BACKGROUND

Occupational licensure is a form of government regulation that requires an individual to obtain authorization—that is, a license—to perform certain services. Licensure requirements generally include educational preparation and demonstration of competency, thereby restricting who can provide the service because of an inherent risk in letting people without education or competency provide services. By setting a standard, licensure provides some assurance that the person providing the service is qualified to do so safely at minimum risk to the public.

By restricting who can provide a service, licensing requirements increase costs, limit employment opportunities, and prevent provision of services across state lines, especially in low-income jobs. Licensure requirements have exploded from less than 5% of US workers in the 1950s to over 25% of US workers in 2015. While licensure intends to improve quality and protect the public from incompetent practitioners, it may unnecessarily restrict employment opportunities when specialized expertise or safety risks are minimal in the occupation. These factors have led to a licensing reform movement intended to balance costs and benefits of occupational regulation.

Nurses cannot assume that our profession will be exempt from scrutiny regarding the need for licensure to practice. Texas Nurses Association members have heard others in the policy arena express that “nurses care for people. You don’t need a license to care.” While caring—displaying kindness and concern for others—is fundamental to nursing, so is scientific and medical knowledge and expertise, as is reducing the risk of harm to any patients who receive care—prevention or treatment of a health condition—from a licensed professional. Nurses must be prepared to advocate for the specialized knowledge and expertise, validated through licensure, required for safe practice.

HISTORY OF LICENSURE

In the early 1900s nurses were concerned about inconsistency in nursing education and practice standards so they began to seek legislative approaches to regulate and standardize the education of nurses and practice of
nursing. Registration was the first step toward regulation in many states. In 1909, the Texas Graduate Nurses Association (now Texas Nurses Association) advocated for Senate Bill 111, “an Act to define and regulate the practice of professional nursing, create a board of nurse examiners for the examination of nurses, prescribe their qualifications, provide for their proper registration, and fix suitable penalties for the violation of this act.”

In 1923, Senate Bill 40 gave the Board of Nurse Examiners—now the Board of Nursing (BON)—authority over nursing education programs. “Professional Nursing” was first defined in the Texas Nursing Practice Act in 1967, and in 1969, legislation prohibited unlicensed persons from practicing professional nursing. This act established the scope of professional nursing and restricted who could engage in nursing practice to those licensed by the Board.

Only the legislature can amend the Nursing Practice Act. The Nursing Practice Act falls under the Occupational Code which defines nursing practice and gives the BON authority to issue rules that further interpret provisions of the Nursing Practice Act.

**VALUE OF NURSE LICENSURE**

Without occupational licensure, anyone could represent themselves and practice as a “nurse” without demonstrated competency. The nature of nursing work is inherently risky. While nurses are commonly viewed as caring, even angelic, nurses have a pivotal role in patient safety and quality outcomes. The profession is grounded in science and evidence-based practice. Nursing educational programs are designed to provide the knowledge base, psychomotor skills, and caring demeanor to prepare graduates to demonstrate their competencies on a standardized national licensure examination. Because of licensure, the Nursing Practice Act and BON exist, and residents of Texas can be assured they are receiving proper care.

The BON plays a crucial role in protecting the public from unsafe nursing practice by licensing graduates of accredited nursing education programs through examination or an endorsement process for nurses licensed in other states wishing to practice in Texas. Nurses licensed in any one of 36 Nurse Licensure Compact states are able to practice under their compact license and do not need to undergo an additional endorsement process.

Additionally, the BON holds licensed nurses accountable to the standards of the Nursing Practice Act and Rules and Regulations that govern nursing practice. In an effort to support continued competency, licensed nurses are required to complete continued education in their area of practice. The BON also investigates nurses who have been reported to them for violation of practice standards and may take action against a nurse’s license if the nurse was at fault. Disciplinary sanctions may include remedial education and a warning, reprimand, or suspension with or without probation. Without occupational licenses for nurses, there would be no regulation or oversight of nursing practice.

**EDUCATION AND TRAINING**

Nursing education prepares nurses in the science of applying the nursing process (assessment, diagnosis, planning, implementation, and evaluation) to protect, promote, and optimize health; prevent illness and injury; facilitate healing; and alleviate suffering. Eligibility for professional licensure requires a rigorous course of study at the diploma, associate, or baccalaureate level. Nursing school admission criteria typically requires a minimum
GPA, as well as didactic and laboratory coursework in the sciences (i.e., chemistry, biology, microbiology, anatomy and physiology, and the behavioral sciences). People applying to nursing school must also complete a criminal background check. Depending on the results, the nurse may be ineligible for licensure due to past criminal history or may require monitoring by the BON when beginning to practice.

Nursing curricula must be approved by the BON and must cover the differentiated educational competencies published by the BON. Nursing education accreditation organizations (such as the Commission on the Collegiate Nursing Education and the Accreditation Commission for Education in Nursing) have additional requirements for schools to demonstrate their quality of nursing education. Nurses achieve these competencies in the classroom and through clinical learning experiences in places where people receive care, such as acute care hospitals and community settings, as well as high-fidelity simulation laboratories. Training spans diverse populations (children, child-bearing woman, geriatrics, etc.) as well as care and treatment of individuals experiencing various disease processes (diabetes, cancer, dementia, etc.), acute injuries (myocardial infarction, trauma), and natural conditions (birthing, dying, grieving, health maintenance).

Once the educational program is successfully complete, the individual may apply to take the National Council Licensure Exam (for the RN or LVN) and must pass the exam to obtain their license.

**ARGUMENTS AGAINST LICENSURE**

Nationwide activity reveals a growing concern among policy makers over occupational licensure. The American Legislative Exchange Council’s “Right to Earn a Living” model is prompting re-evaluation of the need to require licensure. The “Right to Earn a Living” is a policy that asserts “the right of individuals to pursue a chosen profession, free from arbitrary or excessive government interference, is a fundamental civil right” and that many occupational regulations arbitrarily limit entry to professions and reduce competition. The policy proposes that all “regulations of entry into professions are demonstrably necessary and carefully tailored to legitimate health, safety, and welfare objectives.”

Potential changes lawmakers have considered include merger or consolidation of licensing boards, elimination of certification as requirement for licensure (such as for advanced practice registered nurses), and removal of sunset or sunrise regulatory board reviews due to burden of time and cost. Other potential outcomes could be removal of licensure requirements for all occupations under a certain threshold (e.g., deregulation of non-nurse roles providing nursing-related functions like certified nursing assistants or medication aides).

**SELF-REGULATION AND AUTONOMY**

Self-regulation and quality performance are the key of a mature profession. The American Nurses Association’s Social Policy Statement explains that nurses’ authority for practice comes from our social contract with society which grants us profession autonomy over the management of vital functions important to society. In return, the profession of nursing is responsible for acting in society’s best interest and maintaining public trust. Adherence to nursing’s strong Code of Ethics is part of honoring this social contract.
Nurses practice professional regulation through a Board of Nursing legally charged with setting standards for education and practice and holding the profession accountable for the same. Nurses, as well as consumers, govern the BON and carry out these functions. It would be detrimental to nurses and the public if another profession, e.g. medicine, were to be appointed to regulate nursing. Maintaining autonomy is a crucial part of self-regulation.

REGULATORY APPROACHES

Changes have been implemented to streamline and lessen occupational licensure in Texas. For example, in 2015 SB 202 moved regulation of four health occupations (medical physicists, radiologic technologists, perfusionists, and respiratory care practitioners) from the Department of State Health Services to the Medical Board. In 2017, Texas abolished 26 required credentials—from bingo unit managers, to temporary licenses for dietitians, audiologists, and speech-language pathologists. SB 37 passed in 2019 and prevents action against an occupational license if the licensee defaults on a student loan. A proposal to delicense plumbers that same year failed to pass.

Regulatory standards are assessed periodically to assure the “least restrictive regulatory solution.” Sunset reviews are intended to serve this function in Texas and other states. Reevaluating the necessity of licensure and restrictions to practice can facilitate the removal of barriers that limit access to certain occupations by disadvantaged groups and the ability to practice across state lines.

Proposals to move the regulation of nursing to another agency or to deregulate the profession could impair nurses’ authority over their profession and threaten the safety and quality of nursing practice, potentially affecting the safety of all Texans.