




Licensing: A Different Perspective
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Policy Benchmark

- Put resources (land, labor, capital) to their highest valued use



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Economic Arguments AGAINST Licensing

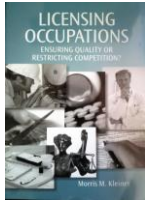
1. Antitrust
2. Lobbying involves resources
3. Unnecessary investments in human capital
4. Constrains innovation
5. A barrier to productive labor market matches
6. Limits access to jobs and business formation



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According to Economist Morris Kleiner (2006)

- “No overall quality benefit...”
- 1990 to 2000: Licensing slows growth in licensed occupations
- “...enhances the hourly earnings of the regulated occupations by about 10%.”



Upjohn Institute



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Gains from Deregulation are not Trivial

1. Independent practice for CA nurse practitioners
- \$1.8 billion (10 years)
2. Liberalizing immigration restrictions for foreign-trained physicians 1966-1971
- Physician earnings would have been 11% higher by 1971 without immigration

Moah Weinberg and Patrick Kallerman "Full Practice Authority for Nurse Practitioners Increases Access and Controls Cost." Report by Bay Area Council Economic Institute, sponsored by Robert Wood Johnson Foundation and AARP, April 2014 and Shirley Swamy, "Consumer Gains from Physician Immigration to the U.S., 1966 - 1971." Applied Economics, 1991

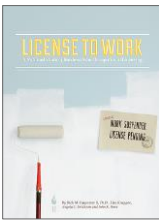


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“License to Work” (2012) Institute of Justice Report

- Examines the burden on workers
- Finds no logic in cross-state differences
- Recommends less licensing to help people find work



Dick Carpenter, Lisa Kinsgper, Angela Erickson and John Ross, License to Work: A National Study of Burdens from Occupational Licensing, Institute of Justice, May 2012




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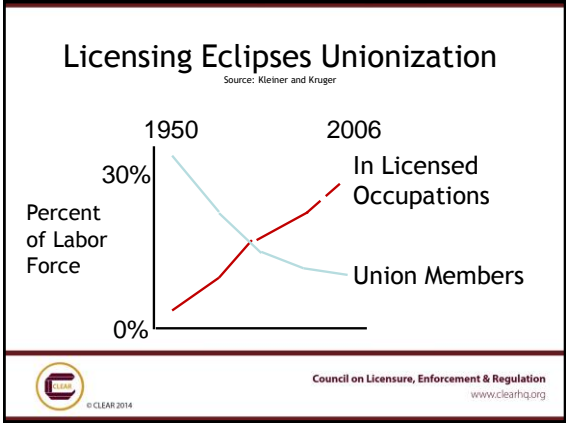
2014 Texas Sunset Advisory Commission explains why there is licensing:

1. "...the...interest of the regulated community to be regulated and to exert control..."
2. "the public's lack of awareness..."
3. "...the budgetary impact to the state" (fee revenue > cost of operations)


Department of State Health Services, Sunset Advisory Commission Staff Report, May 2014 online at <https://www.sunset.texas.gov/public/uploads/files/reports/DSHS%20Staff%20Report.pdf>

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The traditional argument for consumer protection: **Asymmetric Information**

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Where Does Consumer Protection Come From?

- 1. Brand name/reputation
- 2. Private certification
- 3. Private credentialing
- 4. Liability



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1. Brand Name and Reputation Protect Consumers



Is this how you check your food?



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Brand Name and Reputation Protect Consumers



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FOOD

- Wendy's 0.1 M
- Subway 0.1 M
- McDonald's 0.2 M
- Waffle House 0.4 M
- KFC 0.2 M
- Taco Bell 0.2 M

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Regional
Medical
Center,
Kingman, AZ

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NOTICE TO CONSUMERS
Medical doctors are licensed and regulated by the Medical Board of California (800) 633-2322 www.mbc.ca.gov

NOTIFICATION TO CONSUMERS
Physician assistants are licensed and regulated by the Physician Assistant Committee (916) 561-8780 www.pac.ca.gov

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What information is here?

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Information is Here:

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2. Private Certification Offers
Information & Protection

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Private Certification vs. Licensing


- Consumers get information
- Allows/encourages innovation and competition
- *No state apparatus to use to limit entry*

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3. Private Credentialing

(Companies check service providers' credentials.)

- Hospitals
 - Also "Privilege"
- Dental Clinics
- Insurance companies (service providers)
- Health maintenance organizations





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Example: Credentialing at Aetna

<http://www.aetna.com/docfind/cms/assets/pdf/MedicalCredentialing.pdf>

- Before contracting for services, Aetna checks
 1. Education/training/certification
 2. Employment history
 3. Malpractice coverage
 4. Malpractice claims history
 5. Hospital privileges (lost or limited?)



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4. Liability Protects Consumers

- Liability is a powerful source of financial incentives to protect consumers from bad outcomes
 - Motivates oversight



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Medical Professional Liability Insurance Oversight

- Annual evaluation
- Information and incentives to reduce practice risk
- Oversight of new medical procedures and high-risk physicians



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Who is protecting health care consumers?

- According to med mal insurers
 - Most "hard-to-place" physicians have never been sanctioned by the state
 - Most are identified by valid claims and hospital sanctions
- State boards allow sanctioned physicians to practice



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Brand Name & Liability Protect

The slide displays eight brand logos arranged in two rows. The top row includes ROTO-ROOTER (Plumbing & Drain Service), Baltic HOME IMPROVEMENTS (Roofing, Siding, Windows), and Massage Envy S.P.A. The bottom row includes LOWE'S (Never Stop Improving), Fantastic Sams Hair Salon, COLDWELL BANKER (Residential Brokerage), and Jade (Offering the Designer Method of Electrolysis).



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Stated Goals of Licensing

1. To inform consumers
2. To penalize negligence or substandard services




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Options

1. To inform consumers
 - State licensing
 - Certification
 - Private credentialing/certification
 - Brand name (reputation)
 - Consumers' own experience (Yelp!)

These don't restrict entry




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Options

2. To penalize negligence or substandard services
 - Loss of license
 - Liability
 - Loss of reputation (repeat business)
 - Loss of private bond
 - Criminal justice system

These don't restrict entry



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 **ECONOMIC FREEDOM**

Taking on barriers to employment

www.economicfreedom.org
Funded by the Charles Koch Institute

Quotes opposing occupational licensure:

1. "A lot of people coming out of prison have a hard time obtaining occupational licenses."
2. "Removing licensing creates jobs."
3. "People want to earn a living."
4. "The cost of occupational licensure fall disproportionately on low-income households and minorities."

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Fast Action by Audiologists? 

- 1997 (effective 2012): American Speech-Language-Hearing Association (ASHA) certificate requires Au. D.
- 2004-6: Last 2 states license audiologists (MI, ID)
- Late 2006: ASHA accrediting requires Au.D.
- >> 2007: **not one masters degree program in the U.S.**

Source: Academy of Doctors of Audiology Timeline

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**American Academy of Audiology
Legislative Action Center**

- **July 2014:** "Urge your Members of Congress to Oppose Expansion of VA Hearing Aid Benefits by Hearing Instrument Specialists"

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FEDERAL TRADE COMMISSION
 PROTECTING AMERICA'S CONSUMERS


FTC Proposed Framework

1. “Are there significant and non-speculative consumer health and safety issues, or other legitimate public policy purposes...?”
2. Are the conditions or restrictions imposed...” likely to have a significant adverse effect on competition and consumers?”

*Prepared Statement of the Federal Trade Commission on Competition and the Potential Costs and Benefits of Professional Licensure Before the Committee on Small Business, U.S. House of Representatives, July 16, 2014 online at http://www.ftc.gov/pa/ftc/documents/public_statements/568171140216professionallicensure.pdf



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FEDERAL TRADE COMMISSION
 PROTECTING AMERICA'S CONSUMERS

FTC Proposed Framework

3. Will the specific conditions or restrictions “protect against demonstrable harms or risks?” Are there other “demonstrated or likely consumer benefits, such as reducing information or transaction costs...?”
4. “Are the regulations narrowly tailored” to avoid restricting competition?”

*Prepared Statement of the Federal Trade Commission on Competition and the Potential Costs and Benefits of Professional Licensure Before the Committee on Small Business, U.S. House of Representatives, July 16, 2014 online at http://www.ftc.gov/pa/ftc/documents/public_statements/568171140216professionallicensure.pdf



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FTC

“FTC staff have not questioned state interests in establishing licensure requirements for... health professionals in the interest of public safety.”

MY TAKE

Why not?


*Prepared Statement of the Federal Trade Commission on Competition and the Potential Costs and Benefits of Professional Licensure Before the Committee on Small Business, U.S. House of Representatives, July 16, 2014 online at http://www.ftc.gov/pa/ftc/documents/public_statements/568171140216professionallicensure.pdf



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Conclusion

- Consumer protection comes from
 1. Brand name
 2. Liability
 3. Private certification
 4. Private credentialing
 5. Consumers can judge quality (as with barbers)



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Baby Steps



1. Push back on license creep and scope-of-practice restrictions
2. Oppose accreditation requirements that raise the cost of entry
3. Embrace reciprocity/endorsement
4. Shift from licensing to certification



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