Licensing Occupations

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2
Development of Occupational Licensing as a Labor Market Institution

The modern state owes and attempts to perform a duty to protect the public from those who seek for one purpose or another to obtain money. When one does so through the practice of a calling, the state may have an interest in shielding the public against the untrustworthy, the incompetent, or the irresponsible.


The overthrow of the medieval guild system was an indispensable early step in the rise of freedom in the Western world. It was a sign of the triumph of liberal ideas, and widely recognized as such, that by the mid-nineteenth century, in Britain, the United States, and to a lesser extent on the continent of Europe, men could pursue whatever trade or occupation they wished without the by-your-leave of any governmental or quasi-governmental authority. In more recent decades, there has been a retrogression, an increasing tendency for particular occupations to be restricted to individuals licensed to practice them by the state.


As these two statements suggest, there are often conflicting views of the goals and outcomes achieved by occupational licensing. This chapter aims to provide the institutional setting for the theoretical and empirical analysis that follows, building a background for the development of this labor market institution. The background begins with the origins of occupational licensing, with an emphasis on its development in Europe and the United States. Following that, I review several studies that show...
the benefits of licensing during the early part of the twentieth century. The results of these studies suggest that initially the public may benefit from more regulation as quality increases, but long-term effects of licensing are more likely to be dominated by restricted competition due to the more strict entrance requirements into the profession. Moreover, the growth of information technology through the Internet minimizes the argument that licensing reduces asymmetry of information between consumers and suppliers of the service (Kleiner 2002). Further on, I outline the major court cases and their decisions that made licensing by states part of the legal framework in the United States. Finally, I look at a case study of one particular state, which details recent trends in occupational licensing for the state of Minnesota, with some comparisons to its neighboring state of Wisconsin. This case study shows evidence of the extent to which the legislature and licensing boards act to both protect the public and how they could be “captured” by the members of the occupation.

The regulation of occupations in the United States and other nations takes various forms. The three major forms of occupational regulation are licensing, certification, and registration. The Council of State Governments in the United States established a special agency to focus exclusively on occupational licensing. That agency is the Council on Licensure, Enforcement, and Regulation (CLEAR), and its stated objective is to improve “the quality and understanding of regulation in order to enhance public protection” (CLEAR 2004). The council also developed widely accepted national definitions for each of the categories of occupational regulation. The toughest form of regulation is licensure, and CLEAR refers to this as the right-to-practice. Under licensure laws, it is illegal for a person to practice a profession without first meeting state standards. A less-restrictive form of regulation is certification, where states grant title (occupational right-to-title) protection to persons meeting predetermined standards. Those without certification may perform the duties of the occupation, but they may not use the title. The least restrictive form of regulation is registration, which usually requires individuals to file their names, addresses, and qualifications with a government agency before practicing the occupation. This may include posting a bond or paying a fee to have the practitioner’s name listed by the state among those in the occupation. The regulation of occupations in the United States and other nations falls under the
continuum of little to highly restrictive forms of government regulation of occupations.

DEVELOPMENT OF OCCUPATIONAL REGULATION

Occupational licensing has a long and prominent history as a labor market institution. The Babylonian Code of Hammurabi (c. 1780 BCE) stipulated both the fees patients were to pay for medical services and the punishments for negligent treatment. Women were barred from medical practice in Greece during the period around 300 BCE, and examining and licensing boards existed for “healers” in Baghdad in 931 CE (Gross 1984). Even the Hippocratic Oath taken by Greek physicians as early as the fourth century BCE, urging physicians to do no harm, also provided provisions regarding conflict of interest and the need to refrain from wrongdoing and corruption. In the Middle Ages in Europe during the course of the Holy Roman Empire, physicians were required to have specific years of schooling, and those who did not have the appropriate qualifications had their property confiscated and the sentence of a year in prison (Gross 1984).

The merchant guilds that developed during the Middle Ages and “Enlightenment” in Europe later served as models for current professional associations. The guilds limited entry into occupations and enforced requirements that merchants only hire from the guild. Both the university and the guilds tied education to licensing, also serving to tie the state to the professions. As educational historian H.G. Carman states:

The medieval universities both trained and licensed. In reality a degree was a certificate of competence which in the cases of law and medicine usually conveyed certain exclusive rights of practice to its holder. Similarly, the guilds which evolved into professional bodies often gave training and always attempted to give exclusive rights of practice to their members. (Carman 1958, p. 269)

In 1518 in England, Henry VIII established the Royal College of Physicians and Surgeons, which gave the state and the church the power to license physicians. Through much of Europe during this period,
another licensing requirement was membership in the proper church (Gross 1984).

The development of occupational licensing in the United States borrowed much from the European experience. The first physician licensing occurred in the new British colony of Virginia in 1639. By 1800 13 of the 16 states had given the authority to examine and license to the state medical authorities. By 1840 there were 30 medical schools in the United States and 77 by 1876. Medical education varied from a few months to two years (Tabachinik 1976). However, almost anyone could claim to be a doctor during this period, but there is little evidence that the trained or “regular” doctors during this period did much better than the unlicensed doctors in terms of patient outcomes (Ehrenreich and English 1973). In contrast to the earlier period at the time of the U.S. Civil War, the early licensing system had fallen away and there was still no effective occupational licensing system in place (Council of State Governments 1952).

In the latter half of the nineteenth century, modern professional and scientific associations were formed, including one for physicians in 1847, pharmacists in 1852, and lawyers in 1877. One of the major methods of obtaining integrity for these organizations was to obtain state sanction for these occupations and the individuals in them (Carmen 1958). The first modern medical practice legislation was passed in Texas in 1873. By 1905, 39 states were licensing physicians. Similarly nurses formed a national association in 1896, and 40 states were licensing nurses by 1926 (Gross 1984).

The major period during which licensing laws initially were passed was 1890 to 1910. In his article on “Freedom of Contract,” Law Professor Lawrence Friedman relates the major legal principles on licensing and other labor reforms that were taking place during this period (Friedman 1965):

In the same period 1890 to 1910, occupational licensing first achieved a firm foothold in the statute-books of most American states. Laws to license doctors, plumbers, barbers, funeral directors, nurses, electricians, horse shoers, dentists, and the practitioners of many other occupations were debated, propounded and very often passed. Many of these laws gave rise to constitutional test cases. Unlike the more spectacular labor law cases, the licensing cases called down no pronouncements of doom and enlisted neither pro-
ponents nor opponents in high and academic places to argue validity and propriety on the basis of first principles. This was a quieter, blander area of constitutional law. From the standpoint of logic and of life, however, the cases involved first principles no less than those which arose under wage and hour laws. If a workman had a constitutional and God-given right to work eleven hours a day in a bakeshop, or to be paid in kind instead of cash, he should have had a similar right to contract with an unlicensed barber or to buy a laxative from a druggist without a certificate on his wall.

The major Supreme Court case that established the right of states to grant licenses was *Dent v. West Virginia* (1888). The decision established the state law purporting to protect the health, welfare, or safety of citizens and was justified as having a rational relationship to the legitimate end of government under the police power banner (Gross 1984). This decision took away the federal right of preemption in the arena of occupational licensing and gave it to the states. This is different from most other later labor laws, such as the National Labor Relations Act, which established federal law over any state provisions dealing with the regulation of unions and management on collective bargaining. Occupational regulation continued to grow and, by 1889, 10 additional occupations besides law and medicine were licensed. A steady increase saw 30 occupations licensed in 1920, including more than 2,800 statutory provisions in the different states (Greene 1969). Following World War II, the number of regulated occupations continued to expand as more occupations became well-organized and sought licensing from state governments (Council of State Governments 1952). In 2003 the Council of State Governments estimated that more than 800 occupations are licensed in at least one state and more than 1,100 are either licensed, certified, or registered (Brinegar and Schmitt 1992; Smith-Peters and Smith-Peters 2004). Although the vast majority of occupations have sought licensing through their associations from federal, state, county, or city sources, there are instances of occupations for which licensing was imposed mainly as a result of perceived corruption. For example, stockbrokers were brought under federal regulation in response to the financial scandals that grew out of the crash of the stock market in 1929 (Gellhorn 1976).
QUALITY FIRST, THEN RESTRICTIONS ON COMPETITION?

The initial work on estimating the impacts of licensing focused on the ability of the occupations to restrict the supply of new entrants into the occupation. The classic work by the future Nobel Laureates Milton Friedman and Simon Kuznets analyzed the differences in the regulatory restrictions of doctors and dentists from 1900 to the early 1940s. Based in large part on the greater ability of doctors to restrict entry through their professional associations by eliminating “overcrowding” in the profession relative to dentists, the authors attribute about half of the 23 percent difference in the earnings within the two professions to these restrictions on supply (Friedman and Kuznets 1945). On the other hand, they do not attempt to examine the impact of occupational regulation on the quality of the service. Rather, the focus of the discussion in their book is on the restrictions on competition during the period of initial licensure of many of the major regulated occupations in the United States.

One of the major issues on costs and benefits of occupational licensing is that, initially, licensing is a product of consumer demands for higher levels of credible information on the quality of service. Law and Kim (2004) state that from 1880 to 1930, licensing laws were passed in response to the growth of knowledge within the professions and the reduction in transportation costs that made urbanization more feasible. In fact they find that urbanization and population density were the dominant factors in the passage of initial licensing laws during the twentieth century. They argue that there is evidence of information asymmetry as the major force for regulation as individuals move to an urban area and have limited information on the quality of key service providers such as lawyers and doctors. A similar argument can be made currently for the maintenance of licensing laws as immigrants, the poor, and the elderly also have little knowledge of physicians’ or attorneys’ competence or have little experience with information sources like the Internet or other sources of data on service quality. Consequently, licensing offers a relatively low-cost method of providing information on critical services.

Law and Kim (2004), however, find that licensing has an impact on restrictions in the growth rate in employment for certain key occupations such as dentists, physicians, and cosmetologists. They are unable
to find any impact of their licensing index on the incomes of physicians. However, during the early part of the twentieth century, as Friedman and Kuznets (1945) point out, the mechanism through which physicians restricted supply was through limiting the number of positions in medical schools and only tangentially through the passage of tougher licensing exams. One important finding from the licensing of physicians was the increase in malpractice lawsuits following the regulation of physicians. This may be a consequence of higher consumer expectations from regulation. When an occupation becomes licensed, the licensing results in the creation of regulatory boards and greater visibility for the occupation, an expectation of higher-quality services, and an infrastructure that allows lawsuits and other forms of consumer voice to be heard relative to a regime of no licensing. The greater visibility provided to members of the licensed occupation may counterbalance any greater quality benefits of regulation through measures such as complaints or malpractice insurance rates.

From Law and Kim’s (2004) analysis there appears to be many similarities between the workings of the regulation of occupations and those of another labor market institution, unionization. For example, Freeman and Kleiner (1990) find that initially unions bring to an establishment voice benefits such as a grievance procedure, the posting of job requirements for promotion, and seniority-based layoffs and recalls, but there are few initial wage and benefit increases. Only after the union is established are the employees and their union leadership willing to go after wages and benefits. These “monopoly effects” have led to a union wage premium of 10 to 25 percent over time (Freeman and Medoff 1984). In a similar manner, licensing and unions initially provide nonwage benefits of perceived quality of working conditions and later seek outcomes that result in increases in earnings or greater control of who works and under what conditions. During the period of initial regulation from 1880 to 1930, occupational licensing provided a form of information to consumers on minimum quality (Law and Kim 2004). As basic science grew in the health occupations, the migration from rural to urban areas became substantial and immigrants were a large percentage of the urban landscape, occupational licensing provided basic information on essential services for newcomers. Although licensing provided some information on quality, it did so with the cost
of higher prices and slower growth in employment of the service occupations that it regulated.

LEGAL BASIS OF STATE OCCUPATIONAL LICENSING

As mentioned earlier, the *Dent v. West Virginia* decision in 1888 gave the first federal justification to the states to have the power to regulate occupational licensing. In another major court decision, *Parker v. Brown* (1943), the Supreme Court held that antitrust statutes are aimed at private, not state, action and ruled that a California statute constricting competitive marketing in the private sector was legal (Gellhorn 1976). The implication of the law as stated in this case was that a state must command, not merely permit, a restraint of trade in order to immunize it against federal antitrust laws. This case also gave the states wide latitude in setting occupational licensing laws without the oversight of the federal courts.

Perhaps the most important case dealing with licensing practices was decided by the Supreme Court in *Goldfarb v. Virginia* (1975). The Court ruled that the state bar’s policy of an association’s minimum fee schedule violated the Sherman Act’s prohibition of combinations in restraint of trade. This case vindicated lawyers’ abilities to advertise and charge fees that can be negotiated with the client and not set by the bar association or the state (Gellhorn 1976). Prior to this case, many state and federal courts thought that the “learned professions” should be treated differently because their goal was to provide services necessary to the community rather than to generate “profits.” Consequently, their activities did not fall within the terms “trade and commerce” in Section One of the Sherman Act. The central finding of the Supreme Court in the Goldfarb case was that professional activities have a sufficient effect on interstate commerce to support the Sherman Act jurisdiction.

In subsequent decades, both the FTC and the Antitrust Division of the Department of Justice have undertaken a broad enforcement program designed to eliminate private restrictions on business practices of state-licensed professions that may adversely impact the competitive process and raise the prices or decrease the quality of professional services. From 1976 to 1978 the FTC had more than doubled its expenditure
on funds it allocated to occupational licensing research and litigation (Clarkson and Muris 1980). For example, since the Goldfarb v. Virginia decision, these two federal agencies have sued or charged the American Medical Association, the American Institute of Certified Public Accountants, the California Dental Association, the National Society of Professional Engineers, and other public or quasi-public associations in order to alleviate restrictions on advertising, minimum fee agreements, restrictions on competitive bidding, and increases in requirements for entering a profession (Committee on Competition Law and Policy 2000).

Recent issues involve the attempts by the professions to capture work from other occupations or to restrict the ability of licensed or unlicensed occupations, such as alternative health care providers, to do work within the occupations’ “span of control.” For example, in South Carolina, the state dental association (through the state legislature) required dentists to examine Medicaid-eligible children rather than allow them to be seen only by dental hygienists (Nash 2003). The FTC perceived this as a restraint of trade problem that raised the cost to the federal government of funding the Medicaid program for eligible young children. These U.S. policies to enhance competition have resulted in more price and marketing competition within and across occupations following individuals entering into the occupation in comparison to other nations in the Organisation for Economic Co-operation and Development (OECD), which consists of the major economically developed countries (Garoupa 2004).

Since the Goldfarb v. Virginia decision, professional associations have been more modest in attempting to lobby states to become licensed, and states have opened up the occupations’ work practices to advertising and less-restrictive marketing practices. Nevertheless, the number of licensed occupations has continued to grow, but at a slower pace, because it is rare for an occupation to move toward a less or unregulated status once it has become regulated. The growth in employment in service industries during the past decade has resulted in a growth in employment in licensed occupations as well. In fact, during the past decade, most of the growth of employment in licensed occupations has occurred as a consequence of employment growth within occupations rather than increases in the number of newly regulated occupations.

In order to illustrate how licensing works in greater depth, I use one state to provide more detailed information for that state’s licensing
provisions and practices. I chose to examine Minnesota, a state that has been at the forefront of the “good government” movement and has attempted to provide clear guidelines for new occupations seeking to become regulated. Examining this state in depth, with access to more detailed information on the institution of licensing, will also allow the subsequent analysis of the United States and Western Europe in the context of the detailed issues raised within these case studies.

**HOW LICENSING WORKS: A CASE STUDY OF MINNESOTA**

Although a broader examination of state-by-state regulation of occupations is instructive, much can be learned about how licensing works by examining a single state in detail. As a result of the evolution of the legal system in the United States, most licensing takes place at the state level. For this analysis, I chose Minnesota since it is a state with an emphasis on “good government,” and it has evolved its regulatory policy from little oversight by the legislature to establishing clear criteria for licensing and tougher regulations for occupations. This section also develops comparisons of the impact of licensing versus certification on the complaints of consumers for certain regulated occupations in Wisconsin and Minnesota. Moreover, Minnesota has gathered considerable data on licensing and devoted much effort to reports from the state’s legislative auditor on this subject (Broat et al. 2004; Office of the Legislative Auditor, State of Minnesota 1999).

Occupational regulation began in the state in the 1880s, starting with physicians (1883), dentists (1885), and accountants (1909) (Council of State Governments 1952). These initial dates of licensure were similar to other states in the Midwest, but they were earlier than most other states nationally. There was a steady increase in the number of occupations seeking to become regulated. For example, 20 occupations were regulated in Minnesota in 1950, a number that included about 5 percent of the workforce (Council of State Governments 1952). During the 1960s and 1970s, the state, along with many others, received several requests annually, mainly from organized representatives of the occupations seeking licensure (Kleiner and Gordon 1996). Although there were some changes in census categories over time, making exact
matches somewhat imprecise, the number of occupations regulated rose from 47 to 141 in the period from 1968 to 1990 (Kleiner and Gordon 1996). From 1998 to 2004, the percentage of persons in licensed occupations grew by about 1 percent, or approximately 100,000 workers. About 75 percent of overall growth was in employment in already licensed occupations, and about 25 percent (approximately 25,000 workers) of overall employment increases was due to the addition of individuals in newly licensed occupations (Broat et al. 2004). This increase is largely a result of the growth in the service and health-related industry employment during this period. In 2004 the state regulated a total of 167 occupations, of which 131 are licensed with their own boards, 19 are certified, 15 are registered, and two are regulated via the “after credentialing” activity of the occupation, which is a weaker form of registration (Broat et al. 2004). The percentage of workers in occupations regulated by the state in 2004, using state of Minnesota internal measures of regulation, was approximately 30.2 percent of the total state workforce. Approximately 27 percent were licensed, 2 percent were certified, and 1 percent were registered (Broat et al. 2004).

In comparison to other states, Minnesota ranks in the middle tier of states in both the number of occupations regulated and percentage of the workforce licensed.

Table 2.1 shows changes in occupational regulation in Minnesota from 1999 to 2004, the period of the last two reports to the Minnesota State Auditor on occupational licensing (Office of the Legislative Auditor, State of Minnesota 1999). As the table shows, the trend in Minnesota is toward regulating more occupations or increasing the level of regulation for existing occupations. For example, midwives and multi-purpose water piping system contractor/installers became licensed. Physical therapists and occupational therapists moved from being certified to being licensed. Other occupations lost their own independent board and were merged into larger commercial or medical licensing boards. One of these occupations was weather modifiers. Watchmakers were deregulated because their numbers diminished to just a few. In general, the trend has been toward more regulation through the licensing of new occupations and increasing the toughness of regulation for certified occupations by requiring them to license their work. The goal of most of the occupational associations seeking regulation in Minnesota is licensing rather than certification or registration because it gives
Table 2.1 Changes in Occupational Regulation in Minnesota, 1999–2004

<table>
<thead>
<tr>
<th>Newly licensed occupations</th>
<th>Newly regulated occupations</th>
<th>Occupations with stricter regulation</th>
<th>Regulated occupations merged with other licensing boards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power limited technician (2002)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Multi-purpose water piping system contractor/installer (2003)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

the occupation control of the standards and the work. No occupations went from licensing to certification during this period.

GOALS AND EFFORT OF REGULATORY BOARDS

The goals of regulatory boards are to control entry into the occupation and to enforce the standards of practice among licensed practitioners. Typically, board administrators examine the credentials of applicants and determine whether their education, experience, and "ethical" fitness meet statutory or administrative admission requirements. They often decide whether certain schools meet the requisite training standards in the occupation. This generally involves setting an approved list of schools that meet the minimum standards for the occupation. A board may contract out the examinations for passing the licensing exam, but it will often set the pass rate for the examination. Boards are also required to administer the reciprocity or endorsement provisions between the states to determine who qualifies to be regulated within the state if they were initially in a regulated occupation elsewhere. They set standards for persons who have licenses from other countries. Boards generally have the authority to investigate violations of standards and conduct hearings when there is evidence of violations of state standards and if a revocation of a license is warranted. Finally, they collect annual fees and can levy any fines. Often revenues collected from licensed practitioners become part of the general state budget.

The way regulatory boards operate is not uniform. Many of the licensing boards meet often to discuss issues of quality and disciplinary procedures. Often new approaches to setting standards in the occupation and the ways that information can be disseminated are discussed. Subcommittees usually meet to discuss the cut-off scores for passing the state licensing exam. Economist Milton Friedman (1962a) states that boards limit new entrants so that current licensees will not be compelled to charge higher prices or engage in unethical practices to generate more clients in order to make an "acceptable income." Other issues considered are the criteria for accepting out-of-state applicants and foreign nationals.
The time allocated to meetings varies a great deal. Table 2.2 gives the variations in the time allocated to meeting annually in Minnesota by regulated occupation. For example, “peace officers” spend less than 1 hour per month on board-related activities, whereas the board dealing with the licensing of public school teachers spends about 10 hours per month on licensing-related issues (Broat et al. 2004). There does not appear to be a relationship between the number of persons in an occupation and time spent on licensing-related activities. For example, barbers have only 2,700 licensed practitioners, but licensing board members spend more than 8 hours per month on regulatory meetings in 2003. Conversely, the licensing board that regulates electricians and related fields with more than 27,800 practitioners spends about one-fifth as much time in meetings as other licensed occupations presented in Table 2.2 (e.g., barbers in 2003). The allocation of time for licensing-related activities by board members varies a great deal, suggesting that the impacts on labor market outcomes may also vary by state and occupation, depending on whether the board is focused on the quality or supply aspects of occupational regulation.

### Table 2.2 Average Total Number of Hours Spent by Board Members in Meetings and on Other Board Activities in Minnesota

<table>
<thead>
<tr>
<th>Board title</th>
<th>FY 2003</th>
<th>FY 2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board of Peace Officer Training and Standards</td>
<td>7.6</td>
<td>10.1</td>
</tr>
<tr>
<td>Board of Electricity</td>
<td>18.5</td>
<td>22.4</td>
</tr>
<tr>
<td>Board of Teaching</td>
<td>91.2</td>
<td>115.3</td>
</tr>
<tr>
<td>Board of Barber Examiners</td>
<td>104.3</td>
<td>61.8</td>
</tr>
<tr>
<td>Board of Accountancy</td>
<td>68.8</td>
<td>94.2</td>
</tr>
<tr>
<td>Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design</td>
<td>100.7</td>
<td>101.5</td>
</tr>
</tbody>
</table>

HOW DO OCCUPATIONS BECOME LICENSED?

In Minnesota, as in many other states that regulate occupations through the legislative process, licensing appears to be responsive to political pressure from occupational associations seeking to become regulated. Occupations that are well-organized and have well-funded campaigns with no organized opposition are more likely to find themselves at the top of the agenda before occupational regulatory commissions. This is consistent with other evidence from Illinois, which showed that occupations whose practitioners work for individual consumers (e.g., barbers) have an easier time getting licensed than do, for example, electricians who were opposed in Illinois by groups such as farmers when they attempted to become regulated (Wheelan 2005). Minnesota passed legislation in 1976 that established criteria for the passage of new licensing laws (Office of the Legislative Auditor, State of Minnesota 1999). This provision, Chapter 214, establishes the criteria for assessing any proposed licensing law (Office of the Legislative Auditor, State of Minnesota 1999). The criteria stated in detail in Appendix Table A.1 are the questions that all legislators on the regulatory commission are required to consider and document when an occupation seeks to become regulated. The central questions focus on both quality and restriction of supply issues that form the essence of issues on occupational licensing. Beyond the forms that the legislators are required to complete, the advocates from the occupations who want to become licensed are also required to complete a form providing evidence supporting their position that the legislature should pass a bill regulating the occupation (see Appendix Table A.2). In both cases the burden of proof is on the occupation to provide a compelling reason for the job to be regulated.

Although this is the policy for the legislature, the practice is often quite different. The surveys are often not completed, and blank copies exist in the minutes (Minnesota Legislature, Senate 2000, 2002). Even though it is a policy for associations representing occupational groups to address the issues raised in the memo, only two groups addressed the memos during a recent legislative session: traditional midwives and massage therapists, and oriental bodywork therapists (Minnesota Legislature, Senate 2000, 2002). Of these two bills, only the midwives leg-
islation was passed (Minnesota Legislature, Senate 2000). During the following legislative session in 2001–2002, the same trends concerning the practice of not completing the proper evaluation of occupational regulation continued. There were a number of bills that went before the Legislature. All except one bill were tabled in a joint subcommittee. There is little detailed public record of these meetings (Minnesota Legislature, Senate 2002). The one occupation that made it through these hearings, dental assistants, was not passed into law (Minnesota Legislature, Senate 2002).

Nevertheless, establishing criteria for the regulation of occupations in the state appears to have had some effect on the composition of new legislation. Table 2.3 shows the proposed and adopted bills on occupational regulation for the period from 1981 through 2003. For example, from 1981 through 1998, a third of the bills proposed attempted to license new occupations, and 29 percent of them passed. Following the tighter implementation of the criteria for evaluating new licensing laws during the 1999–2003 sessions, only 26 percent of the bills proposed involved licensing a new occupation and 74 percent involved modifying an existing occupation. This shift implies that a trend exists toward making entry provisions more difficult or adding continuing education requirements (Broat et al. 2004).

Table 2.4 gives the number and percentage of bills that were proposed at the Minnesota legislature on occupational regulation, by industry, from 1995 to 2003. The last column in the table also shows the percentage of the Minnesota workforce for each of the industries covered. The numbers of bills proposed that deal with occupational regulation in the state by the regulated sectors are substantially higher than their percentage in the Minnesota workforce. The data are divided into the periods before and after the implementation of the tougher enforcement of Chapter 214 and the report of the legislative auditor in 1999 on occupational regulation. The basic data show that the majority of bills on occupational regulation were in the health sector, with 53 percent of all proposed legislation from 1995 to 1998 focused on this sector, and more than 67 percent of all legislation from 1999 through 2003 was focused on the regulation of health occupations.

To complement the information in Table 2.4, Table 2.5 presents financial contributions to the Minnesota legislatures’ leadership by industry sectors that have interests in occupational regulation. Consistent
Table 2.3  Composition of Proposed Legislation on Occupational Licensing in Minnesota, 1981–2003*  

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Bills proposed</td>
<td>Bills passed</td>
</tr>
<tr>
<td>Modifying existing law</td>
<td>158</td>
<td>76</td>
</tr>
<tr>
<td>New occupations regulated</td>
<td>79</td>
<td>23</td>
</tr>
<tr>
<td>Total proposed and passed</td>
<td>237</td>
<td>99</td>
</tr>
</tbody>
</table>

*In 1999 new criteria were adopted for legislators to follow when occupations requested regulation.

SOURCE: Adapted from Broat et al. (2004).
Table 2.4 Bills Proposed by the Minnesota Legislature on Occupational Regulation, by Industry, 1995–2003

<table>
<thead>
<tr>
<th>Industry</th>
<th>1995–1998</th>
<th>% of total bills</th>
<th>1999–2003</th>
<th>% of total bills</th>
<th>% of total employment in Minnesota in 2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounting</td>
<td>5</td>
<td>7.58</td>
<td>5</td>
<td>5.81</td>
<td>0.6</td>
</tr>
<tr>
<td>Construction</td>
<td>4</td>
<td>6.06</td>
<td>4</td>
<td>4.65</td>
<td>4.6</td>
</tr>
<tr>
<td>Education</td>
<td>7</td>
<td>10.61</td>
<td>0</td>
<td>0.00</td>
<td>2.9</td>
</tr>
<tr>
<td>Health</td>
<td>35</td>
<td>53.03</td>
<td>58</td>
<td>67.44</td>
<td>12.2</td>
</tr>
<tr>
<td>Mental health</td>
<td>8</td>
<td>12.12</td>
<td>9</td>
<td>10.47</td>
<td>——</td>
</tr>
<tr>
<td>Public safety</td>
<td>0</td>
<td>0.00</td>
<td>0</td>
<td>0.00</td>
<td>12.2</td>
</tr>
<tr>
<td>Social work</td>
<td>3</td>
<td>4.55</td>
<td>0</td>
<td>0.00</td>
<td>1.9</td>
</tr>
<tr>
<td>Other regulated</td>
<td>4</td>
<td>6.06</td>
<td>10</td>
<td>11.63</td>
<td>4.4</td>
</tr>
<tr>
<td>Total</td>
<td>66</td>
<td>86</td>
<td>38.8</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*aMental health employment was subsumed under the general health category.
SOURCE: Adapted from Broat et al. (2004).

Table 2.5 Total Donations by Major Sectors to the Leadership of Each House of the Minnesota Legislature Relative to Employment, 1996–2004

<table>
<thead>
<tr>
<th>Industry</th>
<th>House ($)</th>
<th>Senate ($)</th>
<th>Total ($)</th>
<th>% of total lobbying expenditures</th>
<th>% of total employment in Minnesota in 2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounting</td>
<td>2,004</td>
<td>6,497</td>
<td>8,501</td>
<td>2</td>
<td>0.6</td>
</tr>
<tr>
<td>Construction</td>
<td>17,767</td>
<td>31,085</td>
<td>48,852</td>
<td>11</td>
<td>4.6</td>
</tr>
<tr>
<td>Education</td>
<td>32,002</td>
<td>39,403</td>
<td>71,405</td>
<td>15</td>
<td>2.9</td>
</tr>
<tr>
<td>Health</td>
<td>59,921</td>
<td>75,734</td>
<td>135,655</td>
<td>29</td>
<td>12.2</td>
</tr>
<tr>
<td>Public safety</td>
<td>70,109</td>
<td>45,619</td>
<td>115,728</td>
<td>25</td>
<td>12.2</td>
</tr>
<tr>
<td>Other</td>
<td>33,846</td>
<td>47,905</td>
<td>81,751</td>
<td>18</td>
<td>4.4</td>
</tr>
<tr>
<td>Total</td>
<td>216,060</td>
<td>246,859</td>
<td>462,919</td>
<td>100</td>
<td>36.9</td>
</tr>
</tbody>
</table>

NOTE: All amounts are in 2004 dollars. Mental health was subsumed under the general health category.
SOURCE: Adapted from Broat et al. (2004).
with a “capture theory” approach to the impact of regulation, which states that those who are regulated attempt to monopolize the process, it is not surprising that the largest single contributor to political campaigns during this period was in the health sector in Minnesota. From 1996 to 2004, the health industry contributed 29 percent of all industry-related funding to the legislative leadership in Minnesota (Broat et al. 2004). Although this amount is smaller than the proportion of licensing-related bills proposed in the legislature, it does reflect that industries that are most impacted by occupational licensing are more likely to contribute to influential individuals in the legislature. Funding for legislative leaders followed the occupational groups with the most at stake in the regulatory process. This approach is consistent with a capture theory view of occupational licensure, and the occupational associations perceive state regulation as an important arena for their members, and they attempt to directly impact legislation.

LICENSING AND QUALITY OF SERVICES IN MINNESOTA AND WISCONSIN

One of the major questions in the regulation of occupation literature is the institution’s ability to increase the quality of service provided. The evolution of occupational licensing in Minnesota and Wisconsin allows for an examination of the quality effects of licensing versus certification, a less rigorous form of regulation. Wisconsin, which has tougher occupational regulations than Minnesota, is next to Minnesota geographically, has a similar population, income level, and unemployment rate. These similarities allow for a relevant comparison to examine the impact of different forms of regulation on one measure of service quality and on complaint rates to the regulatory body. If occupational licensing is successful relative to certification in accomplishing its objective of eliminating incompetent practitioners, lower-quality services are eliminated from the market and consumers are less likely to file complaints with state agencies.

The examination of these two similar states is instructive, especially since their policies on occupational licensing are different. The stated policy in Wisconsin is that it “favors regulation only when there is a
clear and direct harm to the public." Wisconsin has no "sunrise provision," which is legislation that requires that the burden of proof for regulation is with the proponent of the regulation. On the other hand, Minnesota has legislation labeled Chapter 214, which became termed "sunrise legislation" and includes criteria for occupational regulation against which any new or increased occupational regulation must be judged and explicit questions that legislators and proponents of licensing must address (Office of the Legislative Auditor, State of Minnesota 1999). The regulatory policy articulated by Chapter 214 recognizes the "potential danger of occupational restrictions and challenges proponents of regulation to demonstrate that regulation serves the public interest" (Office of the Legislative Auditor, State of Minnesota 1999). "Sunset legislation," which eliminates regulation or reduces it, has not resulted in the widespread success that it once seemed to promise and has never been a regular part of the political process in Minnesota, which is generally perceived as a tougher state on occupational organizations seeking regulation.

Using Department of Labor and Census definitions of licensing, it is therefore not surprising that Wisconsin ranks sixth in the country in the number of regulated occupations. It licenses 117 census-listed occupations covering 24 percent of its workforce, but Minnesota ranks twenty-first and licenses 94 occupations covering only 13 percent of its workforce in 2000. The ability to compare the impact of licensing versus certification is based on a comparison of physical therapists, respiratory care providers, and physician assistants (Broat et al. 2004). These three health occupations are licensed in Wisconsin but were certified in Minnesota (Minnesota Board of Medical Practice 1993–2002; Wisconsin Department of Regulation and Licensing 2004). If an occupation is certified, data are collected by the state on complaints about individuals in the occupation, and all licensing boards must maintain data on complaints filed with the state licensing board.

Figure 2.1 gives estimates of the complaint rate for Wisconsin relative to Minnesota. Either Minnesota has a more visible certification board or there is a more litigious population in Minnesota relative to Wisconsin. Evidence for a more litigious environment is that in 2003 Minnesota had a lawyer-to-population ratio of 1 attorney per 255 persons and Wisconsin had a ratio of 1 attorney per 396 persons, which is a 63 percent lower rate of attorney coverage in Wisconsin (American
Bar Association 2003; U.S. Census Bureau 2003). This larger ratio in Minnesota could lead to a greater awareness of certain legal rights to file complaints with regulatory boards. Moreover, filing a complaint with an occupational certification board could be the first step in filing a negligence suit against a member of the occupation. In all the occupations for which data in these two states are available, where one of the occupations is certified and the other is licensed, Wisconsin had a lower complaint value. Even for physicians, which is the longest licensed occupation in both states, Minnesota has a complaint rate that is about twice as high as Wisconsin, even though Wisconsin’s population is larger. There does not seem to be a meaningful difference in the complaint rate of the certified occupations relative to the base rate of the complaint rate for physicians in Minnesota, which is a state that

**Figure 2.1 Regulatory Complaints in Wisconsin Compared to Minnesota**

![Bar chart showing regulatory complaints in Wisconsin compared to Minnesota for physicians, physical therapists, respiratory care providers, and physician’s assistants.]

NOTE: These values are the summation of the rate of complaints to licensing boards in Wisconsin divided by the number of complaints to certification boards in Minnesota for physical therapists, respiratory care providers, and physician’s assistants during 1999–2002. Physicians are licensed in both states.

SOURCE: Data from Broat et al. (2004) and Wisconsin Department of Regulation and Licensing, 2004 and 2005.
certified its occupations relative to Wisconsin that gave the same occupations a license to practice.

Figure 2.2 shows changes in the number of complaints to state boards for these three occupations, which were certified in Minnesota but licensed in Wisconsin, relative to physicians, who were licensed in both states. In Wisconsin, physical therapists became fully licensed with their own board in 1993, physician assistants moved from being certified to licensed in 1997, and respiratory care providers became licensed in 1992 (Wisconsin Act 107 1993; Wisconsin Act 67 1997). The initial low levels of complaints in the early period of licensing in Wisconsin are consistent with the hypothesis that initially tougher regulation increases quality as measured by this complaint data, but that over time these quality impacts diminish or level off, and the level of complaints are similar to the certified occupations in Minnesota by the end of the time period. The data plots show that the complaint rate declined for physicians, the universally licensed occupation in both states, from 1994 to 2001. In contrast, for the three licensed occupations, physical

Figure 2.2 Changes in Complaints in Certified and Licensed Occupations in Minnesota and Wisconsin, 1994–2001

SOURCE: Data from Broat et al. (2004).
therapists, respiratory care providers, and physician assistants, in Wisconsin the complaint rate increased slightly over the same period. In Minnesota, where respiratory care providers and physician’s assistants were certified over the entire period and for physical therapists who were certified until 1999, there was a small decline in the aggregate complaint rate during the same period. At a minimum, licensed occupations showed no greater ability to reduce constituents’ complaints to licensing boards about the service provided compared to complaints filed in a regime where these same occupations were certified for most of the period. From the data provided in Figures 2.1 and 2.2 for these health-related occupations, there does not appear to be significant benefits for consumers of licensing relative to certification.

SUMMARY AND CONCLUSIONS

The goal of this chapter has been to present the development of occupational licensing as a labor market institution and show how this institution works within a state. Although the issue of occupational regulation often operates under the public policy radar screen, it has a long history in many different societies over time. There have been long periods where this institution has been pervasive and other times when there has been little to no occupational regulation by the government. One of the major issues for regulators and the public is whether the public interest theory of regulation has greater weight relative to the capture theory. If the public interest theory is dominant, occupational regulation reduces the likelihood that incompetent practitioners will enter an occupation and the public is protected from potential abuse. One outcome is that quality rises. But, if an occupation uses the regulatory process to limit competition and maintain or enhance the relative earnings of practitioners, with little impact on the quality received by consumers, then this labor market institution should be limited.

During different time periods, the impact of licensing may have resulted in both outcomes. Evidence suggests that licensing has positive impacts immediately following its implementation through the standardization of the quality of the service that is expected of practitioners. During this period, the ability to capture any economic monopoly rents
may be limited as the occupation focuses on quality and providing voice to practitioners during the regulatory process. However, the returns to this process diminish over time, and the occupation focuses its efforts on restriction of supply through entry tests and other legal barriers that can limit the number of practitioners who enter the occupation from other regions. The apparent benefits of occupational regulation—providing higher quality as measured by a reduction in complaints—are not obvious, at least in the long run.

As an illustration of this process, this chapter examines Minnesota, a state that is in the middle of U.S. states in terms of its level of occupational regulation, using both the number of regulated occupations and the percentage of the workforce that is licensed. This state has experienced moderate growth in the number of occupations that are licensed, but the percentage of the state workforce that is covered by regulation has continued to grow, in large part as a consequence of the regulated occupations being in the fastest growing sector of the economy. In this state, occupations that spend the most on political campaigns are also the most regulated, evidence that is consistent with the political capture theory. The evidence from Minnesota’s neighboring state of Wisconsin shows that licensing in that state versus certification in Minnesota provides no obvious benefits to consumers as measured by complaints to regulatory boards. The apparent benefits of occupational licensing relative to certification are not obvious, at least in the long run.

Studying data from just one state provides an in-depth look at regulation that includes the details of the licensing process. For example, focusing on a single state allows for a deeper understanding of new occupations seeking licensing. It also allows for a detailed examination of the allocation of meeting time for licensing boards. Further proposals to the state legislature for changing licensing provisions can be examined by observing how occupational lobbyists allocate funds for political purposes. The quality of services for licensed and unlicensed occupations can be examined in detail through state level analysis of nearby states. This depth of analysis does not give us enough breadth to examine the questions of quality versus restricting competition raised in this book. We now turn to a broader examination of the quality impacts of occupational licensing, followed by an examination of the potential restrictions of competition across states. The overarching questions of the policy implications of licensing are examined in detail in the chapters that follow.
Notes

1. For a more detailed history of licensing in the United States and in Europe, see *Occupational Licensing Legislation in the States* (Council of State Governments 1952).

2. There was a decline in the number of licensed occupational boards from the mid-1990s to 2004, a consequence of the consolidation of boards with few members following a report by the State Legislative Auditor recommending that occupations with few members be merged with larger boards.

3. The higher percentage of licensed workers in Minnesota reflects data gathered from state records from the regulatory agencies, which includes many occupations that are not listed by the Census Bureau in their listing of three-digit occupational titles. Consequently, estimates from the Department of Labor and the Census Bureau reflect a substantially downward-biased value relative to having state data from each regulatory agency. Nevertheless, the estimates presented in this paper reflect a consistent estimate since they use the same data-gathering approach for occupations and the same national database of the decennial censuses.

4. Leadership is defined as The Speaker of the House, House Majority Leader, House Majority Whip, House Assistant Majority Leader, House Minority Leader, House Minority Whip, House Assistant Minority Leader, Senate Majority Leader, Senate Assistant Majority Leader, Senate Majority Whip, Senate Minority Leader, and Senate Assistant Minority Leader. Political party leadership was acquired from the Minnesota House of Representatives (2004) and Senate Web sites. Committee membership was gathered from three bienniums using *The Minnesota Legislative Manual* (Minnesota Secretary of State 1997, 1999, 2001; Broat et al. 2004).

5. Physical therapists moved from certification to licensure in Minnesota during the period of analysis. The inclusion of this profession in the analysis is explained later in the methodology section.

6. The data collected for the number of complaints in Wisconsin come from D. O’Connell of the Wisconsin Department of Licensure and Regulation (personal communications, November 4, 2004, to Clint Pecenka). Conversely, data for the number of complaints in Minnesota were taken from the biennial reports of the regulation authority, in the case of the analyzed occupations, biennial reports of the Minnesota Board of Medical Practice (1993–2002). In all three occupations, the data available dictated the analysis of the years 1993–2002. During this time period, the data measure the number of complaints reported in each year (Broat et al. 2004).