

**A Comparative Analysis of Selected Health  
Care Professional Regulatory Requirements in Texas  
and the Canadian Provinces: Professional  
Mobility and Free Trade**

**BY**

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## CHAPTER I -- INTRODUCTION

The sun rises daily. Bureaucrats go to work in the states and provinces of North America. Licensing agencies receive applications, qualify applicants, give examinations, issue licenses, receive complaints, and take disciplinary action. The regulatory work appears to function on a placid lake. But as life goes on in the states and provinces, a tidal wave of change is on the horizon. The United States and Canadian federal governments have enacted a free trade agreement (FTA) that will bring enormous changes to the professional regulatory community. The FTA in effect nationalizes some police powers reserved to the states and provinces. The North American Free Trade Agreement (NAFTA) if ratified by Canada, Mexico, and the United States will bring even greater change in the regulatory community.

Article 1403 of the U.S.-Canada Free-Trade Agreement of Jan. 2, 1988 (P.L.100-449, Sept. 28, 1988) states the parties recognize measures governing licensing and certification of nationals providing covered services should relate principally to competence or the ability to provide the covered services. Each party must also assure that licensing measures do not discriminate against the other party's access to licensing. The parties further agreed that they will encourage mutual recognition of licensure requirements for the provision of covered services.

Chapter 15 of the FTA provides for the temporary entry of business persons on a reciprocal basis and establishes transparent criteria<sup>1</sup> and procedures for entry. Business persons are divided into four categories: business visitors; traders and investors; professionals; and intra-company transferees. The professions are set out in a schedule that identifies 49 professions that qualify as professional business activities for the purpose of temporary entry into Canada or the United States. Many of these professionals must be licensed to perform the covered service in a state or province.

The regulatory community must examine its licensure requirements to determine if discriminatory criteria exist to establish trade barriers and to compare the requirement standards for covered professions.

This research project will describe the licensing requirements for six selected health care professionals identified in the FTA that are regulated in Texas. The professions selected were physicians, dentists, registered nurses, social workers, psychologists, and dietitians. An analysis of the enabling regulatory statutes of each profession will be conducted to determine the similarities and differences between Texas and Canada in the requirements for obtaining a license in the selected professions.

All Canadian provinces were asked to identify regulated professions and to provide applicable statutes. The Canadian regulatory bodies responded with statutes, and in some

cases, lengthy letters to explain their system and/or impending changes. Studies have identified education, training, examination, and moral character as common license eligibility requirements. These categories will be used to complete a content analysis on the selected laws of Canada and Texas.

In the U.S., regulatory functions are delegated to agencies by the legislature. In Canada, this regulatory function is delegated to the private sector using professional associations to qualify practitioners and enforce standards of practice. This delegation represents a basic difference in the regulatory philosophy of the two countries. The U. S. and Texas Constitutions prohibit this type of delegation to the private sector. Outside of this basic difference in regulatory schemes, the professions are regulated by statute whether in Texas or the 10 Canadian provinces.

Research on licensure laws and programs is limited. Governmental regulatory activities seldom change over the years; therefore, recent research is not found in professional publications. As the FTA is implemented, research on the agreement's impact and implementation is beginning to appear. Most information on the agreement is in the popular press and not professional journals. The articles do report similar themes and have face validity.

The findings by profession will be presented in table and narrative form. Analysis of the data will determine if

differences exist in the education, experience, examination, and moral character qualifications in the occupations selected. NAFTA requirements will be identified and examined in light of future policy implications for professional regulators as national barriers become transparent.

<sup>1</sup>A professional is allowed to offer his or her services in a country other than the one in which he or she obtained his or her diplomas and authorization to practice without any discrimination. Regulatory standards must be based on competence; and not constitute a hidden barrier to the provision of a service across the border.

## Chapter II -- Literature Review

While investigating the literature relating to the credentialing of individuals in Canada and the United States, it became evident that governmental bodies regulate occupations by establishing education requirements; establishing licensing requirements; and enforcing the law, rules, and regulations pertaining to the profession. Most occupational regulation occurs at the state and province level in the two countries signing the FTA. The review of literature in this chapter examined these controls to determine the common requirements for license issuance in regulated occupations. It also documented the history of the U.S.-Canada FTA and specifically, the sections related to the free movement of professionals between Canada and the United States.

### Background on Trade

After World War II, all the industrialized nations sought to end trade discrimination, to reduce tariffs gradually based on the most-favored-nation-principle, and to restore multilateral trade. The emerging economic and political orders, however, led to the Cold War. These hostile relationships resulted in two economic systems - one based on capitalism and one based on Marxism. Trading partnerships developed along those two systems. The Western countries created the General Agreement on Tariffs and Trade (GATT) as a forum for trade negotiations and resolution of trade disputes (Holliday, 1990). More recently changes in

world trading patterns are reflected in the emergence of regional trade blocs. The blocs revolve around the European Community, North America, and the Pacific Rim (Lynch and Sekwat, 1991). Holliday (1990) states many critics feel GATT is flawed because dispute resolution is slow, and the rules are not effective in several areas and not applied to many kinds of trade such as agricultural products, textiles and apparel, and services. U.S. trade negotiators have pursued multilateral agreements to promote American trade goals outside the Uruguay Round of GATT. This policy led to conclusion of free trade agreements with Israel and Canada.

Nanto (1988) wrote that American's preeminent role in world economic affairs resulted in the United States' trading interests receiving a lower priority than strategic consideration and political objectives abroad. Now, U.S. industry is less tolerant of sacrificing export sales for national policy gains. Market forces and trade negotiations cause trade barriers to fall slowly. Access to market area in services was added to industry's demands to level trade playing fields. Policy disputes between the President and Congress have been acute. Trade policy questions remain unresolved. The policy issues include the process of making trade policy, the government's role in enhancing U.S. industrial competitiveness, and the effect of macroeconomic policies on trade relations (Nanto, 1988).

The traditional debate over the advantages of free trade versus protectionism continues. Protectionist



advocates argue protection is warranted to protect infant industries, safeguard national security, maintain jobs, and pursue other economic, political, and social goals. Free trade advocates argue trade barriers distort production and consumption patterns, lead to inefficient resource use, and reduce economic growth (Holliday and Wilson, 1987).

#### History of U.S.-Canada FTA

The United States and Canada have had an on-again-off-again trade relationship for over 120 years (Fry and Radebaugh, 1988). Morici (1991) wrote that the government of Prime Minister Pierre Elliott Trudeau in the 1970s committed itself to reducing tariffs in the Tokyo Round of the GATT talks. His government then embarked on an industrial policy to counteract the effects of tariff cuts, to modernize manufacturing and reorient to high technology pursuits, and to circumscribe the influences of American multinationals on Canadian development. To accomplish the latter, aggressive screening and performance standards for new direct foreign investment were instituted. The policies failed on two counts: 1. Canadian manufacturing did not improve its competitiveness; and 2. Relations with American multinational corporations and the United States government soured because of Canadian attempts to buy back the oil and gas industry and to regulate American investment. In 1981 and 1982, 5.4 billion Canadian dollars in direct foreign investment left the country.

The United States brought complaints against Canadian trade practices to GATT. Canadian exports also became the target of U.S. protectionist activities. Duties and quotas were imposed on subsidized products and on goods that were less expensive to produce in Canada (Morici, 1991).

The 1984 election of Brian Mulroney as Prime Minister led to a reversal of this trend. The national energy policy was reversed, subsidies curtailed, and talks for a free trade agreement with the United States were initiated. The U.S. entered the talks to eliminate higher Canadian tariffs, lock in reforms to foreign investment and energy policies, and resolve some industry-specific disputes. Canada saw the agreement as essential to securing guaranteed access to U.S. markets for Canadian industries (Morici, 1991). On January 1, 1988, Prime Minister Mulroney and President Ronald Reagan concluded the FTA after 18 months of bilateral discussion (Fry and Radebaugh, 1988).

Wilson (1988) stated the free-trade agreement has three main thrusts:

- \* The elimination of tariffs.
- \* A series of codes (or chapters) covering specific trade issues such as agriculture, energy, automotive trade, investment, services, government procurement, safeguards, and rules of origin.
- \* A unique dispute settlement procedure in which a binational panel will, on request, determine whether or not countervailing and antidumping actions are consistent with domestic law.

The agreement was designed to achieve a gradual elimination of most trade restraints between the U.S. and

Canada and to provide a legal framework for the reduction of the remaining barriers. The objectives of the agreement included:

1. elimination of tariffs;
2. reduction of most non-tariff barriers, especially federal and provincial/state non-tariff barriers;
3. liberalization of investment practices in manufacturing and service industries;
4. development of rules for regulation of international trade in the service sector;
5. attention to difficult issues of subsidies which are often a source of disagreement;
6. adoption of copyright regulations;
7. prohibition of most trade restriction on energy related goods; and
8. removal of discriminatory pricing and listing practices on alcoholic beverages.

The United States and Canada have the largest bilateral trade relationship in the world. Trade in goods and services exceed \$150 billion annually. The trade in services provisions represents the frontiers of international commercial policy. The negotiations focused on regulations that constituted trade barriers and sought to eliminate them (Fry and Radebaugh, 1988). Smith (1987) noted one sixth of the value of bilateral merchandise traded was in services. Laws or regulations that discriminate or prohibit service transactions with foreign firms are the most explicit

barriers to service trade. Two provisions of the agreement address this concern: 1. Establishment of principles governing trade in services; and 2. Reduction in barriers to temporary business travel between the U.S. and Canadian border (Wilson, 1988).

#### FTA Article 1402

In Article 1402, the two governments agreed to extend national treatment to the providers of specified commercial services in Annex 1408 (Figure 1). Canadian and U.S. providers of the listed services must be treated equally. If a country chooses to treat providers of one service differently than does the other country, it will be acceptable as long as it does not discriminate between Canadians and Americans. Each government remains free to decide whether or not to regulate or how to regulate the professional or service (Fry and Radebaugh, 1988).

Figure 1.

**Schedule 2  
to  
Annex 1502.1**

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>• accountant</li> <li>• engineer</li> <li>• scientist               <ul style="list-style-type: none"> <li>◦ biologist</li> <li>◦ biochemist</li> <li>◦ physicist</li> <li>◦ geneticist</li> <li>◦ zoologist</li> <li>◦ entomologist</li> <li>◦ geophysicist</li> <li>◦ epidemiologist</li> <li>◦ pharmacologist</li> <li>◦ animal scientist</li> <li>◦ agriculturist (agronomist)</li> <li>◦ dairy scientist</li> <li>◦ poultry scientist</li> <li>◦ soil scientist</li> </ul> </li> <li>• research assistant<br/>(working in a post-secondary educational institution)</li> <li>• medical/allied professional               <ul style="list-style-type: none"> <li>◦ physician (teaching and/or research only)</li> <li>◦ dentist</li> <li>◦ registered nurse</li> <li>◦ veterinarian</li> <li>◦ medical technologist</li> <li>◦ clinical lab technologist</li> <li>◦ psychologist</li> </ul> </li> <li>• scientific technician/technologist <sup>2</sup></li> <li>• disaster relief insurance claims adjuster <sup>3</sup></li> </ul> | <ul style="list-style-type: none"> <li>• architect</li> <li>• lawyer</li> <li>• teacher               <ul style="list-style-type: none"> <li>◦ college</li> <li>◦ university</li> <li>◦ seminary</li> </ul> </li> <li>• economist</li> <li>• social worker</li> <li>• vocational counselor</li> <li>• mathematician (baccalaureate)</li> <li>• hotel manager (baccalaureate and 3 years experience)</li> <li>• librarian (MLS)</li> <li>• animal breeder</li> <li>• plant breeder</li> <li>• horticulturist</li> <li>• silviculturist (forestry specialist)</li> <li>• range manager (range conservationist)</li> <li>• forester</li> <li>• journalist (baccalaureate and 3 years experience)</li> <li>• nutritionist</li> <li>• dietitian</li> <li>• technical publications writer</li> <li>• computer systems analyst</li> <li>• management consultant (baccalaureate, or equivalent professional experience<sup>1</sup>)</li> </ul> |
|---|--|

**Source:**

The U.S.-Canada Free-Trade Agreement of January 2, 1988  
(P.L. 100-449, September 28, 1988)

#### FTA Article 1403

Article 1403 states either government remains free to license or certify providers of specified services, but the requirements must not be a discriminatory barrier for either country's citizens. Changes in existing regulations for covered services must not become more discriminatory (Fry and Radebaugh, 1988).

#### FTA Article 1406

This article allows either country to deny benefit of these chapters if it can be documented that a service is provided by a national of a third country (Fry and Radebaugh, 1988).

#### Temporary Entry for Business Persons

The FTA requires immigration regulations be amended or adopted to ensure that business persons have access to each other's markets to sell goods and services and to supply after sales services to their customers. The temporary entry provisions allow professionals to qualify for entry if the business person meets the general entry requirements (health and safety), indicates the nature of his or her business, and is a professional listed in Schedule 2 of Annex A of the agreement (Fry, 1988).

Section 1184 of the United States Immigration and Nationality Act sets out the requirements for admission of non-immigrants. Generally, aliens admitted under this section are authorized to remain in the States as a non-

immigrant visitor for a period not to exceed 90 days from the admission date. Subsection (e) of this section sets out the provisions of the U.S.-Canada Free-Trade Agreement for persons applying for admittance under Annex 1502.1 Part C. This section relates to professionals seeking admission for business activities and authorizes the Attorney General to adopt rules to implement the section (8 U.S.C. 1184, 1988).

The Immigration and Naturalization Service adopted federal regulations to implement the law at 8 Code of Federal Regulations Chapter 1 Part 214. Canadian citizens seeking entry under the FTA provisions will be admitted upon presentation of proof of Canadian citizenship, a description of the purpose of the entry, and evidence that he or she is engaged in the occupation or profession found in FTA Schedule 1 of Annex 1502.1. Schedule 2 to Annex 1502.1 of the FTA sets license requirements for some professions and minimum education standards for the remainder. Canadian citizens admitted under this provision receive a Service Form I-94 with a TC symbol for a period not to exceed one year. The I-94 will be marked "multiple entry". Canadian citizens may apply for an extension of stay with letter(s) from the U.S. employer(s) confirming the continued need for the service(s) (8 CFR, 1991).

#### Professional Regulation

As new occupations explode in the global market so does the regulation of the individuals who practice the occupations or professions. These practitioners band

together to aid the profession by encouraging and recognizing high professional and individual achievement. The profession starts with forms of self-regulation and progresses to government regulation (Jacobs, 1983).

In the 13th century, Frederick II, Emperor of the Holy Roman Empire, enacted the first medical practice law that prescribed education, training, and examination requirements, punished offenders, set fees, and prevented physicians from owning apothecary shops. Ancient Egypt and Greece differentiated between curers of the masses and curers of the elite. Europe also had a dichotomy of medical practice - witches practiced on commoners and university-trained physicians treated the ruling class. Licensing came into vogue to restrict the practice of medicine to university-trained doctors (Gross, 1987).

Past research detailed the development of licensing regulations through the merchant, craft, and professional guilds of Europe. The guilds were designed to protect the economic interest of their members, to provide training, and to prescribe the performance of its members (Council of State Governments, 1952; & Gross, 1978). The craft and merchant guild systems broke down in the 16th century because of the interaction of powerful economic and political forces. The professional guilds maintained power and continued to formulate standards, control membership, and enforce an inspection system (Council of State Governments, 1952).



In the United States, only the professional guilds or societies succeeded. These societies turned to government for assistance in enforcement through licensing arrangements. From 1773 to 1800, a flood of states passed medical practice acts leaving the societies no longer the administrative agencies in charge. Nineteenth century America, though, saw virtually all the professions deregulated as the population grew, the frontier expanded, and popular health movements developed. At the end of the Civil War, there were no effective licensing systems in operation (Council of State Governments, 1952). By the 1870s, the professional associations had begun promoting the relationship between competence and licensing. This link became the basis for society's support of licensing statutes (Gross, 1978).

Weller (1977) found that dentists were the first profession to be regulated in Texas through district society offices. The Texas State Board of Dental Examiners was created in 1897 to centralize the licensing function. The Texas Legislature set up licensing agencies for teachers in 1905, doctors and pharmacists in 1907, nurses and lawyers in 1909, and veterinarians in 1911. Most cities also issue licenses in Texas, but they are generally precluded by statute from regulating occupations licensed by the state.

The licensing movement sought to deny admittance to the unqualified using the police power of the state for enforcement. In the health care fields, licensing was seen

as a mechanism to combat quackery (Shimberg, Esser, and Kruger, 1973).

Most licensing historians report licensing laws were passed to protect the public from certain occupations closely associated with the public health, welfare, and safety. The public is not equipped to judge if a professional is qualified by training or experience to perform the services. Therefore, the regulatory board would identify practitioners who had the minimum amount of competence at the time his or her license was granted (Council of State Governments, 1952; Derbyshire, 1978; Fortune & Associates, 1985; & Shimberg et al, 1973). One researcher expanded the purpose of licensure to include protection of the public from the untrained, the unqualified, and the incompetent (Schneider, 1987).

Some researchers disagreed with this rationale for regulation found in the professional licensing literature. Wolfson, Trebilcock, and Tuohy (1980) theorized that unregulated activities fail to achieve social objectives, i.e. a market failure exists. Two major market failures in professional services differentiate it from other markets and may call for regulatory intervention. The failures are service information problems and pervasive externalities. A competitive market is not present if consumers cannot judge the value of the services offered by the market. Externalities occur when some of the costs of service provision are not borne by the producers (professionals) or

when some benefit of what is consumed does not accrue to consumers (clients). They argued market failure provides the most important arguments for regulation to protect the public interest because excess service costs reduce the total resources available for economic activity.

Across the United States, legislatures have passed regulatory statutes that place the responsibility for implementation of the law with boards made up of practitioners in the regulated occupation. Most statutes allow the administrative agency to develop rules to implement the law, issue licenses, and take disciplinary actions (Council of State Governments, 1952; Derbyshire, 1978; Fortune et al, 1985; Schneider, 1987; & Shimberg, 1982).

"Licensure is the process by which an agency of government grants permission to persons to engage in a given profession or occupation by certifying that those licensed have attained the minimal degree of competence necessary to ensure that the public health, safety, and welfare will be reasonably protected" (Shimberg, 1984). Weller (1977) defined occupational licensing as "the issuance of any certificate, registration, or license based on specific individual prerequisites in terms of education, experience, examination or personal characteristic which authorize the holder to conduct an occupation or engage in a profession not otherwise permitted by law".

In a typical licensing statute, the applicant must satisfy education and training requirements, successfully complete an examination, and possess satisfactory personal characteristics. These requirements are customarily set out in the enabling legislation, but may also be adopted as administrative rules (National Commission for Health Certifying Agencies [NCHCA], 1979). Weller (1977) found five general categories of qualifications:

1. personal characteristics;
2. education and experience;
3. examination;
4. reciprocity and endorsement; and
5. continuing education, relicensure, and grandfathering.

Shimberg et al (1973) found only three "legitimate" licensure requirements. The requirements relate to training, experience, and competency demonstration. Later research also found requirements for job related experience, citizenship, and residency (Shimberg, 1982). Studies of physician licensing requirements found three general prerequisites for applicants: good moral character; successful completion of an approved medical school curriculum; and successful completion of a medical licensing examination (Cramblett, 1983). However, Derbyshire's (1978) examination of state medical practice acts found a large variance in assessment of these standards. The Council of State Governments (1952) found wide variation in license

requirements in the same occupation from state to state. Common to those, however, were personal requirements (age and morals), formal education, periods of service as an apprentice, and examinations.

#### Canadian Regulation

Canada appears to have reduced licensure variations among occupations within the provinces. Wolfson et al (1980) reported that at the Canadian federal level amendments to the Combines Investigation Act (S.C. 1974-75-76 c. 76) were meant to remove barriers to competition among the professions. Different provinces have reviewed and changed the licensing process. All provinces except Quebec recognize the examination given by the Medical Council for physician applicants (Derbyshire, 1978). Each province operates independently much as the individual states do in the United States. Therefore, there are some differences in occupational regulation and the requirements from province to province. Neither Canada nor the United States has uniform federal level licensing laws.

#### Regulatory Criticisms

Several authors found that licensees are less mobile than nonlicensed practitioners with comparable educational requirements and income characteristics. Artificial barriers are created when licensing boards lack endorsement and reciprocity agreements. These barriers restrict both mobility and income in many professions (Derbyshire, 1978; Shimberg, 1982; Shimberg et al, 1973; & Weller, 1977). Some

studies found that restrictive licensing practices have a statistically significant effect on interstate migration even after accounting for income, age, and sex (Shimberg, 1982).

Holen (1965) found a great deal of variance among state license regulations primarily because the laws vary widely. She reported licensure laws have inherent professional barriers to interstate mobility absent in unregulated professions. An analogy was drawn between the effect of license restrictions on professional mobility and the restriction of trade in commodities brought about by tariffs and quotas. Occupational restrictions between states are closely akin to tariffs between states.

Shimberg et al (1973) reported licensure reciprocity agreements are essentially bilateral compacts between states. The authors identified the need for federal intervention to reorganize licensing's role in manpower utilization and to remove trade barriers.

Olm (1992) recently wrote that when the free trade agreements sweep away international trade barriers in North America, the negotiators need to negotiate free trade inside the United States. All states erect trade barriers under various names to shelter their citizens from competition from the rest of the country. These barriers include widespread professional and occupational licensing. Interstate trade barriers are forbidden by the Commerce Clause of the U. S. Constitution, but the Supreme Court

hasn't applied it rigorously to provision of services. He concluded America would benefit from elimination of both international and interstate barriers.

Critics content licensing mechanisms artificially impose unduly restrictive licensure qualifications which deny access to otherwise qualified applicants and impede interstate mobility of practitioners. The patchwork system of regulation by individual states and provinces may also contribute to confusing variations in levels of competence.

#### Texas-Canadian Trade

The Comptroller of Public Accounts (1991) reported than Texas exported about \$3.2 billion worth of goods to Canada while Canada sent \$2.3 billion in goods to Texas. Despite this trade exchange, many firms on both sides of the border haven't availed themselves of FTA benefits (Hockenyos, 1991).

#### Summary

While previous studies have provided evidence of free trade agreements, it has become apparent that trade blocs have emerged to counter the effects of pre-established agreements. The barriers to effective trade agreements have occurred internationally between countries, and even between states and provinces. In the professional realm, various occupational regulatory practices have met with both acceptance and agreement, as well as with resistance. No research was found that delineated the similarities and

differences in the regulatory requirements between Texas and Canada for the occupations identified in this study. This lack of published research reinforces the need for this analysis.



### Chapter III -- Methodology

This applied research project is a descriptive study of the requirements for licensure in six health care professions in Texas and the Canadian provinces. Document analysis of public records and written correspondence was the primary method of gathering data.

#### Document Analysis

Document analysis allows the researcher to conduct a systematic examination of any form of communication. The communications may include books, laws, newspaper, speeches, and constitutions (Babbie, 1989).

Babbie attributes several advantages to content analysis as a methodology. It is economical in terms of time and money because most documents are easily accessible. It has additional safety advantages because the documents are available for recoding if error is suspected. It is also an unobtrusive research method that has no effect on the subject being studied. Adams and Schvaneveldt (1985) state documents are similar to the properties of physical sciences in that they are static in nature.

Adams and Schvaneveldt (1985) also point out that content analysis can be either quantitative or qualitative in nature. The goal in quantitative analysis is to determine the frequency or duration of the events. Qualitative analysis seeks to understand the subjective content.

A disadvantage to content analysis is its limitation to the study of recorded documents. Babbie (1989) contends, however, that the concreteness of the materials studied strengthens the likelihood of reliability.

In content analysis, the researcher reads or analyzes the content within the context of categories, rules, or guides established for the project. The purpose of the study, the nature of the material, and desired analyses determine the number and type of categories used in content analysis. "Once these categories are established, content analysis is a systematic process of locating works, phrases, ideas or messages that fit into the codes" (Adams & Schvaneveldt, 1985).

Merrian (1988) states the categories should reflect the purpose of the research, be exhaustive, be mutually exclusive, and independent.

#### Documents Used

This researcher obtained copies of the Texas and Canadian provincial statutes regulating the professions of dentists, dietitians, physicians, psychologists, registered nurses, and social workers. The categories used to classify the requirements for licensure were education, experience, examination, and moral character. Each document was analyzed for requirements in these categories. Both the Texas and Canadian laws followed a similar format that set out the scope of practice, role of the board or agency, applicant qualifications, and disciplinary measures.

All of the Canadian provinces responded to the researcher's request for documents. However, the responses did not always include data. Several administrators sent additional documents and letters to explain the regulatory process in their provinces.

### Interviews

A supplemental method of gathering information concerning the FTA was through interviews and professional conference presentations. Babbie (1989) states unstructured interviews is a conversation with a general direction that does not have a particular order or specific questions to be answered. This format allows flexibility to answer in more depth or to redirect the person's attention to relevant areas. The interviews were used to supplement the information available from the recorded documents.

Informal interviews were conducted with various Texas Department of Health professional staff concerning practical problems that may result from increased international mobility of professionals. Following a brief overview of the trade agreement provisions, the interviewees were asked to identify policy issues, regulatory problems, and related questions that might impact their programs upon implementation of the trade agreements.

This researcher attended the 1992 CLEAR annual meeting sessions on professional and occupational mobility in North America and Europe. Two sessions focused on NAFTA provisions and a third on the European Economic Community model. These

interactive sessions allowed conference participants to ask a wide range of questions of the "experts". Canadian and U.S. trade specialists who participated in the NAFTA negotiations were featured panelists.

This researcher along with the Executive Secretary of the Ohio dietetics board met with Toni Dick, International Trade Specialist, Office of Canada, U.S. Department of Commerce, to discuss NAFTA trade agreement provisions. The unstructured interview focused on entry requirements and implementation problems.

## Chapter IV-- Legal Setting

The purpose of this chapter is to describe the regulatory models used in the provinces and states. Regulatory boards are charged with protecting the public and preserving service quality. However, Canada and the U.S. use different regulatory models to achieve similar goals.

### Canada

The Canadian provinces regulate professionals through legislation that establishes a profession as self-regulatory. The statute creates a public or professional corporation or governing body whose mandate is to protect and serve the public interest. The governing body is provided with statutory responsibility to regulate the practice of its discipline and to govern its members according to the Act and regulations. In some provinces, these bodies have regulations that are reviewed by the provincial health ministry or a cabinet level ministry; others publish their bylaws in professional newsletters without oversight. The provincial governments use "title-reserving" acts<sup>1</sup> as well as practice acts<sup>2</sup> to regulate professionals.

The Ontario Provincial Legislature passed the Regulated Health Professionals Act, 1991 (RHPA) to establish a new structure for regulating health professionals. This legislation is based on the concept of controlling potentially dangerous acts. Thirteen categories of hazardous

acts will be restricted to regulate the health professions. Activities not designated as a "controlled act" will be in the public domain. Regulation under the profession-specific Acts include dentists, dieticians, nurses, physicians, and psychologists. Social workers are not regulated under RHPA. This regulatory model has acts that are regulated and titles that are reserved.

### Texas

In Texas, the legislature creates state licensing boards for certain professions where the unregulated practice has been determined to have potential harm to the public. These state agencies have executive, legislative, and judicial authority. Two regulatory schemes to govern professionals are employed: practice acts and title protection acts.

Both the U.S. and Texas Constitutions prohibit delegation of legislative and judicial powers to private associations. Case law appears to prohibit "privatization" of licensure as Canada provinces allow.<sup>3</sup> A 1992 Texas Attorney General Opinion No. DM-159 states that a recent statute that confers legislative authority on a private association contravenes article III, sec. 1 of the Texas Constitution. This prohibition in Texas of privatization is meant to protect the citizenry and to provide a consistent governing authority.

## Conclusion

While the regulatory models are different, the statutes analyzed follow a standard format. The laws establish a regulatory body, give it legislative and judicial powers, and set minimum qualifications for applicants to qualify in the profession (figure 2). In Canada, the professions have a self-policing role in addition to a regulatory role. Professional associations in the U.S. serve as trade groups to promote the profession. Regulatory matters are left to the state licensure boards.

<sup>1</sup>Title reserving or protection acts protect the professional title used. For example: "Licensed Dietitian".

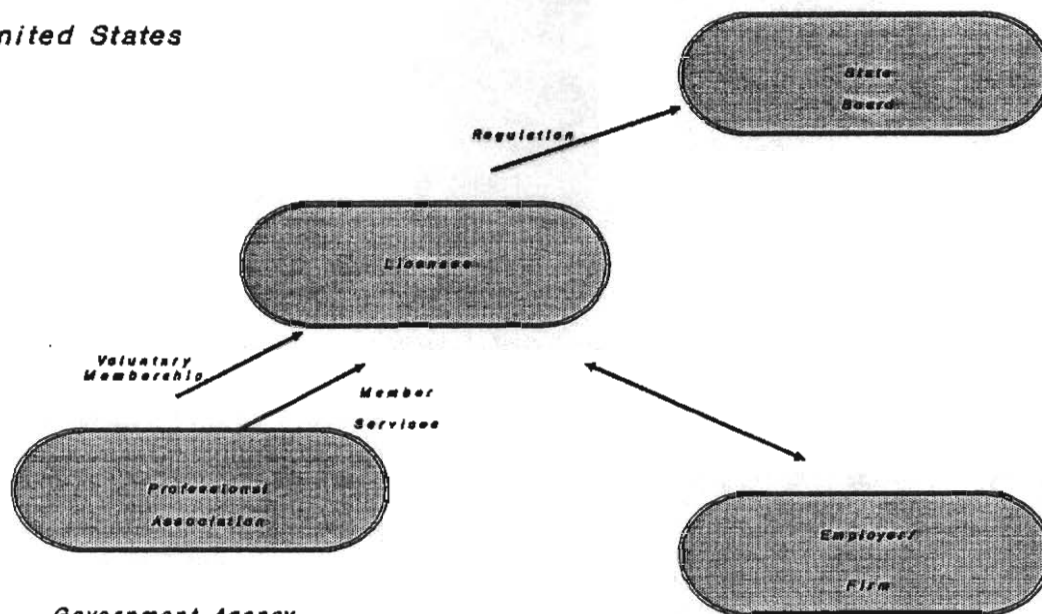
<sup>2</sup>Practice acts require anyone who practices within a defined scope of practice regardless of the professional title used to be licensed. For example: Procedures defined in medical practice acts must be performed by physicians.

<sup>3</sup>A.L.A. Schechter Poultry Co. v. United States 295 U.S. 495 (1935); Carter v. Carter Coal Company 298 U.S. 238 (1936); State v. Crawford, 177 p.360 (Kan. 1919); Eastern Fed. Corp. V. Wasson 316 S.E.2d 373 S.C. 1984; and News Printing Co. v. Borough of Totowa, S11 A.2d 139 (N.J. Super. Ct. Law DIV. 1986).

Figure 2.

## REGULATORY MODELS

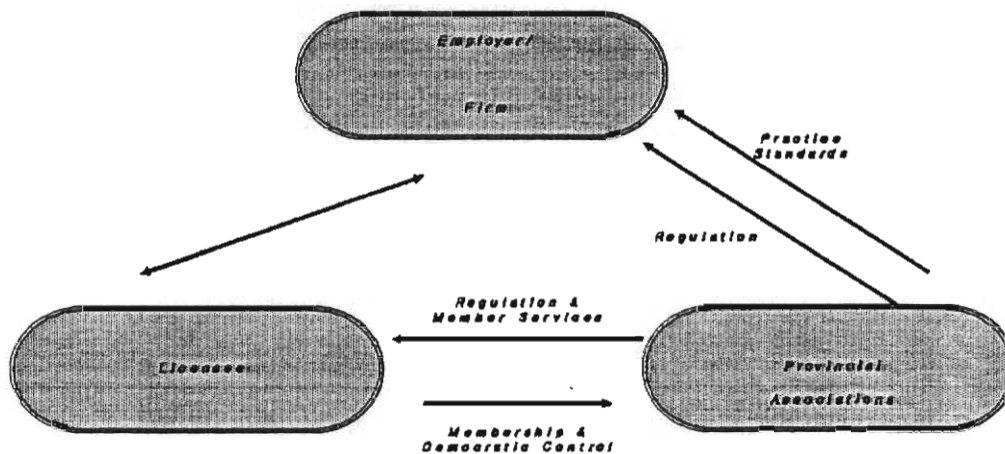
### United States



**Government Agency  
(Practice & Title Statutes)**

**Board Functions:** Admission, Regulation, Standards & Conduct,  
Professional Development, Statute Enforcement

### Canada



**Professional Society  
(Practice & Title Statutes)**

**Council/Association Functions:**  
Professional Development, Statute Enforcement  
Promote the Profession



## Chapter V -- Findings

This research project studies the licensure requirements for six health care professions in Texas and the Canadian provinces through an analysis of public records and written correspondence. The content analysis approach establishes the categories of education, experience, examination, and moral character requirements for licensure.

### Dentists

The Texas State Board of Dental Examiners requires applicants to graduate from a reputable dental college whose program is not less than four terms of eight months each. Applicants must be at least 22 years of age and present evidence of good moral character to qualify for examination prescribed by the Board.

The Canadian provinces delegate regulation of dentists to various provincial dental professional associations. The enabling legislation for Alberta, British Columbia, Manitoba, Newfoundland, Nova Scotia, Prince Edward Island, Quebec, and Saskatchewan associations sets minimum standards for applicants. New Brunswick delegates regulation to a professional association but allows that group to establish the requirements for licensure. The dental society in Ontario is developing standards to implement the new regulatory model at this time.

The Canadian provinces generally require a degree of dental surgery or dentistry acceptable to the individual Boards. The statutes in Manitoba, Nova Scotia, Quebec, and

Saskatchewan name specific dental schools located within the province although in some cases the Boards can accept equivalent dental degrees or proof of licensure in another province, state, or country. The Boards have varying authority to prescribe an examination or accept the National Dental Examining Board of Canada examination results.

The minimum age for applicants ranges from 18 to 19 years. Evidence of good reputation, moral character, aptitude, and ethics are required in some statutes. Others remain silent on this qualification. Only Newfoundland by statute requires dental applicants to have a working knowledge of the English language. Specific statutory requirements are shown in Table 5.1.

TABLE 3.1

## PROFESSION: DENTISTS

State/ Province	Education	Experience	Examination	Moral Character
Texas	Graduate of reputable dental college - equivalent of not less than 4 terms of 8 months each	--	Exam by Board	22 years of age Evidence of good moral character
Alberta	Degree of doctor of dental surgery from approved faculty of dentistry	--	Exam by National Dental Examining Board or Universities Co-ordinating Council	18 years of age Evidence of reputation & good moral character
British Columbia	Graduation of college or school of dentistry designated in the rules	--	Pass exam & certificate of qualification from examining board	Person of good character
Manitoba	Dental education approved by University of Manitoba	--	Exam by Senate & perform clinical treatment & procedures before examiner or certificate of qualification Nat'l Dental Examining Board of Canada	18 years of age Good moral character
New Brunswick	Private Association	--	--	--
Newfoundland	Complete course of study & hold degree in dentistry or dental surgery from university or school approved by Board or holds academic qualification set by regulations or passed exam set by regulations	--	--	Working knowledge of English language to practice dentistry in province
Nova Scotia	Hold certificate of qualification from Dominion Dental College of Canada or Nat'l Dental Examining Board of Canada or degree from Dalhousie University	--	--	19 years of age
Ontario	Under revision due to change in method of regulating professionals			
Prince Edward Island	Diploma from school of dentistry or evidence valid NDES of C certificate or recommendation by dean of dentistry school or licensing authority	--	Exam specified by Council	18 years of age 2 written evidences of aptitude, character & capability to become competent & ethical member of Association
Quebec	Doctorate in medicine from Quebec universities	--	--	--
Saskatchewan	Set by College of Dental Surgeons of Saskatchewan	--	--	--

## Dietitians

The Texas State Board of Examiners of Dietitians regulates dietitians in Texas. The dietitians' regulatory law is a title protection act that protects the titles "licensed dietitian" and "provisional licensed dietitian". The requirements for licensure are set out in the enabling legislation. Applicants must have a baccalaureate or post-baccalaureate degree with a major course of study in human nutrition, food and nutrition, dietetics, or food systems management. The Board may establish an equivalent major course of study by administrative rules. A preprofessional experience program that has been approved by the Board or the American Dietetic Association is required before applicants are eligible for writing the competency examination. The Board has authority to determine the fitness of applicants.

Dietitians are not regulated in British Columbia. Ontario has added dietitians as a self-regulating profession under RHPA and the requirements are under development by the professional association. The requirements for applicants in New Brunswick are set by the professional society and are not set out in the statute. Alberta, Manitoba, Newfoundland, Nova Scotia, Prince Edward Island, Quebec, and Saskatchewan require a bachelor's degree from an institution whose course content or degree is in dietetics, nutrition or specified by the Board. Several statutes defer to the course content requirements of the Canadian Dietetic Association. All

statutes but Quebec's set out professional experience program or internships approved by the Canadian Dietetic Association, a provincial dietetic association, or the Board. Alberta, Manitoba, Newfoundland, Nova Scotia, Prince and Edward Island allow applicants with master's or doctoral degrees to meet the experience requirements through teaching experience in the field as a college staff member. The statutes of Alberta, Manitoba, and Saskatchewan require examination by the Board or the UCC Professional Examinations Board in Dietetics. Two provinces require membership in the Canadian Dietetic Association. Four provinces require endorsements or evidence of good character and professional reputation.

The credentialing arms of the Canadian Dietetic Association and the American Dietetic Association have a reciprocal agreement that accepts educational and professional experience requirements of dietitians registered by the two associations. However, applicants must pass the competency examination before registration is granted by the partner association. Specific statutory requirements are shown in Table 5.2.

TABLE 3.2

## PROVISIONS: DIETITIANS

State/ Province	Education	Experience	Examination	Moral Character
Yukon	Baccalaureate or Post-baccalaureate degree with major course of study: human nutrition or food & nutrition or dietetics or food systems mgt. or equivalent major course of study approved by Board	Internship or preplanned professional experience program approved by Board or ADA	Competency exam	2 references by allied health professionals attesting to dietetic skill & professional standards of practice
Alberta	Baccalaureate degree in Home Economics with major in Foods & Nutrition from Univ. of Alberta	Dietetic Internship approved by CDA & Registration Committee of Alberta Registered Dietitian Assoc. or 2 year preplanned program approved by CDA & RCADA or masters or doctoral degree in foods, nutrition, food service admin. or allied discipline approved by majority of RDS	Exam by UCC Professional Examinations Board in Dietetics	--
British Columbia	Not Regulated	--	--	--
Manitoba	Education consistent with standards of education for dietetic students adopted by The University of Manitoba or "Bachelor's" or Doctoral degree that indicates academic credits & achievement levels in Board specified subjects	Dietetic Internship or successful completion of 2 years full-time planned experience in dietetics or nutrition attested to by advisor or with advanced degrees 1 year practical experience acceptable to profession	Exam set by Board	2 endorsements by active practicing or retired members
New Brunswick	Private Association	--	--	--
Newfoundland	Bachelor's or equivalent degree from university whose course content is approved by Council	Internship approved by Council or 3 years diversified experience in study & practice of nutrition or dietetics or 2 years experience in teaching a course in field as a full-time university staff member or masters in field & 1 year experience in study or practice acceptable to Council	--	Membership in Canadian Dietetic Association & evidence of good character & professional reputation
Nova Scotia	Bachelor's degree whose course content is approved by Board or bachelor's degree with additional courses approved by Board	Internship approved by Board or 3 years diversified experience in study & practice in field or allied subjects or 2 years teaching experience in field as college staff member or Master's degree in approved subject & 1 year experience or study approved by Board	--	Membership in Canadian Dietetic Assoc & evidence of good character & professional reputation
Ontario	Under revision due to change in method of regulation	--	--	--
Prince Edward Island	Bachelor's degree whose course content meets CDA requirements	Internship or 3 year diversified experience in approved area or 2 years experience in teaching in field as college staff member or Master's degree in acceptable area & 1 year experience	--	Evidence of good character & professional reputation
Quebec	Baccalaureate in dietetics or nutrition from specified Quebec universities	--	--	--
Saskatchewan	Member of CDA or membership of incorporated body in another province of country if standards are equivalent to set or graduate of school or college approved by Board	Experience as dietitian acceptable to Board	Pass exam by University of Saskatchewan	--

## Physicians

The Texas Medical Practice Act requires applicants to complete 60 semester hours of college courses acceptable for a baccalaureate degree at the University of Texas before graduation from a medical school or college approved by the Texas State Board of Medical Examiners. Applicants must complete a one year program of medical training approved by the Board before sitting for an examination given in the English language. The law also requires applicants to establish good professional character and be at least 21 years of age.

Alberta, Manitoba, Nova Scotia, and Saskatchewan statutes allow applicants to present a certificate of registration from the Canadian Medical Register (Canada Medical Act) to meet the educational requirements for registration or licensure. These provinces also accept medical school diplomas from institutions approved by the individual Boards as do the provinces of British Columbia, Newfoundland, Prince Edward Island (PEI), and Quebec. New Brunswick statutes delegate authority to a private association to determine the requirements for physicians. The qualifications in Ontario are under revision to comply with the RHPA.

The laws from Alberta, Manitoba, Newfoundland, Prince Edward Island, and Saskatchewan require post graduate training or internship. The length varies from 12 months in PEI and Manitoba to two years in Alberta. Newfoundland and

Saskatchewan require post-graduate training of an unspecified length.

Examination requirements vary by province. Manitoba, PEI, and Saskatchewan accept national examinations while Alberta and Newfoundland specify examinations to determine fitness and competence or capacity. The medical practice statutes from Nova Scotia and Quebec are silent regarding examination requirements. British Columbia, Nova Scotia, and Saskatchewan have character requirements set out in the statute. PEI requires applicants to be provincial residents and be fluent in English or French. The findings are presented in Table 5.3.



TABLE 5.3

## PROFESSION: PHYSICIANS

State/ Province	Education	Experience	Examination	Moral Character
Texas	60 semester hours of college courses acceptable at UT on BA or BS degree and Graduate of medical school or college approved by Board	1 year program of medical training approved by Board	Board exam given in English language	Good professional character  Must be 21 years of age
Alberta	Degree in medicine from university in Alberta or hold certificate of registration from Medical Council of Canada	2 years approved post graduate training	Exam by Universities Co-ordinating Council	--
British Columbia	Diploma of qualification from approved college or school of medicine	--	Pass exam of fitness & capacity	Evidence of ID, experience, good professional conduct & character as a citizen  --
Manitoba	Graduate degree in medicine by Univ. of Manitoba or school of medicine approved by Medical Council of Canada or AMA in USA or specified countries	12 month rotating internship in approved hospital	Pass exam to register on medical register for Canada under the Medical Practice Act (Canada)	--
New Brunswick	Private Association	--	--	--
Newfoundland	Education prescribed by Board before medical school and complete course of studies & hold medical degree from university or school of medicine approved by the Board	Internship or residence training required by Board	Exam certifying fitness & competence	--
Nova Scotia	Diploma from college or school of medicine recognized & approved by Board or may admit medical practitioner registered with Medical Council of Canada or National Board of Medical Examiners of USA	--	--	Evidence of identification, experience, good professional conduct & character as a citizen
Ontario	Under revision due to change in method of regulating professionals	--	--	--
Prince Edward Island	Medical degree from Canadian or US medical school	12 month rotating internship approved by CAPPTF or 2 year program approved by Canadian College of Family Physicians or year 1 of program approved by Royal College of Physicians & Surgeon of Canada	Exam of Medical Council of Canada	Resident of PEI Fluent in English or French
Quebec	Doctor of Medicine from specified Quebec universities	--	--	--
Saskatchewan	Certificate of registration on Canadian Medical Register (Canada Medical Act) or graduate approved medical program	Satisfactory post-graduate training	Exam of Federation of State Medical Board of US or NBOME of US	Good character & standing as practitioner

## Psychologists

Texas psychologists are required to possess a doctoral degree in psychology from an regionally accredited educational institution and two years of supervised experience in the field of psychological services to be eligible for examination for licensure. One year of the professional experience must be after the doctoral degree was conferred. The statute also requires applicants to establish good moral character and have reached the age of majority. Regulatory authority is assigned to Texas State Board of Examiners of Psychologists.

The provinces of Alberta and Quebec allow psychologists to be licensed with a master's degree. Manitoba, Newfoundland, Nova Scotia, Prince Edward Island, and Saskatchewan set the minimum educational requirements at the doctoral degree level. The professional experience requirements range from 900 hours in Alberta to two years in Manitoba, Nova Scotia, and PEI. The examination requirements mandate written and oral examination as well as work samples as determined by the Boards. Character requirements were found only in the Alberta statute. Statutory requirements are in Table 5.4.

TABLE 5.4

## PROFESSION: PSYCHOLOGIST

State/ Province	Education	Experience	Examination	Moral Character
Texas	Doctoral degree in psychology from regionally accredited educational institution	2 years supervised experience in field of psychological services, 1 year of which must be after doctoral degree was conferred	Board exam	Good moral character & age of majority
Alberta	Master's degree from approved program in psychology	900 hours supervised practice within 1 year	Exam for professional practice in psychology & oral exam	Character requirements set by Board
British Columbia	Set by College of Psychologists of British Columbia	--	--	--
Manitoba	Doctoral degree from institution approved by Univ. of Manitoba with primarily psychological content or meet requirements of psychology dept. conferring degree or educational standards set by American Assoc. of State Psychology Boards	2 years full time supervised professional practice of psychology; 1 year may have occurred at pre-doctoral stage & supervisor must be registered	Combination of written, work samples, and/or oral exams or Examination of Professional Practice in Psychology (USA)	--
New Brunswick	Private Association	--	--	--
Newfoundland	Doctoral degree in psychology from institution approved by Board or equivalent in content and training acceptable to Board	1 year professional experience in field of psychology after doctoral degree awarded	Exam prescribed by Board	--
Nova Scotia	Doctoral or equivalent degree in psychology acceptable to Board or may waive requirements if diploma from American Board of Examiners in Professional Psychology or is registered as psychologist with province, state or country with equivalent standards	2 years professional experience in field of psychology acceptable to Board; 1 year must be after doctoral degree granted	Exam prescribed by Board	--
Ontario	Under revision due to change in method of regulation	--	--	--
Prince Edward Island	Doctoral degree in psychology or program closely related to discipline of psychology or Doctoral or Master's degree meets criteria of Council of Provincial Assoc. of Psychologists	2 years of professional psychological experience with supervision or structured advisory consultation	Exam or interview	--
Quebec	Master's or Doctoral degree from specified Quebec universities	--	--	--
Saskatchewan	Doctoral degree with studies primarily psychological as determined by Univ. of Saskatchewan	--	Exam by Univ. of Saskatchewan	--

### Registered Nurses

The Texas Nurse Practice Act required applicants to complete at least two academic years and not more than four calendar years at an accredited school of nursing and education program. The examination is prescribed by the Board of Nurse Examiners.

Canadian requirements for registered nurses range from basic nursing education programs of unspecified length to baccalaureate degrees in nursing from specified universities. Alberta, British Columbia, Manitoba, Newfoundland, Prince Edward Island, and Saskatchewan specify completion of basic nursing education programs approved by the respective councils. Statutes in New Brunswick and Nova Scotia allow the requirements to be established by the professional association in the province. Quebec requires completion of a baccalaureate degree in nursing from specified provincial universities. Only the PEI statute specifies that applicants must perform the functions of a nurse under supervision of a qualified instructor.

Three provinces - Alberta, Manitoba, and PEI- use the examination offered by the Canadian Nurses Association Testing Service. The British Columbia, Newfoundland, and Saskatchewan statutes prescribe examinations by the council. Only Alberta requires applicants whose first language is not English to reach minimum scores on English language examinations. Manitoba also requires applicants to be of sound physical and mental health. Table 5.5 shows the

statutory requirements for registered nurses by state and province.

TABLE 3.5

PROFESSION: REGISTERED NURSE

State/ Province	Education	Experience	Examination	Moral Character
Texas	At least 2 academic years & not more than 4 calendar years at accredited school of nursing & education program	--	Exam prescribed by Board	--
Alberta	Basic nursing education program at approved school of nursing	--	Exam Canadian Nurses Assoc. Testing Service or Nat'l League for Nursing State Board test pool. If English not 1st language, score 550 on TOEFL or 200 on TSE.	--
British Columbia	Graduate of approved school of nursing not more than 3 years before application or be or have been registered in jurisdiction outside BC	--	Pass Board exam	Provide evidence of good character & fitness to engage in practice of nursing
Manitoba	Graduate of nursing program approved by NARN Board	--	Pass Canadian Nursing Assoc. Testing Service comprehensive exam	Sound physical & mental health
New Brunswick	Private Association	--	--	--
Newfoundland	Graduate recognized school of nursing in province or present acceptable proof of registration & competency equivalent to Act	Must be 18 years old before pre-clinical training period & completed the Grade XII course of Dept. of Education of province	--	--
Nova Scotia	Requirements set by Registered Nurses Assoc. of Nova Scotia	--	--	--
Ontario	Under revision due to change in method of regulation	--	--	--
Prince Edward Island	Graduate of school of nursing & has all prescribed subjects of school of nursing	Perform functions of a nurse under supervision of qualified instructor	Exam prepared by CHATS	--
Quebec	Baccalaureate in nursing from specified Quebec universities	--	--	--
Saskatchewan	Complete basic nursing education program in Saskatchewan & approved by Council or education outside province recognized as equivalent	--	Exam prescribed by Council	--

## Social Workers

Texas statutes require social workers to have a doctoral or masters' degree in social work to be eligible for certification. The Council for Social Work Certification is authorized to examine candidates using an examination prepared by the Department of Human Services. The statute is silent on experience and character requirements.

Social workers are not regulated in the provinces of Manitoba and Ontario. British Columbia and New Brunswick regulate social workers through statutes that allow the professional associations to establish the requirements. Saskatchewan requires applicants to be a member or eligible for membership in the Canadian Association of Social Workers and to have one year of training from a social work school or one year of work experience prior to examination.

Quebec requires a baccalaureate degree in social work from specified provincial universities without addressing experience, examination, and character requirements. Prince Edward Island specifies a degree program of social work accredited or comparable to requirements of the Canadian Association of Schools of Social Work. PEI also requires three months of practical field activity in social work under the direct supervision of a qualified professional to be eligible for examination by the Board.

Nova Scotia and Alberta require at least a masters' degree in social work of applicants. Alberta requires a practicum prior to graduation or one year of work

experience. The Nova Scotia statute requires sufficient experience in social work to qualify. Both provinces require applicants to pass provincial examinations. Nova Scotia also requires applicants to be registered members in good standing of a social work association approved by the regulatory Board. Alberta has good moral character and reputation requirements in its statute. The statutory requirements are shown in Table 5.6.

**TABLE 3.6**                      **PROFESSION: SOCIAL WORKERS**

State/ Province	Education	Experience	Examination	Moral Character
Texas	Doctoral or Masters' degree in social work	--	Prepared by Department	--
Alberta	Masters' degree in social work or council evaluation of social work experience	Practicum prior to graduation or 1 year work experience	Exam by Universities Co-Ordinating Council	Good moral character & reputation
British Columbia	Set by British Columbia Association of Social Workers	--	--	--
Manitoba	Not Regulated	--	--	--
New Brunswick	Private Association	--	--	--
Newfoundland	Not available			
Nova Scotia	Doctor or Masters' of social work	Sufficient experience in social work to qualify	Exam prescribed by Board	Registered member in good standing of social work association approved by Board
Ontario	Not Regulated	--	--	--
Prince Edward Island	Degree program of school of social work accredited or comparable to Canadian Assoc. of Schools of Social Work	3 months practical field activity in social work under direct supervision of qualified professional	Exam to qualify to graduate or Board exam	--
Quebec	Baccalaureate in social work from specified Quebec universities	--	--	--
Saskatchewan	Member or eligible for membership in Canadian Assoc. of Social Workers	1 year social work training from school of social work or social work experience or equivalent	Board exam	--

In summary, the qualifications for licensure in the six professions examined in this project are substantially equivalent. Only the professions of social work and psychology have differing minimal levels of education. While the statutes are silent in some qualification areas, the administrative rules or policy statements may impose additional requirements. Most Canadian and U.S. regulatory bodies require applicants to successfully complete a competency examination. While the statute may not require competency demonstration by examination, this requirement is usually set out in administrative rules. For example: Both the Canadian and American Dietetic Associations require applicants for registration as a dietitian to successfully write a competency examination. Therefore, dietitians in both countries have passed national credentialing exams. Most provinces and states use the national examination for licensure purposes.



## Chapter VI -- Conclusions

Literature comparing the licensure qualifications of a health care profession is not readily available. A few studies have examined the requirements for physicians in the United States. No studies were found in the literature review that examined the requirements for nurses, dentists, psychologists, dietitians, and social workers. The findings reported by this researcher indicate that the qualifications for nurses, physicians, dietitians, and dentists are substantially equivalent in Texas and the provinces examined. These data indicate that individuals licensed in these professions would have comparable education, experience, and competence. The public would be protected regardless of where the individual practiced. Whether the differences in educational requirements for psychologists and social workers would affect the competence of the practitioners is outside the scope of this research.

Literal reading of the FTA indicates that these professionals, upon meeting the streamlined border crossing requirements for temporary entry, would not be required to be licensed in the host country in the profession for which he/she is qualified. Additionally, the agreement states neither government can make the eligibility requirements in effect on January 1, 1989, more restrictive in the future.

Publications from the U.S. Department of Commerce and the Employment and Immigration Canada both state the professional applicant must provide a letter from the

employer(s) in the receiving country and be willing to provide supporting documentation which affirms:

- the professional activity to be engaged in;
- the purpose of entry;
- the anticipated length of stay;
- the educational qualifications or appropriate credentials which demonstrate professional level status;
- that all local licensing or other requirements to practice the profession are met; and
- the arrangements for remuneration.

This interpretation of the trade agreement provisions was confirmed in an interview with Toni Dick, International Trade Specialist, U.S. Department of Commerce on October 20, 1992. The Immigration and Naturalization Service rules concerning admission of aliens pursuant to the U.S.-Canada Free-Trade Agreement (8 CFE ch.1(4)) do not require applicants to present proof of meeting local licensure requirements.

Presentations at the 1992 Council on Licensure, Enforcement and Regulation (CLEAR) conference, however, showed that regulators in both countries believe that the more literal interpretation of the agreement will prevail. In a presentation to the dietitian licensure boards coalition meeting on October 21, 1992, Henry Fernandez, CLEAR President and Deputy Commissioner for the Professions in New York, stated that it appeared state licensure would not be required of nationals entering under the professional

section of the FTA. It appears to this researcher that this question will be answered in administrative hearings by professional regulatory boards and in the court systems of both countries. The FTA does not have a mandated court of justice to make binding judgments on the interpretation and application of trading partner laws as the Single European Act does (The Department for Enterprise, 1992). The European Court of Justice (ECJ) has held that member states cannot refuse permission to work based on reasons that are not justified under the Treaty. Member states are not required to accept qualifications gained in other Member States but must have good reasons (substantial differences in qualifications) should the refusal be contrary to the Treaty provisions.

The American Institute of Certified Public Accountants, the Canadian Institute of Chartered Accountants, and the National Association of State Boards of Accountancy have achieved a consensus on the principles for reciprocity to be recommended to the Canadian provinces and the U.S. state boards to grant reciprocity to Chartered Accountants (CA) and Certified Public Accountants (CPA). Thirteen jurisdictions in Canada and 54 in the U.S. are empowered to grant the licenses. This initiative is an attempt to require uniform education, examination and experience requirements for accountants. The Committee of Canadian Architectural Councils and the National Council of Architectural Registration Boards have reached an agreement to share

criteria for accrediting schools, certifying individuals, and monitoring mandatory experience. The agreement will also result in a jointly developed examination and code of conduct. Architects will then be recognized as AMCAN architects (Rolfsen and Thomashower, 1992, September).

Regulators need to examine the public health and safety issues related to the mobility of professionals. These issues include:

1. Communication. State licensure boards do not have regular communication among themselves regarding qualifications, disciplinary actions, and policy issues. There is not a central point to determine which professions are regulated in a particular jurisdiction and the responsible agency. Even in Texas, there is not a central point in state government that can provide this information about professional regulatory activities.

2. Legal. Professionals do harm the health, safety, and welfare of the public. The injured party will have international law to complicate the remedies available to him or her in the state. State and provincial evidence rules for administrative hearings will be affected by infractions that occur in a foreign country. International legal issues will not be readily resolved without lengthy legal procedures. Boards must also consider the disciplinary actions of the other country's boards in granting approval to applicants.

Most U.S. boards use other state's disciplinary actions to deny applicants, but will provincial actions be allowed under current law?

3. Other regulatory rules. Many administrative rules adopted by Texas state agencies for health care facilities require that providers be licensed by the appropriate state board. The FTA requirements for professional entry may or may not require licensure of these individuals. The effect on the facility's license has not been determined if it contracts with a professional admitted under the FTA to perform services that administrative rules require to be performed by a Texas licensed provider.

Related to the issues listed above, regulators will face practical problems in enforcement of state and provincial regulatory statutes. These problems might include situations such as:

- \* A Canadian physician obtains expedited entry under the FTA provisions to become a visiting faculty member at a Texas medical school. This physician does not obtain a Texas medical license. Faculty members practice medicine if the practice is related to faculty duties. These faculty members also may provide service to the poor and indigent through clinics offered by the institution. Residents at the institution have obtained a license to practice medicine in Texas. This results in an unlicensed physician who may or may not be eligible for Texas licensure supervising licensed physicians in the training program. The faculty member may also be unable to get third party reimbursement from insurance companies or the federal government for services provided in the clinic. Most third party reimbursement regulations require the provider to hold the appropriate state license. If the physician is not licensed does the institution incur additional liability for this physician's practice? Do the

licensed medical students jeopardize their licenses by working under the supervision of an unlicensed physician?

\* A nursing service from Mexico contracts with border health care facilities (hospitals, home health agencies, long term care facilities, and renal dialysis units) to provide PRN nurses. The nurses are not licensed in the border states. All of the facilities are Medicare certified. The federal guidelines and survey procedures require the facilities to assure that personnel are licensed or meet other applicable standards that are required by State or local laws. The regulations also require that nursing personnel for whom licensure is required have valid and current licenses. The state surveyor finds that nursing services have been provided by unlicensed nurses under NAFTA provisions. The surveyor asks what the state and federal agency positions are in relation to the trade agreement, Medicare regulations, and state facility licensure laws and rules. Is the facility sanctioned for using unlicensed health care providers? Does the health care provider have a basis for legal action under the trade agreement provisions?

\* A Texas licensed dietitian gains entry into Canada under FTA provisions and obtains a license in the province of Alberta. She violates provincial laws and her license is revoked. Texas is notified of the disciplinary action order containing findings of fact and conclusions of law. The Board must decide if actions committed outside of the United States can be the subject of disciplinary action in Texas. If the Board proceeds with the administrative hearing process, it must obtain evidence and witnesses from Canada which raises the spectre of federal government involvement.

The North American Free-Trade Agreement (NAFTA) has additional provisions that impact the regulatory community. It commits NAFTA countries to competence-based licensing, based on objective and transparent criteria. It also contains a provision to remove all requirements for citizenship/nationality and of permanent residency as conditions of licensing and certification of professional service providers within two years of NAFTA's entry into force. Article 1206 grants a two-year grace period for

state/provincial governments to inscribe reservations to maintain existing non-conforming measures (i.e. residency requirements). Upon NAFTA's entry into force, these governments will be prohibited from introducing new non-conforming measures. Chapter 16 establishes a trilateral working group to focus on the implementation of NAFTA provisions and future improvements. These improvements will include expanded coverage for professionals, etc. (Sauve, 1992, September).

Information regarding the training and licensure of professionals in Mexico is not readily available. Information available from the professional associations indicates Mexico does not follow a regulatory model that is similar to that used in the U.S. and Canada. Research is needed to determine the educational and experience requirements for professionals in Mexico and the regulatory scheme used, if any.

Provisions of both the FTA and NAFTA establish the concept of free movement of professionals between countries. Despite the treaty negotiators best efforts and intentions, it appears jurisdictional problems will arise at various federal, state, and provincial levels. In the U.S., the federal government has not been proactive in disseminating information on treaty provisions to regulatory bodies. The states and even federal agencies may be resistant to amend state laws and federal program requirements to allow the

free movement of regulated professionals from other countries.



## APPENDIX

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## LICENSING STATUTES

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Dental Practice Act, Article 4543

Licensed Dietitian Act, Article 4512h.

Medical Practice Act, Article 4495b.

Nurses, Article 4513

Psychologists' Certificate and Licensing Act, Article 4512c.

Social Work Services, Human Services Code, c. 50.

### Alberta:

Dental Profession Act, Statutes of Alberta 1983, c. D-9.5.

Medical Profession Act, Revised Statutes of Alberta 1980, c. M-12.

Nursing Profession Act, Statutes of Alberta 1983, c. N-14.5.

Psychology Profession Act, c. P-25.

Registered Dietitians Act, c. R-10.1.

Social Workers Act, c. S-17.

### British Columbia:

Dentists Act, RS c. 92.

Medical Practitioners Act, RS1979, c. 254.

Nurses (Registered) Act, RS1979, c. 302.

Psychologists Act, RS1979, c. 342.

Social Workers Act, RS1979, c. 389.

### Manitoba:

The Dental Association Act, R.S.M. 1987, c. D30.

The Medical Act, C.C.S.M., c. M90.

The Psychologists Registration Act, c. P190.

The Registered Dietitians Act, C.C.S.M., c. D75.

The Registered Nurses Act, C.C.S.M., c. R40.

Newfoundland:

The Dental Act, c. 26.

Medical Act, c. M-4.

The Newfoundland Dieticians Act, Revised Statutes of Newfoundland 1970, c. 257.

The Newfoundland Registered Nurses Act, Revised Statutes of Newfoundland 1970, c. 268.

The Psychologists Act, c. 19.

— Nova Scotia:

Dental Act, R.S., c. 125.

Medical Act, R.S., c. 278.

Professional Dietitians Act, 1973, c. 11.

Psychologists Act, 1980, c. 14.

Registered Nurses' Association Act. 1985, c.5.

Social Workers Act, c. 4334.

Ontario:

Bill 49, c. 24, Statutes of Ontario, 1991.

Bill 51, c. 26, Statutes of Ontario, 1992.

Bill 55, c. 30, Statutes of Ontario, 1991.

Bill 57, c. 32, Statutes of Ontario, 1991.

Bill 63, c. 38, Statutes of Ontario, 1991.

Prince Edward Island:

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Medical Act, c. 47.

Nurses Act, c. N-4.

Prince Edward Island Dietetic Association Act, c. 37.

Psychologists Act, Stats. P.E.I. 1990, c. 49.

Social Work Act, c. S-5.

Quebec:

Professional Code, R.S.Q., c. C-26, s. 184, subpar. 1.05.

Professional Code, R.S.Q., c. C-26, s. 184, subpar. 1.06.

Professional Code, R.S.Q., c. C-26, s. 184, subpar. 1.09.

Professional Code, R.S.Q., c. C-26, s. 184, subpar. 1.15

Professional Code, R.S.Q., c. C-26, s. 184, subpar. 1.17.

Professional Code, R.S.Q., c. C-26, s. 184, subpar. 1.24.

Saskatchewan:

The Dental Profession Act, 1978, c. D-5.1.

The Medical Profession Act, 1981, c. M-10.1.

The Professional Dietitians Act, R.S.S. 1965, c.P-28.

The Registered Nurses Act, 1988, c. R-12.2.

The Registered Psychologists Act, c. R-14.

The Registered Social Workers Act, c. R-15.