

From John Bear and Allen Ezell, May 7, 2012

In our book *Degree Mills: the billion-dollar industry that has sold more than a million fake diplomas*, the longest section is devoted to our recommendations for dealing with the problem, for each of dozens of agencies and regulators, from the FBI to the FTC to the Postal Inspectors to Interpol to the fifty state higher education agencies. Here is the relevant section from the book, regarding state agencies.

STATE AGENCIES

Every state has one or more state agencies that deal with approving or licensing new schools in the state and regulating schools that already operate in the state. A few have laws specifically relating to the use of degrees by people in the state.

With fifty sets of state laws, and with enforcement attitudes and policies ranging from strict to negligible, the situation is complex and often unclear. There are many anomalies, which make trying to “get a handle” on the state situation even harder. Here, as an example, are half a dozen.

- Montana had a decent school-licensing law but intentionally chose not to enforce it.
- California had reasonable school-licensing law, but it expired and was not renewed for several years, during which time many bad and fake schools rushed to California (or at least took out convenience addresses), knowing they would be safe from regulation. California once again has modest regulation, but chooses to ignore the many unaccredited schools that are really run from California although they have a token office or just a mailbox in another state or country.
- Louisiana exempted religious schools from the need for state licensing but then agreed that religious schools could offer degrees in nonreligious subjects, since God created everything.
- Wyoming also fails to regulate religious schools and allows them to offer nonreligious degrees. And Wyoming’s nearly automatic licensing of unaccredited nonreligious schools made that state a haven for the “bad guys.”
- New Mexico enacted a reasonable school licensing law but then grandfathered in all the unaccredited schools that could never have qualified under the new law.
- Idaho properly regulates schools but intentionally ignores some dreadful Idaho-based schools as long as they do not enroll students living in that state.

The Seven Questions a State Should Ask

We are not going to get into detailed recommendations for each state; that could fill an entire book. These are seven questions that any state might well ask on the occasion of considering new laws or revisiting old laws relating to schools and degrees, with some short comments on each.

1. Academic quality and/or consumer issues.

Some states look closely at curriculum. The state of New York is the only state that is actually a recognized accrediting agency. Some states have little or no interest, as long as the public isn't defrauded. Indeed, in the late 1990s, California took the unusual step of moving school licensing from the Department of Education to the Department of Consumer Affairs.

The question is: for schools in our state, are we concerned with the academic quality of schools, the consumer issues (not making misleading claims or taking money under false pretenses), or both?

2. Actual presence in the state.

Are we concerned about schools that have token offices (or mailboxes) outside the state but which really are run from within our state? This is, for instance, a significant issue in California, where some very large unaccredited schools are almost entirely run from offices in California, despite claiming their authority to operate from Wyoming, Hawaii, New Mexico, and elsewhere.

3. Out-of-state schools.

Are we concerned with schools that have no connection with our state but offer programs and degrees to state residents? Some states, such as Minnesota, have made the claim that they have the right to restrict out-of-state schools that do not meet their standards from offering correspondence or online programs to people in their state. Schools that were notified that they were in violation simply changed their rules by saying that all diplomas would be awarded only in the state where they were located and that graduates would have to travel there, or make private shipping arrangements, to receive their diplomas. A California school that received the Minnesota warning hired a constitutional lawyer, who told them she felt Minnesota was on shaky ground based on precedents for interstate commerce.

4. Procedures for starting a new school.

Do we want to encourage people to start new and innovative schools in our state? A few states encourage this, a few tolerate it, and many discourage it. California and Indiana, for instance, encourage innovation through a meaningful but not excessively

rigorous procedure of state licensing called State Approval in California and State Accreditation in Indiana. Other states, such as Louisiana and South Dakota, have adopted what is called the “up or out” approach. New schools are permitted to operate for a fixed period of time with little oversight (two years is typical), but if they have not achieved recognized accreditation, or cannot show they are close to it, then they can no longer operate.

5. Regulating degree use.

Are we concerned about the degrees used publicly by citizens of our state or visitors to our state, regardless of where the degrees were issued? In the 1990s, Florida enacted a law making the use of unaccredited degrees illegal. The law was badly written—not taking into account non-US schools, for instance—and was found to be unconstitutional, although the *state* Supreme Court said it might be approved if rewritten. Since that time, there has been a small trend toward regulating degree *use* rather than degree *granting*. Oregon, Illinois, New Jersey, Nevada, and North Dakota have passed such laws. The challenge is to be extremely clear in defining what is illegal and to have enforcement procedures in place.

5. Clarity of the law.

Are our laws (or proposed laws) clear, unambiguous, and sensible? Florida’s law badly defined eligible schools. Iowa’s “up or out” law had no time provisions. Other states have suffered from intentional ambiguity—something happening “when it is felt that” certain circumstances have occurred. And a few have referred to “accredited colleges and universities” without taking note of the fact that there are many unrecognized accreditors. Hawaii has a law that makes it extremely easy to be a legal school there: in effect, having little more than one employee in the state and a small number of Hawaii residents enrolled. But even that is more than many fake schools do, and Hawaii has been aggressive in pursuing violators.

6. Fairness and uniformity.

Are the laws enforced fairly, uniformly, and strictly, or *would* they be? We hear from regulators and enforcers that because of budget cuts, staff shortages, and lack of direction from management, they are limited—and frustrated—in their pursuit of bad schools. Hawaii, as just mentioned, has been the most aggressive in bringing legal actions against violators—more than fifty to date—largely due to the efforts of one attorney in the Department of Consumer Affairs, who operates in triage mode, due to the number of possible cases.

7. Nature of penalties.

Are the penalties meaningful, or are wrists being slapped? Large fines are common, imprisonment is increasingly rare, and enforcement is a real problem. The state of

Kansas won a million-dollar-plus judgment against degree-mill operator Les Snell and his Monticello University, but he moved to Colorado and was not pursued. Hawaii has won numerous million-dollar judgments, but mostly against perpetrators living elsewhere, and collections are rare. Is prison a deterrent? Sometimes. Some major perpetrators (Geruntino, the Fowler brothers) never went back into the business after prison. Some (Sinclair, Kirk) actually ran their next phonies from within prison. And others (Reddeck, Pellar) went back into business as soon as they were freed.

Each of these questions is worthy of lengthy analysis and discussion, and indeed such discussions have gone on in many states over many years, sometimes harmoniously (or at least collegially), and sometimes acrimoniously.

One expert who writes often and well on these matters is Alan Contreras, who retired in 2011 as the administrator of Oregon's Office of Degree Authorization. His scholarly 2009 White Paper, "The Legal Basis for Degree Granting Authority in the United States," written for SHEEO, the State Higher Education Executive Officers (<http://http://www.sheeo.org>) is available free, online: <http://tinyurl.com/ContrerasPaper>