
Viewpoint

Needs and Licenses

Michael Pertschuk

OUR CULTURE is dominated by professionals who call us clients and tell us of our needs. Morticians advise us of what is required for a decent burial. Sex therapists counsel us about what is required for intimacy. Professional hypertrichologists diagnose and treat our “excessive and unsightly” facial hair. Our children’s education requirements are determined by professional teams of speech therapists, learning disability specialists, child psychologists, social workers, school administrators, and guidance counselors.

Our very language has transformed the word “need” from a personal verb, dependent for its content on the one who feels it, into an objective noun. Needs are now somehow separate and apart from people; they have become the objects of professional competence, beyond our private competence to diagnose. We speak of the “delivery” of health care or social services and of the “achievement” of mental health or degrees of educational competence as if we were talking about commodities manufactured in uniform portions for those who lack them.

The increasing ubiquity of the professionals has had an insidious and intimidating effect. We lack confidence in our unprofessional abilities to diagnose our private needs on the basis of our personal experience. Increasingly, we ask professionals to reveal our needs, not merely to service them. The professional stockbroker, real estate agent, insurance agent, doctor, dentist, lawyer, pharmacist, auto mechanic, architect, interior decorator, psychiatrist, mortician, family planner, organizational development specialist—all now counsel us about our needs, advise us about what we should want, and then service their own prescriptions.

This combination of diagnosis and service is often efficient—how wasteful it would be to require that the diagnosing physician or auto

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mechanic put the body back together again before offering to repair it—but it is also open to subtle abuse. How can the diagnostician be relied on to understand our unique preferences, our own particular willingness to trade quality against price, our unique aversion to risk? And since it is difficult or impossible for us to know whether the recommended services match our personal preferences, how can the diagnostician be relied on not to try to maximize his profits simply by recommending services that will bring him the greatest gain?

To the extent that diagnosticians are conscientious, relying on time-consuming personal interviews and making the effort to listen and explain, they are apt to earn less than they could by sending us off to costly diagnostic centers filled with complex equipment for analyzing our physical, psychological, emotional, or financial needs. And to the extent that diagnosticians prescribe changes in personal habits or routines they are likely to earn less than they could by applying the techniques and remedies for which they have been trained and on which they profit. As a result, we are liable to misdiagnosis and overprescription.

It is estimated that 33 cents of every dollar spent last year on auto repair went for unnecessary work. It is also estimated that 2 million Americans underwent operations last year they did not need, at a cost of 10,000 lives and \$4 billion. And personal expenditures for lawyers, physicians, dentists, and other professionals are increasing at a rate faster than the average for all goods and services in the economy.

Ironically, licensing is both a response to, and a cause of, this problem. It is a response because—theoretically—it brings to bear the government’s comparative advantage in policing against misleading diagnoses and excessive service. If consumers are unable to evaluate bundles of diagnosis and service, then arguably the government should step in and set minimum standards to ensure the competence and

integrity of those who offer such bundles. Variations on this argument are sounded to justify most licensing schemes. Indeed, some concerned consumer groups now urge that auto mechanics be licensed in states where they are not, and that the licensing of lawyers and physicians be made stricter in order to guard against the kind of shoddy service that spurs dramatic increases in malpractice suits.

But licensing is also a cause of misdiagnosis and overprescription to the extent that it becomes a vehicle for a profession's legitimizing its monopoly on discovering and remedying needs, and enforcing its mystique by limiting access to special knowledge. Generally it is the members of a particular occupation—not the public—that seek licensing (as a means of enhancing prestige and income). At a recent session of one state legislature, occupational groups advanced bills to license themselves as auctioneers, well diggers, home-improvement contractors, pet groomers, electrologists, sex therapists, data processors, appraisers, and TV repairers. Hawaii licenses tattoo artists. New Hampshire licenses lightning-rod salespeople.

The evolution of certain occupations from being collections of individual sellers to tradesmen to certified professionals and, ultimately, to licensed professionals is well known. Barbers have been transformed into cosmetologists, garbage collectors into sanitary engineers, undertakers into grief counselors. Specialized courses of study are required, displacing apprenticeship and on-the-job training. Qualifying exams, citizenship and residency requirements, and professional fees are imposed on new entrants. Professional journals appear, Washington offices are opened to lobby for favorable legislation, and public relations firms are retained to ensure a favorable image. The profession develops status, political strength, and exclusivity. And each of these attributes reinforces the others.

It is hardly surprising that, once licensed, a profession is in a position to determine how much competition it will tolerate. Licensing boards dominated by members of the profession may act like any other cartel—adjusting entry standards to protect the incomes of established practitioners. It is not unusual for boards to reject higher percentages of applicants during periods of economic downturn when there is less demand for their services.

Nor is it unusual for these boards to restrict advertising, promotion, and innovative ways of providing services, thereby making it more difficult for new entrants to compete.

Thus, like members of medieval guilds, the licensed professionals can maintain their privileged positions regardless of market forces. Study after study has shown that licensing results in higher direct costs to consumers and that indirect costs, in the form of foregone innovation and experimentation, are higher still.

But what about quality? Higher prices might be justified if quality were improved, if there were fewer cases of misdiagnosis and excessive service. Unfortunately, the fact is that all too often licensing bears little relationship to quality. Several years ago the Federal Trade Commission (FTC) compared the price and quality of TV repairs in Louisiana, where repairers were licensed, and in the District of Columbia, where no licensing was required. The result: prices were 20 percent higher in Louisiana and the incidence of unnecessary repairs was virtually the same in both places. Other studies show that uncontested divorces result in the same incidence of legal error whether handled by the parties themselves or by lawyers, and that clinical labs licensed by states have the same incidence of inaccurate clinical test reports as the unlicensed labs.

Indeed, licensing boards rarely monitor quality. Most professionals, once licensed, are licensed for life. One needs periodic reexaminations in most states to drive a car or pilot an airplane, but not to continue practicing as doctor or lawyer. From 1967 to 1973, the number of doctors disciplined by state boards for incompetence averaged only 1.6 per state, per year.

When licensing renders certain services unavailable to those segments of the population that cannot afford to pay for licensed professionals, consumers can end up with poor and dangerous quality of the do-it-yourself variety. One study, for example, shows that states with the most restrictive systems for licensing electricians also have the highest rates of deaths from accidental electrocution.

Are we bound, then, to a closed circle of professionals who identify and adjudicate our needs, professionals admitted to practice by professionals and policed by the same professionals? I do not think so—for a rebellion is brewing. Blame it on a revival of populism, on

a resurgence of frontier self-sufficiency, on two decades of economic analysis focusing on occupational licensing, or on increased skepticism about government. Whatever its cause, the barriers to entry and innovation erected by professionals are beginning to fall.

The Supreme Court has struck down state laws prohibiting price advertising by pharmacists and lawyers for routine goods and services—laws passed at the behest of the professionals. Last year the Federal Trade Commission lifted restrictions on price advertising by optometrists, opticians, and ophthalmologists. More recently the commission issued a consent order that bars the American Society of Anesthesiologists from deterring its members from working under contract with hospitals. The FTC staff has recommended a rule requiring funeral directors to disclose the full range of their prices and options. And it is investigating physician control over Blue Shield boards, as well as licensing practices among lawyers, accountants, and dentists.

Private groups and many of the states have also taken steps to open up the professional marketplace. The American Veterinarian Medical Association and the American Psychological Association, after discussions with the FTC, have revised their codes of ethics to permit members to advertise. A committee of the American Bar Association has proposed streamlining ABA disciplinary procedures. California has placed a majority of public members on most of its licensing boards. Twenty-three states have enacted some form of sunset legislation to enable them to watch over their licensing boards. In Minnesota, no group can submit proposed licensing legislation without satisfying the state's Legislative Audit Commission that licensing is necessary.

More and more consumers are discovering that professionals are not markedly different from other sellers who offer their services in trade. Nothing dissolves a mystique faster than seeing lawyers advertise inexpensive legal services just as used-car dealers advertise special deals. Making visible the commercial underpinnings of the professions is therapeutic. It fosters healthy skepticism, and it teaches that, in this area as in all other commerce, vigorous competition coupled with adequate consumer information ensures the optimum range of quality at the lowest possible price.

Certainly it is necessary to be concerned about fraud and deception in these professions, just as it is with door-to-door sellers. But there are means of guarding against fraud and deception that are far less restrictive than licensing. Certification is one alternative. It provides consumers with information about the competence of the seller without creating a barrier to entry. Separation of diagnosis from service—the “second opinion” that allows consumers to do comparison shopping—is another alternative (which is why the FTC eyeglass rule requires eye examiners to provide consumers with a copy of their prescription).

The Federal Trade Commission is committed to finding and remedying vestigial and unjustifiable restrictions on the market for professional services. The remedying is the more difficult part, of course. FTC rulemaking is a less attractive approach than cooperation with state and local officials and concerned citizen groups—less attractive in part because the FTC may be less equipped than state and local officials to undertake the difficult trade-offs that are often involved. One area where the FTC can act without arousing substantial concern—indeed, an area where the commission has a major role to play—is in the provision of information, designing and funding studies that compare the effects of alternative regulatory systems on price and quality and serving as a clearinghouse for the findings of other studies.

At the same time, the FTC must carry out its congressional mandate to police unfair methods of competition and unfair and deceptive practices in the marketplace. And it will continue to act forcefully where professional regulation violates the basic tenets of our laws of competition and consumer protection and where there exists no serious alternative reform possibility.

When enough barriers have been removed so that professionals, disciplined by the market, must rely to a greater extent on their reputations for competence; perhaps then we consumers will be more confident of ourselves and less awed by those who tell us of our needs. We will bury the unfair advantages of the morticians, retreat from the intimate queries of the sex therapists, discover that hypertrichologists are excessive (if not unsightly), and require that the teams of educators do in fact educate our kids. ■