

A conversation with Dick M. Carpenter II, Ph.D., March 20, 2015

Participants

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Note: These notes were compiled by the Open Philanthropy Project and give an overview of the major points made by Dick M. Carpenter II, Ph.D.

Summary

The Open Philanthropy Project spoke with Dr. Carpenter of the Institute for Justice (IJ) as part of its investigation into occupational licensing. Conversation topics included the sources of problems associated with occupational licensing, growth in occupational licensing for non-high-skilled occupations, and opportunities for occupational licensing reform.

IJ research

Dr. Carpenter's research team studies issues related to IJ litigation to measure the effects of policies and laws on economic liberty, private property rights, school choice, and First Amendment rights in order to inform public opinion and influence judicial action. It conducts research on the traditional, academic model of social science.

Occupational licensing problems and trends

High-skilled occupations have historically been the greater proportion of licensed occupations, therefore likely leading to a large proportion of the problems caused by occupational licensing. Many high-skilled occupations have been licensed for more than a hundred years in the U.S. and for much longer elsewhere. Most are relatively high-income.

Recently, licensing growth has been concentrated in relatively low-income occupations. As a result, wealth transfers from customers to service providers have grown in these sectors. IJ tends to litigate in these sectors.

A person aspiring to practice a licensed occupation requires more upfront capital than they would if the occupation were not licensed. Therefore, a large share of practitioners may come from backgrounds that allow them to afford the upfront cost of licensing. Licensing costs may be particularly discouraging for people who aspire to lower-income occupations, such as hair braiding, because they may face the challenge of acquiring capital to pay licensing costs and of paying off debt after becoming licensed.

There is a robust sociological literature on professionalization that includes studies of licensing. Some sociologists note that professionalization segments society in a range of ways, including economically and socially.

The growth of licensing in the service sector is visible in government data. Jobs in this sector are more likely than higher-income jobs to experience licensing growth because they are less likely than higher-income jobs to have had a licensing requirement in the past.

Occupational licensing reform

Political feasibility of reform

American politicians are increasingly aware of occupational licensing and the problems it can cause. President Obama and Vice President Biden have mentioned the topic in recent speeches. Their statements lean toward promoting licensing reform. Dr. Carpenter is not aware of any other U.S. president who mentioned licensing reform in speeches.

At the national level, the Executive Office of the President and Congress are dedicating time to the issue of licensing reform, and, on the state level, governors including the Governor of Indiana have dedicated time and established offices geared toward licensing reform. In Texas, a licensing reform bill was under consideration that aimed to realign licensing requirements with public health and safety needs. Licensing reform has momentum and is more politically feasible now than it was in the past.

Pushback against licensing reform is severe. For example, licensed occupations responded strongly to a recent reform effort in Arkansas. In Florida, Governor Scott sought to deregulate 20 occupations during the 2012 legislative session. Pushback was very strong, and the matter was still being considered down to the last second of the state legislature session.

Approaches to occupational licensing reform

Licensing reform has often been considered from the binary perspective of whether there should or should not be a licensing requirement rather than from the nuanced perspective of whether the type of regulation in place matches relevant public health and safety considerations. Where a genuine threat to public health and safety exists, some form of regulation may be beneficial. Reform approaches include:

Deregulation

This involves removing the licensing requirements from a set of occupations that have a weak case for requiring licensing. This approach can generate some success.

Aligning regulation with demonstrable need

This involves evaluating whether regulations fit the demonstrable need and adjusting policies accordingly. Regulators commit to using evidence and data to identify risks associated with occupations and to finding proportionate, targeted ways to address the risks. This approach can lead to more or less regulation as policymakers strive to find a balance between extremes of over- and under-regulation. This approach is at least as promising as deregulation. The UK's "Right-

touch” regulatory movement, which began in the healthcare sector, is a prominent European example of this type of reform. The approach is expanding into other sectors and into countries such as Canada, Australia, and New Zealand.

Under-regulation

Though anecdotes about the danger of under-regulation are common, data on the topic are rare. The movement to collect more data could clarify the question of how much under-regulation is actually taking place. Dr. Carpenter has not observed any under-regulation in his research. He thinks this is because under-regulation is rare.

Reform options in the U.S.

Reform on the state level in the U.S. could involve a nuanced selection of tools from a range of options including market competition, market regulation, and licensure. Some intermediate options might be particularly useful to cities and states seeking to align regulation with demonstrable need. These include:

- Private civil action
- Inspections
- Bonding
- Insurance
- Registration
- Voluntary or third party certification

Licensing and geographic mobility

Licensing reform is part of the discussion of how to facilitate geographic mobility because licensing requirements may hinder geographic mobility. For example, one state may have a registration requirement for a profession, whereas another state may have a licensing requirement for the same profession. The licensing requirement in the latter state may discourage workers who only need to be registered in their current state from moving to it. First Lady Michelle Obama has discussed this issue with respect to military spouses because they have little choice about whether and where to move.

Licensing reform in high-skilled occupations

Licensing reformers and economists rarely focus on high-skilled industries. However, licensing reform efforts are beginning in high-skilled occupations such as the legal profession. For example, a process of certification is being considered that would allow practitioners to perform some legal tasks despite not having been admitted to the state bar. Dr. Carpenter thinks there could be some success in reforming high-skilled occupations, but he thinks the success would likely be small because licensed, high-skilled workers tend to recognize the advantages of maintaining their exclusive right to perform many tasks. For example, a rigid hierarchy in medicine dictates what nurses may do. There may be some tasks that dentists, for example, would be willing to delegate to hygienists or assistants, but these would likely be few. Such delegation most often takes the form of ceding

tedious or entry-level work to people without top certifications. The case of barristers vs. solicitors in England may be an example of this sort of division of labor. Nurses' inheritance of tasks that used to be done by doctors also fits this pattern.

Whenever a new category of worker develops, it often results in an effort to regulate it, which could cause it to become a new licensed occupation. Dr. Carpenter would be surprised if these new licensed roles encroached on the responsibilities of higher-ranking professionals because of the higher-ranking professionals' strong incentive to prevent movement into their domain. Architects, for example, battle with interior designers over professional territory. Interior designers try to take on some tasks traditionally done by architects, and architects try to prevent the encroachment.

A possible effect of the development of new regulated roles is "license creep," the extension of regulation to previously unregulated tasks. Teeth whitening is a contemporary example. Dentists have been providing teeth whitening services for years. The average dentist makes approximately \$25,000 per year from providing the service. Non-dentist entrepreneurs recently began selling and administering over-the-counter teeth-whitening products, and dentists, seeing this as an encroachment on their occupation, have considered expanding licensing requirements to gain the exclusive right to whiten teeth.

Other people to talk to

- **Professor Alan Krueger** – Professor of Economics and Public Affairs, Princeton University; former Chairman of President Barack Obama's Council of Economic Advisers; co-author of several papers with Professor Morris Kleiner.
- **Professor David Harrington** – Professor of Economics, Kenyon College, with a focus on the cost of regulation in low-skilled occupations.

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