



# Government: The Ultimate Equalizer



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Regulatory boards and their governance structures have been under significant political and legal scrutiny of late. The need for state-based licensure of the professions, occupations, and trades (globally referred to as professions) has been challenged, causing the regulatory community to articulate the need for government involvement. Licensure of the professions has also been challenged under economic arguments that allege that government involvement acts as a barrier to economic growth through the enforcement of unnecessary and, perhaps, arbitrary barriers to professional practice.

Scholars are also pressing the alleged inequities arguably caused by the involvement of government in regulation of the professions. Inequity, as opposed to inequality, can be defined as unfair, avoidable differences caused by poor governance. The ultimate questions to be asked are:

- Why is government involved?
- Is government regulation doing what it is supposed to be doing?

## Start with why

In spite of criticism levied at politicians, government is the ultimate equalizer. Government provides for

accountability and transparency. In the light of day, duly elected legislators enact laws that are signed into effect by the executive branch of government. Laws relating to regulation of the professions contain standards and criteria intended to be uniformly applied to all applicants. Government determines that regulation of the professions is necessary to protect the health, safety, and welfare of society as a whole. As such, licensure is mandatory and failure to acquire the government credential may result in administrative and/or criminal prosecution.

Licensure eligibility criteria for many professions include the “three E’s”—Education, Examination, and Experience. Standardization of the three E’s through accreditation of educational programs, uniform examinations, and the criteria and recognition of supervisors defines a standard to be applied to applicants for licensure. State board members appointed by the executive branch act as agents of the state and are delegated with the authority to enforce this legislation.

Uniform application of the laws is ensured through a series of checks and balances involving the state and federal constitutions, as well as state laws, ethics policies, and general oversight by all branches of government—legislative,

executive, and judicial. Enacted laws allow for an application of governmentally established criteria to be applied to all applicants. Reliance upon the expertise of professional and “public” members of the board provides for decisions based upon a cross section of diverse perspectives, including those within the profession. Disgruntled applicants have a mechanism to challenge board action (or inaction) through internal administrative appeals and, if necessary, appeals to the judiciary. Disparate application of the laws creates grounds for challenges.

In addition to the issuance and renewal of licensure under standardized conditions, boards are authorized to enforce the laws through an administrative process. Such enforcement protects and benefits society as a whole. Administrative complaints are filed, investigated, and administratively prosecuted at no cost to the complainant. Additionally, adjudications benefit society by ensuring that licensees qualify for licensure and maintain some level of competence throughout the lifetime of their license. Furthermore, unlicensed persons may be prosecuted, again facilitating benefits to the public.

### **Then how**

The administrative system provides “due process” rights to licensees based upon their property interest in a governmentally issued license. Pursuant to such rights, licensees are entitled to notice and the opportunity to be heard prior to an adverse action taken by government. While

each set of circumstances may be unique, enforcement must also be uniformly applied pursuant to the language of the statute as supplemented through the promulgation of rules/regulation. Again, a disgruntled licensee in an enforcement proceeding has the right to internal appeals and, if necessary, appeals to the judiciary. Judicial oversight provides an important check and balance to administrative decision-making and ensures uniform application of legal principles.

Government involvement in the regulation of the professions also removes the unspoken—and potentially arbitrary—application of self-imposed criteria in the private sector. These criteria may act as barriers to such certification and employment opportunities and, importantly, may not be subject to judicial enforcement but for specified protected classes of persons.

Finally, societal benefits of a regulatory scheme are often overlooked under the roar of political and economic righteousness. Those with a zeal toward deregulation of the professions must consider the effects that the absence of government involvement has on the public, which is inclusive of consumers/patients, applicants, licensees, respondents, academics, politicians, and others who benefit from government uniformity through regulation. Elimination of government from the regulatory equation allows for imbalance and inequities not necessarily subject to correction through administrative and judicial scrutiny. Inequities can be remedied.