Medical Xpress

'Credential creep' bad for health care practitioners, consumers

January 28 2015, by Phil Ciciora

The outcome of a case argued before the U.S. Supreme Court last fall could potentially slow the trend of the ever-increasing number of occupations subject to state licensing, says a University of Illinois expert in the regulation and financing of health care.

According to David Hyman, the H. Ross and Helen Workman Chair in Law and professor of medicine at Illinois, the case – North Carolina Board of Dental Examiners v. Federal Trade Commission – goes to the heart of the "professional self-regulatory paradigm that has governed the U.S. health care system for more than a century."

"States have fairly aggressively licensed certain professions, particularly in health care, for more than a century," Hyman said.

But over the course of the last 50 years, there's been a dramatic increase in the number of occupations other than health care that require a license, which has a big impact on the ability of individuals to enter a field without undergoing extensive and costly training that is sometimes of dubious value, Hyman said.

From a consumer standpoint, increasing credential requirements translates into fewer people who can do the job, which translates into higher costs for those services for consumers – and, by extension, higher income for those providing the services, Hyman said.

"Consumers end up paying higher prices for what they thought would be a higher quality service, but the evidence on that actually turns out to be much harder to establish," he said.

The consumer protection argument for rampant licensing quickly evaporates under scrutiny, according to Hyman.

"People aren't very good at discerning the quality of certain types of services, and so by restricting who can provide them we end up protecting the public," he said. "The problem is, you've got mission creep, where suddenly things that nobody thought needed much in the way of licensure end up falling within the scope of licensing. And once something is licensed, the level of education and training required to become a licensed practitioner just keeps going up."

For example, the ability to become a physical therapist used to only require a bachelor's degree. But now it's headed in the direction of a Ph.D., Hyman said.

"There has also been dramatic 'credential creep' in fields that already require a license to practice – advanced practice nursing and audiology, to name a few," he said. "And we are also seeing licensing requirements applied to things that have never required it, such as hair braiding, beekeeping and interior design."

Hair braiding is a particularly head-scratching example because the educational requirements to be licensed as a barber or cosmetologist have very little to do with hair braiding, Hyman said.

"You will have to take extensive classes and pay a lot of money for those classes. But you learn pretty much nothing useful relative to hair braiding," he said. "It's hard to see what the real consumer harm is with unlicensed hair braiding."

But from the perspective of the people providing the licensed services, cracking down on unlicensed hair braiding is completely rational, Hyman said.

"They will talk about how people can be exploited by someone who doesn't know what they're doing," he said. And they might even be able to find an example of something bad happening – but the reality is that they don't like the competition."

Licensing boards also don't act as a bulwark for consumer protection because they take on such a limited number of cases.

"They do occasionally bring disciplinary cases against practitioners, but they tend to be late to the party," he said. "They're not proactive responders to quality problems. They may have a role to play, but we need to be careful not to put the fox in charge of the henhouse."

Which is why the North Carolina case is a significant one, Hyman said.

"Essentially, it's an attempt by licensed professionals to keep unlicensed practitioners from entering their retail space," he said. "The specific legal question under review is the standard for determining when a state professional licensing board's activities are subject to scrutiny for anticompetitive effect under the federal antitrust laws.

"In health care, public regulation limits competition, which means that laws adopted over many decades raise prices, reduce access and slow innovation by protecting favored health professionals, such as physicians and dentists, from both competition and corporate control, while allowing them to exploit the marketplace."

According to Hyman, the best outcome would be for the Supreme Court to definitively hold that state boards dominated by licensed professionals must be actively supervised by the state in order to qualify for state action immunity.

"With any luck, this type of ruling would encourage a more public discussion of legislative standards for state licensing boards," he said. "Congress might consider enacting a federal law, as it did in response to an earlier case in which antitrust law was used to attack the hospital peer review process. Or, states could enact one or more model practice acts that would promote uniformity among boards and assure their accountability to state government."

Even if the Supreme Court cuts back on overreaching by the North Carolina Board of Dental Examiners, there are lots of similar cases – and consumers bear the costs of excessive licensing, Hyman said.

"We should be trying to roll back the rising tide of occupational licensing," he said.

More information: The paper is available online: www.pennlawreview.com/responses/index.php?id=127

Provided by University of Illinois at Urbana-Champaign