



License, Please?

Excessive Occupational Licensing Can Cost Consumers Money Without Necessarily Increasing Quality or Protection

BY BETTY JOYCE NASH

Quantavious Bovain, a six-year-old student at Harbison West Elementary School in Columbia, S.C., opens his mouth wide “like an alligator” as dental hygienist Laura Hancock cleans his teeth. Hancock treats Quantavious’ teeth with fluoride and seals them to deter decay. She works for a private firm in partnership with the South Carolina Department of Health and Environmental Control’s public health dental program, resurrected in 2000 after the fiscal woes of the early 1990s cut off the service.

Quantavious’ teeth might have gone untreated were it not for a public health dental program called Healthy Smiles Partners. To widen access to dental care, South Carolina, along with some other Fifth District states, is changing current state laws that restrict the way hygienists work. Previously, hygienists could only work on premises with dentists. The change allows hygienists to work without a dentist on the same premises as long as it is in a public health setting. The question arises, if hygienists can work without direct supervision in public health settings, why can’t they do so elsewhere, and reduce the cost of dental services?

Dental care is a luxury for many low-income people, according to a 2003 report by the Center for Health Ser-

vices Research and Policy at The George Washington University Medical Center. Poor people tend to have more tooth decay and either forgo or put off dental care until it’s too late to save teeth. The report cites many reasons for this, including the state regulations: “The licensing system and self-regulation by the dental and medical professions have profound implications for low-income children.”

This is just one example of state occupational oversight that can stifle entrepreneurship and raise prices. Such practices can increase wages for practitioners at the expense of consumers, economists say. And consumers may use licensing as a signal of quality when, in fact, there’s often no evidence that such regulations are effective.

Born in Babylonia, Reared in Medieval Guilds

The regulation and licensing of occupations in the United States, practically nonexistent in 1900, has grown to include some 1,000 occupations regulated today by one or more of the 50 states.

Licensing in the 1950s affected about 3 percent of the labor force, but today licensing affects about 18 percent of all U.S. workers, more than the minimum wage or unionization, according to Morris Kleiner, a pro-

fessor of labor policy at the University of Minnesota. In Virginia alone, the state licenses well over 100 occupations, from auctioneers to wrestlers. The North Dakota legislature recently added bikini waxing to a list of cosmetic procedures allowed by law.

Occupational licensure has roots in ancient civilization (the Code of Hammurabi) and showed up later in medieval guilds, whose purpose was to create and keep a monopoly. Some guilds persisted, however, especially in the retail trade and small-scale service enterprises. “It was only with the appearance of shopping centers and ‘supermarkets’ after World War II that butchers and bakers lost their professional status, while such groups as plumbers have managed to keep that status,” writes medieval historian Lynn Harry Nelson. The regulatory movement gained momentum during the Progressive Era, aided by consumer activists and “muckraking” journalists who exposed dangerous products and conditions in the marketplace. Ultimately federal agencies overseeing certain industries, such as the Food and Drug Administration, among others, were created.

Today’s state occupational licensing rules are promulgated by boards made up of the people who stand to gain from

rules that restrict entry to professional occupations — the members of the profession. While licensing rules vary from state to state and occupation to occupation, they usually include some combination of prescribed formal education, experience, a test, good moral character, and citizenship. In some cases, the rules can even include limitations on practice ownership, as is the case with dentistry in Virginia, where only a dentist can own a dental practice.

“For the occupations, there’s a real incentive to restrict supply and increase earnings and increase the perception of quality within the occupation,” Kleiner says. “...for consumers, the benefits of fighting restrictive [regulations] is relatively small. It’s not worth the effort of going to lobby the legislature or going to the licensing board trying to loosen restrictions.”

Economists have studied occupational regulation at least since the days of Adam Smith. In *The Wealth of Nations*, published in 1776, Smith questioned whether long apprenticeships guarantee good work:

“The patrimony of a poor man lies in the strength and dexterity of his hands; and to hinder him from employing this strength and dexterity in what manner he thinks proper without injury to his neighbour, is a plain violation of this most sacred property. ... To judge whether he is fit to be employed, may surely be trusted to the discretion of the employers whose interest it so much concerns. The affected anxiety of the law-giver lest they should employ an improper person, is evidently as impertinent as it is oppressive.”

Occupational Licensing and the Internet

Licensing laws grew partly from the idea that it’s expensive and time-consuming for consumers to gather information they need before finding a service. But today, the flow of information on the Internet reduces the cost for computer-literate consumers to make informed decisions about purchases of goods and services.

And doing business in cyberspace, where no state lines exist to mark territory, raises plenty of questions about state occupational licensing.

“There have been several studies of the impact of the Internet on prices ... and licensing reduces some of the cost effectiveness of those transactions by limiting the ability of individuals to order or get services through the Internet...,” says Morris Kleiner, an economist at the University of Minnesota.

The Federal Trade Commission (FTC) last fall held a public workshop as part of an ongoing effort to examine anticompetitive barriers to Internet commerce, says Jerry Ellig, acting director of the office of policy planning for the FTC.

The FTC weighs in when Internet commerce is stifled because of anticompetitive practices, such as the case of the Internet-based casket seller who sued the state of Oklahoma over a state law requiring casket retailers to hold a funeral director’s license.

The possibilities for bumping up against

state licensing regulations are endless. For example, Ellig says some state real estate appraisal boards want companies who do automated appraisals to obtain licenses, although the FTC has not investigated that situation in depth, he says. The FTC also intervened recently in a proceeding before the Connecticut Board of Examiners for Opticians, who are considering whether Internet retailers who sell contact lenses to Connecticut customers need an optician’s license.

“We argued that a firm which only sells contact lenses and simply takes sealed boxes of lenses received from a manufacturer and puts them in an envelope and mails them to consumers... shouldn’t have to have an optician’s license,” Ellig says. Opticians are licensed because they actually make eyeglasses and that takes skills and training. “But fabricating eyeglasses is different from taking a marked box from a manufacturer and matching it to a prescription and dropping it in the mail.”

Such licensing laws can restrict the commercial benefits of the Internet, says Kleiner. “To the extent that other services..., medical devices, and pharmacy-related products have similar state occupational licensing-related restrictions, this may limit the ability of consumers to purchase products which have the lowest cost relative to quality,” he says.

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Most studies examining whether restrictions improve quality find few such benefits, according to a 1990 Federal Trade Commission (FTC) study, “The Costs and Benefits of Occupational Regulation”:

“Even in the situations in which licensing increases the quality of the licensee-provided service, consumers are not necessarily better off. Price increases due to licensing may cause some consumers to ‘do without’ the service, or to ‘do it themselves.’”

The FTC study notes the “capture theory” of occupational regulation, which holds that professionals seek to protect themselves from competition and, in doing so, increase income. Economic theory suggests rules aimed at limiting entry will cut supply and raise prices. The FTC report noted a 1982 study that found dental prices to be about 4 percent higher in metropolitan areas in states limiting the number of hygienists that dentists can employ.

An alternative to licensing, suggests Kleiner and the FTC study, is certification. For example, travel agents and car mechanics are certified, notes Kleiner. “Licensing by definition is that you need state permission to do the work. With certification, others can do the work but the public knows the individual has gone through training requirements.” Certification may also require testing and education.

Perhaps the best consumer protection is provided by reputation. Some professions use independent regulatory agencies, such as Underwriters Laboratories Inc., to advertise that their products have been tested in accordance with trusted standards.

Another protection for consumers against deceptive trade practices exists by statute already, says lawyer Steve Simpson, who works for the Institute for Justice, a nonprofit group in Washington, D.C., that investigates regulations that keep entrepreneurs out of the marketplace. The fear of litigation often enforces good practice. “The tremendous amount of liability companies face when they do things wrong is a huge incentive to do things right,” he notes. “[Professionals] are much more worried that they’re going to get



RETTY JOYCE NASH/BOARD OF RICHMOND

In South Carolina, hygienists may clean and seal the teeth of low-income children as part of a public health program.

sued by a customer than that a licensing guy is going to come by and write them a ticket.”

The Case of Dentistry

Several economic studies have examined the statutes and regulations governing dentists. Kleiner, for example, studied U.S. Air Force recruits to see how restrictive licensing laws affected outcomes of service, prices, and practitioner earnings. The study used data from the young recruits’ first dental examinations after entering the Air Force, as well as relevant socioeconomic information, including recruits’ home states and income, among other characteristics. “We tried to see, if they came from a state that had tougher licensing requirements, how was their dentitia at that point in their life?” Kleiner explains, adding that he and co-author Robert Kudrle found that restrictions did not improve dental health but did raise prices of basic dental services.

Similarly, an economic analysis by the Virginia Department of Planning and Budget found that proposed regulations by the Board of Dentistry that limit the number of dental hygienists per supervising dentist except in public health and volunteer work settings would have a negative economic effect. The 2003 analysis states: “Overall, the new proposed regulation continues a set of practice restrictions that both increase costs and reduce the quantity consumed of

dental care without providing any commensurate public health benefits.” (States differ in supervision levels, with about 13 states requiring dental hygienists to work directly under a dentist on the premises. Virginia and other Fifth District states are among the few that currently do not allow general supervision, which allows the hygienist to perform services while a dentist is not present, but has authorized treatment and will evaluate the hygienists’ performance later. However, most of those states allow hygienists to work in public health settings under general rather than direct or indirect supervision.)

The American Dental Association (ADA) opposes general supervision because it fails to protect public health, according to Dr. Laura Neumann, of the ADA. Most states do not restrict the number of hygienists a dentist can supervise, according to the ADA; however, several Fifth District states have pending legislation that would limit that number.

African Hair Braiding and Caskets

Health professions are but one of many professions under scrutiny. In 1991, the Institute for Justice challenged the District of Columbia’s cosmetology licensing regulations in *Uqdah v. Board of Cosmetology*. At the time, the District required African hair-braiding businesses to comply with extensive training requirements to procure a cosmetology license. But the 1,500 hours mandated had little to do with natural hair braiding, according to the Institute. The legal effort changed licensing laws in the District and, since that time, has contributed to changes in cosmetology licensing laws in 14 states.

“As you can imagine, this is a skill that people learn when they’re young,” Simpson says. “They learn it as kids and, rather absurdly, the states try to regulate them when they decide to go into business doing it.”

The Institute seeks cases in which the licensing laws are ridiculous, Simpson says. In 2001, the Institute challenged regulations that require casket retailers to be licensed funeral directors, a requirement in some states. That drives up

casket prices, the largest portion of a funeral’s cost. The 6th U.S. Circuit Court in Tennessee recently sided with the Institute; the issue is being challenged in Oklahoma, too. Simpson says that often lawmakers are unaware of such economically inefficient regulations.

“A lot of times we’ll bring cases and the legislators will recognize that these are absurd laws,” he says. “When you have an active and organized group like funeral directors and a disorganized public, there’s a huge incentive for a small organized group to get the law changed and no incentive for the man on the street to care about it.”

The rationale for occupational licensing has typically been to protect public health and safety. Occupational licensing can be useful when consumers, for whatever reason, lack information about or have difficulty determining professionals’ quality.

But economists continue to question what people are buying for the higher prices associated with licensing.

“Prices are higher, quality is uncertain, and you don’t know if it’s better or not,” Kleiner says. **RF**

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