

**Written Testimony by Le Ondra Clark Harvey, Ph.D., Chief Consultant  
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Good afternoon Commissioners and thank you for the invitation to present about the Legislature's "sunrise process." I am Dr. Le Ondra Clark Harvey, and as a former consultant to the Senate Committee and Business, Professions, and Economic Development, and now the Chief Consultant to the Assembly Committee on Business and Professions, I have a great appreciation for the sunrise process that policy committees of the Legislature utilize, and I am pleased to present alongside my colleague from the Senate committee.

With current questions arising about the licensing boards in California, including their composition and effectiveness, it is imperative to have processes in place regarding the creation and oversight of such entities. I will discuss the sunrise process, a precursor to the Legislature considering the creation of regulatory entities, and my colleague from the Senate will discuss the oversight mechanisms that both our policy committees jointly engage in, commonly referred to as the sunset review process, in which we monitor the activities of the regulatory entities.

During my testimony, I will provide background on the need for oversight, including the sunrise process, and the Legislature's development of the sunrise process. I will then review the sunrise questionnaire criteria, and the procedure for submitting the questionnaire.

### **Background**

Legislators and policy committees of the Senate and Assembly receive requests for new or expanded occupational regulation each Legislative Session. The regulatory proposals are intended to assure the competence of specified practitioners in different occupations. In the past, these requests have resulted in a proliferation of licensure and certification programs – which has been met with mixed reviews. Proponents argue that licensing benefits the public by assuring competence and an avenue for consumer redress. Critics, disturbed by increased governmental intervention in the marketplace, have cited shortages of practitioners and increased costs of service as indicators that regulation benefits a profession more than it benefits the public.

State legislators and administrative officials are expected to weigh arguments regarding the necessity of such regulation, determine the appropriate level of regulation (e.g., registration, certification or licensure), and select a set of standards (education, experience, examinations) that will assure competency. The need for accurate information is clear and universal; however, no system existed to ensure that all needed information was collected and that the arguments presented were objectively weighed.

To create such a system, the Legislature and the Department of Consumer Affairs undertook a process to develop ways of assessing needs for examinations, educational standards, and experience requirements that would assure provider competence. The results of this project resulted was the creation of an evaluative process designed to provide a uniform basis for the

presentation and review of proposed occupational regulation. This sunrise process includes a questionnaire and evaluative scales that allow systematic collection and analysis of the data required for decisions about new regulation.

### **Developing the Sunrise Process**

The development of the sunrise process began with an exploration of current regulatory practice in other jurisdictions. Several sources were found that indicate a nationwide, ongoing effort to develop criteria that determine whether a need for regulation exists and, if it does, the level of regulation needed.

Especially helpful were the Bateman Commission report to the New Jersey Legislature, Minnesota's Allied Health Credentialing Act, the Council of State Governments' publication, *Occupational Licensing: Questions a Legislator Should Ask*, and documents from Washington's Department of Licensing.

Several important tenets guided the development of this process. The first is that the public is best served by minimal governmental intervention; therefore, the group seeking regulation should be responsible for showing that government oversight is needed to protect the public health, safety or welfare.

Second, the decision to regulate an occupation involves weighing the right of individuals to do work of their choosing against the government's responsibility to protect the public when protection is clearly needed; therefore, regulation should encompass fairness to consumers and practitioners alike.

Third, the instruments derived from this project should in no way deter small or poorly funded groups from making legitimate requests for regulation.

### **The Sunrise Process**

The sunrise process is utilized for assessing requests for new occupational regulation, pursuant to Government Code Section 9148 and the policy committee rules. The process includes a questionnaire to be completed by the group supporting the regulation. The questionnaire is an objective tool for collecting and analyzing information needed to arrive at accurate, informed, and publicly supportable decisions regarding the merits of regulatory proposals.

This process accomplishes the following: (1) places the burden of showing the necessity for new regulations on the requesting groups; (2) allows the systematic collection of opinions both pro and con; and, (3) documents the criteria used to decide upon new regulatory proposals. This helps to ensure that regulatory mechanisms are imposed only when proven to be the most effective way of protecting the public health, safety and welfare.

### **Sunrise Criteria**

Central to the sunrise process was the creation of nine sunrise criteria developed to provide a framework for evaluating the need for regulation. These criteria are:

1. Unregulated practice of the occupation in question will harm or endanger the public health, safety or welfare.

2. Existing protections available to the consumer are insufficient.
3. No alternatives to regulation will adequately protect the public.
4. Regulation will alleviate existing problems.
5. Practitioners operate independently, making decisions of consequence.
6. The functions and tasks of the occupation are clearly defined.
7. The occupation is clearly distinguishable from other occupations that are already regulated.
8. The occupation requires knowledge, skills and abilities that are both teachable and testable.
9. The economic impact of regulation is justified.

### **Procedure for Submitting the Questionnaire**

The questionnaire should be completed prior to introduction of a bill. Once the applicant group has completed the questionnaire, legislative staff and other interested parties (e.g., staff of the appropriate state agency or agencies) will review and evaluate the information provided. While the questionnaire will generate information useful in several contexts, its main purpose is to provide proponents and Legislative staff with comprehensive information in a common format and thereby facilitate informed decision making.

The process should help administrators and legislators answer three basic questions:

1. Does the proposed regulation benefit the public health, safety or welfare?
2. Will the proposed regulation be the most effective way to correct existing problems?
3. Is the level of the proposed regulation appropriate?

### **Determination of the Level of Regulation Needed**

If review of the proponents' case indicates that regulation is appropriate, a determination must be made regarding the appropriate level of regulation. The following definitions and guidelines are intended to facilitate selection of the level of regulation that will adequately protect the public interest.

**Level I:** Strengthen existing laws and controls. The choice may include providing stricter civil actions or criminal prosecutions. It is most appropriate where the public can effectively implement control.

**Level II:** Impose inspections and enforcement requirements. This choice may allow inspection and enforcement by a state agency. These should be considered where a service is provided that involves a hazard to the public health, safety, or welfare. Enforcement may include recourse to court injunctions, and should apply to the business or organization providing the service, rather than the individual employees.

Level III: Impose registration requirements. Under registration, the state maintains an official roster of the practitioners of an occupation, recording also the location and other particulars of the practice, including a description of the services provided. This level of regulation is appropriate where any threat to the public is small.

Level IV: Provide opportunity for certification. Certification is voluntary; it grants recognition to persons who have met certain prerequisites. Certification protects a title: non-certified persons may perform the same tasks but may not use “certified” in their titles. Usually an occupational association is the certifying agency, but the state can be one as well. Either can provide consumers a list of certified practitioners who have agreed to provide services of a specified quality for a stated fee. This level of regulation is appropriate when potential for harm exists and when consumers have substantial need to rely on the services of practitioners.

Level V: Impose licensure requirements. Under licensure, the state allows persons who meet predetermined standards to work at an occupation that would be unlawful for an unlicensed person to practice. Licensure protects the scope of practice and the title. It also provides for a disciplinary process administered by a state control agency. This level of regulation is appropriate only in those cases where a clear potential for harm exists and no lesser level of regulation can be shown to adequately protect the public.

In closing, the sunrise process has been instrumental in providing a data driven analysis of the need for increased regulation. Just this past year, at least three sunrise questionnaires were completed and submitted to the Legislative policy committees. One questionnaire resulted in a bill that established a new regulatory entity charged with overseeing various licensure categories.

Thank you for your time, and I look forward to answering any questions.