

## SENATE COMMITTEE ON BUSINESS AND PROFESSIONS

### REGULATORY REQUEST QUESTIONNAIRE

#### **Instructions for completing this questionnaire**

- Responses to this questionnaire should be typed and dated. Each question should be answered within a single main document, which is limited to 50 pages. Supporting evidence for your responses maybe included as an *Appendix*, but all essential information should be included within the main document.
- Each question from the questionnaire should be stated in upper case (capital) letters. The response should follow in lower case letters,
- Each part of every question must be addressed. If there is no information available to answer the question, state this as your response and describe what you did to attempt to find information that would answer the question. If you think the question is not applicable, state this and explain your response.
- When supporting documentation is appropriate, include it as an *Appendix*. Appendices would be labeled as follows: Each document appended should be lettered in alphabetical order. Pages within each appendix should be numbered sequentially. For example, the third page of the first appendix will be labeled A3, and the fifth page of the second appendix will be labeled B5. References within the main document to information contained in Appendices should use these page labels.
- Please read the entire questionnaire before answering any questions so that you will understand what information is being requested and how questions relate to each other.

#### **Section A: Applicant Group Identification**

This section of the questionnaire is designed to help identify the group seeking regulation and to determine if the applicant group adequately represents the occupation.

1. What occupational group is seeking regulation? Identify by name, address and associational affiliation the individuals who should be contacted when communicating with this group regarding this application.
2. List all titles currently used by California practitioners of this occupation. Estimate the total number of practitioners now in California and the number using each title.
3. Identify each occupational association or similar organization representing current practitioners in California, and estimate its membership. For each, list the name of any associated national group.

4. Estimate the percentage of practitioners who support this request for regulation. Document the source of this estimate.
5. Name the applicant group representing the practitioners in this effort to seek regulation. How was this group selected to represent practitioners?
6. Are all practitioner groups listed in response to question 2 represented in the organization seeking regulation? If not, why not?

### **Section B: Consumer Group Identification**

This section of the questionnaire is designed to identify consumers who typically seek practitioner services and to identify nonapplicant groups with an interest in the proposed regulation.

7. Do practitioners typically deal with a specific consumer population? Are clients generally individuals or organizations? Document,
8. Identify any advocacy groups representing California consumers of this service. List also the name of applicable national advocacy groups.
9. Identify any consumer populations not now using practitioner services likely to do so if regulation is approved.
10. Does the applicant group include consumer advocate representation? If so, document, If not, why not?
11. Name any non-applicant groups opposed to or with an interest in the proposed regulation. If none, indicate efforts made to identify them.

### **Section C: Sunrise Criteria**

This part of the questionnaire is intended to provide a uniform method for obtaining information regarding the merits of a request for governmental regulation of an occupation. The information you provide will be used to rate arguments in favor of imposing new regulations (such as educational standards, experience requirements; or examinations) to assure occupational competence.

### **Part C1 - Sunrise Criteria and Questions**

The following questions have been designed to allow presentation of data in support of application for regulation. Provide concise and accurate information in the form indicated in the *Instructions* portion of this questionnaire.

**I. UNREGULATED PRACTICE OF THIS OCCUPATION WILL HARM OR ENDANGER THE PUBLIC HEALTH SAFETY AND WELFARE**

12. Is there or has there been significant public demand for a regulatory standard? Document. If not, what is the basis for this application?
13. What is the nature and severity of the harm? Document the physical, social, intellectual, financial or other consequences to the consumer resulting from incompetent practice.
14. How likely is it that harm will occur? Cite cases or instances of consumer injury. If none, how is harm currently avoided?
15. What provisions of the proposed regulation would preclude consumer injury?

**II. EXISTING PROTECTIONS AVAILABLE TO THE CONSUMER ARE INSUFFICIENT**

16. To what extent do consumers currently control their exposure to risk? How do clients locate and select practitioners?
17. Are clients frequently referred to practitioners for services? Give examples of referral patterns.
18. Are clients frequently referred elsewhere by practitioners? Give examples of referral patterns.
19. What sources exist to inform consumers of the risk inherent in incompetent practice and of what practitioner behaviors constitute competent performance?
20. What administrative or legal remedies are currently available to redress consumer injury and abuse in this field?
21. Are the currently available remedies insufficient or ineffective? If so, explain why.

**III. NO ALTERNATIVES TO REGULATION WILL ADEQUATELY PROTECT THE PUBLIC**

22. Explain why marketplace factors will not be as effective as governmental regulation in ensuring public welfare. Document specific instances in which market controls have broken down or proven ineffective in assuring consumer protection.

23. Are there other states in which this occupation is regulated? If so, identify the states and indicate the manner in which consumer protection is ensured in those states, Provide, as an appendix, copies of the regulatory provisions from these states.
24. What means other than governmental regulation have been employed in California to ensure consumer health and safety. Show why the following would be inadequate:
- a. code of ethics
  - b. codes of practice enforced by professional associations
  - c. dispute-resolution mechanisms such as mediation or arbitration
  - d. recourse to current applicable law
  - e. regulation of those who employ or supervise practitioners
  - f other measures attempted
25. If a “grandfather” clause (in which current practitioners are exempted from compliance with proposed entry standards) has been included in the regulation proposed by the applicant group, how is that clause justified? What safeguards will be provided consumers regarding this group?

#### **IV. REGULATION WILL MITIGATE EXISTING PROBLEMS**

26. What specific benefits will the public realize if this occupation is regulated? Indicate clearly how the proposed regulation will correct or preclude consumer injury. Do these benefits go beyond freedom from harm? If so, in what way?
27. Which consumers of practitioner services are most in need of protection? Which require least protection? Which consumers will benefit most and least from regulation?
28. Provide evidence of “net” benefit when the following possible effects of regulation are considered:
- a. restriction of opportunity to practice
  - b. restricted supply of practitioners
  - c. increased costs of service to consumer
  - d. increased governmental intervention in the marketplace.

#### **V. PRACTITIONERS OPERATE INDEPENDENTLY, MAKING DECISIONS OF CONSEQUENCE**

29. To what extent do individual practitioners make professional judgments of consequence? What are these judgments? How frequently do they occur? What are the consequences? Document.
30. To what extent do practitioners work independently (as opposed to working under the auspices of an organization, an employer or a supervisor)?

31. To what extent do decisions made by the practitioner require a high degree of skill or knowledge to avoid harm?

**VI. FUNCTIONS AND TASKS OF THE OCCUPATION ARE CLEARLY DEFINED**

32. Does the proposed regulatory scheme define a scope of activity which requires licensure, or merely prevent the use of a designated job title or occupational description without a license?
33. Describe the important functions, tasks and duties performed by practitioners. Identify the services and/or products provided.
34. Is there a consensus on what activities constitute competent practice of the occupation? If so, state and document. If not, what is the basis for assessing competence?
35. Are indicators of competent practice listed in response to *Question 34* measurable by objective standards such as peer review? Give examples.
36. Specify activities or practices that would suggest that a practitioner is incompetent. To what extent is public harm caused by personal factors such as dishonesty? Document.

**VII. THE OCCUPATION IS CLEARLY DISTINGUISHABLE FROM OTHER OCCUPATIONS THAT ARE ALREADY REGULATED**

37. What similar occupations have been regulated in California?
38. Describe functions performed by practitioners that differ from those performed by occupations listed in *Question 37*.
39. Indicate the relationships among the groups listed in response to *Question 37* and practitioners. Can practitioners be considered a branch of currently regulated occupations?
40. What impact will the requested regulation have upon the authority and scopes of practice of currently regulated groups?
41. Are there unregulated occupations performing services similar to those of the group to be regulated? If so, identify
42. Describe the similarities and differences between practitioners and the groups identified in *Question 41*.

**VIII. THE OCCUPATION REQUIRES POSSESSION OF KNOWLEDGES, SKILLS AND ABILITIES THAT ARE BOTH TEACHABLE AND TESTABLE**

43. Is there a generally accepted core set of knowledges, skills and abilities without which a practitioner may cause public harm? Describe and document.
44. What methods are currently used to define the requisite knowledges, skills and abilities? Who is responsible for defining these knowledges, skills and abilities?
45. Are these knowledges, skills and abilities testable? Is the work of the group sufficiently defined that competence could be evaluated by some standard (such as ratings of education, experience or exam performance)?
46. List institutions and program titles offering accredited and nonaccredited preparatory programs in California. Estimate the annual number of graduates from each. If no such preparatory programs exist within California, list programs found elsewhere.
47. Apart from the programs listed in *Question 46*, indicate various methods of acquiring requisite knowledge, skill and ability. Examples may include apprenticeships, internships, on-the-job training, individual study, etc.
48. Estimate the percentage of current practitioners trained by each of the routes described in *Questions 46-47*.
49. Does any examination or other measure currently exist to test for functional competence? If so, indicate how and by whom each was constructed and by whom it is currently administered. If not, indicate search efforts to locate such measures.
50. Describe the format and content of each examination listed in *Question 49*. Describe the sections of each examination. What competencies is each designed to measure? How do these relate to the knowledges, skills and abilities listed in *Question 43*?
51. If more than one examination is listed above, which standard do you intend to support? Why? If none of the above, why not, and what do you propose as an alternative?

**IX. ECONOMIC IMPACT OF REGULATION IS JUSTIFIED**

52. How many people are exposed annually to this occupation? Will regulation of the occupation affect this figure? If so, in what way?
53. What is the current cost of the service provided? Estimate the amount of money spent annually in California for the services of this group. How will regulation affect these costs? Provide documentation for your answers.

54. Outline the major governmental activities you believe will be necessary to appropriately regulate practitioners. Examples may include such program elements as: qualifications evaluation, examination development or administration, enforcement, school accreditation, etc.
55. Provide a cost analysis supporting regulatory services to this occupation. Include costs to provide adequate regulatory functions during the first three years following implementation of this regulation. Assure that at least the following have been included:
  - a. costs of program administration, including staffing
  - b. costs of developing and/or administering examinations
  - c. costs of effective enforcement programs
56. How many practitioners are likely to apply each year for certification if this regulation is adopted? If small numbers will apply, how are costs justified?
57. Does adoption of the requested regulation represent the most cost-effective form of regulation? Indicate alternatives considered and costs associated with each,

**Part C2 — Rating on Sunrise Criteria**

Assign each Criterion a numeric rating of 0-5 in the space provided. The rating should be supported by the answers provided to the questions in *Part C1*. Scale descriptions are intended to give examples of characteristics indicative of ratings.

0 \_\_\_\_\_ 1 \_\_\_\_\_ 2 \_\_\_\_\_ 3 \_\_\_\_\_ 4 \_\_\_\_\_ 5  
(Little Need for Regulation) LOW HIGH (Great Need for  
Regulation)

**I. UNREGULATED PRACTICE OF THIS OCCUPATION WILL HARM OR  
ENDANGER THE PUBLIC HEALTH SAFETY AND WELFARE** \_\_\_\_\_

*low:* Regulation sought only by practitioners. Evidence of harm lacking or remote. Most effects secondary or tertiary. Little evidence that regulation would correct inequities.

*high:* Significant public demand. Patterns of repeated and severe harm, caused directly by incompetent practice. Suggested regulatory pattern deals effectively with inequity. Elements of protection from fraudulent activity and deceptive practice are included.

**II. EXISTING PROTECTIONS AVAILABLE TO THE CONSUMER ARE  
INSUFFICIENT** \_\_\_\_\_

*low:* Other regulated groups control access to practitioners. Existing remedies are in place and effective. Clients are generally groups or organizations with adequate resources to seek protection.

*high:* Individual clients access practitioners directly. Current remedies are ineffective or nonexistent.

**III. NO ALTERNATIVES TO REGULATION WILL ADEQUATELY PROTECT THE  
PUBLIC** \_\_\_\_\_

*low:* No alternatives considered. Practice unregulated in most other states. Current system for handling abuses adequate.

*high:* Exhaustive search of alternatives finds them lacking. Practice regulated elsewhere. Current system ineffective or nonexistent.

**IV. REGULATION WILL MITIGATE EXISTING PROBLEMS**

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*low:* Little or no evidence of public benefit from regulation. Case not demonstrated that regulation precludes harm. Net benefit does not indicate need for regulation.

*high:* Little or no doubt that regulation will ensure consumer protection. Greatest protection provided to those who are least able to protect themselves- Regulation likely to eliminate currently existing problems.

**V. PRACTITIONERS OPERATE INDEPENDENTLY, MAKING DECISIONS OF CONSEQUENCE**

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*low:* Practitioners operate under the supervision of another regulated profession or under the auspices of an organization which may be held responsible for services provided. Decisions made by practitioners are of little consequence-

*high:* Practitioners have little or no supervision. Decisions made by practitioners are of consequence, directly affecting important consumer concerns-

**VI. FUNCTIONS AND TASKS OF THE OCCUPATION ARE CLEARLY DEFINED**

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*low:* Definition of competent practice unclear or very subjective. Consensus does not exist regarding appropriate functions and measures of competence-

*high:* Important occupational functions are clearly defined, with quantifiable measures of successful practice. High degree of agreement regarding appropriate functions and measures of competence.

**VII. THE OCCUPATION IS CLEARLY DISTINGUISHABLE FROM OTHER OCCUPATIONS THAT ARE ALREADY REGULATED**

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*low:* High degree of overlap with currently regulated occupations- Little information given regarding the relationships among similar occupations.

*high:* Important occupational functions clearly different from those of currently regulated occupations- Similar non-regulated groups do not perform critical functions included in this occupation's practice.

**VIII. THE OCCUPATION REQUIRES POSSESSION OF KNOWLEDGES, SKILLS AND ABILITIES THAT ARE BOTH TEACHABLE AND TESTABLE**

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*low:* Required knowledge undefined. Preparatory programs limited in scope and availability. Low degree of required knowledge or training. Current standard sufficient to measure competence without regulation. Required skill subjectively determined; not teachable and/or not testable.

*high:* Required knowledges clearly defined. Measures of competence both objective and testable. Incompetent practice defined by lack of knowledge, skill or ability. No current standard effectively used to protect public interest.

## **IX. ECONOMIC IMPACT OF REGULATION IS JUSTIFIED**

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*low:* Economic impact not fully considered. Dollar and staffing cost estimates inaccurate or poorly done.

*High:* Full analysis of all costs indicate net benefit of regulation is in the public interest.