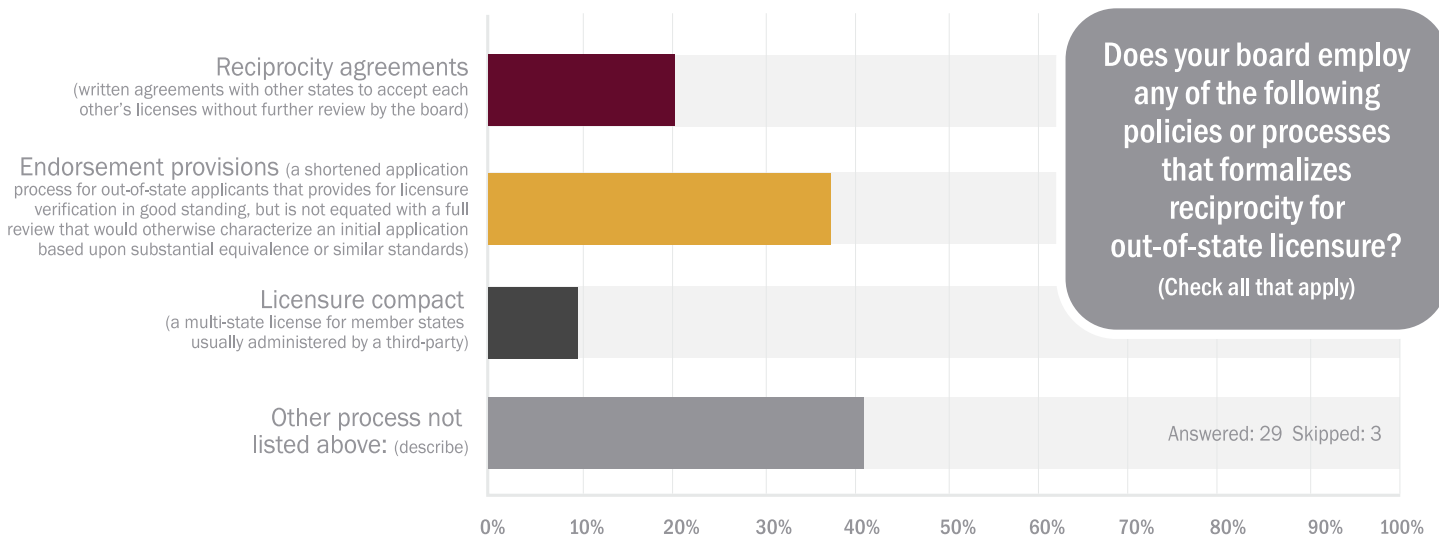
Finding 13: Typical Annual Costs for Licensees

Question 29 asked how much a typical licensee spends on an annual basis. This is an important question that gauges accessibility to a given profession and provides a starting point for a comparative analysis across states. Initial application fees varied widely, from \$0 in many cases to \$1200 for new dentists. Renewal fees were comparable to – if not slightly less than – initial license fees, ranging from \$0 in many cases to \$750 at the most expensive. A variety of miscellaneous fees were identified in the “informal/other fee” category, ranging from background check fees to administrative fees charged for several professions. Late fees were reported as well. Continuing education fees ranged from \$0 to \$1000 annually, though many respondents reported that continuing education in many cases is up to the individual licensee to pursue in the marketplace, and therefore may range considerably even within a single profession.

Finding 14: Current Reciprocity Environment

Questions 30-32 sought to characterize the current reciprocity environment. Specifically, these questions sought to better understand the potential for applicants who are licensed in other states to bring that license with them to North Dakota and be automatically licensed, or to apply for a multi-state license that includes North Dakota. Some occupations allow for an expedited licensing process for those who have a license in good standing issued by another state, if the other state has “substantially similar” licensing requirements. Question 30 asked if the respondent has any informal policies in place to expedite applications for out-of-state applicants, or to recognize out-of-state licenses. Nineteen respondents (41.3%) affirmed that they do have these kinds of informal policies in place.

Question 31 identified several specific strategies and asked whether the respondent’s professional licensing body employs these strategies. The most common response was “other process not listed” but most of the narrative responses to this option were variants on the other listed options, often with additional conditions. Of the options specifically listed, the most common response was to report the use of endorsement provisions (37.9%), a shortened application process for out-of-state applicants that provides for licensure verification in good standing, but is not equated with a full review that would otherwise characterize an initial application based upon substantial equivalence or similar standards. Reciprocity agreements with other states (20.7%) and multi-state licensure compacts (10.3%) were also affirmed by some respondents. Those respondents that do engage in multistate license compacts listed the details of those compacts in their responses to Question 32.



Finding 15: Complaint Processes

Questions 33-36 measured the extent to which occupational licensing boards and commissions facilitated complaint processes for their licensed professions. The existence of complaint processes were measured to be nearly universal, with 89% of respondents confirming that they also manage a complaint process for licensees. Most require complainants to make their identities known: only 35.7% of respondents indicated that anonymous complaints are accepted. The complaint process takes on a variety of forms; we recorded processes that were limited to a commissioner undertaking a complaint themselves, boards that employ outside consultants to referee complaints, and others that vest the complaint process in a board member or staff. All complaint processes described were thorough and well documented.

Finding 16: SB2306 Compliance

Questions 37-40 measured compliance with Senate Bill 2306 of the Sixty-Sixth Legislative Assembly in North Dakota, which required that each occupational licensing board or commission in North Dakota adopt new rules regarding the licensure of military spouses. Question 37, asking if the board or commission is compliant with SB2306 by adding a question to the license application asking military spouses to identify themselves, is only answered affirmatively by 71.7% of respondents. This was a lower figure than anticipated, and probably reflects exemptions built into the statutory requirement. Questions 38 and 39 asked how many applicants had identified themselves as military spouses on their license applications, and of that number, how many had been granted provisional licenses under the auspices of SB2306. A total of 58 military spouses applied for licenses and were so identified, and of those, only one was granted a provisional license under the law. This squares with responses to earlier questions that showed a remarkably quick turnaround in license applications. It is likely true that only one applicant was granted a provisional license because all other applicants were processed within the statutorily-required 30 day timeframe. While a longer timeframe was not observed in the survey, it is entirely plausible that the bill laid the groundwork for a culture shift expediting license applications for military spouses, thereby reducing the necessity of provisional licenses.

VII. INTERPRETATION OF FINDINGS AND RECOMMENDATIONS

Deliverables and Conclusions

The survey findings point to a regulatory system that is operating well: broadly speaking, boards are appropriately constituted, meet frequently (either for scheduled or special meetings) and are empowered with flexibility to make decisions in between meetings. Application times appear to be very reasonable and steps have already been taken to ensure that for at least several professions, mobility and portability of licenses are addressed via national, profession-specific, interstate compacts, or profession-specific recognition agreements at a regional level.

Consequently, there is scope for measured reform of regulatory practices in North Dakota, to ensure the current workforce, and those that will follow, operates in a setting that protects both the health and well-being of the public, and the economic vibrancy of the broader economy.

Potential Obstacles and Opportunities

The last decade has seen a resurgence of research related to the effects of occupational licensing on consumers, workers, employers and the economy. In general, this body of work seeks to answer two questions: 1) is occupational licensing effective at protecting the public health, safety and welfare, and 2) do the benefits outweigh the costs?

In 2015, the U.S. Council of Economic Advisors, with the U.S. Departments of Treasury and Labor published “Occupational Licensing: A Framework for Policy Makers²¹.” The report elevated the national conversation concerning occupational licensing. Though initiated during the Obama Administration, many of the policies and priorities initiated by this report were continued by the Trump Administration through the U.S. Department of Labor.

The report effectively summarizes a body of research that supports the benefits of occupational licensing to consumers through higher quality services and improved health and safety standards. It also called attention to the costs of the current regulatory framework which can reduce employment opportunities, lower wages, increase costs for consumers, create barriers to interstate mobility, and create costs that disproportionately affect certain populations.

North Dakota shares many of these same benefits and barriers and like other states will be challenged to grapple with strategies to modernize its regulatory framework. The CLEAR survey results barely scratch the surface when considering North Dakota’s regulatory framework. Questions related to gradations of licensure, pathways, reciprocity, military experience, criminal convictions, and continuing education all point to some of the same economic influences noted by the growing body of research.

Gradations of Licensure

Gradations of licensure speak to the various levels and specialities of licenses that fall under a single board or commission. For example, nursing boards across the United States tend to offer a broad array of license types which, like North Dakota, may include:

- Nurse Assistant
- Licensed Practical Nurse
- Registered Nurse
- Advanced Practice Nurse
- Prescription Authority
- Specialty Authority (e.g. licensed nurse anesthetist)

Responses to CLEAR’s survey show that 44% of boards and commissions offer gradations of licensure. Some gradations appear to identify a clear pathway to advanced licensure. Consider for instance the Plumbing Board, in which an individual may start as an apprentice, graduate to a journeyman and advance to a master electrician. Other gradations relate more to specialties, such as a Licensed Professional Counselor, as opposed to a Licensed Professional Clinical Counselor.

²¹A copy of this report can be viewed at https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf

Pathways to Licensure

While some professions demonstrate a pathway to licensure through gradations, this question on the CLEAR survey was intended to more directly address entry requirements. In general, many licenses require three components:

1. Completion of academic requirements;
2. Demonstration of supervised experience hours; and
3. Passage of an exam.

However, some professions offer alternative pathways. These include but are not limited to:

1. Recognition of military training and experience in lieu of academic coursework;
2. Experiential pathways through a registered apprenticeship in the absence of academic course completion;
3. Competency-based testing/credentialing; or
4. Relying solely on an exam to demonstrate knowledge and skills.

Responses to CLEAR's survey demonstrate that most North Dakota occupational boards and commissions rely on the three-part traditional pathway that requires academic achievement, experience and passage of an exam in order to become licensed. In fact, this was broadly true of both entry-level and advanced credentials. Interestingly, in some cases the advanced credential only required experience while the entry-level requirement seemed to require the higher constellation of barriers such as is the case for applicants upgrading from a licensed appraiser to a certified residential appraiser, but this alternative is not provided to entry-level apprentices. Furthermore, a reliance on academic pathways can be incredibly time consuming and costly for aspirants. According to Student Loan Hero²², "Among the Class of 2019, 69% of college students took out student loans, and they graduated with an average debt of \$29,900, including both private and federal debt." The total cost of a license that requires a bachelor's degree far exceeds the license and exam fees.

Potential Pitfalls and Benefits Related to Gradations and Pathways

Economists studying occupational licensing note that requirements can become mismatched to the risk of consumer harm. That is, those professions that pose the least risk have the more intensive barriers, while those posing relatively less risk to life and safety are easier to enter.²³

Regulating sub-specialties can contribute to the steep incline in occupational licensing observed over the last fifty years, leading many to question if it is truly necessary to regulate so many professions and occupations to safeguard the consumers' wellbeing.²⁴

Any circumstance in which one license type is authorized by the state to supervise and deny market entry to another license type creates a ripe environment for anticompetitive conduct. These policies deserve to be closely scrutinized and monitored.

Multiple pathways also create "earn and learn" opportunities. Many higher level licenses require academic and experience requirements, both of which can be costly. An apprenticeship or entry-level license can ease the burden.

Multiple pathways can also institutionalize entry to practice and can support market participation by groups that may have otherwise struggled to enter, such as people of color and women. Licensing also can contribute to the development of other supports for entry, such as vocational schools, exam-oriented coursework, licensure application assistance, career counseling, and network opportunities which can make a license and career more viable and attainable.²⁵ It is notable that many labor and workforce policies of the last twenty years were crafted to do just this.

Given the survey results and what appears to be a moderate reliance on gradation and little diversity in pathways, this may represent a key finding for North Dakota policymakers. CLEAR's publication "Questions A Legislators Should Ask" offers useful

²²U.S. Student Loan Debt Statistics for 2020. (n.d.). Retrieved June 28, 2020, from <https://studentloanhero.com/student-loan-debt-statistics/>

²³*The Evolving State of Occupational Licensing: Research, State Policies and Trends* (2nd ed., p. 17, Rep.). (2019). Denver, CO: National Conference of State Legislatures. Doi: https://www.ncsl.org/Portals/1/Documents/employ/Occu-Licensing-2nd-Edition_v02_web.pdf

²⁴U.S. Department of Treasury Office of Economic Policy, Council of Economic Advisers and Department of Labor. *Occupational Licensing: A Framework for Policymakers* (Washington, D.C.: The White House, 2015), 7, https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf

²⁵Redbird, B. (2017). The New Closed Shop? The Economic and Structural Effects of Occupational Licensure. *American Sociological Review*, 82(3), 600-624. doi:10.1177/0003122417706463

guidelines and questions that can help hone and modernize the regulatory framework to very directly address the risk of public harm and evaluate the cost-benefit analysis of a given approach for entry-to-practice regulations.²⁶ For example:

- What is the problem that could be solved by the regulation?
- Has the public been harmed due to a lack of regulation of the profession?
- To what extent has the public's health, safety, or economic well being been endangered?
- Have claims of any public harm been documented?
- To what degree does the profession practice independently?
- How much unsupervised access does the professional have to the public?
- Is there a high degree of independent judgment required of practitioners?
- How much skill and experience are required in making these judgments?
- If supervised, is the supervisor covered by regulatory statute?
- If practitioners work under licensed supervision, is regulation of the supervisee necessary?

Geographic Mobility and Universal Reciprocity

Occupational licensure provides a number of benefits to consumers and to the economy more broadly. These are well documented and primary among them relate to consumers and the role boards play in regulating entry to practice. Namely, occupational licensing:

1. Establishes clear competency requirements and rules of engagement to safeguard public health; and,
2. Corrects asymmetry of market information, helping consumers select qualified practitioners when such information would otherwise not be available solely through free market competition.²⁷

Geographical mobility is a primary consideration for regulatory boards with good reason. How does a state board preserve the protections above if all applicants are not subject to the same level of scrutiny? Can a board trust another state or entity to do this job while upholding the commission with which it was charged by the Legislature?

Economists have noted some unintended consequences related to occupational licensing, and geographic mobility is one lightning rod for criticism. Research has indicated that occupational licensing can restrict mobility across state lines for licensed occupations more than for unlicensed (unregulated) occupations. This prevents the market from correcting unemployment which impacts the worker, consumer, employer and the economy more broadly.²⁸ While the burden of initial application can disproportionately affect specific populations and low-income workers, the barrier of moving a license to another state only further compounds these by adding time, cost and confusion.

These considerations can be especially important for smaller and more rural states such as North Dakota, which are more prone to experience a workforce dearth than a surplus.

A number of regulatory policies help boards address this tension. These are:

- a. Interstate Compacts - a contract among states generally to adopt standardized entry criteria for licensure and to share licensing information especially related to suspension, discipline and revocation.
- b. Endorsement Provisions - a process by which an individual holding a license in one state may apply for a similar or equal license in another state without relying on original documentation typically required for initial licensure.
- c. Reciprocity Agreements - an agreement among states to recognize individuals holding a similar or equal license in another state as equivalent and minimally competent. Unlike endorsement, a reciprocity agreement generally is predetermined, providing a more "automatic" approval of an applicant or waiving the application process entirely.
- d. Universal licensure (more recently) - generally enacted through legislation, a policy that allows any person holding a similar or equal license in another state to be recognized as possessing a valid license in the home state.

Responses to CLEAR's survey reveal that North Dakota licensing boards use a broad array of the first three policies: compacts, endorsement and reciprocity. From the responses, it appears most boards utilize endorsement; however, many refer to this

²⁶Schmitt, K. (2018). Questions a legislator should ask, 3rd edition. Nicholasville, KY: Council on Licensure, Enforcement and Regulation. p. 53-54

²⁷The Evolving State of Occupational Licensing: Research, State Policies and Trends (2nd ed., p. 17, Rep.). (2019). Denver, CO: National Conference of State Legislatures. https://www.ncsl.org/Portals/1/Documents/employ/Occu-Licensing-2nd-Edition_v02_web.pdf

²⁸Jason Furman and Laura Gialiano, New Data Show that Roughly One Quarter of U.S. Workers Hold an Occupational Licensure (Washington, D.C.: Council of Economic Advisers, 2016), <https://obamawhitehouse.archives.gov/blog/2016/06/17/new-data-show-roughly-one-quarter-us-workers-hold-occupational-license>

process as “reciprocity” despite the fact that a bilateral agreement does not appear to be in place following the definition provided in the survey. A few boards such as the psychology and nursing boards issue a provisional license or temporary permit while the application is processed so that the applicant can get to work without delay. Others, such as the pharmacy and architect boards, leverage national third party organizations, which may set standards to which all fifty states comply or collect pertinent application materials to reduce this administrative burden. Reciprocity agreements are more common in the trades with specific agreements listed: for engineers, land surveyors, plumbers, electricians, and real estate.

While North Dakota boards in general appear to license people very quickly, the process can still be burdensome for the applicant. If the applicant must track down original documentation or if they are responsible for proving the licensure requirements in the state of origin are equal to or more stringent than those in North Dakota, the process can prove confusing or untenable. While statute may authorize a board to utilize endorsement processes, enter into reciprocity agreements or compacts, the individual processes and interpretations for carrying out such policies can diminish their original intent. For example, while many statutes allow for an endorsement process, a board may pass rules that equate this process to initial licensure by requiring original documentation of transcripts, specified coursework, supervised/clinical hours, exam passage and other elements of an application. While endorsement intends to acknowledge that another state has already verified such documentation, phrases such as “substantially similar” are vague, while requirements in other states may change frequently through legislation. Many boards across the country are challenged to maintain current understanding of initial licensure requirements in each state and engage an apples-to-apples comparison based on unique scopes of practice. For example, what if an applicant’s state of origin is nearly equivalent except that North Dakota allows licensees to engage in one modality in which the applicant did not have training because it was not part of the scope of practice in the original state? How is this remedied?

Legislation related to universal licensure has been utilized in other states to reverse the unintended consequences of restricting geographic mobility and to clearly articulate state policymakers’ intent related to the endorsement process. The concept of universal licensure seeks to extend the benefits of policies such as military spouse licensure and temporary emergency or disaster exemptions. Both policies embody the foundation of universal licensure but limit the risk by extending the benefit to only military spouses or in certain time-limited circumstances.

In its various forms, recent legislation for “universal” licensure does not waive the application process nor eliminate requirements that could disqualify an applicant. These conditions are often specified in statute and may require that the applicant:

1. Practice a number of years, especially recently;
2. Pass a criminal background check;
3. Pay a fee;
4. Hold a “substantially equivalent” license; and/or,
5. Hold a license that is free of discipline.

Thus the term “universal” can sometimes be considered a misnomer in that holding a license in another state is no guarantee the applicant can obtain a license in a “universal” licensure state. Likewise, in order to obtain such a license, the applicant must still engage an application and approval process. It is notable that many universal licensure legislative initiatives closely align to current statutory provisions related to out-of-state applicants. Consider, for example, North Dakota’s Real Estate Commission statute. Section 43-23.3-04.01 outlines the requirements enacted by Arizona’s “universal licensure” legislation²⁹, stating:

43-23.3-04.1. Issuance of permits to applicants licensed or certified by another state. The board shall issue a permit to an applicant who is licensed or certified in good standing by another state if the other state’s requirements to be licensed or certified are at least substantially equivalent to the requirements imposed by this state, and if grounds for denial of the application under section 43-23.3-18 do not exist. Within sixty days of filing a completed application, the board shall issue or deny the application and inform the applicant of the decision.

There are two primary drivers for delays in out-of-state application processes: 1) confirming the absence of discipline in another jurisdiction and 2) the determination of substantial equivalence.

²⁹The statute can be viewed in context at <https://www.legis.nd.gov/cencode/t43c23-3.pdf#nameddest=43-23p3-04p1>

Boards often confirm any disciplinary history by requesting a verification of licensure from the state of origin. Increasingly, this confirmation can be made online. The State of Colorado, for example, provides a single website where any member of the public or state licensing board can look up a license and view the disciplinary record, if any exists. Some professions, again using the example of North Dakota's Real Estate Commission, facilitate a national registry such as the Appraisal Subcommittee National Appraiser Registry which reflects licensure history.

The determination of substantial equivalence can be much more complicated and onerous. Fragmentation across states in licensure requirements and practice levels can make such a comparison nebulous. Since each state is different, boards are forced to consider applications on a case-by-case basis, which can lead to delays in the application process. In some circumstances, the burden of proving substantial equivalence is placed on the applicant rather than facilitated by the board or board staff.

For example, in CLEAR's survey, the North Dakota Real Estate Commission explained its interpretation and process for fulfilling a statutory requirement (43-23.3-04.01) to issue a license to someone with a license in good standing in a substantially equivalent state. The application process requires the applicant submit:

1. A signed application;
2. Letter of history verifying good standing in another state;
3. Certification of no pending or past disciplinary proceeding against the license in any jurisdiction;
4. Documentation of the current requirements of the state in which the applicant was originally licensed or certified in;
5. A criminal history background check; and
6. The application fee.

A requirement that the applicant demonstrate substantial equivalence can be vague, especially if the applicant does not share the regulatory expertise of board staff and members. What type of documentation satisfies such a requirement? Is it a copy of the statute and rules, the original application or some other documentation?

Increasingly, boards, federations, professional associations and other bodies are undertaking comparative licensing analysis to internally maintain and/or publish licensure requirements in each state in part to facilitate an evaluation of "substantial equivalence." Such directories must be maintained at least annual to account for any changes in a state's licensure requirements through legislation or rulemaking.

Instead, states may consider improving geographic mobility through policies that specifically expedite the review of substantial equivalence and licensure verification. Options may include:

1. Funding a staff position or department with the sole purpose of maintaining substantial equivalence analysis;
2. Requiring each board to publicly notify which states are and are not considered substantially equivalent and noting the gap analysis to inform the specific requirements an applicant from that state must fulfill to become licensed. Similar to initiatives related to veteran licensing, states may consider working with local education providers to design bridge programs to remediate just the skill gap;
3. Reciprocity agreements with surrounding states to facilitate regional mobility. Such agreements are memorialized typically in writing in which a group of states has preemptively conducted substantial equivalence analysis and/or agree to maintain similar licensure requirements while party to the agreement; or
4. Relaxing restrictions on telepractice authority to allow patients/consumers to access services and specialists remotely, which can be especially helpful in border regions.

Licensees that participate in a licensure compact perhaps enjoy the most freedom and least burden when transferring to a new state. In this case, a third party agency (often born from a professional association or federation of state boards), establishes application criteria. A licensee submits all requirements for a "compact" license which, once approved, is then accepted in all member states without the requirement to re-apply such as with endorsement or universal licensure. One of the primary reasons compacts are so effective relates to the data sharing; each applicant has a single record and information concerning discipline and public safety is exchanged among member states. Boards that do not participate in a compact will face an additional burden to ensure that an applicant is not "fleeing" discipline in another state. License verifications and criminal background checks can be effective tools, as can the National Health Practitioner Data Bank or other national registries.

Compacts are growing in popularity. Only six currently exist, of which North Dakota belongs to five; these are for teachers, physicians, nurses, physical therapists, and emergency medical services. North Dakota is not a member of the psychology compact which is the newest and perhaps most limited of the interstate compacts addressing primarily teletherapy and time-limited licensure.

The CLEAR survey did not delve into the individual processes, barriers or national comparative analysis by license type. However, North Dakota policymakers, regulators and Reform Subcommittee members may pursue a multitude of considerations that could assist the state to determine the current status, obstacles and opportunities related to the geographic mobility of a license. A menu of options may include:

1. Engage out of state applicants on their experience with the endorsement, reciprocity or compact process. What were the unforeseen costs or speed bumps in the process?
2. Host a roundtable of regulators and/or board leadership on the concept of “universal” licensure and the primary barriers regulators face in determining if an out-of-state applicant is competent and safe to practice.
3. Where statute requires “substantial equivalence” or “equal or more stringent” language, evaluate how such a measure is met. Who is responsible for the burden of proof? How much time does it take or how complex is such analysis for board members and staff that process applications? If requirements are divergent across states, can policies emphasize a range of acceptability?
4. If an exam is required, consider accepting all exam types in a profession rather than limiting the options to just one or two providers.
5. For applicants with experience, consider relying solely on the exam rather than requesting information on education and experience which could be difficult to track down after several years have passed.
6. After gathering data and feedback, consider processes and rules that would help streamline the out-of-state application process. Consider legislation if the intent for such policies is mismatched to the current process.

The above options are by no means exhaustive. There is no substitute for convening relevant stakeholders to consider opportunities that are unique to North Dakota’s regulatory landscape and economy.

Military Experience and Military Spouses

Given that this study and survey coincides with the advent of SB2306, a specific examination of the experience of members of the military and military spouses is warranted. The burden of occupational licensing disproportionately affects military veterans and spouses. Veterans often face state policies that do not acknowledge or count the training and experience they accrued while performing a similar military job. And when a state does acknowledge and credit such experience, the benefit hinges on an honorable discharge regardless of the individual’s competence and ability to practice safely.

Military spouses are highly mobile and often required to move every two to three years. A 2018 seminal report on the military spouse labor market information poignantly called attention to the disproportionate impact of occupational licensure:

Military spouses are more likely than other workers to be caught up in this country’s patchwork of occupational licensing laws, both because they are more likely to move across state lines and because they are disproportionately employed in occupations that require a license. The Bureau of Labor Statistics estimates that 22 percent of all workers required a government license to do their job in 2016, while 35 percent of military spouses in the labor force worked in occupations requiring a license or certification (U.S. Department of Treasury and U.S. Department of Defense 2012).³⁰

CLEAR’s survey of North Dakota boards and commissions points to an encouraging state of policy regarding military spouses across all professions. Unlike other states in which a military spouse could wait up to three months for a license (even without complicating factors such as a criminal record), spouses in North Dakota enjoy speedy licensing times from application to approval. While the CLEAR survey sought to understand the utilization of provisional licensure directed by SB2306, the clear portrait painted by the survey data is that North Dakota boards provide quick turnarounds without the lengthy pitfalls that tend to impact spouses most.

Like other considerations related to geographic mobility for the general population, North Dakota policymakers may further investigate the experience of the spouse up to the point of application. How long did it take to obtain required documentation?

³⁰U.S. Department of Treasury Office of Economic Policy, Council of Economic Advisers and Department of Labor. Military Spouses in the Labor Market (Washington, D.C.: The White House, 2018), 4, <https://www.whitehouse.gov/wp-content/uploads/2018/05/Military-Spouses-in-the-Labor-Market.pdf>

What was required from the point of investigating licensing requirements to submitting a complete application? How much work did the spouse do prior to submitting an application — what was the cost considering finance, time and burden? The responses to this line of questioning may be relatively benign, in which case there may be few policy gains to be made in relation to military spouse licensure.

Trends related to military experience proved disparate across North Dakota boards. The CLEAR survey asked if military experience could count in lieu of education requirements, to which the overwhelming majority (82 percent) responded in the negative. Such a trend may also be consistent with boards nationwide. Frankly put, it is difficult to assess military training and experience. For this very reason, the Department of Defense (DoD) has made it a priority to improve how military training and experience is captured in a manner that is understandable to civilian academic institutions and licensing boards. The DoD is also working with the University of Minnesota to evaluate state policies and recommend strategies to deepen reform for veteran and spouse licensure. As an indicator of board implementation of military licensing legislation, the University of Minnesota contacted boards in all 50 states for six professions. They found, “44 percent of boards were not accessible on the first attempt. Customer service representatives were most often not aware of the legislation specific to military spouses. Only about 40 percent of boards had information on websites specific to military spouse license and credential.”³¹

Still, many states have already pursued legislation to advance licensing policies for military spouses and veterans. Of these, improved communication is a key finding, and one that does not require legislation or rule changes. Colorado, for example, launched a single website dedicated to military spouse and veteran licensing, which centralizes information on various state policies benefiting this population: fee waivers, reinstatement of expired licenses, temporary license waivers, and military pathways to civilian licenses.³² Other states, such as Illinois, have appointed a military liaison to help applicants navigate the state’s regulations. Florida tasked the Veterans Employment and Training Services program to provide skills assessment, information and assistance to veterans reentering the civilian job market.^{33 34}

Spouses, specifically, could benefit from universal recognition of all state licenses, as is the case in Utah. This allows spouses to practice in the state, if they hold a license in good standing in another state and pay applicable fees in Utah. The U.S. Department of Labor also compiles military spouse provisions by state, which is a helpful tool to learn about other state approaches to reform.³⁵

One of the main initiatives affecting veterans requires licensing boards and commissions to accept military training and experience toward license requirements. This can be especially difficult if a license requires a specific academic degree from an accredited institution. This challenge has resulted in three new innovations:

1. Bridge Programs: Some states have acknowledged that military training and experience relates to part but not all of such a degree program. They engaged academic stakeholders to identify gaps and develop bridge programs that require the veteran only complete a few courses rather than a full degree.
2. Alternative Pathways: similar to bridge programs, if military training and experience delivers the same minimum competence as a civilian academic/experience pathway, the state allows the board to confer a license automatically without completing remedial coursework. For example, a military post as a medic may directly satisfy minimum competence requirements to become a CNA, without having attended a civilian training program.
3. Licensure by exam: If a license requires passage of an exam, some state policies allow a board to credit military training and experience toward license requirements and skip directly to the exam to demonstrate minimum competence and knowledge.

Many states have re-evaluated policies that confer these benefits based on military discharge status. Amending language that requires only honorable discharge more directly connects policy to competence.

³¹Defense-State Liaison Office. (n.d.). Discussion Points for Evaluating State Actions to Support Improved Licensure Laws. Retrieved July 01, 2020, from <https://statepolicy.militaryonesource.mil/key-issue/evaluating-state-actions-to-support-improved-licensure-laws/discussion-points>

³²Military & Veterans Program HOME. (n.d.). Retrieved June 28, 2020, from <https://dpo.colorado.gov/Military>

³³Military Service Members and Spouses. (n.d.). Retrieved June 28, 2020, from <https://www.idfpr.com/military.asp>

³⁴*The Evolving State of Occupational Licensing: Research, State Policies and Trends* (2nd ed., p. 17, Rep.). (2019). Denver, CO: National Conference of State Legislatures. doi: https://www.ncsl.org/Portals/1/Documents/employ/Occu-Licensing-2nd-Edition_v02_web.pdf

³⁵U.S. Department of Labor. (n.d.). Military Spouse Interstate License Recognition Options. Retrieved July 01, 2020, from <https://www.veterans.gov/milspouses/>

Criminal Convictions and Good Moral Character

Like veterans and military spouses, occupational licensing also disproportionately affects individuals with criminal histories. Whether because of blanket bans, good moral character clauses, or simply the sheer cost of application, state policies can systematically exclude anyone with a history in the criminal justice system. Some state policies allow a board to deny an applicant a license just for being charged, whether or not the applicant was ever found guilty of committing a crime.

CLEAR's survey specifically asked North Dakota boards a series of questions related to the justice population. The survey addressed automatic disqualifications and good moral character clauses. Nearly all boards, with the exception of six, do not make automatic disqualifications for a criminal conviction. Most boards (62 percent) do have "good moral character" or similar clauses.

The policies regarding criminal convictions among North Dakota boards appear to vary widely. For example, the Board of Barber Examiners' statute cites "temperate habits" while the Accountancy Board references "a history of dishonest or felonious acts." Some boards rely on an attestation and self-report while others engage a criminal record check. Some consider only felonies. Several report that "good moral character" has never been utilized to disqualify an applicant. Most reference that the board engages a review process if a criminal conviction is present. The Marriage and Family Therapy Board is working on a decision matrix related to convictions while the Chiropractic Board reported it is in the process of removing the "good moral character" clause.

Determining how boards enact or interpret such statutes/rules can be inconclusive. For example, boards may not track license denials based on a criminal conviction or other data that would be pertinent to crafting evidence informed policies. Likewise, the existence of such clauses can serve as a deterrent to potential applicants, preventing them from seeking licensure or a particular career pathway in the first place.

While most boards appear to consider criminal convictions in the context of the applicant's competence and ability to practice safely, it can be useful to publicly affirm this process in state policy. This could happen at a board level or through a legislative instrument. The decision matrix referenced above, under development by the Marriage and Family Therapy Board, is one example. Legislation in other states has required boards to identify the specific crimes related to practice to narrow the scope of a criminal record check or disclosure.

The National Council of State Legislators (NCSL) highlights a number of policies to address criminal convictions such as:

- Removing blanket bans
- Relevancy limitations
- Certificate of rehabilitation
- Pre-qualification process/standards

NCSL also points out that some state laws provide protections for employers that hire people with criminal convictions.³⁶

New Hampshire passed SB589 in 2018, which addresses both relevancy limitations and a pre-qualification process. However, it goes a step further to require a board to give reasons for denial in writing, explain remedial measures to address the board's concerns, and limit the fees a board may charge to render a determination. The bill also requires the board to report annually on the number of licenses granted and denied to applicants with a criminal record. Colorado added a similar criteria to its sunset process which states:

Whether the agency through its licensing or certification process imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subsection (5)(a) of this section must include data on the number of licenses or certifications that the agency denied based on the applicant's criminal history, the number of conditional licenses or certifications issued based upon the applicant's criminal history, and the number of licenses or certifications revoked or suspended based on an individual's criminal conduct. For each set of data, the analysis must include the criminal offenses that led to the sanction or disqualification.³⁷

³⁶The Evolving State of Occupational Licensing: Research, State Policies and Trends (2nd ed., p. 17, Rep.). (2019). Denver, CO: National Conference of State Legislatures. doi:https://www.ncsl.org/Portals/1/Documents/employ/Occu-Licensing-2nd-Edition_v02_web.pdf

³⁷ Colorado Revised Statutes Title 24. Government State § 24-34-101. Department created—executive director, §§ 34-101(6)(IX)-101(6)(IX) (2019).

Lastly, occupational licensing policies regarding justice involvement tether state boards and commissions to correctional policies and trends. Yet many board members do not receive training or regular education about their state's justice system. They may be unaware that concerns regarding mass incarceration have prompted calls for reform in policing, courts and corrections. Statistics related to mass incarceration directly feed into state policies regarding justice involvement and good moral character.

One in three Americans has a criminal record. Black men are six times more likely to be incarcerated than white men. More than just communities of color, mass incarceration disproportionately affects lesbian, gay, bisexual and transgender individuals as well as people with histories of mental illness. In North Dakota, one in 82 people is on parole or probation and the Pew Charitable Trust reports that more than three-quarters of Americans on probation or parole were convicted of a nonviolent offense.³⁸

Occupational licensing boards and commissions have a real opportunity to dramatically impact recidivism which the Bureau of Justice Assistance estimates at 35 percent in North Dakota.³⁹ Employment is known to reduce criminogenic risk bringing financial security to the individual and family. Yet the National Inventory of Collateral Consequence of Conviction catalogs over 6,000 occupational licensing consequences for people with criminal records.⁴⁰

In order to craft and implement evidence-based and equitable policies, board and commission members must be empowered with education, data, feedback loops and training. This means sharing corrections statistics, collecting and evaluating licensing data, and collaborating across traditional lines to harmonize licensing, justice and workforce goals within the state.

Potential Future Models for Consideration

North Dakota's regulatory structure, like many "Model A" Autonomous Board states, may provide some important efficiencies. Large centralized agencies, while leveraging economies of scale can also be susceptible to bureaucratic and complicated process delays. Conversely, as demonstrated in survey responses, North Dakota boards and commissions appear to process applications very quickly while facilitating deeper review when a competence or a practice safety matter is flagged.

As mentioned previously in this report, universal licensure legislation can be useful to clarify the state's intent regarding out-of-state applicants and to harmonize requirements across disparate boards and commissions. However, many board statutes may already note the same requirements as those embodied in universal licensure legislation enacted in states such as Arizona or Pennsylvania, making such legislation redundant without clearing barriers related to licensure verification and substantial equivalence evaluation.

North Dakota policymakers may consider initiatives to improve geographic mobility through policies that specifically expedite the review of substantial equivalence and licensure verification. Some examples of these alternatives include:

- Funding a staff position or department with the sole purpose of maintaining substantial equivalence analysis.
- Requiring each board to publicly notify which states are and are not considered substantially equivalent and noting the gap analysis to inform the specific requirements an applicant from that state must fulfill to become licensed. Similar to initiatives related to veteran licensing, states may consider working with local education providers to design bridge programs to remediate the skill gap.
- Reciprocity agreements with surrounding states to facilitate regional mobility. Such agreements are memorialized typically in writing in which a group of states has preemptively conducted substantial equivalence analysis and/or agree to maintain similar licensure requirements while party to the agreement.
- Relaxing restrictions on telepractice authority to allow patients/consumers to access services and specialists remotely which can be especially helpful in border regions.

Other effective practices to expedite the application process are already in place and appear to be widely used by North Dakota boards and commissions. These include:

³⁸Probation and Parole Systems Marked by High Stakes, Missed Opportunities. (n.d.). Retrieved July 08, 2020, from <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/09/probation-and-parole-systems-marked-by-high-stakes-missed-opportunities>

³⁹The recidivism rate includes any new convictions or technical violations of offenders within 36 months of release from prison. North Dakota. (n.d.). Retrieved July 08, 2020, from <https://bjafactsheets.iir.com/State/ND>

⁴⁰National Inventory of the Collateral Consequences of Conviction. (n.d.). Retrieved July 08, 2020, from <https://nij.ojp.gov/topics/articles/national-inventory-collateral-consequences-conviction>

- Delegations of authority from the board/commission to staff to approve applications that do not trip screening criteria related to a competence or practice safety matter (e.g. discipline in another jurisdiction);
- Temporary permits that allow an applicant to automatically work upon submission of an application, pending final approval; and
- Streamlined and nimble workflows among board staff and the ability to quickly call a board/commission meeting to maintain an approval process free of lengthy delays.

As a state with an Autonomous Board structure, North Dakota is at greater exposure for fragmentation in board policies and processes. Ultimately, the regulatory structure employed by a state must be responsive to that state’s unique landscape including its policy goals, investment priorities and infrastructure. North Dakota may particularly consider introducing elements of other models that would address the absence of broader coordination and confusion for both applicants and consumers. Alternatives include:

- *Centralized Database:* This could include the pursuit of a central licensing database like Oklahoma recently implemented, making its Department of Labor the central coordinating entity for the reporting of occupational licensing information from all state agencies, boards and commissions. A central database could also help the state to track regulatory data to inform evidence-based policy about occupational regulation, as well as other policy objectives for workforce or education infrastructure.
- *Communities of Practice:* In the absence of a centralized agency to house all boards, commissions and their administrative staff, North Dakota regulatory practitioners could be susceptible to the isolation of their silos. Facilitating a community of practice among regulatory staff and board/commission members could promote more harmonized policymaking and facilitate the sharing of best practices among boards. The Harvard Business Review notes, “Communities of practice can drive strategy, generate new lines of business, solve problems, promote the spread of best practices, develop people’s professional skills, and help companies recruit and retain talent.⁴¹” This could be an especially useful strategy for areas of overlap, such as convening all boards in which licensees have the ability to prescribe controlled substances. The topics that could be considered by an occupational licensing community of practice are numerous and may include:
 - Evolving experiential and apprenticeship pathways to licensure;
 - Military service member, veteran and military spouse licensure policies;
 - Prescribing guidelines to curb opioid misuse;
 - Continuing competency initiatives;
 - Strategies employed by boards to identify criminal convictions related to practice; and
 - Expedited licensing innovations.

Sunrise/Sunset Provisions: Sunrise and/or sunset processes can facilitate transparent review of occupational licensing regulations to ensure they remain consistent with legislative intent and to ensure continued relevance and effectiveness while mitigating against unintended consequences. Sunrise and sunset statutes often list the specific considerations for such an evaluation. If license portability is a primary objective for North Dakota policymakers, regular review of reciprocity, endorsement and other such policies and practices may help to inform how to advance best practices or more perfectly address barriers.

Outreach Strategies

If North Dakota chooses to pursue a universal licensure initiative, it will be important to engage a broad group of stakeholders, and particularly regulatory board staff and members, to better understand the unique challenges in North Dakota’s application process and practices. To ensure robust feedback, an outreach plan should consider 1) the stakeholders 2) the process and 3) the questions that will deliver the information the state seeks.

⁴¹Wenger, T. C., & Snyder, W. M. (2020). Communities of Practice: The Organizational Frontier. *Harvard Business Review*, January-February. <https://hbr.org/2000/01/communities-of-practice-the-organizational-frontier>

Stakeholders

Consider the following groups:

- Board/commission staff, especially executive directors and staff that process license applications;
- Board/commission members, especially if any are appointed to positions that specialize in applications such as a licensing panel or subcommittee; and
- “Users” of the regulatory system:
 - Students and school counselors;
 - Major employers such as hospitals and trade unions; and
 - Recently licensed individuals, obtaining names and contact information from ND boards/commissions.

Remember to seek groups that would help the state evaluate policies in a manner that upholds diversity, equity and inclusion. Recall some people may not even seek licensure believing they would not qualify or could never finance such a career path. Community groups and even other government agencies that serve low-income individuals or communities of color may offer networks to reach these individuals. Likewise, the corrections department or local jails may offer occupational training programs that directly feed into a license. These programs can be particularly insightful about perceived delays or bias in the licensing process.

Process

A layered approach can be effective to gather feedback quickly while delving deeper with representative groups. Consider asking boards/commissions if they could share “listservs” of licensees or name and contact information for individuals recently licensed. Discuss strategies to survey these groups on their application experience. Focus groups are helpful to convene multiple people with a shared speciality, such as all regulatory executive directors. Lastly, individual meetings, especially with people that represent a key group such as the local military liaison major employers or a chamber representing small business, can provide perspective without convening large groups or sifting through disparate experiences.

Questions for the Future

Consider messaging ahead of stakeholder engagement. Articulate the purpose of the outreach initiative and the specific topics you wish to address. Carefully select the words you use. For example, some audiences may interpret “universal licensure” to imply the removal of any application process and endorsement of “all” applicants regardless of their ability to safely practice. Phrases such as “license portability” or “geographic mobility” may broaden the conversation to an array of topics that still relate directly to the overall policy objective without exposure to misinformation and disparate interpretations.

Generally, try to narrowly define the problem you are trying to solve and your intent to identify unintended consequences through stakeholder engagement. CLEAR’s publication “Questions a Legislator Should Ask” provides a series of questions and topics to serve as a starting place. As it relates specifically to universal licensure, the following questions may prove useful:

For applicants, licensees and employers:

- What are current barriers to entry you wish you could change? Tell me about the cost, time or complexity of the application process.
- Use open ended questions for follow-up. For example, what specifically about the cost was a barrier? Are you speaking about the cost of obtaining the education required for a license, or specifically about the license application fee?
- How much time did you spend preparing your application for licensure?
- What was the hardest part? What was the easiest part?
- What was most surprising to you about the application process?
- What would be your advice to future applicants?
- Do you know of any insurance and Medicaid requirements that drive your licensure policies for employees and hiring practices?
- Do you assist your employees with the licensure process? What has been your experience? What do you wish the board/commission knew?

For regulators:

- What could be some unintended impacts of a universal licensure law?
- What are some other policy mechanisms that could help us solve delays when transferring a license to North Dakota?
- What is the current process for out of state applicants? What delays could they face in obtaining a license?
- What would make your job easier when considering an out of state applicant?
- What ideas do you have to make it easier for someone from out of state to get a license, assuming they are competent and safe to practice?
- Do you know of any Medicaid or other insurance requirements that impact your licensing policies or the ability of an applicant to start working?

Next Steps and Conclusion

This project has highlighted the importance of ensuring secure foundations are in place throughout the regulatory system. This begins with the regulatory boards themselves, and the need for clear messaging and understanding about the role of the board member and the purpose of regulatory activities. Education for board members is particularly beneficial in ensuring regulatory activities are underpinned by the need to protect and build confidence in the process, rather than to protect the profession that is being regulated. Several non-profit organizations (including CLEAR) provide training for regulatory board members that makes this very point, while also seeking to resource the work of regulatory boards and staff more broadly.

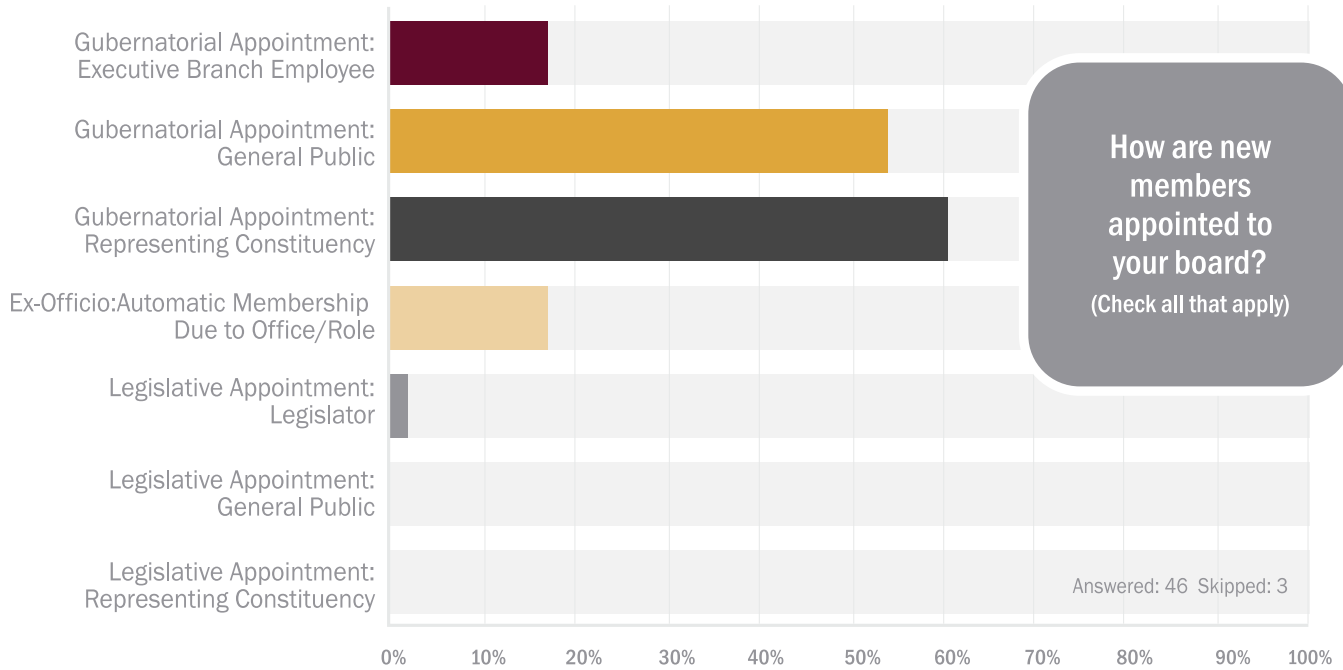
Recent regulatory reform efforts have also highlighted the importance of ensuring mechanisms exist for regulatory boards, their members and staff, to share information about best practices, and to acknowledge particular challenges and develop state-wide risk mitigation strategies. There is significant potential for activity to become ‘siloes’ at the board or profession-specific level, despite the fact that many of the issues boards encounter are similar in nature and can be addressed by similar approaches and solutions. Opportunities for boards to engage, whether at planned in-state meetings, or at broader regulatory conferences or events, are important in ensuring a cohesive approach is taken across the state. This will be particularly important as further initiatives focused on professional mobility and the recognition of credentials that have been awarded by other entities come to the fore.

One of the issues raised by survey responses are the ways in which, and whether, the use of different license types will affect future professional mobility and portability of licensure initiatives. A future study exploring the way North Dakota might address best practices related to the recognition of multiple-license types in use in other jurisdictions (and particularly in those states that provide most incoming members of the licensed professions and occupations) would be beneficial. Such a study could also explore alternative pathways to licensure, particularly where multiple license types mean there are potential ‘gaps’ between licenses issued in other jurisdictions versus those issued in North Dakota, and remediation approaches that could be employed, as a step to provide full recognition to a license issued elsewhere.

CLEAR looks forward to future partnership opportunities with North Dakota, as the State embarks on the next phase of its regulatory reform and renewal journey.

APPENDIX:

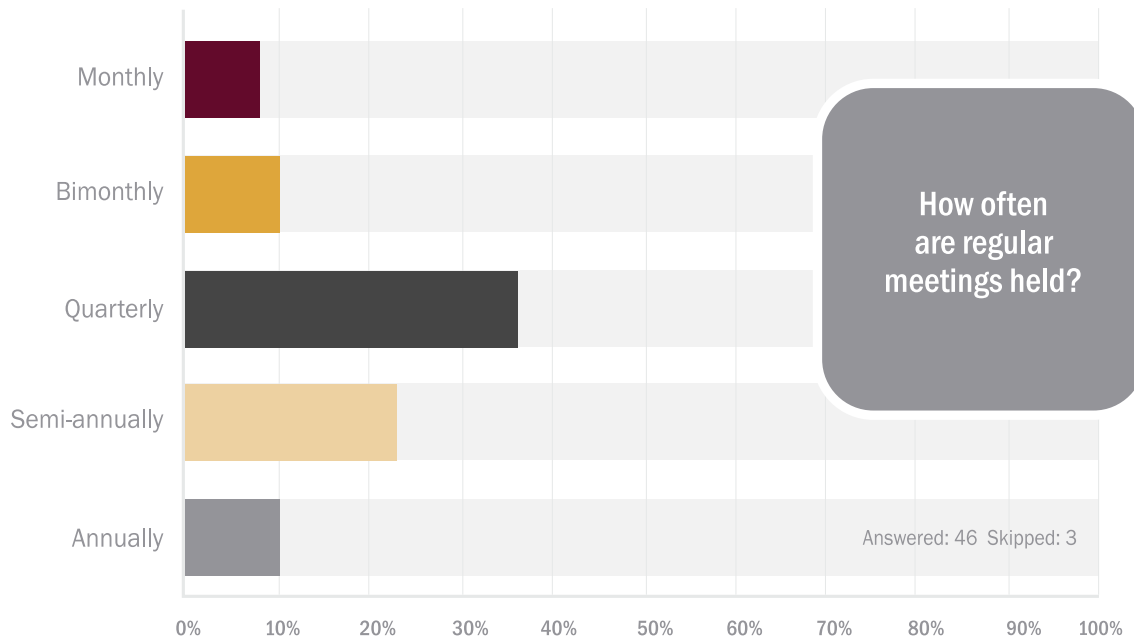
Q5:



SURVEY QUESTION 5 RESULT:

Gubernatorial Appointment: Executive Branch Employee	17.39%
Gubernatorial Appointment: General Public	54.35%
Gubernatorial Appointment: Representing Constituency	60.87%
Ex-Officio:Automatic Membership Due to Office/Role	17.39%
Legislative Appointment: Legislator	2.17%
Legislative Appointment: General Public	0%
Legislative Appointment: Representing Constituency	0%

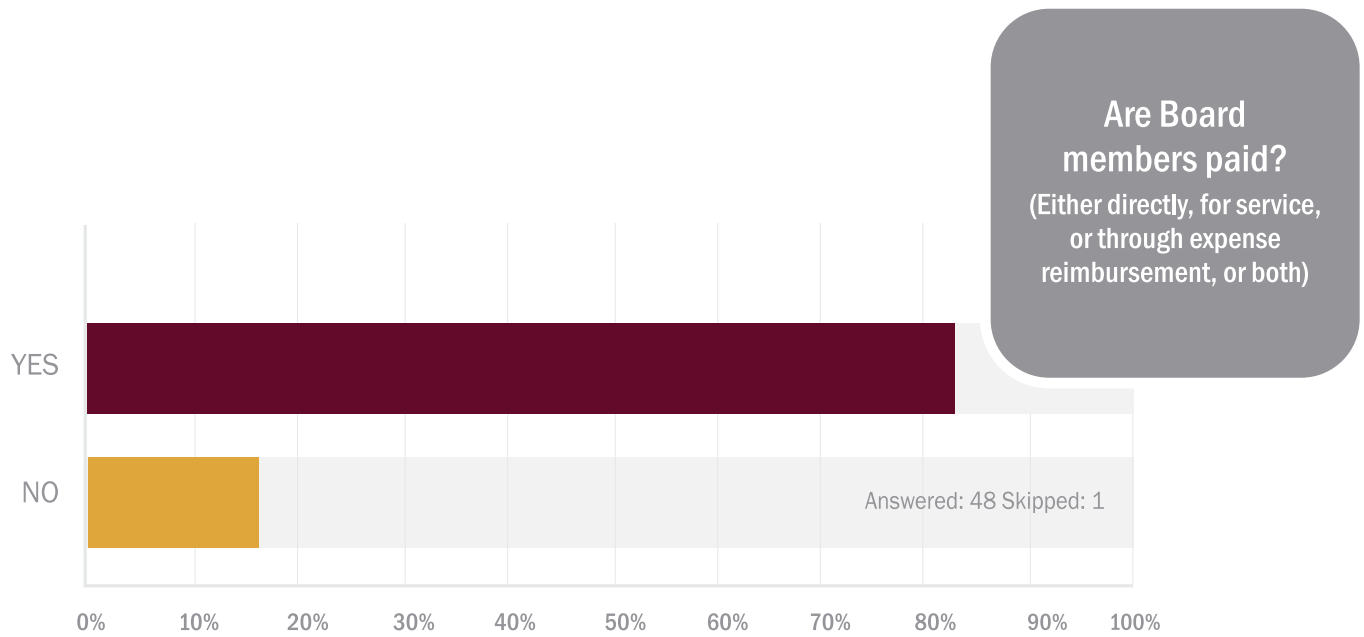
Q9:



SURVEY QUESTION RESULTS:

Monthly	8.70%
Bimonthly	10.87%
Quarterly	36.96%
Semi-annually	23.91%
Annually	10.87%

Q11:

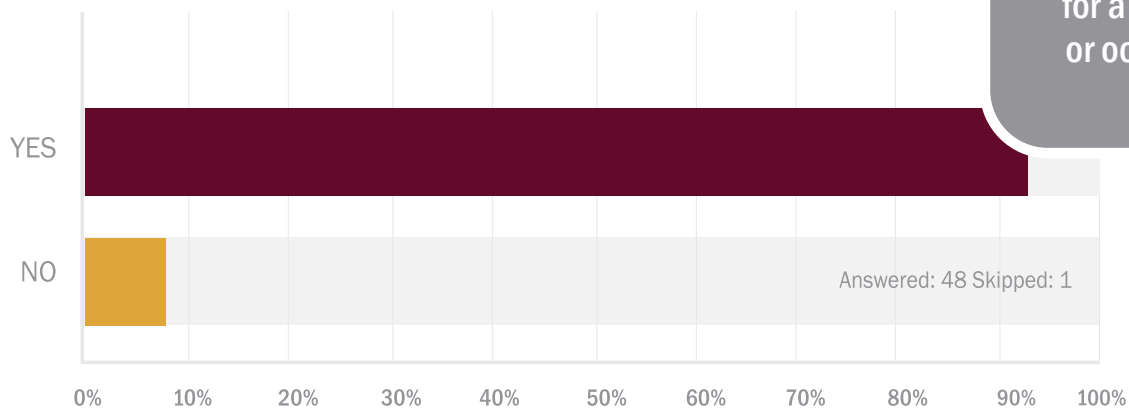


SURVEY QUESTION RESULT:

Yes 83.33%
No 16.67%

Q14:

Does your Board or Commission provide licensure for a profession or occupation?

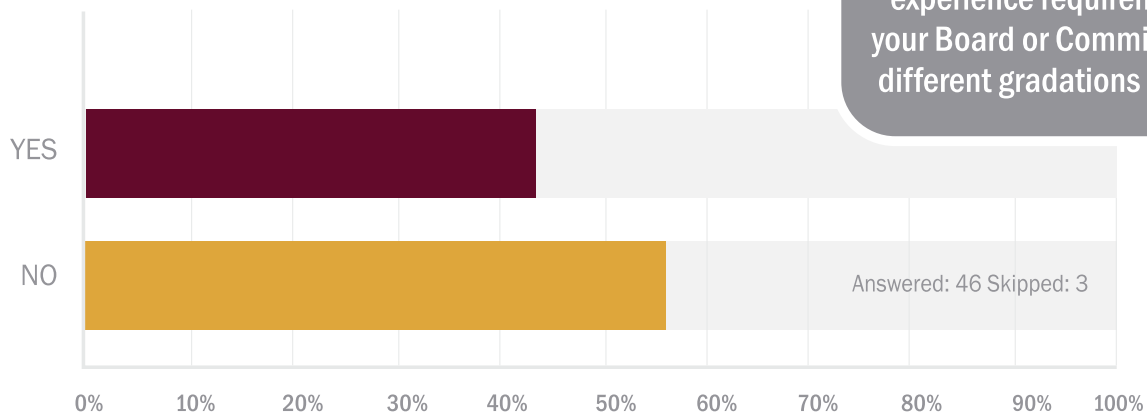


SURVEY QUESTION RESULT:

Yes 93.88%
No 6.12%

Q15:

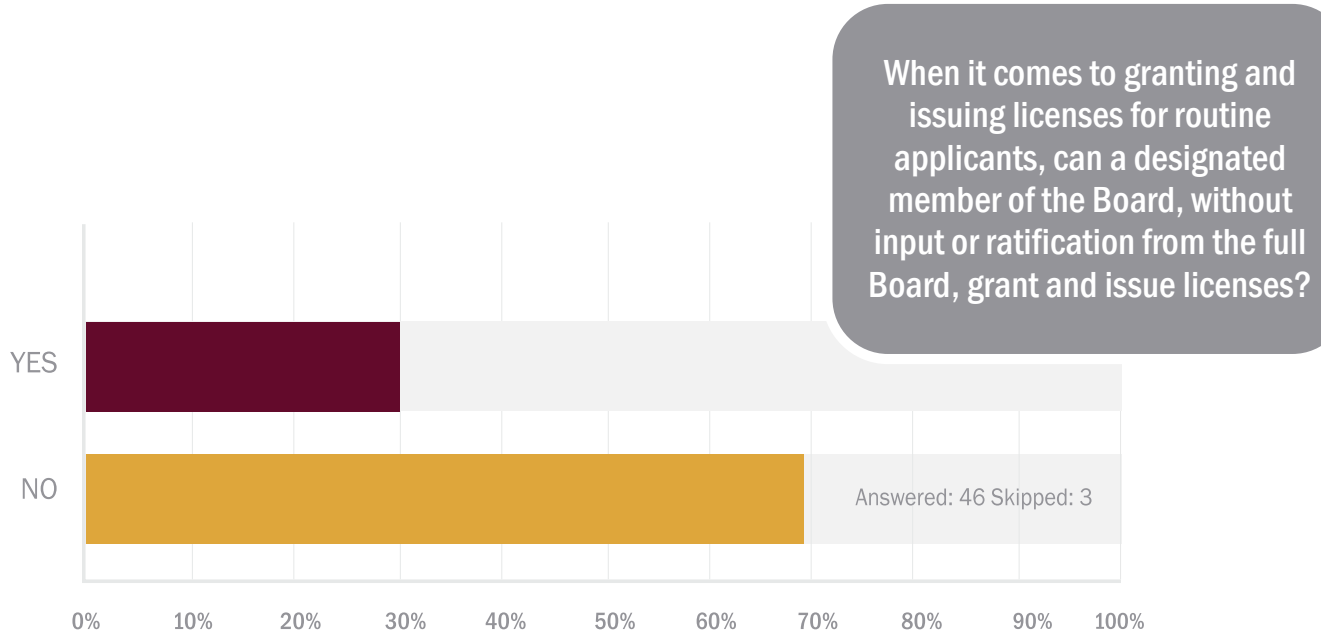
Some licensing boards provide gradations of licensure, for example issuing multiple levels of license with differing education or experience requirements. Does your Board or Commission provide different gradations of licensure?



SURVEY QUESTION RESULT:

Yes 43.48%
No 56.52%

Q19:

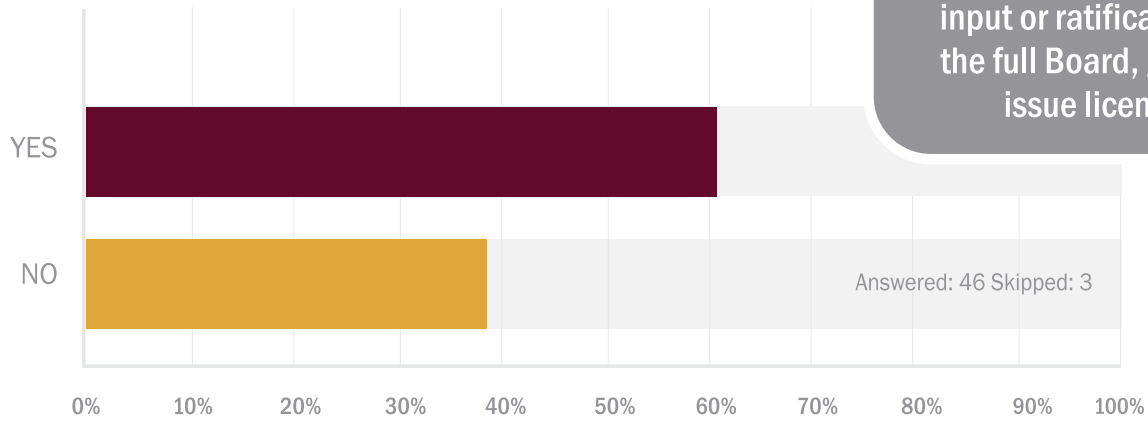


SURVEY QUESTION RESULT:

Yes 30.43%
No 69.57%

Q20:

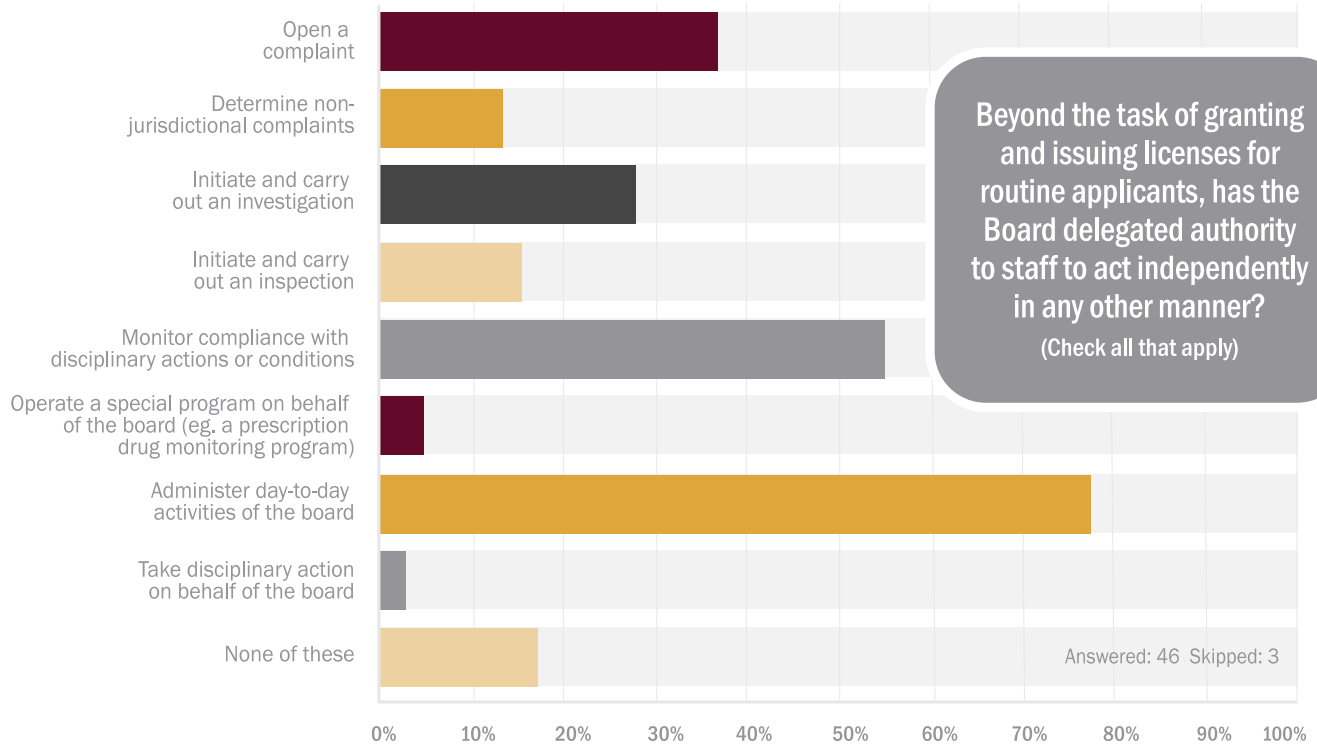
When it comes to granting and issuing licenses for routine applicants, can a staff member, without input or ratification from the full Board, grant and issue licenses?



SURVEY QUESTION RESULT:

Yes 60.87%
No 39.13%

Q21:

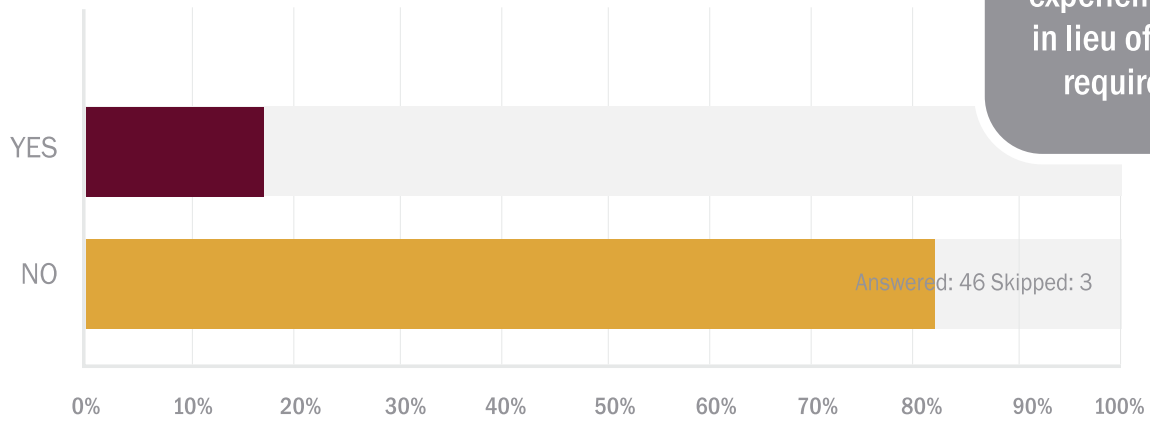


SURVEY QUESTION 21 RESULTS:

Open a complaint	36.96%
Determine non-jurisdictional complaints	13.04%
Initiate and carry out an investigation	28.26%
Initiate and carry out an inspection	15.22%
Monitor compliance with disciplinary actions or conditions	54.35%
Operate a special program on behalf of the board (eg. a prescription drug monitoring program)	4.35%
Administer day-to-day activities of the board	78.26%
Take disciplinary action on behalf of the board	2.17%
None of these	17.39%

Q22:

Does your Board or Commission allow for military experience to count in lieu of education requirements?

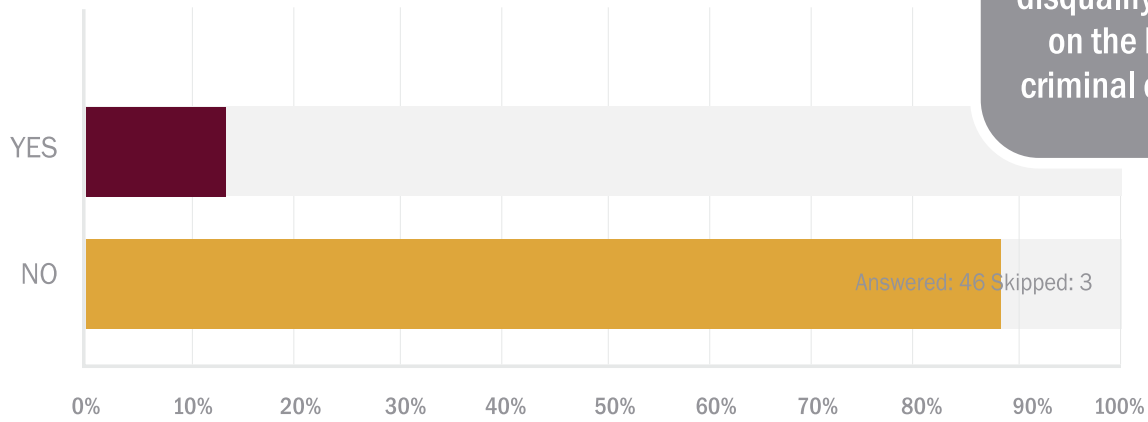


SURVEY QUESTION RESULT:

Yes 17.39%
No 82.61%

Q23:

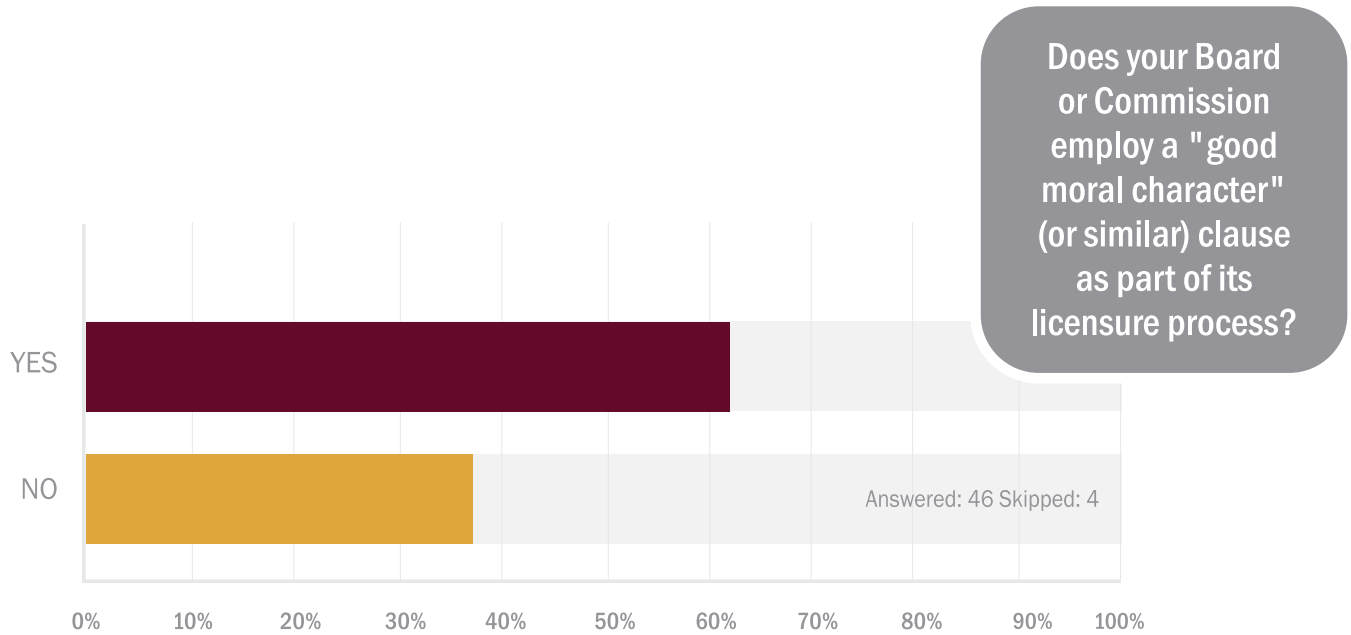
Does your Board or Commission ever automatically disqualify applicants on the basis of a criminal conviction?



SURVEY QUESTION RESULT:

Yes 13.04%
No 86.96%

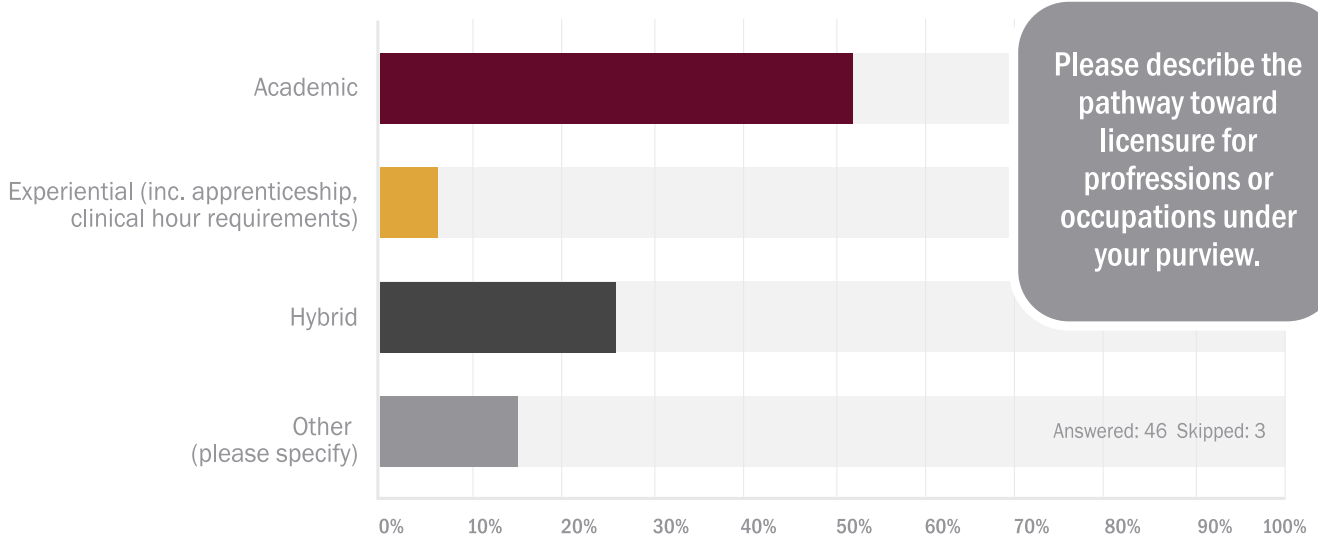
Q24:



SURVEY QUESTION RESULT:

Yes 62.22%
No 37.78%

Q25:



SURVEY QUESTION 25 RESULTS:

Academic	52.17%
Experiential (inc. apprenticeship, clinical hour requirements)	6.52%
Hybrid	26.09%
Other (please specify)	15.22%

Q29:

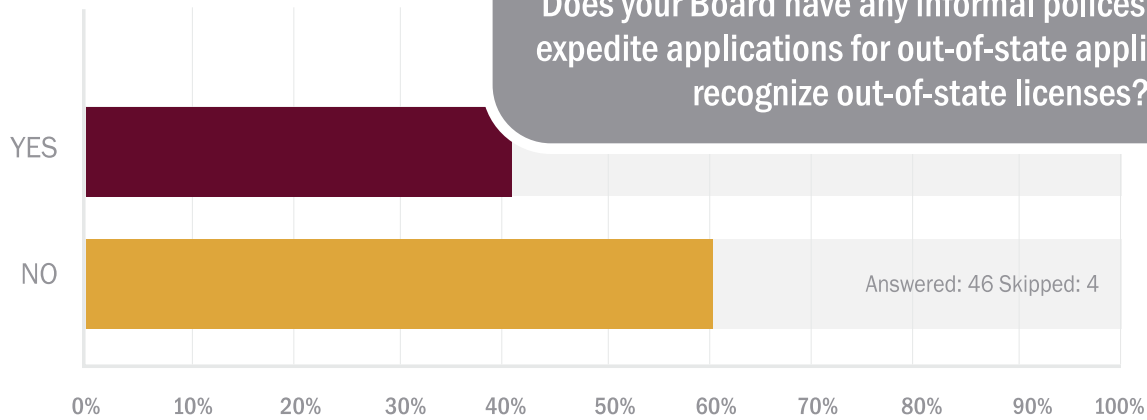
How much does a typical licensee for your occupation/profession spend in the following categories, annually? (If your Board or Commission issues different gradations of licensure, provide costs for the most common level of licensure.)

SURVEY QUESTION 25 RESULTS:

Application Fees	100.00%
Renewal Fees	97.83%
Informal/Other Fees	63.04%
Continuing Ed Fees	67.39%

Q30:

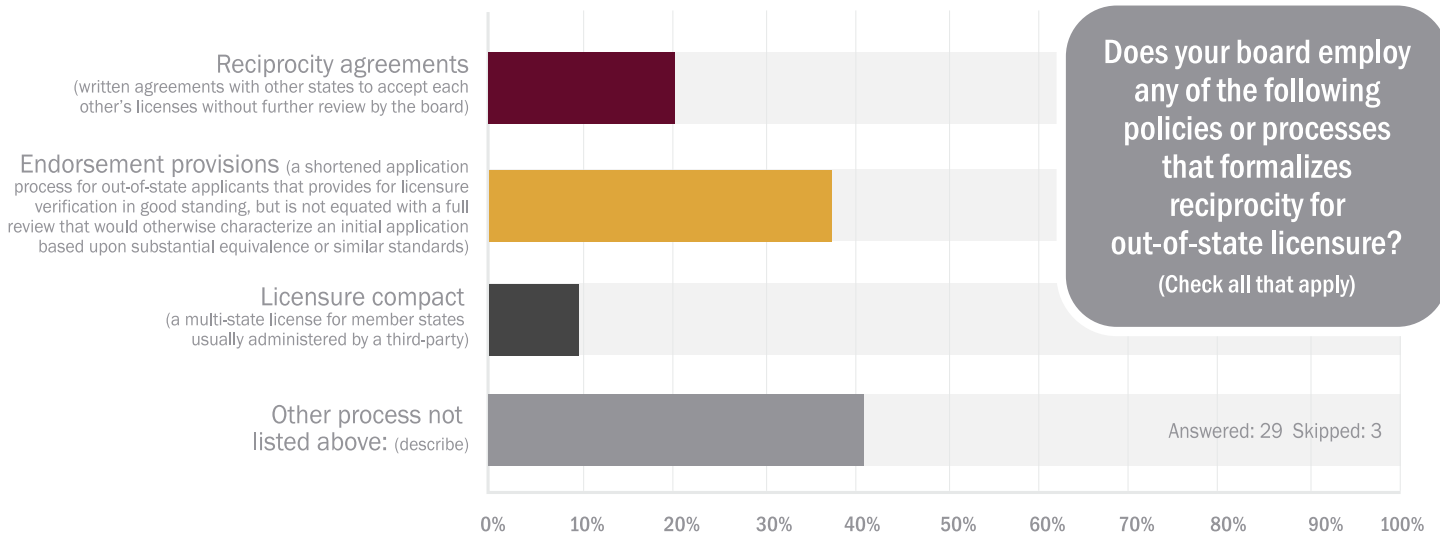
Some occupations/professions allow for an expedited licensing process for those who have a license in good standing issued by another state, if the other state has "substantially similar" licensing requirements. Does your Board have any informal policies in place to expedite applications for out-of-state applicants, or to recognize out-of-state licenses?



SURVEY QUESTION RESULT:

Yes 41.30%
No 60.87%

Q31:



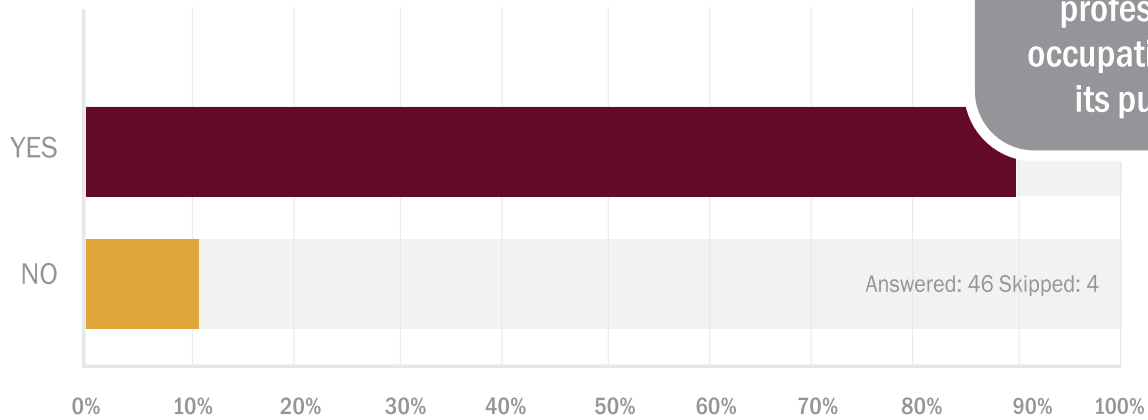
SURVEY QUESTION 31 RESULTS:

Reciprocity agreements (written agreements with other states to accept each other's licenses without further review by the board)	20.69%
Endorsement provisions (a shortened application process for out-of-state applicants that provides for licensure verification in good standing, but is not equated with a full review that would otherwise characterize an initial application based upon substantial equivalence or similar standards)	37.93%
Licensure compact (a multi-state license for member states usually administered by a third-party)	10.34%
Other process not listed above: (describe)	41.38%

COMMENTS:

Q33:

Does your Board or Commission provide a complaint process for professions or occupations under its purview?

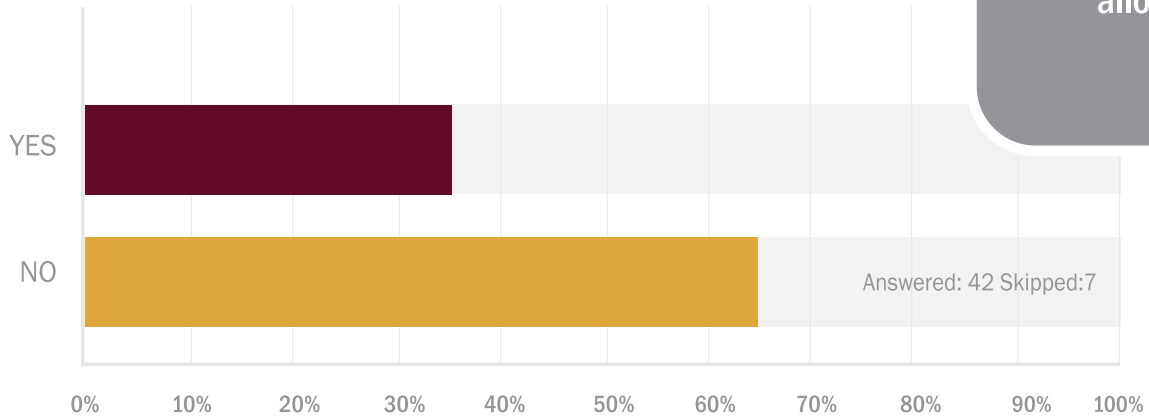


SURVEY QUESTION RESULT:

Yes 89.13%
No 10.87%

Q35:

Are anonymous complaints allowed?

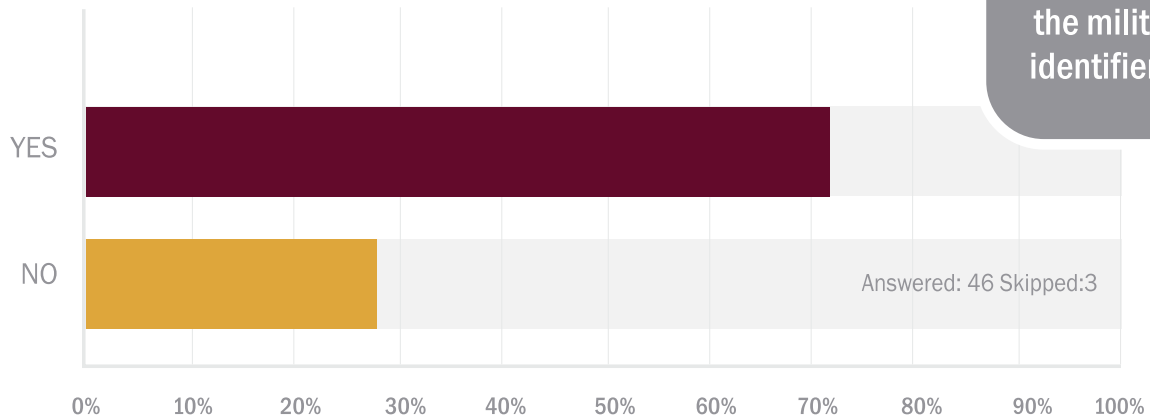


SURVEY QUESTION RESULT:

Yes 35.71%
No 64.29%

Q37:

As required by SB2306, does your license application form now include the military spouse identifier question?



SURVEY QUESTION RESULT:

Yes 71.74%
No 28.26%



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