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NOTES

LICENSE REVOCATION: UNCERTAINTY AND DUE PROCESS

Under state and federal due process, language of the law which is vague and uncertain will render a statute void for indefiniteness.¹ The sections of the California Business and Professions Code dealing with suspension and revocation of licenses contain many questionable words and phrases. Some examples are "dishonesty,"² "deceptive advertising,"³ "moral turpitude,"⁴ "incompetence,"⁵ "gross immorality,"⁶ "immoral conduct,"⁷ "not of a good character,"⁸ and "of questioned financial responsibility."⁹ One or more of these catchall phrases appears in practically every statute dealing with cause for suspension or revocation of a license.¹⁰ Judicial review of disciplinary action of licensing boards almost invariably includes a ruling on the plea that language under which the licensee was "convicted" is too vague and uncertain.¹¹

The cases abound with references to the propositions that the right to practice one's profession is property of the highest character, and that

¹ For discussions of the void-for-vagueness doctrine see Comment, 41 CALIF. L. REV. 523 (1953); Note, 62 HARV. L. REV. 77 (1948). For a general background on licensing statutes, their development, scope, and constitutionality see COUNCIL OF STATE GOVERNMENTS, OCCUPATIONAL LICENSING IN THE UNITED STATES (1952); GELLHORN, INDIVIDUAL FREEDOM AND GOVERNMENT RESTRAINT (1956); Monaghan, *The Constitution and Occupational Licensing in Massachusetts*, 41 B.U.L. REV. 157 (1961); Comment, 14, STAN. L. REV. 533 (1962).

² CAL. BUS. & PROF. CODE §§ 5100(d) (accountants); 7553.2 (private detectives); 8954(j) (yacht and ship brokers).

³ CAL. BUS. & PROF. CODE §§ 2380 (physicians); 1680(11) (dentists); 6579 (barbers); 7693 (funeral directors).

⁴ CAL. BUS. & PROF. CODE §§ 1679 (dentists); 2383 (physicians); 2761(f) (nurses); 1320(a) (clinical laboratory technicians); 5100(a) (accountants); 7431(j) (cosmetologists).

⁵ CAL. BUS. & PROF. CODE §§ 2761(a)(1) (nurses); 3093 (optometrists).

⁶ CAL. BUS. & PROF. CODE § 1680(8) (dentists).

⁷ CAL. BUS. & PROF. CODE § 6582 (barbers).

⁸ CAL. BUS. & PROF. CODE §§ 6775(b) (professional engineers); 9540.3 (cleaners and dyers).

⁹ CAL. BUS. & PROF. CODE § 9547 (cleaners and dyers).

¹⁰ For a discussion of the various types of prohibited conduct subjecting the violator to license revocation, see Note, 44 CALIF. L. REV. 403 (1956).

¹¹ That the problem of vagueness in licensing statutes is of current significance in California is indicated by the fact that five of the cases to be subsequently noted in this paper have reached the appellate courts within the last four years: Rhodes v. Savage, 219 A.C.A. 359, 32 Cal. Rptr. 885 (1963); Duskin v. State Bd. of Dry Cleaners, 58 Cal. 2d 155, 23 Cal. Rptr. 404, 373 P.2d 468 (1962); Wayne v. Bureau of Private Investigators, 201 Cal. App. 2d 427, 20 Cal. Rptr. 194 (1962); McMurtry v. Board of Medical Examiners, 180 Cal. App. 2d 760, 4 Cal. Rptr. 910 (1960); Board of Educ. v. Weiland, 179 Cal. App. 2d 808, 4 Cal. Rptr. 286 (1960). It is also reported that more often than not accusations filed against licensees include a charge of violation of various catchall phrases such as are listed in the text at notes 2-9 *supra*. Interview with a hearing officer, State of California, Department of Professional and Vocational Standards, San Francisco, November 1963.

where licensing is involved the requirements of due process are strictly enforced.¹² But these principles are opposed by the equally honored rule that the constitutionality of a statute is to be upheld if at all possible.¹³ While it is proper for courts to show restraint in striking down legislative enactments, this restraint should not cause the court to lose sight of the other side of the issue before it, namely, "property" rights. Moreover, this self-imposed limitation, coupled with the present volume of litigation on this subject suggests the need for continuous legislative re-examination of the various statutes with an eye toward greater clarity and precision of meaning.

The void-for-vagueness doctrine is easily stated but its application is far from predictable. One of the most quoted statements is that "[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."¹⁴ More specifically, the statutory language must satisfy two criteria: (1) it must provide an intelligible standard of conduct for the person to whom it applies so that he may be sufficiently *warned* of the forbidden or required conduct,¹⁵ and (2) the courts must be given a standard or guide against which conduct may be uniformly judged.¹⁶ The distinction between the requirements is not a useful one, for a court is not likely to say that it can interpret language which the respondent could not, and certainly the converse would never be applied.

In searching for the meaning of statutory language, the courts (and presumably the respondent) refer to accepted common law definitions, legislative history and intent, common usage, usage known and accepted by members of the class governed, and court decisions which have construed the language.¹⁷ Such a search for meaning may be possible in a

¹² See, e.g., *Greene v. McElroy*, 360 U.S. 474, 492 (1959); *Schwartz v. Board of Bar Examiners*, 353 U.S. 232, 238-39 (1957); *Truax v. Raich*, 239 U.S. 33, 41 (1915); *Dent v. West Virginia*, 129 U.S. 114, 121 (1888); *Cavassa v. Off.*, 206 Cal. 307, 314, 274 Pac. 523, 526 (1929).

¹³ *Downey v. Watson*, 114 Cal. App. 2d 491, 495, 250 P.2d 692, 694 (1952). A typical statement of this principle is found in *People v. Nunn*, 46 Cal. 2d 460, 468, 296 P.2d 813, 818 (1956): "A liberal construction should be given to constitutional provisions in order to sustain legislative enactments, and all doubts or uncertainties arising from the Constitution, as well as the statute, should be ruled in favor of the validity of the statute."

¹⁴ *Connally v. General Const. Co.*, 269 U.S. 385, 391 (1926); *accord*, *Perez v. Sharp*, 32 Cal. 2d 711, 728, 198 P.2d 17, 27 (1948); *People v. Saad*, 105 Cal. App. 2d Supp. 851, 854, 234 P.2d 785, 787 (App. Dep't Super. Ct. Los Angeles, 1951).

¹⁵ In *Jordan v. De George*, 341 U.S. 223, 231 (1951), the Court commented on the void-for-vagueness doctrine as follows: "Impossible standards of specificity are not required. . . . The test is whether the language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices."

¹⁶ *In re Newburn*, 53 Cal. 2d 786, 796-97, 3 Cal. Rptr. 364, 371, 350 P.2d 116, 123 (1960); *People v. McCaughan*, 49 Cal. 2d 409, 414, 317 P.2d 974, 977 (1957); Comment, 41 CALIF. L. REV. 523 (1953).

¹⁷ *McMurtry v. Board of Medical Examiners*, 180 Cal. App. 2d 760, 4 Cal. Rptr. 910 (1960).

courtroom but cannot seriously be expected of "men of common intelligence"; thus it must follow that the test is whether a sufficient guide to adjudication is set forth in the statute. With statutes involving occupational licensing perhaps the courts would be better advised to direct their inquiry to whether the language conveys a sufficiently clear *warning* of the required or prohibited conduct since here is a subject which a business or professional man will make an effort to know so that he may be sure that his conduct does not fall outside the legal requirements. The knowledge that he has erred is of little value to the licensee when gained only upon the imposition of a disciplinary penalty which jeopardizes his livelihood; and this must be the result when cases are decided on an *ad hoc* basis, under language which the courts themselves admit is incapable of certainty of definition.¹⁸

The problem presented by questionable statutory language is best illustrated by looking at judicial treatment of certain phrases found in the disciplinary sections of the California Business and Professions Code.

In *Duskin v. State Bd. of Dry Cleaners*,¹⁹ a penalty had been assessed against the licensee for failure to comply with the board's order to file a surety bond to protect those with whom he dealt in the dry cleaning business. Business and Professions Code section 9547 provides that if the state board of dry cleaners should find that a licensee's "financial responsibility is questionable" he may be compelled to obtain such a bond. The licensee argued that "questionable financial responsibility" was so vague and uncertain a term that the section was void. The court in holding otherwise, noted that this was a "general policy" type statute, wherein the legislature need only set forth a general standard or yardstick and might delegate authority to the administrative body to adopt and enforce reasonable rules for effecting the purpose of the statute.²⁰ Further, the court found that the legislative intent, in speaking of "questionable financial responsibility," was to describe a financial condition which created a sub-

¹⁸ See text at notes 23 and 26 *infra*.

¹⁹ 58 Cal. 2d 155, 23 Cal. Rptr. 404, 373 P.2d 468 (1962).

²⁰ Other examples of general policy type statutes cited were those delegating authority to regulate oil wells, milk prices, and to administer the "assigned risk" law regarding automobile insurance. The standard required of these statutes is that the discretion delegated to the board must not be used arbitrarily or amount to sanctions which add to or change the intent of the statute; that is, the board may not determine what the law is to be. *El Dorado Oil Works v. McColgan*, 34 Cal. 2d 731, 215 P.2d 4 (1950); *American Distilling Co. v. State Bd. of Equalization*, 55 Cal. App. 2d 799, 131 P.2d 609 (1942).

Opposed to this broad, policy-type statute are those described as self-executing statutes, principally criminal in nature, but including the bulk of civil licensing statutes where prohibited conduct is spelled out and enforced by the administrative board. Here both the licensee and the licensing agency must be given a definite standard to follow and enforce, while the policy-type statute allows a broad, general intent to be made specific by regulations promulgated by the board. Nevertheless, an acceptable standard for the self-executing statute seems to mean no more than a reasonably adequate disclosure of legislative intent in language giving fair notice. *In re Clark*, 149 Cal. App. 2d 802, 309 P.2d 142 (1957).

stantial risk to persons with whom the licensee might deal. This condition might be evidenced by such factors as liens and bills payable which, *in the opinion of the board*, create a substantial risk that customers might suffer loss in dealing with the licensee. Under this statute it is the opinion of the licensing board, as it investigates the finances of each licensee, that adds the required certainty to the code section. Is this the certainty and warning the licensee is entitled to?

The Business and Professions Code section dealing with suspension and revocation of a private investigator's license²¹ provides for discipline if the licensee has "committed any act in the course of business constituting dishonesty or fraud." In *Wayne v. Bureau of Private Investigators*²² the petitioner was found guilty of misrepresenting the identity of his employer to an adverse witness in order to extract testimony which would otherwise have been withheld. The bureau had suspended the agent's license and his appeal from the lower court's approval of the bureau's action was in part based on the proposition that the word "dishonesty" was too vague and uncertain.²³ The court held that the burden of proving vagueness rested on the petitioner, that he had failed to sustain this burden, that the statute was capable of reasonable and practical construction, and that it would be impossible for the legislature to draft a statute which would specifically set forth every act that might be considered "dishonest." A case cited by the court for a definition of "dishonesty" construed it as "bad faith, fraud, deception, betrayal, abuse of integrity."²⁴ In another recent case the suspension for "dishonesty" of a real estate agent was upheld.²⁵ The court noted that the term covers an infinite variety of situations, and when used in licensing statutes the word "honesty" has the broadest possible meaning; it requires "a fastidious allegiance" to the standards of one's profession, "fairness," "straightforwardness of conduct," and "truthfulness."

In the light of these decisions it seems that all but the purest of acts *could* be called "dishonest," and rather than attempting to keep the definition within bounds the courts proceed on a case-to-case basis, paying

²¹ CAL. BUS. & PROF. CODE § 7553.2.

²² 201 Cal. App. 2d 427, 20 Cal. Rptr. 194 (1962).

²³ The petitioner did not question the meaning of the word "fraud," but the court in *Wayne* nevertheless defined it: "Fraud embraces multifarious means whereby one person gains advantage over another and means in effect bad faith, dishonesty or overreaching. . . . 'No definite and invariable rule can be laid down as a general proposition defining fraud, as it includes all surprise, trick, cunning, dissembling and unfair ways by which another is cheated.'" *Id.* at 437-38, 20 Cal. Rptr. at 200-01, quoting the last sentence from *Wells v. Zenz*, 83 Cal. App. 137, 140, 256 Pac. 484, 485 (1927). It would seem that the word "fraud" is as vague as "dishonesty."

²⁴ *Hogg v. Real Estate Comm'r*, 54 Cal. App. 2d 712, 717, 129 P.2d 709, 712 (1942).

²⁵ *Rhodes v. Savage*, 219 A.C.A. 359, 32 Cal. Rptr. 885 (1963). Petitioner, real estate agent for the seller, apparently abandoned negotiations with a particular buyer, did not advise the seller, and conveyed another offer of the same buyer to the foreclosing mortgagee of the seller's property.

little heed to the requirement that a statute provide warning and establish a standard of adjudication.

A similar judicial approach is seen where the charge is "unprofessional conduct." The court in *Board of Educ. v. Swan*²⁶ approved a teacher's dismissal, saying that the requirements of conduct of a school teacher are so "intimate, delicate and the things in which a teacher might prove unworthy of are so numerous"²⁷ that they are incapable of enumeration in a statute. In effect, the court said that the fact that "unprofessional conduct" is not and cannot be defined does not render the phrase so uncertain as to be declared void.

The treatment by California courts of the word "immoral" is particularly interesting in view of the fact that the United States Supreme Court in *Musser v. Utah*²⁸ held that a criminal conviction on a charge of committing "acts injurious to public morals" violated due process, unless the statute was not as broad as it appeared on its face. The court felt that to hold otherwise would permit conviction for almost any act which a judge and jury might at the moment find contrary to their notion of what was good for "health, morals, trade, commerce, justice or order."²⁹ The judgment of the Supreme Court of Utah was vacated, and the case remanded for a determination by that court of the scope of the statute.³⁰ In *State v. Musser*³¹ the Utah court could find no legislative intent to limit the words to other than their *general meaning* and struck down the statute, concluding that acts which could be considered "injurious to public morals" are as numerous as the opinions of man.³²

²⁶ 41 Cal. 2d 546, 261 P.2d 261 (1953), *cert. denied*, 347 U.S. 937 (1954). Petitioner was charged with making derogatory statements about the Superintendent of Schools and the Board of Education, had refused assignments, did not attend scheduled meetings and had excused her classes before the final bell on several occasions.

²⁷ *Id.* at 553, 261 P.2d at 266.

²⁸ 333 U.S. 95 (1948).

²⁹ *Id.* at 97.

³⁰ UTAH CODE ANN., 1943, § 103-11-1, replaced by UTAH CODE ANN., 1953. *Cf.* UTAH CODE ANN., 1953, § 76-12-1(5).

³¹ 118 Utah 537, 223 P.2d 193 (1950).

³² California has a penal statute, CAL. PEN. CODE § 182(5), containing language almost identical to the invalidated Utah statute. Defining "conspiracy," the statute provides punishment for a combination of two or more persons who conspire "To commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws." The constitutionality of this entire provision was questioned on the basis of *Musser* but was upheld in *Davis v. Superior Court*, 175 Cal. App. 2d 8, 345 P.2d 513 (1959). The court held that three prior California decisions, *Lorenson v. Superior Court*, 35 Cal. 2d 49, 216 P.2d 859 (1950); *People v. Sullivan*, 113 Cal. App. 2d 510, 248 P.2d 520 (1952); and *Calhoun v. Superior Court*, 46 Cal. 2d 18, 291 P.2d 474 (1955), had illustrated and limited the type of acts which would fall within this language, thus supplying the necessary definiteness to an otherwise vague and uncertain statute. But in *Davis* the charge concerned only the last half of the statute dealing with obstructing justice and the due administration of the law, as was the charge in the three "limiting" cases cited by the court. This leaves open in California the question of the vagueness of that portion of the statutory language concerning "any act injurious . . . to public morals . . ." which the *Musser* decisions held void. PERKINS, CRIMINAL LAW, 538-44 (1957).

A year before *Musser v. Utah* the Louisiana Supreme Court, in *State v. Truby*,³³ held void for vagueness a statute which made it a misdemeanor to keep a house for "immoral purposes"; the court adopted the theory, which later was to prevail in *Musser*, that the rulings of courts and juries would vary from locality to locality, with no standard for determining what would or would not be a house used for an "immoral purpose." Subsequently the California Supreme Court in *Orloff v. Los Angeles Turf Club*,³⁴ citing *Truby* with approval, indicated that "of lewd or immoral character" is too vague a description of a person to withstand due process requirements. Nevertheless, the court upheld a statute permitting exclusion of undesirables from race tracks on the grounds that it was not a customer's general moral character that the legislature intended to open for inspection but his observable conduct at the track. Thus the court avoided the effect of *Truby* by limiting the scope of the statute.³⁵

To illustrate the vague and all-inclusive nature of the word "immoral," the court in *Orloff* referred to *Words and Phrases*.³⁶ Two years later, in a criminal case,³⁷ the court cited this definition in holding that the word "immoral" was *not* vague or uncertain where it appeared in a statute dealing with contributing to the delinquency of a minor.³⁸ Apparently the *Musser* cases were not considered, and the court used the same definition that had been used in *Orloff* to illustrate the vagueness of the term, as authority for its acceptability. Subsequently, in a civil disciplinary proceeding, this same definition from *Orloff* was again used to uphold the words "immoral conduct."³⁹ Thus the California courts, through a questionable evolutionary process, have taken a word considered too vague and uncertain by the United States Supreme Court, defined it in a most unlimited sense and found it to be acceptable in both penal and civil statutes.

³³ 211 La. 178, 29 So. 2d 758 (1947).

³⁴ 36 Cal. 2d 742, 740, 227 P.2d 449, 454 (1953).

³⁵ Two of the justices dissented from this distinction between "immoral" acts on the premises as opposed to "immoral" acts off the premises, saying that observation of a person's conduct would not add the required certainty to the word, since the conclusion that a particular act was "immoral" would necessarily vary from one observer to the next. *Id.* at 744, 227 P.2d at 456.

³⁶ "The term 'immoral' has been defined generally as that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as wilful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare. (Words & Phrases, Perm. ed. vol. 20, pp. 159-160.)" 36 Cal. 2d at 740, 227 P.2d at 453. Cf. 20 WORDS & PHRASES 226-28 (1959).

³⁷ *People v. Deibert*, 117 Cal. App. 2d 410, 419, 256 P.2d 355, 361 (1953).

³⁸ The statute provided that it was a misdemeanor for a person to cause or encourage any person under 21 to lead "an idle, dissolute, lewd or immoral life . . ." Cal. Stat. 1915, ch. 631, § 21, p. 1246 referring to Cal Stat. 1915, ch. 631, § 1, p. 1225 (now CAL. PEN. CODE § 272 referring to CAL. WELF. & INST. CODE § 601).

³⁹ *Board of Educ. v. Weiland*, 179 Cal. App. 2d 808, 4 Cal. Rptr. 286 (1960) (teacher discharged for "immoral conduct" for padding evening school enrollment to prevent its cancellation).

"Moral turpitude" is another phrase that apparently has created little difficulty in the California courts with respect to vagueness and uncertainty.⁴⁰ Yet it has been defined as "everything done contrary to justice, honesty, modesty or good morals."⁴¹ A discussion of the uncertainty inherent in these words is found in Mr. Justice Jackson's dissenting opinion in *Jordan v. De George*.⁴² Justice Jackson's point was that the words "acts injurious to public morals" are too vague, as held in *Musser*, and the phrase "moral turpitude" is not less uncertain. This dissenting opinion was cited with approval by the Court in *Konigsberg v. State Bar*⁴³ in considering the words "good moral character" as found in the requirements for admission to the California bar.⁴⁴ The Court noted that the term "good moral character" might serve a useful purpose in licensing statutes but of itself was "unusually ambiguous."⁴⁵ It could be defined in an infinite number of ways and all definitions would necessarily reflect the attitudes, experiences and prejudices of the definer. "Such a vague qualification, easily adapted to personal views and predilections, can be a dangerous instrument for arbitrary and discriminatory denial of the right to practice law."⁴⁶ *Konigsberg* was such a case: the only apparent basis for the examiners' rejection of the applicant was doubtful testimony that he had been present fifteen years earlier at Communist Party meetings, criticisms he had made in newspaper editorials regarding public officials, and his refusal to answer questions regarding his political beliefs. *Konigsberg* was at all times willing to sign an oath to uphold the Constitution. In ruling in *Konigsberg's* favor on this point the court did not hold that the words "good moral character" were too vague but found as a matter of fact that the bar examiners erred in finding that *Konigsberg* lacked "good moral character."⁴⁷

Conclusion

The preceding discussion indicates that a licensee has little chance to obtain a reversal in California or in the Supreme Court of the United States by urging the theory of vagueness and uncertainty of statutory language. This is not to say that the appellant *cannot* be successful. The contention

⁴⁰ *Lorenz v. Board of Medical Examiners*, 46 Cal. 2d 684, 290 P.2d 79 (1956) (giving liquor to minor not of itself crime involving moral turpitude); *Brainard v. Board of Medical Examiners*, 68 Cal. App. 2d 591, 157 P.2d 7 (1945) (conviction for not keeping proper narcotics records a crime involving moral turpitude).

⁴¹ *Wallis v. State Bar*, 21 Cal. 2d 322, 327, 131 P.2d 531, 534 (1942).

⁴² 341 U.S. 223, 231 (1951) (deportation).

⁴⁴ CAL. BUS. & PROF. CODE § 6060(c).

⁴³ 353 U.S. 252 (1957). The case again came before the court, 366 U.S. 36 (1961).

⁴⁵ 353 U.S. 252, 262-63 (1956).

⁴⁶ *Ibid.*

⁴⁷ See also *Barsky v. Board of Regents*, 347 U.S. 442 (1954) where a New York statute providing for revocation of a license for conviction of a crime was held not to be vague or uncertain merely because the act complained of (conviction in the District of Columbia for failing to produce papers before a congressional committee) was not a crime in New York.

has been accepted on occasion with respect to license revocation.⁴⁸ On the other hand, attack on criminal statutes containing similar language is more successful.⁴⁹ The relationship between civil and criminal statutes which use questionable phrases is not clear. The United States Supreme Court has said that a greater degree of certainty is required in criminal than in civil statutes.⁵⁰ And in *Wayne v. Bureau of Private Investigators*⁵¹ the court stated that the words "dishonesty" and "fraud" in licensing statutes could cover a greater variety of situations than in criminal statutes. Yet the courts seem to pass back and forth between civil and criminal statutes without reference to any difference in the degree of certainty. This has already been pointed out in the evolution of the cases treating "immoral," where definition of the word was interchanged.⁵² Another illustration is the civil case⁵³ which, in stating the scope of the certainty requirement, quoted the standard from a criminal case,⁵⁴ while this criminal case had in turn quoted a prior civil case.⁵⁵ Because of the difference in the nature of the two types of action (criminal confinement as opposed to discipline in regard to a license) perhaps there should be a different standard of certainty applied. But to attempt to define the same word one way in a criminal statute and another in a civil statute can lead only to confusion. This does not mean, however, that a word found too vague to sustain a criminal statute could not be sufficiently definite under the less stringent civil standard.

Yet it could be argued that taking away one's livelihood by revoking or suspending his license is as serious an action by a state as incarcerating a person for short periods of time under a misdemeanor statute.⁵⁶ At least one of the purposes of imposing a criminal penalty is to protect the public. The practitioner's license is also revoked to protect the public. It would not seem to follow that in the name of public protection a licensee should be restrained under language requirements which would leave the criminal unrestrained. Thus a licensee might well urge that the same standard of certainty, the more strict standard, should be applied to the licensing statutes.

The ultimate solution rests not with the courts but with the legislature. It should not be the function of the courts to correct marginal language in a state's code books. And the mere fact that marginal statutory language has survived attack in the courts does not mean that the language should not be revised. Responsibility properly rests with the legislative branch.

The California legislature has been aware of the need for constant re-examination of licensing statutes. With the founding in 1953 of the

⁴⁸ *E.g.*, *Hewitt v. Board of Medical Examiners*, 148 Cal. 590, 84 Pac. 39 (1906); *McMurtry v. Board of Medical Examiners*, 180 Cal. App. 2d 760, 4 Cal. Rptr. 910 (1960).

⁴⁹ *E.g.*, *In re Newburn*, 53 Cal. 2d 786, 3 Cal. Rptr. 364, 350 P.2d 116 (1960); *People v. McCaughan*, 49 Cal. 2d 409, 317 P.2d 974 (1957).

⁵⁰ *Winters v. New York*, 333 U.S. 507, 515 (1948).

⁵¹ 201 Cal. App. 2d 427, 20 Cal. Rptr. 194 (1962), *supra* note 22.

⁵² See text at notes 37, 39 *supra*.

⁵³ *McMurtry v. Board of Medical Examiners*, 180 Cal. App. 2d 760, 766, 4 Cal. Rptr. 910, 913 (1960).

⁵⁴ *People v. McCaughan*, 49 Cal. 2d 409, 414, 317 P.2d 974, 977 (1957).

⁵⁵ *Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926).

⁵⁶ See *Cavassa v. Off.*, 206 Cal. 307, 314, 274 Pac. 523, 526 (1929).

Senate Interim Committee on Licensing of Business and Professions,⁵⁷ an intensive program was begun, embracing hearings, recommendations, and proposed legislation regarding the various licensed occupations.⁵⁸ A wide variety of matters were brought before the committee, including requests by various occupational groups for license status,⁵⁹ for reorganization of groups already licensed,⁶⁰ and for additions and deletions to statutes in effect.⁶¹ During the years 1955 to 1957 many changes were made in disciplinary statutes in an effort to relate conduct to be condemned to the licensee's practice of his profession.⁶² This was a desirable step forward since activities of a licensee having no bearing on his ability to perform his occupation should not be the proper concern of a licensing board. In addition to this action, obsolete language was deleted from some statutes and clarifying language added to others.⁶³ That the committee was aware of the need for a definite standard of conduct for the licensee to follow and the board to administer is illustrated by the proposal,⁶⁴ subsequently adopted,⁶⁵ to repeal a provision for discipline based on "any unfair or unjust practice, method or dealing which in the judgment of the board may justify such action."⁶⁶ But improvements were made in only some of the statutes, and the discussion in this note should indicate that additional work remains to be done.

Should causes for discipline be narrowly described to obtain certainty, with the possibility that the calculating licensee could evade and circum-

⁵⁷ Senate Resolution 112, 3 SENATE JOURNAL 4124 (June 10, 1953). Although this committee no longer exists, its operations have recently been included as a function of the Senate Fact Finding Committee on Business and Commerce.

⁵⁸ 1955 and 1957 REPORTS TO THE [CALIFORNIA] LEGISLATURE BY THE SENATE INTERIM COMMITTEE ON LICENSING OF BUSINESS AND PROFESSIONS, hereinafter cited as 1955 REPORT and 1957 REPORT.

⁵⁹ *E.g.*, 1955 REPORT 86 and 1957 REPORT 37 (recommended against licensing building designers); 1955 REPORT 96 (recommended against licensure of naturopathy); 1955 REPORT 148 (despite recommendation by the committee against licensure, a provision for certification of psychologists was passed by the legislature in 1957, CAL. BUS. & PROF. CODE §§ 2900-84, Cal. Stat. 1957, ch. 2320 § 1, pp. 4037-46).

⁶⁰ *E.g.*, 1955 REPORT 96 (nursing).

⁶¹ Appendices to the reports summarize the numerous legislative proposals by this committee.

⁶² An example of this legislation is found in CAL. BUS. & PROF. CODE § 6775(a). Previously, disciplinary action could be taken against a licensee "who has been convicted of a felony." As a result of the committee's recommendation this language was changed by amendment in 1957 to one "who has been convicted of a felony arising from or in connection with the practice of engineering." Cal. Stat. 1957, ch. 1708, § 2, p. 3082.

⁶³ For example CAL. BUS. & PROF. CODE § 6577 provided discipline for a barber found guilty of "malpractice and incompetency." This section was repealed in 1957 on the recommendation of the committee since no licensee had ever been disciplined under the language and no definition of what would constitute "malpractice" in barbering could be furnished to the committee. Cal. Stat. 1957, ch. 915, § 2, p. 2123. 1957 REPORT 31, 35.

⁶⁴ 1957 REPORT 57.

⁶⁵ CAL. BUS. & PROF. CODE § 7431, Cal. Stat. 1957, ch. 1711, § 5, p. 3086.

⁶⁶ Cal. Stat. 1953, ch. 1403, § 2, p. 2997, repealed.