

Enacting Legislation to Thwart Illegal Practice of Licensed Professions

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SUMMARY

On September 30, 2003, AIA New York State (AIANYS) celebrated the passage of legislation that gives the State Education Department (SED) authority to seek injunctive relief, to issue cease-and-desist orders, and to seek civil restitution against illegally practicing individuals. The new legislation gives the SED added authority over the licenses and practices of New York State's 44 professions. AIANYS had lobbied actively for more than 20 years before the bill passed.

PROJECT OVERVIEW

Illegal practice has been a priority issue for AIA New York State (AIANYS) and many of the state's 44 licensed professions ever since the professions received accreditation in New York State. Prior to September 30, 2003, the law required the State Education Department's (SED) Office of the Professions to investigate reports of illegal practice and to refer any confirmed cases to the state's attorney general for prosecution. The law did not authorize the SED to enforce the illegal practice provision, nor did it require the attorney general to prosecute illegal practice cases. Although illegal practice is a class E felony under New York State law and presents a danger to public health and safety, enforcement of these provisions is not a priority for the attorney general's office unless there is a victim or the assurance of a conviction.

The initial efforts of AIANYS to strengthen the enforcement aspect of the state's licensing laws, rules, and regulations were primarily directed toward the SED's Office of the Professions. From 1980 to 2003, this was our priority issue at the regents' annual legislative conferences. We continually cited the problem and suggested the obvious solution: Enact regulations or legislation that would grant the SED the authority to seek injunctive relief against individuals engaged in unauthorized practice of a profession; issue cease-and-desist orders; and seek civil restitution against such individuals. Indeed, not only did AIANYS regularly meet with the Office of the Professions and the Board of Regents, it also met

numerous times in the late 1980s and 1990s with the attorney general's office. We also acted as consultants to the Office of Professional Discipline (OPD), and worked on how to train its investigators to recognize the illegal practice of architecture. In addition, we met regularly with other licensed professions to strategize what to do about illegal practice.

COLLABORATION TO MOVE FOWARD

By 1992, many professions were infuriated that nothing was being done to curb illegal practice. AIANYS—along with professional societies for engineers, nurses, CPAs, and several other professions—decided to initiate legislation that would move authority over the Title VII-licensed professions from the SED to some other government or private entity. The group took this action because the Office of the Professions and the SED had done nothing to rectify the problem. This was a wake-up call to the Office of the Professions. The professions and the SED began to meet regularly between 1992 and 1994 on this issue. The collaboration produced an omnibus bill to streamline and strengthen licensing laws, rules, and regulations; give the regents concurrent jurisdiction with the attorney general against illegal practice; and permit a profession or its professional societies to bring civil action.

GOVERNMENT ACTIONS

This legislation was introduced in the 1995 session. In the 1996 session, it passed both houses. However, the professions agreed to language requiring a \$9 fee be added to the professions' biannual and triennial registration fees to augment the budget of the Office of the Professions in order to add staff to administer and enforce the new law. The new governor, George E. Pataki, who campaigned on a "no new taxes" platform, vetoed the legislation because of this so-called "tax."

After that veto in 1996, AIANYS was determined to continue its efforts to get legislation enacted that would give the regents and the attorney general's

office concurrent jurisdiction over individuals practicing a licensed profession illegally. We introduced legislation in both houses in 1997, 1999, 2001, and again in 2002. We lobbied the governor's office, the Office of the Professions, the regents, the attorney general's office, and the other 43 professions to convey to all parties the necessity of passing this bill.

We continued to lobby this issue, making it a priority year after year of our legislative program and annual Lobby Day. In 2002, after many years of bringing it to the attention of the SED and the legislators, the legislation passed the Senate. Right before the session ended, we obtained a letter of support for the bill from Attorney General Elliot Spitzer. Suddenly, in a highly unusual event, the legislation was reported out of the Assembly Higher Education Committee over the objections of the committee chair. This "mutiny" of the members against the chair was due to the intense one-on-one lobbying by the AIANYS lobbyist and executive vice president/CEO. AIANYS ended 2002 with the commitment to continue the effort in the next session, with the acknowledgment from the other professions that the tide may be turning in Albany on this issue, thanks to the initiative of the architects. The Assembly speaker acknowledged that the Assembly would revisit the issue next session.

AIANYS and its lobbyist were again committed to start the process in 2003 to lobby the Senate, the Assembly, the governor, the professions, and the SED. This time, victory! The legislation passed the Senate the morning of June 19, 2003, and the Senate adjourned. The legislation passed the Assembly at 8:30 p.m. on June 20, and the Assembly adjourned. The governor signed the bill on September 30 and immediately issued a press release.

Throughout these years—from 1980 until September 30, 2003—the members of AIANYS received frequent legislative alerts at strategic times to write to the legislature and the governor requesting their support to pass this legislation. As one member stated so well when the enactment was announced, "Congratulations to all of us!" Indeed, it was a coordinated effort over the years by the AIANYS leadership, members, staff, and lobbyists who refused to give up, who embraced the dream that illegal practice can be thwarted, and who convinced our allies, the lawmakers, and the governor that "there should be a law." And now there is!

THE NEW LAW

This law gives the SED, *for the first time*, jurisdiction over unlicensed individuals who practice a licensed profession illegally *and* a process to enforce the state's licensing laws in this regard.

The bill amends Section 6515 of the Education Law to give the SED the authority to seek injunctive relief in the State Supreme Court against individuals engaged in unlicensed practice. Previously, only the attorney general had such authority. To protect the public, the new Section 6516 also gives SED the authority to issue cease-and-desist orders and to seek civil restitution from those individuals engaged in illegal practice. Section 6516 also provides hearing, appellate, and judicial review procedures.

JUSTIFICATION

Under the previous law, the SED oversaw the licensure and practice of the Title VIII professions and was charged with investigating incidences of unlicensed practice of a profession. It did not, however, have the authority to follow through on cases for prosecution to the attorney general or the corporation counsel of certain cities for prosecution. The new law rectifies that situation by giving the SED authority to seek injunctive relief, to issue cease-and-desist orders, and to seek civil restitution. The following is a direct quote from the sponsors' memorandum in support of the legislation:

"New York State cannot permit the unlicensed practice of professions. Serious consequences for the health and safety of the unsuspecting public results when an individual without the proper training and state-issued license holds him/herself out as a health care professional, design professional or financial professional. Although the unlicensed practice of a profession is a class E felony, the system as it stands is not adequate to protect the public from the dangers of illegal practice. The most appropriate means of shoring up the State's enforcement of the licensure laws is to add to the Department's present authority to investigate illegal practice, the power to follow through on its own investigation and stop these unqualified, unlicensed individuals, and to seek civil restitution from individuals who profit from their illegal activities."

For More Information

See the Government Affairs Web page of AIANYS, [AIANYS Government Affairs Webpage](#).

RESOURCES

More Best Practices

The following AIA Best Practices provide additional information related to this topic:

- 21.03.04 Building Relationships with Elected Officials
- 21.03.05 Instituting Legal Reform
- 21.03.11 Florida Architects Champion Important Legislation

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Key Terms

- Leadership
- Issues
- Political issues
- Legislation
- Bills passed
- AIA Components