

Andrzej J. Gapiński

# Licensure, Ethics, Welfare of the Public and Uberization of Services

**In the United States, professional licensure is primarily the responsibility of state governments. State governments create the statutory guidelines for occupational regulation. For implementing and interpreting of these laws special administrative state agencies or boards are formed that also perform other regulatory responsibilities [Schneider, 1987].**

Historically speaking, professional licensure goes back to A.D. 1140 when Roger of Normandy required doctors to prove competency [Michels, 2013]. In the USA, the state of Wyoming was the first one that started requiring professional engineering registration in 1907 [Michels, 2013]. Currently, across the country there are over 800 different occupations regulated by the states. State boards regulate licensing policies. The mean number of boards per state is 17, but there is a huge variation of this number among the states [Berry, 1986]. While some states such as California has 29 boards, others such Wyoming has this number significantly lower with only a few professions subject to licensing such as architects and medical professionals.

According to the Pennsylvania Department of State's website, Professional Licensing [2015] protects the health, safety and welfare of the public from fraudulent and unethical practitioners. The purpose of licensing is to ensure an adequate quality level in delivering important services in order to protect the public. Since each state within US regulates the licensure

process individually, Pennsylvania has its own licensing agency, which handles licensing the Bureau of Professional and Occupational Affairs [2015] established in 1963. As part of the Department of State of Pennsylvania, the Bureau of Professional and Occupational Affairs provides an administrative, logistical and legal support to 29 professional and occupational licensing boards and commissions. The areas where professionals are expected to be licensed vary from accountancy to veterinary medicine. In Pennsylvania licensing includes the following professions

- auctioneering business,
- clinical social workers, therapists, and counsellors,
- dentists, dental hygienists, nurses, medical doctors,
- auto manufacturers, distributors, and dealerships,
- landscaping architects, engineering, etc.

How prevalent are the licensure requirements as the share of workforce across the nation? The share of workforce subject to licensure does vary from state to state. In the case of Pennsylvania the share of workforce licensed or certified equals to 20.2 and 7.6 percent, respectively [Berry, 1986]. The share of workforce licensed or certified for other states does vary from a high share of 12.4 (South Carolina) to 33.3 percent (Iowa) and from 1.9 (Wisconsin) to 12.3 percent (West Virginia) for low share range, respectively based on recent 2015 statistics [Kleiner, 2015].

As far as enforcement is concerned, the Pennsylvania' Bureau of Enforcement and Investigation provides the boards and commissions with inspection and law enforcement capabilities. Similar agencies with equivalent services do exist in other states.

### European landscape

Occupational licensing is used worldwide to ensure quality of services, public safety, and welfare. In the European Union (EU), between 9 and 24 percent of the workforce is subject to licensing which is surprisingly lower than the USA's less than 30 percent [Koumenta, *et al.*, 2014]. Similarly to the states of the U.S., there is a huge variation of occupational licensing policies across EU countries. While Bulgaria, Estonia, France, Latvia, Sweden have less than 15 percent of the workforce licensed, in Denmark and Germany the number reaches at least 25 percent [Koumenta, *et al.*, 2014]. There are administrative attempts to change or modify the licensing policies in order to improve the current state. The Polish government, for example, in October 2011 announced plans for the deregulation of licensing with hopes to lower prices and to improve the quality of services [Kleiner, 2015]. As far as other geographical regions, the author at time of writing was not aware of any published documentation regarding occupational licensing and related regulations in Latin America and elsewhere.

### Licensure – at times unnecessary burden?

The states, by requiring licensure for all types of occupations and jobs, often cordon off occupations from competition for the clear advantage of licensed workers and their lobbying groups, critics say [Kleiner, 2015]. Nobody will argue against licensing in the medical and engineering professions but there are myriads of other occupations which do require state licensing without the clear advantage

to the public. In addition, it maybe said there is a trend of overburdening licensing by some states. M. Kleiner [2015] reports *In the early 1950s less than 5 percent of U.S. workers were required to have a license from a state government in order to perform their jobs legally. By 2008, the share of workers requiring a license to work was estimated to be almost 29 percent.* He also claims that by providing a safety umbrella from competition for so many occupations, states reduced employment by up to 2.8 million jobs. There is a lack of consistency and some may claim even simple logic in licensing requirements. This may be particularly true in professions of lower income levels: while the majority of states require licensure for a pest control applicator, an emergency medical technician, a bus driver, a cosmetologist, and a manicurist only few states require license for a nursery worker, an HVAC contractor, a dietetic technician or a dental assistant. The large variations in license requirements for the same occupations suggest that the licensing may not be always related to safety or quality of services [Carpenter, 2012].

### Lack of uniform licensure polices and standards

The US States list different occupations subject to licensure requirements. So to society the message is confusing: what in one state is allowed to be performed without license in another state does require state approval or license. There is a lack of uniformity of licensing policies across the US. E. Porter [2015] writes *Locksmiths must be licensed in only 13 (states), upholsterers and dental assistances in seven and shampooers in only five.* Furthermore the lack of uniform licensing policies extends to licensure standards. *An athletic trainer must put in 1,460 days of training to get a license in Michigan while an emergency medical technician needs only 26* [Porter, 2015]. This clearly goes against not only a reasonable justification of licensing re-

quirements but more importantly against common sense. Nurse practitioners are allowed to prescribe medicines in Arizona but not in other states, such as Alabama. At the same time there is no difference in infant mortality rates and malpractice insurance premiums are about the same, which suggest that in the eyes of insurance industry the risks are not greater in the case of allowing nurses to prescribe medication [Porter, 2015]. It seems clear that other states would benefit by adopting Arizona's approach.

USA union of states does provide, in their original founders' thinking, opportunities for experimentation and consequently for best practices to spread out, however due to political realities and influence of interest groups and lobbies the unconstrained dissemination of best models and practices in variety of industries and services is very much inhibited.

There is a growing body of evidence that professional organizations which push for licensing are using the public health and safety argument to *de facto* fend off competition and provide higher salaries for their members. The American Academy of Cosmetic Dentistry reported that in 2006 its members performed, on average 70 teeth-whitening procedures for a \$350 a pop while unlicensed workers do it for \$150 [Porter, 2015]. Furthermore, M. Kleiner and R.T. Kudrie [1992] study suggests that tighter licensing of dentists does not improve the quality of dental health.

J.A. Brannon, *et al.* [2012] investigated barriers to the cross-state licensure practice related to tele-health occupations (audiologists, occupational and physical therapy, speech language pathologists, etc.) in delivering health services otherwise unavailable in rural or remote locations. While, as J.A. Brannon [2012], writes there are three common core licensure requirements shared by states: education, examination and behaviour require-

ments, states do differ on jurisprudence exams, criminal background checks, continuing education expectations, and other requirements. Lack of uniform standards makes the multi-state licensing process expensive if not completely prohibitive for those who wish to participate in offering services in an inter-state format. One area of such services is tele-rehabilitation delivered via modern information and communication technologies. J.A. Brannon [2012] proposed the method to improve licensure portability through pinpointing the areas of agreement and variations that do exist in licensure requirements and processes between states. While the need for more uniformity is realized by many, it is not clear from where the impetus for uniformity might come, e.g., federal, state, licensure bodies, or professional association based initiative. Naturally arguments of introducing more uniform licensure standards goes beyond areas discussed by Brannon and can and should be extended to not only engineering and medical professions but to other areas as well. The federal form of United States certainly should not prohibit more uniformity in licensing policies.

One other factor that has to be considered is that states benefit financially from requiring licensing by collecting license fees. Thus, on many occasions, due to states' financial situation and their financial needs, it is an uphill political battle to expect elimination of licensing.

## Ethics

In order to better serve society many occupations and professions adopted ethical codes that describe ethical guidelines for professional conduct. These guidelines to a certain extent also describe the responsibilities and rights of the professional. The first professions that organized themselves into professional associations in the USA were engineering specialties in nineteenth century: civil, electrical,

and mechanical engineering. These professional societies adopted codes of ethics to provide guidelines for professional conduct with respect to responsibilities and rights. The National Society of Professional Engineers [NSPE, 2015] which adopted ethical codes could serve as an exemplary illustration of that process. Naturally, the ethical codes mainly follow the utilitarian theory as the workable approach to be used in professional settings, although one can find elements of Aristotle's Virtue Ethics or Kant's Duty Ethics [Smith *et al.*, 2008] attributes as well. These approaches are used in evaluations and assessment of ethical issues and dilemmas encountered in professional ethical cases. Obviously, other occupations which do not affect public safety or welfare in similar ways as the engineering fields or healthcare usually have much lower level of codification of ethical conduct if any at all.

When talking about ethical conduct in respective professions one should note that expectations of good ethical and moral conduct go beyond the professional setting. Namely, in many occupations it is expected that the licensee will behave ethically in their personal life outside of the professional setting. E. Brous [2012], when discussing the strategies to protect licensure in nursing, points out that *nurses can be disciplined or separated from practice for engaging in untoward conduct in their personal lives, and to continue taxes must be filed, spouses and child support payments must be paid on time, and nurses must not drive when impaired or intoxicated.* Furthermore the author points out that misuse of social media may affect the licensee adversely. E. Brous [2012] notes that *if arrested or charged with a crime, nurses should seek the counsel of a licensure defense attorney, as well as a criminal attorney.* The fact that personal conduct does matter and it may affect the licensure standing may surprise some but in many cases the licensure boards are taking a holistic approach to

ethics where professional and personal lives should adhere to similar ethical and moral standards. Naturally, in many occupations subject to licensing, ethical conduct is part of professionalism which includes a specific set of skills that are occupation dependent. Although in the realm of moral epistemology a virtue is considered a skill but not every skill is considered a virtue [Jacobson, 2005, Stichter, 2011], here we assume that any skill set constitutes a positive attribute subject to execution in an ethical way. We will leave it to moral epistemologists to dwell whether or not a person without virtuous skills can execute occupational skills ethically or virtuously. While the H. Dreyfus, S. Dreyfus [1991] model divides skill acquisition into five stages: novice, advanced beginner, competent performer, proficient performer, and expert, here we assume that a licensee provides services at expert level.

Business ethics and social responsibility even brought the attention of the United Nations with its ten principles of Global Compact [Chrzanowski, 2014] that ask companies to *embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labor standards, the environment and anti-corruption. (...) Ethical guidelines are not applied monolithically and they do differ depending on area of professional activity. Some authors introduced classifications of business ethical guidelines based on specific areas of business or occupation such as in finance, marketing, intellectual property, etc.* [Chrzanowski, 2014, p. 27]. Although a significant portion of services under occupational licensure are performed by individual sole proprietorships, for public companies the Sarbanes-Oxley Law of 2002 [Chrzanowski, 2014, SEC, 2015] was enacted that require companies to disclose whether or not they have adopted an ethical code of conduct.

The rational argument behind licensing to ensure public health and safety is

sound; however, due to political pressures from organized occupational workers and their lobbyists many states introduced unneeded licensing requirements, which not only violate common sense but may raise some eyebrows with regard to serving the public good. Proponents of relaxing the licensing requirements claim that this would lower the prices for services and thus increase the number of potential customers [BPOA, 2015]. Low income occupations could see their income fall, but that should be balanced off by a greater number of individuals that would enter the professions in case of more relaxed licensing requirements.

The role of governments in a democracy after all, according to utilitarianism, is to facilitate welfare for the population and not protect special interests groups.

### Uberization of services

Uber, a smartphone app-based transportation network and taxi company which offers transportation services, showed how to address a chronic under-supply and deficiency of regular taxi-cab service in major cities in US and elsewhere [Manjoo, 2015]. The company has shown how to provide service successfully without unnecessary intrusive bureaucratic licensing. Many entrepreneurs took notice of the rapid rise of Uber is being imitated in other areas such as elderly medicine, medicine, real estate, security, home services, delivery and logistics, hospitality, entertainment, etc.

The “uberization” or “uberification” of the economy provides a dramatic change in how local services are located and fulfilled. The consequences are already significant and will become even more so in the coming years. As F. Manjoo [2015] writes *...new technologies have the potential to chop up a broad array of traditional jobs into discrete tasks that can be assigned to people just when they're needed, with wages set up by a dynamic measurement*

*of supply and demand, and every worker's performance constantly tracked, reviewed and subject to the sometimes harsh light of customer satisfaction.* These far reaching and deep changes inevitably question the established ways of doing business and, as a consequence, question the licensing policies enforced by various mainly state agencies. Naturally, occupational licensing should remain as a necessary mechanism to ensure standards in important service segments of the economy such as healthcare, engineering, and other critical services. However, elsewhere common sense should prevail and eliminate unnecessary regulations and licensing.

While uberization will provide benefits to work life such as flexibility and the opportunity to make additional income in the on-demand economy, it will also make peoples' income less predictable. Robert Reich, former secretary of Labor [Manjoo, 2015] sees the on-demand new economy as a contributing factor to less predictable work life and insecure work that does not pay very well. As the changes sweep various service areas one can see uberization entering other sectors of the economy where on-demand, flexible, responsive customer service will be expected and demanded. And there is a hope for changes that will affect state licensing policies and requirements since even behemoth industry such as healthcare goes through revolutionary changes where healthcare providers are awarded based on positive results and prevention. As R. Abelson writes [2015]: *A coalition of some [of the] largest healthcare systems and insurers vowed to change the way hospitals and doctors are paid-placing less emphasis on the sheer amount of care being delivered and more on improving quality and lowering the costs.* Imagine that! If healthcare is reforming then there is a hope for states to use more common sense and to clean up their act regarding licensing policies and politics around it.

## Professional licensure policies – affecting factors

Professional licensure is an important element of any state's policy making activity. The results of licensing boards decisions are well known based on announcements and published documents but how the activities themselves and decision making processes are performed and how they are affected by various factors are much less known. S. Schneider [1987] investigated the factors which influence the board decisions: public representations, economic resources, and size of board jurisdictions. The model used by Schneider which allowed her to examine the influence of these three factors on professional licensure is given by Decision Making (DM) equation (1):

$$DM_i = b_0 + b_1PUB_i + b_2EC_i + b_3JUR_i + u_i \quad (1)$$

Where  $DM_i$  represents decision making by board  $i$ ,  $PUB_i$  stands for public representation on  $i$ ,  $EC_i$  stands for budgetary appropriations for board  $i$ , and  $JUR_i$  for the size of the board  $i$ 's jurisdiction. The  $u_i$  represent disturbance. The  $b_1$ ,  $b_2$ ,  $b_3$  coefficients were estimated by S. Schneider [1987] through least square regression analysis.

The analysis performed by Schneider found that two factors: EC budgetary or available economic resources and JUR the size of board jurisdiction influenced the boards' decisions the most. Surprisingly the PUB public representation did not play any significant role. S. Schneider attributed that fact to two factors: relative novelty of public representation with not yet realized "apparent effects", and an unclear role to be played by public representation who "may be uncertain about their own responsibilities." The analysis was performed based on available Missouri licensing boards' data sets, which was a highly unusual case since for majority of states the data on licensing boards'

activities and decisions are not publically available. There is hope that in the light of inevitable changes to the licensure processes states will institute more openness in disclosing activities of their own agencies and licensing boards. After all, many states did add the public representations to licensure boards responding to the critique of past policies.

Since the licensure processes and standards are not uniform across the states, thus, the licensure share of the work force varies significantly from state to state it would be interesting to see how this factor would influence the licensing boards' decision making process and outcomes. Thus, here it is proposed a modified DM equation, which takes into account the state licensure share of workforce as follows:

$$DM_i = b_0 + b_1PUB_i + b_2EC_i + b_3JUR_i + b_4LSWF_i + u_i \quad (2)$$

Where  $LSWF_i$  represents licensed jobs share in workforce in the  $i$  category. Currently, the data for the state of Pennsylvania is being collected. The analysis of factors affecting the decision making by boards based on a modified equation (2) is the subject of an article in preparation [Gapiński, n/p]. There, the validity of the hypothesis that the share of licensed jobs in a workforce does influence the decision making will be investigated.

### Where to go from here?

There are already proposals in literature that offer policy changes to remedy shortcomings of the present system of licensing. For example, J.A. Brannon, *et al.* [2012] outlined a method to increase licensure portability by minimization of variability of the licensure requirements and credential processes. A more systemic solution was put forth by M.M. Kleiner [2015] that contains four policy changes that would reduce the regulatory costs of occupational licensing among states and

enhance employment and services provided to consumers. The proposal encompasses [Kleiner, 2015]:

- cost-benefit analysis to evaluate occupational licensing,
- role of federal government in establishing and promoting of sound practices on occupational licensing,
- state reciprocity in accepting licenses granted by other states similar in spirit to accepting other states' driver's licenses,
- implementing certification or registration policies as a substitute for licensing.

The universe of state licensing is complex, inconsistent, and not very efficient in present format. On the positive side there is an awareness that the licensure processes should respond to technological changes and disciplines that are becoming increasingly more and more specialized. M.A.Thornton [2012] reports of professional licensure for software engineers being developed. Namely, the Institute for Electronic and Electrical Engineers (IEEE), National Society of Professional Engineers (NSPE) and Texas Board of Professional Engineers *entered into collaborative agreement to sponsor the development of a professional engineering (PE) licensure in the discipline of software engineering*. The need was due to a wide and rapid proliferation of software in modern engineering devices and products which necessitated the licensure initiative since many applications of software engineering may affect public health, safety, and welfare.

Technological advances that many industries and services are currently experiencing could force state governments to consider changes sooner than later. Naturally with the US form of government all parties, i.e., the legislatures, regulatory bodies, and court system should approach the subjects which affect or may affect licensure directly or indirectly with care in order not to jeopardize safety, health,

and public welfare with unintended consequences. A recent statement by NSPE [2015] expresses a concern for possible negative consequences of the US Supreme Court's decision in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*. Namely, the NSPE felt that *the Supreme Court's decision will have the unintended consequence of discouraging highly competent licensed professional engineers from serving on state engineering licensure boards (as well as state engineering licensure board committees and task forces) due to personal liability uncertainty and concern. The decision also jeopardizes the role of state engineering licensure boards and their members in exercising technical and professional judgment and discretion in questions relating to the practice of professional engineering*. To continue, the NSPE [2015], having public welfare in mind expressed a commitment not to allow for the court decision to negatively affect the licensure regulations and processes. Thus, while the technological developments affecting the occupational and professional services may force states to take a more proactive approach to addressing expectations if not demands of the new on-demand economy for regulatory changes, a caution in implementing of inevitable changes to licensure processes is justified.

## Conclusions

The purpose of the article was to investigate the state of licensing policies in the US in light of society expectations, ethics, and new trends in the economy. The new on-demand economy will affect licensure processes and policies and inevitably change work life for many citizens. The consequences will be far reaching and will affect the way many services are currently delivered. The changes will also affect government agencies, mainly at state level, in their licensing policies and requirements. State licensing in current form may offer necessary enforcement of satisfactory

quality of services but in many instances, critics claim, it introduces a bureaucratic burden of unnecessary certifications and licensing costs which limit competition and as a result does not serve the public

well. Also, the purpose of the article was to analyse the status quo regarding licensing policies in light of the “uberization” of the economy and to foresee the inevitable changes to licensing policies.

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