

Theoretical Analyses

Behavioral Science Licensure: Merit and Applications

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Abstract

This article provides an overview of occupational licensure as applied to the behavioral sciences. Licensure enactment is inherently an interdisciplinary phenomenon with educational, ethical, and community welfare implications. The aim of the current study is to conduct a review of the literature pertaining to licensure and compare the findings with the ethics code of the American Counseling Association. The results reveal that the common reasons given for licensure are of questionable validity. Voluntary certification is suggested as a viable alternative.

Keywords: licensure, certification, professional ethics code, human rights, self-actualization

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Occupational licensure is a form of regulation whereupon a government issued license is required to practice in a given profession. The enactment of licensure entails collaboration between a professional field and government. In many professions, licensure is embedded into the educational standards, internship obligations, and experience requirements necessary before one can practice independently (American Counseling Association, 2016). Licensure enactment has far reaching implications, touching areas of study as diverse as clinical psychology, psychology, economics, and moral philosophy.

Considering licensure's impact on entire professions, there is a surprising paucity of research studying its ethics, impact on society, and effectiveness in protecting the general public, the most common reason given to support licensure (U.S. Department of Health and Human Services, 2013; U.S. Department of the Treasury Office of Economic Policy, Council of Economic Advisors, & U.S. Department of Labor, 2015). Licensure has been examined by economists (Kleiner, 2013, 2015a), but seldom by behavioral scientists. This article provides an overview of licensure, focusing on its ethical, community, and human-rights implications. Licensure is compared specifically to the ethics code of the American Counseling Association to gauge its internal consistency with an applied ethics code. Finally, an alternative to licensure is proposed.

Consumer Protection

Consumer protection is a commonly stated reason for licensure enactment (Bray, 2015; Kleiner, 2013; Marini & Stebnicki, 2015; National Institute of Mental Health, 2015). This rationale is based upon the assumption that altruism and not self-interest is the primary driving force behind the strenuous path taken by advocates to license their field. Yet many of the same advocates who partitioned for licensure now reap third-party reimbursement for services, on average 10 to 15 percent more money than their unlicensed counterparts with similar education and experience (U.S. Department of the Treasury Office of Economic Policy et al., 2015). It seems unlikely that money was irrelevant to licensure securement, casting doubt that consumer protection is the sole reason for licensure (Brooks & Gerstein, 1990).

Professional Identity

Another frequently cited reason for counseling licensure is the establishment of professional identity (Mellin, Hunt, & Nichols, 2011). Such recognition confers legitimacy, increases social status, and builds cohesiveness in professional fields (Neukrug, 2016). Early licensure recipients like psychologists set a precedent – in collaboration with state legislators and insurance companies – that licensure was required for reimbursement. With insurance companies paying only *licensed* therapists (Brooks & Gerstein, 1990), the counseling field was left with little choice but to pursue licensure. Nonetheless, this justification commits the logical fallacy of argumentum ad populum, or appeal to the masses, which attempts to justify the merits of a position by pointing out that many people hold it. It is possible that psychologists cannot make an ethical case for licensure, either. Therefore, the yearning for identity is not intrinsically sufficient to justify licensure. If it was, literally every profession could justifiably seek government licensure. In such a scenario, no one could work at all in any field without a government approved license.

The Ethics of Licensure

Licensure entails imposing the will of a majority (i.e. those who favor licensing their profession) on a minority (i.e. those who disapprove of licensing the field). The phenomenon of a majority oppressing a minority, especially when done through democratic practice, has been referred to by historical figures such as John Adams, John Stuart Mill, Friedrich Nietzsche, and Alexis de Tocqueville (as cited in Guinier, 1995) as the tyranny of the majority. A helpful tyrant is still a tyrant. Licensure is ethically problematic due to the use of force. Those in the minority position must comply with the licensure mandate, risk penalty, or choose another profession.

There is also the question of rights. A profession is not an invention. One who invents a device or machine has the right to patent their invention, retaining sole ownership of its usage. Licensure insinuates, analogously, that a collective body has a patent over a practice, which seems untenable. Why do only select groups have a right to practice? If the answer is because a state regulatory board says so, this seems unable to stand up to ethical scrutiny.

Unintended Consequences

Licensure leads to an assortment of unintended consequences, many of which prevent human growth and societal improvement.

1. Licensure Curtails Self-Actualization.

Licensure often conflicts with self-actualization because government regulation may dissuade or outright prevent an individual from maximizing their potential. Bureaucratic obstructionism, pressure, fees, audits, and other actions of policymakers can hardly be viewed as facilitators of self-actualization. For some, maximizing potential may take on the form of advocacy for a worthy cause, like Martin Luther King, Jr. (King, 2010). Few would suggest that prior to advocating for Civil Rights, Dr. King needed to earn a college degree in “Advocacy,” pass an advocacy exam, and gain supervised experience in advocacy.

With activism the likes of which Dr. King promoted, members of the public could have been hurt; in fact, some were (King, 1968, 1992). Applying the logic that possible harm justifies licensure, Dr. King should never have been permitted to march for Civil Rights in the first place because after all, in doing so he placed many people at risk of injury. Again, according to this mode of thinking, licensure should have been a requirement for Dr. King, which may have curtailed the Civil Rights movement as an unintended consequence. Therefore, licensure is potentially dangerous because it prevents worthy endeavors from ever happening.

2. Licensure Means the Prohibition of the Polymath.

Considering the time and resources required, licensure seems to encourage specialization rather than the broad expertise of the polymath. Forced specialization likely prevents contributions to society and therefore can be a barrier to the advancement of civilization. It is reasonable to suggest that had Leonardo Da Vinci been alive in modern times, many of his talents would be squandered, never having a chance to actualize. It is startling to think of how history would be altered had professional licensing took effect long ago. Of note is that Aristotle held no Ph.D. in philosophy.

Keeping eager practitioners from contributing to society runs contrary to a just and fair society where all are free and equal to contribute. Likewise, this practice is contrary to diversity, a pillar of the ACA Code of Ethics (American Counseling Association, 2014). Far from honoring diversity, preventing all but a select few from practicing a profession is a practice in exclusiveness (Dorsey, 1983). In his famous tragedy *Hamlet*, Shakespeare, who held no degree in English Literature, said to be or not to be, that is the question. Conversely, the prohibiting of polymaths twists this phrase around to imply, to be or not to be depends on your college degree, passing an exam, paying a fee, getting a license, and following the requirements of regulatory boards.

3. Licensure Abridges the Right to Mutual Transaction of Service.

Mutually consenting adults have the right to interact in any way they see fit, so long as their interaction does not harm each other or others. Often, this takes the form of one person offering a service to the other in exchange for a mutually agreed upon price. If a person is compelled or forced to buy or sell, the principle is violated. The proposition that human beings have the right to mutual transaction of service has intuitive face validity coupled with backing from law and moral philosophy. Licensure appears to partially recognize this right, but with qualifications (i.e. abridgement), as only properly credentialed people can transact.

4. Licensure Creates a Monopoly and Barrier to Professional Entry.

Licensure is a direct barrier to enter a field (Kleiner, 2006; Kleiner, 2013; Kleiner, 2015b; Kleiner & Todd, 2007). Professional entry barriers are often byproducts of an established brand or oligopoly dominating a particular market. A select group imposing licensure standards over an entire field violates the rights of those not in that group and the practice is monopolistic. Conceptually, a “therapist monopoly” by licensees is not unlike any other business monopoly. Business monopolies are known for being sole providers of a

good or service, for eliminating competition, and are associated with higher prices for consumers. Political maneuvering, or the partnership of a business and government, usually means that consumers pay higher costs for services (Kleiner, 2015b; Kleiner, Marier, Park, & Wing, 2014; U.S. Department of the Treasury Office of Economic Policy et al., 2015). Therefore, consumers are probably paying more for counseling services with a field dominated by licensure than they would with an alternative system, such as the voluntary certification of counselors. With licensure, therapists make money and clients pay more.

Consistency With Professional Ethics Codes

Licensure is paternalistic, insisting that the opinions of a united group of advocates are better for individuals than those same individuals making decisions on their own. Paternalism is widely regarded as contrary to the collaboration promoted by therapeutic professions (American Counseling Association, 2014; Kultgen, 2014). To suggest that imposing the values espoused by government sponsored licensure advocates on all practitioners of counseling is somehow ethical seems inconsistent at best. Paternalism is also at odds with the widely accepted principle of autonomy, which in itself is one of the “fundamental principles” of the ACA Code of Ethics (American Counseling Association, 2014, p. 3). How can one effectively self-govern under the collective restraints enacted by licensure? The underlying dictum of licensure is that its advocates, regulatory boards, and insurance companies know best. This is an ethically suspect assertion (Sandman & Munthe, 2010).

Even when granting that licensure at least sometimes protects the public, licensure creates ethical dilemmas. To the extent to which the public is protected, licensure stands on the ethical foundation of nonmaleficence. At the same time, licensure stands at odds with autonomy, with its self-governance implications. Thus, even if licensure aligns with nonmaleficence, it faces the dilemma of being a hindrance, if not foe, to autonomy, and possibly to beneficence. To promote self-actualization is to promote well-being (Ivtzan, Gardner, Bernard, Sekhon, & Hart, 2013). If licensure curtails the well-being of at least some people then licensure is conflictual with the obligation of beneficence and the ethical axiom of justice, “treating individuals equitably and fostering fairness and equality” (American Counseling Association, 2014, p. 3). Ultimately, even if a stronger case can be made for nonmaleficence than beneficence, the fact remains that licensure did create an ethical dilemma, casting doubt on licensure’s internal validity relative to therapeutic professions.

An Alternative to Licensure

Having covered the perils of licensure, it should be acknowledged that no perfect governing system exists. But perfection is not the goal. The goal is to find a process that maximizes the positives (does not violate individual rights, helps the public make educated decisions, maintains the integrity of a profession) while minimizing the negatives, such as those associated with licensure. The best system available is voluntary certification.

Voluntary certification rather than forced licensure recognizes individual rights, allows professionals to distinguish themselves with official titles, does not limit scope of practice, and allows consumers a variety of professionals from which to choose (National Conference of State Legislatures, 2017). Individuals can mutually agree to establish a professional relationship (counselor and client), or not, respecting the right to association. A client can decide to see a counselor with specific credentials or choose another counselor with different credentials. Also recognized is the ethical principle of autonomy. A non-licensure system requires respect for the intelli-

gence, freedom, and decision-making skills of the citizenry whereas a licensure system appears propelled by emotion, namely fear (i.e. fear of public harm).

Both credentialed and non-credentialed practitioners could be required by law to clearly post their qualifications to customers, making this clear in all advertisements, including it in their informed consent forms, and clearly documenting how this was conveyed to clients. Both types would be liable for misrepresentation. In such a system, many non-credentialed counselors would ultimately fail. Word spreads fast in the information age. Customers would boycott, spread the word of a counselor's incompetence, give them terrible ratings online, and that counselor would pay a hefty price to their personal and professional reputations.

Economists conclude that certification may provide the same benefits of licensure without the added costs and burdens on professionals and consumers (Kleiner, 1990; Maurizi, 1974). Some states have even started implementing policies that favor certification over licensure (Goldstein, 2012; Minnesota State Legislature, 2012). Implementing an alternative to licensure would save states money by reducing the costs associated with maintaining widespread licensure regulations (National Conference of State Legislatures, 2017). However, while alternatives to licensure show promise, there have only been 8 times in the past 40 years in which occupations have been successfully de-licensed, and in some instances licensure reform was met with hostility, particularly by those who had a financial stake in its survival (Kleiner, 2015b; U.S. Department of the Treasury Office of Economic Policy et al., 2015).

It should be noted that there are potential cons to a certification system. A repeal of licensure in favor of certification could create an “us versus them” culture among practitioners. Those who paid the price for licensure would work among certified individuals who arguably would have less training and education, but essentially have equal access to reimbursement and clientele. The resulting differences could lead to an occupational form of tribalism – the licensed vs the certified. Universities which would normally prepare their students to meet strict requirements for licensure would have to restructure their training programs to accommodate for the potentially various and unpredictable requirements of certification organizations. These changes could be costly, not to mention confusing for students and administrators currently enrolled in licensure-based programs. The enacting of a certification system would also require a simultaneous change in state laws and insurance policies to allow certified practitioners to legally work and get paid. It is unlikely that all these moving pieces would fall into place without significant amounts of administrative hurdles.

Without licensure, there would remain laws that protect consumers against exploitation, fraud, assault, and theft. There is no perfect system that protects all consumers all the time. Even in fields where licensure has a stronghold, there are indications that it fails the public. For example, there is evidence that optician licensing offers no measurable benefit to consumers, but does lead to higher earnings for opticians (Timmons & Mills, 2018). Of course, few opticians in states that require licensure are pushing for repeal.

Conclusions

Licensure implementation presents a host of issues that are ethically questionable and logically fallacious. The clinical implications of eradicating therapeutic licensure would be significant, especially in the short-term. Considering the reimbursement requirements set forth by insurance companies, it is fair to speculate that many therapists would lose money, if not employment. How the field would adapt in the long-term is less clear. Never-

theless, money is not sufficient justification for a violation of individual rights and a lack of ethics, not to mention logical inconsistency. Ignoring difficult decisions in the name of financial loss may itself be unethical.

The central question remains of whether a professional field can ethically collaborate with government agencies and insurance companies to regulate practitioners, thereby forcing compliance and imposing the will of a majority who favor such action on the minority who do not. As this narrative suggests, the answer is no.

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