



National Council of
State Boards of Examiners

Who's Defending Occupational Licensing?

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In Defense of Occupational Licensing: A Legal Practitioner's Perspective

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So...what has been happening since the Spring of 2021?

Well, by no means is this battle over!

- Biden White House, July 2021
- The IFJ's release of the 3rd ed. of its study, *License to Work: A National Study of Burdens from Occupational Licensing* in December 2022
- And lots in between ...



For example, just this year (2023):

Utah SB 123, “Boards and Commissions modifications” – repeals four professional licensing boards

Virginia SB 1480, “Deregulation of Certain Professions” – repeals six occupational and professional licensing boards

S.C. HB 3515 – “Entrepreneur Freedom Act” – repeals 13 occupational and professional licensing boards

N.H. HB 655 – “Office of Professional Licensure and Certification” – consolidates 46 occupational & professional licensing and certification boards under an “umbrella agency”

But ... there has been progress -- or at least reconsideration -- in a few states. For instance:

New Mexico HB201, “Extend Certain Board Sunset Dates” – extends the sunset (elimination) date of seven occupational & professional licensing and advisory boards

What is Occupational Licensing?

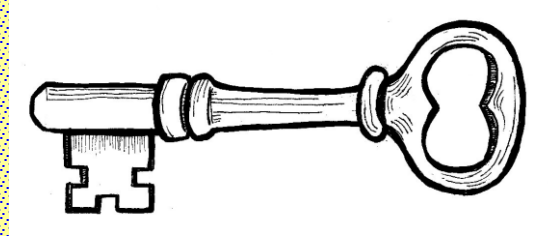
What it's not! (The misleading & erroneous comparisons.)

- They are not trade guilds.
- And they are certainly not unions.

The “title act” distinction



The



Protection of the “public health, safety & welfare.”

It began with *Dent v. West Virginia*, 129 U.S. 114 (1889).

Government cannot regulate an occupation or profession unless it can be shown that regulation is for the protection of the public health, safety and welfare.



The anti-licensing argument.

- It's not partisan political.
- It tends to be “libertarian” in nature.
- *Laissez faire* / free market proponents.

Debunking the data / statistics.

- Morris M. Kleiner “& Co.”**
- A few have tried before:**
- Uwe E. Reinhardt**
- Beth Redbird**



And yes, I discuss the dreaded topic...

N.C. State Dental Board of Examiners v. FTC,
574 U.S. 494 (2015)

Nobody ever thought a state agency could or
would lose *Parker* immunity!

- The “active supervision” in N.C.
- Board members appointed by the Governor and legislators.

The economic benefits of occupational and professional licensing.

- The positive effect
- Cost benefits to business and private citizens
 - It saves businesses and citizens time and money
 - Gives businesses and private citizens a “seal of approval”
 - An economy of scale

- It's an incentive to "do right"
- Should Angie's List be the judge?
 1. No place for laissez-faire capitalism
 2. Position can be bought
- A world without licensing

It's government closest to the people.

- *Vast majority of members are appointed.*
- *Everything every conservative candidate says about how government should operate.*



Any shortcomings are being addressed.

- **Reciprocity or comity**
- **Military & military spouses**
- **Compacts**

Who's fighting back?

- Voices on the national level
- Alliance for Responsible Professional Licensing (ARPL)

Where you can find the article:

<http://scholarship.law.campbell.edu/clr/vol43/iss3/6/>

Thank You