

The Case For Medical Licensure

by George J. Annas, J.D., M.P.H.

Locke *et al.* argue elsewhere in this issue that medical licensure should be abolished. Their reasoning is direct and seductive — but their free market cure is worse than the disease they describe. Their major premise, for example, is simply wrong: "Any governmental action that violates individual rights is improper." For this notion they cite the ultraconservative novelist Ayn Rand who talks about things that are "right" for humans to do. But there are two confusions: (1) rights do not exist in a vacuum; in an interdependent society the rights of individuals *must* sometimes be balanced against the rights of the group (e.g., airport security screening or neighborhood police patrols); and (2) to say one has a right to do something is not the same as saying it is "right" for someone to do something (e.g., I may have a right to treat an accident victim in an emergency, but if I know I will do more harm than good, it would be wrong for me to treat the victim). In Ayn Rand's society everyone has the "right" to do what he thinks is "right" without governmental interference. This is fine for the strong and wealthy; it is destructive to the middle-class majority and the poor. The world can only support a handful of Howard Rouarks and Dagny Taggart.

The authors, do, however, correctly highlight the bastard pedigree of occupational licensing. It has two purposes: (1) to protect the public, and (2) to enhance the profession and give its members a monopolistic advantage. That it does the second more effectively than the first is the real flaw in current licensing. The answer, however, is not to throw public protection out with the professional monopoly, but to increase public protection and competition in the health care field simultaneously. The authors are correct that these two goals need not be conflicting.

We do not need licensing because the majority of the population is inherently stupid and cannot understand basic health care concepts. Rather, when one actually needs medical treatment, one is generally suffering

from an illness or injury that seriously impairs judgment and drastically limits one's ability to "shop around." It is too late to compare credentials, private certifications, and experience. One needs some way to know that at least some *minimal standards* have been met by a person who holds himself out as able to diagnose and treat. Those minimal standards are assured by licensing. To protect the sick and injured against exploitation by unqualified practitioners, mandatory licensing seems necessary.

On the other hand, to make licensing more responsive to the public, and less responsive to the economic concerns of licensees, some significant changes are certainly in order. Let me suggest a few:

1. Licensing standards should be uniform throughout the country;
2. Licenses should be periodically renewed by re-examination;
3. Licensing boards should be composed exclusively of non-licensees (expertise, when needed, can be supplied by the staff or by expert consultants);
4. Much stronger steps should be taken to identify and discipline (and, if possible, rehabilitate) negligent, incompetent, and disabled physicians;
5. The multiple health licensing boards that presently exist should be consolidated into one board that has jurisdiction over all health care professionals so that the stranglehold that medicine now has over all other health professions can be loosened, making more qualified practitioners available to the public.

Dr. Steven Jonas has argued that, "Licensing laws as now written . . . exist very much to meet the needs of the licensed profession and not very much to meet the needs of society. If social needs are to be met, what makes sense is to list all the health care delivery tasks that need to be done and divide them into groups such that one person can reasonably acquire the knowledge and skills needed to carry out each group well." This "rational

task analysis" has much to offer, and can only be accomplished by a unified health board.

Anti-regulation arguments are running wild, and have now reached the health care field. No one likes governmental regulation; but for most of us, a society without it would be too dangerous to our health.

References

1. JONAS, S., *MEDICAL MYSTERY: THE TRAINING OF DOCTORS IN THE UNITED STATES*. (W.W. Norton, New York) (1978) at 333.

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