

1985

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Michigan Law Review

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Recommended Citation

Michigan Law Review, *Of Foxes and Hen Houses: Licensing and the Health Professions*, 83 MICH. L. REV. 974 (1985).

Available at: <https://repository.law.umich.edu/mlr/vol83/iss4/30>

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OF FOXES AND HEN HOUSES: LICENSING AND THE HEALTH PROFESSIONS. By *Stanley J. Gross*. Westport, Conn.: Greenwood Press. 1984. Pp. xi, 185. \$35.

The health professions have come under increasing scrutiny in recent years. Rapidly increasing health care costs and inadequacies in the organization and delivery of health care services have provoked a flood of literature dealing with the regulation of the health professions. Professor Gross's¹ *Of Foxes and Hen Houses* is an interdisciplinary synthesis of this literature; he draws from the work of economists, sociologists, psychologists, historians, political scientists, and lawyers in analyzing the phenomenon of regulation by licensing.

Gross defines licensing as a "generic term referring to all forms of control over the right to perform specific activities" (p. 8).² Licensing is only one part of a general system of regulation which includes "malpractice suits by clients, credentialing of individuals by professional organizations, institutional accreditation, the Federal Trade Commission, and state and federal court decisions" (p. 7). It is a means of "input regulation," that is, an attempt to regulate by controlling who may carry on an activity, as distinguished from "process regulation," which is an attempt to control the activity itself, and "output regulation," which emphasizes an assessment of the consequences of the activity. Gross focuses his discussion on licensing under the prevailing "practice acts," which result in a state-created monopoly by preventing unlicensed persons from engaging in certain defined tasks (p. 9).

Although the book's title suggests an emphasis on the conflicts of interest inherent in self-regulated professions, the book itself is primarily concerned with the use of credentials as a source of information about the qualifications of the provider of services. In the preface, the author notes that the bulk of research and scholarship is critical of licensing and that his position is that it is not the current licensing systems which are faulty but that licensing itself is inherently defective as a means of regulation (p. xii). The former point is demonstrated by the author's pervasive use of quotations and summaries of other authorities. In each chapter Gross marshalls dozens of citations in rapid succession to support his attack on licensing systems. Regrettably the latter point is demonstrated only by the author's consistent reliance on ambiguous data.

The battle lines are drawn in the second chapter. The usual rationale for licensing is "to protect the public from harm and fraud at the hands of incompetent and unethical practitioners" (p. 16). The argument is that consumers lack the information to choose competent, eth-

1. Stanley J. Gross is Professor of Counseling Psychology at Indiana State University.

2. While Gross concentrates on the medical profession, his analysis is intended to apply to all professions and occupations.

ical practitioners, that individuals are not sophisticated enough to evaluate accurately which choices are in their best interests, and that the choice of inappropriate practitioners results in external costs. A secondary rationale is to protect practitioners, who after years of education and experience are entitled to the dignity, prestige, and competitive advantage of licensing. This rationale appears to be rather far-fetched, but Gross offers as support the testimony of several individuals who sought to justify licensing on such a theory in hearings before the California Senate Committee on Business and Professions (p. 20).

Gross then outlines the case against licensing, introducing six arguments that are explored in greater depth throughout the book. First, licensing agencies tend to create an artificial scarcity of trained practitioners (p. 22). Second, they may raise prices and restrain competition by creating monopolistic conditions (p. 24). Third, licensing may incorporate the ethics, standards and interests of private associations into administrative regulations, thus delegating regulatory powers to the regulated groups (p. 28). Fourth, licensing tends to inhibit innovation (p. 29). Fifth, licensing agencies may take arbitrary and unreasonable action as the result of bureaucratic rules (pp. 31-32). Finally, there is a "relative absence of accountability to the public for the mission for which occupational licensing was chartered" (pp. 34-35).

The middle chapters of the book are concerned with licensing as a social phenomenon. Of particular interest is the discussion of the nature of the professions and the concomitant development of licensing (p. 68). Professions primarily represent new ways of organizing knowledge and relationships. Professions also have two secondary functions. The first is economic, resulting from the emergence of new opportunities for earning a living. The second is social; with the decline in the aristocratic tradition, professions became institutions to preserve the privileges of the elite. Gross describes the "attributes" associated with society's concept of an ideal profession as a sense of calling, a body of knowledge, a formal organization, a high degree of autonomy, and an altruistic attitude (p. 72). These attributes, in turn, solidify the status of the profession within society.

In order to further analyze the commercial reality of the modern professions Gross compares them to medieval guilds. Licensing allows professionals to treat their expertise as a commodity over which they have exclusive control. This phenomenon occurs while society relies on professions to police themselves in the public interest. Thus, the guild analogy is appropriate.

Next, Gross describes the various forms that licensing agencies can take, the functions that they perform, and the problems that they face. After this the book begins to falter. Having described the licensing controversy, put it in its social and historical context, and having provided the reader with a practical perspective on the subject, the author

fails to provide a convincing resolution. The reader is told that “[t]he problem of regulation is the difference between what is espoused as its purpose and what it actually accomplishes” (p. 105). Since Gross has conceded that “[t]he legitimate purposes of licensing are compelling” (p. 21), a detailed discussion of what licensing actually accomplishes is crucial. Instead the reader is left to speculate. The author states that the unavailability of certain data necessary for resolving the licensing controversy “argues against the position that licensing protects the public” (p. 115).

The persistent failure to provide convincing solutions is further reflected in the treatment of the problem of competency. Gross concludes that traditionally defined qualifications to ensure competency have not been found (p. 134). Because of this, new approaches are required, but the author’s suggested “goal of developing performance-based examinations that rely on criteria validated on client outcomes appears to be beyond the state of the art at this time” (p. 134). The author believes that it is possible to develop such criteria, but “[i]f . . . it is decided that it is impossible to validly estimate practitioner competence this would turn into another argument against the advisability of attempting to protect consumers and for information based strategies that enhance consumer self-protection” (p. 134). This is a difficult argument to comprehend in the first place. It is all the more difficult to accept because of the author’s continued use of the lack of information necessary to resolve a question as the basis for his conclusion.

Finally, Gross surveys twenty-five recent studies examining the relationship between licensing and quality of service. He acknowledges that they “do not provide profoundly credible results” (p. 138). He also notes that they were “relatively crude” studies of the *association* between licensing and quality, so that causation cannot be presumed (p. 144). Again the reader is left to speculate whether licensing protects the public. Gross forcefully details the shortcomings of licensing agencies in assessing initial competence, monitoring continuing competence, disciplining errant practitioners, and in promoting the distribution of professionals and the utilization of paraprofessionals. These are formidable problems and they are relevant to the discussion, but in the end the reader, along with the author, is merely “tempted to speculate that [licensing] participates with other factors to ensure . . . much less than competent service to a large number of Americans” (p. 159).

Gross concludes that people should rely less on the government and more on themselves for protection against incompetent and unethical practitioners. In order to accomplish this, consumers need “sufficient information, effective alternatives, accountability, reduced cost, and protections against those who would exploit their lack of knowledge” (p. 161). Gross grounds his “structure for change” on the de-

velopment of a competitive market for medical services. In furtherance of this goal, he proposes increasing consumers' freedom of choice of practitioners by eliminating restrictions on who may provide the service, regulating dangerous procedures, regulating professional disclosure to provide for increased information while maintaining accuracy, using nongovernmental resources such as voluntary certification and performance evaluations by professional associations or consumer groups, and providing adequate information for evaluating the success of a regulatory program (pp. 160-85).

These proposals are considerably less radical than the reader might have expected. They could be adopted to complement licensing systems rather than to replace them. Moreover, as Gross describes the implementation of his proposals, it is clear that a high degree of regulation, albeit in a form other than licensing, is still necessary. For example, advertising is advocated as a means of professional disclosure, yet the need to police deceptive advertising is also acknowledged (pp. 168-70). The need to continue regulating "dangerous procedures" also requires government regulation, and as Gross describes it, this proposal is vulnerable to all the criticisms levied against licensing in general, although in a somewhat narrower field (p. 168). The solutions offered help to reduce the conflict of interest problems inherent in self-regulation by experts, but they do not address the more fundamental problem of gathering accurate information about the competence of individual practitioners.

In sum, *Of Foxes and Henhouses* is a superficial book. It is noteworthy for its scope, but this feature has been achieved by engaging in a persistently shallow analysis. The book serves as an adequate survey of the existing literature and it contains a useful bibliography, but it offers little in the way of original scholarship. The author missed an opportunity to make valuable contributions where the literature was inconclusive by leaving the reader with little more than biased speculations.