

Medical Licensing

Dear Editors:

Drs. Locke, Mode and Binswanger, in their article in the October 1980 issue of MEDICOLEGAL NEWS, *The Case Against Medical Licensing*, present a feeling which cries out for a response. The feeling appears to be that laws restrict individual freedom of choice, and that is bad, wrong, or at least not as good as allowing uncontrolled freedom. In some cases this may be correct. However, if it were universally true, I submit that physical force and economic pressure would be the major determinants of reality.

Perhaps the missing consideration is the role of law and the purpose of government. In a free, democratic, representative society, the populace is free. It is even free to decide for itself when to restrict its own freedom. If the group can agree that there is a potential danger to health or safety, it can also agree to voluntarily give up a degree of personal freedom in order to achieve some measure of protection against that perceived potential danger. If the spread of a communicable disease is feared, the group can agree in advance that whoever contracts the disease can and should lose the right to total freedom until the risk of harm to others has been adequately controlled or dissipated. If safety is endangered by the exercise of total freedom to use firearms, motor vehicles, or even construction materials and design for multi-family or public buildings, then why should not those freedoms also be subject to reasonable restraints?

Professional licensure is unquestionably a loss of freedom. However, it is not a total loss of freedom. It is a restriction on the activities of individuals. But is it as reprehensible as Locke *et al.* depict? Is it to be avoided because no freedom should be controlled, or is it because the authors believe that the freedom to practice medicine is without risk of harm? Certainly they will concede that there is a risk. Therefore, they must conclude that it needs some type of restriction. The choice is not between "a free and voluntary system" and "monopolistic, bureaucratic licensing" as the authors appear to suggest simplistically.

While the medical profession led the effort for licensing, this does not in and of itself mean that licensing is bad. Licensing may result in status elevation, invest a person with superior power, and bestow an economic benefit

upon the licensee. So does election to political office. Do the authors contend that the elective process is also to be criticized because the results are the same as the selective process of issuing licenses to engage in potentially harmful activities? I doubt this.

The authors' conclusions have merit, although their rationale may be questionable. I believe that government "can set rational licensing standards" for the practice of medicine, but that it has failed to do so. I believe that state licensing boards can set and apply quality standards for the benefit of both the licensee and the public, but that they have failed.

I have faith in the democratic process, confidence in the ability of some to guide and protect others, faith in the motives of professionals in seeking to maximize the quality of care and minimize the risks to patients, knowledge that those who administer the system can be called to account for their failure to abide by and fulfill these objectives, and an awareness of the current reality of the failure of both the system and the individual appointees to accomplish these goals. The authors' suggestion that the cure is a "free and voluntary system" is just as objectionable as benevolent despotism. The power base must not be any one self-interested, questionably motivated, blindly subjective, private citizen, or minority group. It must be an educated electorate choosing for itself the standards by which it wishes to create a "better" quality of life. If those who are selected to implement those standards fail, the solution is either to change the standards, compel compliance, or change the identity of the administrators. The solution cannot and should not be total, uncontrolled, unexamined freedom for all! Yes, all men are created equal, but who was it who said that some are more equal than others? Should that remain so? I believe not.

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Dear Editors:

Even with my reluctance to agree publicly with my friend George Annas, and my longstanding criticism of professional licensure, *see*, for example, *An Alternative to Mandatory Licensure of Health Professions*, HOSPITAL PROGRESS (March, 1969) and *The Inhibiting*

Effect Upon Innovation of the Prevailing Licensure System, ANNALS OF THE NEW YORK ACADEMY OF SCIENCES, Vol. 166, pp. 951-56 (December 31, 1969), I must admit that eliminating governmental regulation of the health professions at this time, as advocated by Locke, *et al.*, in *The Case Against Medical Licensing* in the October, 1980, issue of MEDICOLEGAL NEWS, is not appropriate or feasible, without an effective mechanism to make the consumers' right to choose more than illusory. George's suggestions for changes in professional licensure in his editorial response would have been viewed as revolutionary 10 years ago; we are moving, albeit slowly, toward the accomplishment of many of them today. For example, George and I would not have had the opportunity to serve on medical licensing boards 10 years ago. I suffered through 5 years on the Pennsylvania medical board, and left only at my desire; George continues to serve in Massachusetts.

I would like to add, as a final point, that with the third party payment mechanisms that we now have, I would be appalled to see the Blues, other insurers, the Feds, and the states paying for services rendered to insureds and program beneficiaries by anyone who provided any "health service." I would resent greatly my premium and tax dollars being squandered in such a fashion, even though the decisions made by the insurers and government with respect to how much to pay which providers are sometimes debatable, (*see Patient Free Choice: A Relative Concept for the Insured Patient*, THE INSURANCE LAW JOURNAL (February, 1969)). If Locke, *et al.*, truly take the Ayn Rand philosophy seriously, then Medicare and Medicaid have to go, giving the elderly and the poor the "freedom" to use their practically non-existent resources in the free market to secure the health services they require. And, there will be the opportunists around to exercise their right to make a living, and take whatever money the elderly and the poor have.

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continued on page 18