

Most licensing boards stand on "*protection of the public*" as their primary role as a Board, but where does that idea come from? Did they just make it up to justify their existence?

Actually, it's a very real thing and has been around a long time... See *Dent v. West Virginia*, 129 U.S. 114, 123 (1889). Yes – 1889 (over 130 years ago) was when this U.S. Supreme Court decision was rendered and it still stands today and is "the" case cited by advocates for licensing. This is where you would find the roots of this legal prerequisite that has empowered states to license and keep incompetent and unscrupulous individuals from performing certain tasks **in the interest of public protection**.

Modern denouncers of licensing, on the other hand, claim that licensing has little effect on the overall quality of services provided, prohibits certain segments of the workforce from earning higher wages and smacks of a restraint of trade. Their "research" into the topic actually resembles an ideological echo chamber that cites older research (more than 30 years old) with new researchers on that side of the fence continuing to cite the same research in their own findings. Newer research, however, has exposed quite different findings and this research is based on a running 30 year period of time with a multitude of people, professions and regulations being researched... and reveals the opposite AND that **licensing also helps to close the wage gap for racial and gender-based inequalities**. (See "[In Defense of Occupational Licensing: A Legal Practitioner's Perspective](#)" by Jeffrey P. Gray, published in the "*Campbell Law Review*, Volume 43, Issue 3, Article 6 – anyone in licensing should probably read this article).

In his article, Mr. Gray also discusses the Supreme Court decision regarding the North Carolina Dentistry Board (which impacted licensure boards recently in most states, resulting in gubernatorial Executive Orders that require many board decisions to be reviewed by someone such as the Attorney General's office). It is this decision that many denouncers of licensing also now cite to suggest that Boards are acting improperly and in their own private best interest where there is very little actual evidence that Board members aren't actually acting properly and taking their role as regulators very seriously.

Many people frequently cite the analogy of the swinging of the pendulum regarding regulation and deregulation and what we are seeing currently is a relatively sharp swing to the deregulation side... so sharp that indeed, "Sunset" clauses threaten to close rather important "professional" licensing boards with large roles in the protection of the public. **Most people DO AGREE that there are too many things that we license that we probably should not be licensing** – the question that should be being asked and answered is *how they relate to the protection of the public* (per the *Dent v. West Virginia* ruling). If they don't relate, then we probably shouldn't be licensing that entity. When they are protecting the public, they probably should be left in place.

Too, there is a marked difference between an "occupational license" and a "professional license" and the "occupational license" boards are typically the easier target for closing (and why detractors use only the former term to address both) – which is another reason you see attempts to remove degree requirements from licensing in some instances because doing so will make it easier to attack the license as occupational instead of the professional license it is with a degree requirement in place.

Too often, people ask how many people have had their license revoked by the Board or how often does the Board actually "deny" someone a license. Those numbers are relatively low for most boards and that gives a false impression, perhaps, that the board isn't doing much. In reality, the opposite is true. The board has done a super job vetting the applicants and setting standards (education, experience, examinations...) *such that they are truly protecting the public* – primarily through standard setting. It

makes enforcement a lot easier when the standards to enter are higher. We have also focused recently on "barriers" to entering a profession... some barriers are really good and necessary; some are in fact "stupid" things (usually carryovers from a past issue that need to be re-addressed). Who knows better than Board what those unnecessary barriers are? This is why "rule making" is delegated to the Board to propose the rules to change these things. It is when the legislators start tinkering with standard setting in the statute (overriding and restricting the "experts" placed on the boards) that we actually see the pendulums start to take those big swings in opposite directions (and people ultimately suffer). When we overregulate, we see costs of doing business increase; when we under-regulate, you see people being taken advantage of, either physically or monetarily, and ultimately, these things eventually hit the headlines and cause the pendulum to violently swing in the other direction. It's these big "swings" that cause a lot of unnecessary chaos... smaller bites of the apple can (and should) occur at the Board (rule) level where these "experts" have been appointed by the Governor (in most cases – there are other appointment sources in some cases) to be the "lowest level of government" to make more measured (and less chaotic) changes.

One of today's common buzzwords is "overreach." Nobody ever thinks it applies to them, but we're probably all guilty of trying to do more than we should or more than our charter allows. It does make you wonder why there aren't some checks/balances in place to help in this regard... for example, in a licensing board's governing statute, why isn't there a requirement stated within for legislators who wish to make material or substantive changes to the statute (short of a valid emergency) to first gain the opinion of the proposal of the affected Board? What could it hurt to have their opinion? Might they not also be able to improve the idea? And couldn't the legislator proceed even if there is a disagreement? Why not require working together at some minimal expectation? Rule making requires public comment, so why not a similar requirement for changing a governing statute? The Boards' views should matter.

Licensure detractors also claim they're against big government (where we've already mentioned that boards are at the lowest level...) or that they're for a hands off (*laissez faire*) approach to government... and a free market... and that government should be run more like a business.

Let's start there. **Nowhere in government will you find "government" run more like a business than you will find in these stand-alone, non-appropriated licensure agencies.** They exist solely on the fees charged for the licenses they provide (though the fees are also controlled by the legislature and it's extremely difficult to get a fee increase approved...) so there is no way on earth they want to see "fewer" licensees – that's akin to that agency asking to have its doors closed. They will always want unnecessary barriers to entering the profession removed as much (or more) than the next guy.

But, likewise, this is truly the opposite of big government where not a red cent of tax-payer dollars goes to support these agencies. So, you close them, put them in these big unwieldy "umbrella" agencies where they're now receiving appropriations and they become relatively dysfunctional. It's all rather puzzling and ironic to hear these "anti-big-government" and "run government like a business" **platitudes being used AGAINST these small agencies which are the EPITOME of what these people actually stand for.** *They've somehow bought into an extreme perspective and lost sight of reality.*

So, ultimately, a licensing agency that's primary interest is not the protection of the public in some real way...they could/should be closed. But, where that link is real, we need to get behind what these expert Board members are doing and support them (to include opposing the lowering of standards attempts that are coming through proposed changes in their governing statutes).