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Teeth Whitening and Occupational Licensing

By Walter BLOCK [†]

Abstract. The case for occupational licensing, whether for physicians or teeth whiteners, is highly problematic. This paper makes the case for a free market system in certification of quality in medical and dental care, and much else. Purpose: To explore occupational licensure as an infringement of liberty. Design/methodology/approach: a logical and empirical analysis. Findings: teeth whitening regulations serve as an anti-competitive barrier to entry. Originality/value: applying the concept of entry restrictions is not original; applying them to teeth whitening, is. This is of value in that for economic liberty to be promoted, schemes against it such as this one must be analyzed and exposed.

Keywords. Restricted entry, Modern guilds, Free enterprise.

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Teeth Whitening and Occupational Licensing

The It teeth whitening dentistry or cosmetics? Before you reply in your usual cavalier manner with a bored “Who cares?” gentle reader, realize this: the answer to that question will determine whether teeth whiteners will go to jail if they ignore cease and desist orders from state dental boards. Their charge is that these entrepreneurs are practicing dentistry without a license to do so.

So which is it? Is teeth whitening a legitimate aspect of being a dentist or it is “merely” cosmetics? If the former, the law requires that practitioners obtain a license to ply their trade; if not, anyone may engage in this practice with impunity, without permission, let or leave from governmental authorities.

Well, on the one hand teeth whitening does deal with teeth. This cannot be denied. One point for the dental profession. Eye shadow, in contrast, is placed near, you guessed it, the eyes, but not really *in* them, so there would appear to be no need to license the purveyors of that beauty aid. No ophthalmologist objects. But on the other hand, no one has to put his hands into anyone else’s mouth to apply teeth whitening; this can be done by the customer himself. A point for cosmetics. However, according to the American Dental Association, and who would know better?, “A thorough oral examination performed by a licensed dentist is essential to determine if whitening is appropriate and whether the patient has other oral health issues that may affect his or her decisions about whitening or other treatments” (Robertson, 2013). This is a second point, it would appear, on the side of the dentists, and, seemingly, a big one. But the cosmetics people are not without a response: the kits which enable people to “do it yourself” are widely available over the counter at numerous stores, without benefit, even, of a prescription. If teeth whitening is ruled to the province of licensed professional dentists, will we

[†] Loyola University, 6363 St. Charles Ave. Campus Box. New Orleans, LA 70118, USA.

 (504) 864 7934

 wblock@loyola.edu

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soon not be allowed to floss and brush our own teeth outside one of their offices? A point for the cosmetologists. But the licensed dentists have yet another arrow in their quiver: the Alabama Supreme Court, and who could possibly know more about this issue or be wiser?, ruled in 2009 that “a dental service is any ‘helpful act or useful labor of or relating to the teeth.’” Teeth whitening surely fits this bill. Ha, take that, unlicensed teeth whiteners, you rascals.

So which is it? We could easily go on, piling up “points” on either side of this debate but hopefully, matters have now become clear: there *is* no correct answer to this quandary. Settling this dispute is akin to determining precisely where orange fades in to yellow, or indigo into violet, on the rainbow. It simply cannot be done. There are all sorts of continuums out there: light and dark, sweet or sour, tall and short, fast and slow, high and low, heavy or light, etc. (Block & Barnett, 2008).

If we are to get any closure on this issue, we shall have to approach it in an entirely different manner. Let us adopt the libertarian non-aggression principle (NAP) as our prism. Should teeth whiteners be put in jail for engaging in this practice with other consenting adults? When put in this way, there is an obvious response: of course not. This practice is not a *per se* violation of the NAP. Come to think of it, that applies as well to hair braiding, coffin manufacture, chicken plucking, psychology, etc. As it happens, there are about 500 different occupations that require licenses in at least one state of the union (Young, 2002; see also Gellhorn, 1976; Friedman, 1962). This list has been growing by leaps and bounds. In the 1950s, some 5% of workers were licensed by the government. That is, not allowed to practice without a say-so from the state. As of 2013, this figure had risen to 30% of all employees. At that rate of increase, before too long we really will not be legally able to floss and brush our own teeth, to say nothing of clipping our nails, cutting or even combing our hair (for those who have any left) or shining our shoes. Surely, for our health and safety, properly qualified licensed professionals can do a better job than we can ourselves? No. The NAP of libertarianism would sweep away *all* licenses. In the truly free society, we should be able to do any of these things for and to ourselves, and/or hire whoever else we wish to employ for these tasks, without any by-your-leave from our masters in Washington D.C.

But wait. This would mean no more prescription drugs, not more licensed dentists or physicians? Are you libertarians barking mad? Why, splutter, splutter, this would be *anarchy*; well, chaos in any case. Jack the Ripper doctors would attend to our physical needs, feel good dentists would wreck our teeth, and without prescriptions we would be at sea without a rudder at the pharmacy. You libertarians must be crazy to even *think* about a scenario of this sort, let alone seriously contemplate implementing it.

Not at all. Happily, there is a way of ensuring the quality of drugs, doctors, dentists and other such professionals who practice such life and death occupations. It is called certification. How does it work? Simple. Tests are duly administered, not by a monopoly government agency, but via a competitive certification industry. If an applicant passes, he is a certified practitioner. If he fails, he can still open up shop, but without any such imprimatur. Think Certified Public Accountant. Anyone may practice accounting or book keeping, but cannot properly claim such to be a CPA without passing the relevant exam.

Are there any dangers in such a system? Yes, of course. Will it work perfectly? Certainly not. Why, then, embrace it? First it is the only system consistent with the natural order of liberty, with the NAP. No consenting adults are prohibited from interacting with one another exactly as they please. That alone, in this vale of tears of ours due to widespread and nefarious regulations is something to celebrate. Second, it will function much more efficiently than our present monopoly statist

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system. There is an important advantage that the market has vis a vis government monopoly licensing in the attempt to promote pure food and drugs, competent physicians, etc. If an error takes place, and given human imperfections it always does, what occurs under the two very different institutional arrangements? In the competitive certification market, the entity responsible for the mistake tends to lose profit. If the errors are numerous and/or serious, bankruptcy is the inevitable result. With this automatic exit of the inferior entrepreneur, the average ability of the remaining firms necessarily rises, just as average height of a group of people would increase if the smallest members of it departed. Perfection is of course unobtainable, but this market test of profit and loss ensures a pretty good result, the best as it happens of which we fallible humans are capable.

In contrast, in very sharp contrast indeed, when a government agency fails, as it must inevitably do so since it is also composed of fallible human beings, are automatic reductions forced upon it? That is to laugh. When the state fails to protect us as in post Katrina, 9/11, the Boston Marathon of 2013, are the institutions responsible for the debacle penalized? Not a bit of it. The Army Corp of Engineers and FEMA which between them were responsible for some 1900 deaths in the Louisiana area instead had their budgets *increased*. Did those responsible for the loss of innocent life at Waco suffer from it financially or in any other way? To ask this is to answer it. Ditto for the murders at the Boston Marathon, 9/11, Aurora Colorado, Sandy Hook Elementary School in Newtown, Connecticut. The list goes on and on. The statisticians in all these cases failed to provide for the public safety, and/or directly undermined it in the case of Waco. Yet their power, pelf and budgets *increased*. (For a similar point regarding highway fatalities of some 40,000 per year in the last decade, see [Block, 2009](#))

Let us take a case closer to health protection; occupational licensure for doctors. If there is any valid argument for guild-like statist controls, this is it. But consider. The American Medical Association functions as an agency that limits entry into the profession in order to keep compensation obscenely high. It severely limits the number of medical schools. It strictly confines the number of students each of them may accept. The ratio of applications to admissions is the highest of all fields of graduate study. It is obdurate with regard to allowing physicians from foreign countries to practice domestically. When there was mass Jewish immigration from Austria in the 1930s, and from Cuba in the 1970s, physicists, chemists, psychologists, biologists, mathematicians, economists, philosophers and other intellectuals were readily accepted in the U.S. Their foreign credentials were respected. Many of them were offered posts in leading U.S. universities, and greatly contributed to our society. But not Cuban and Austrian doctors. They were insultingly required to sit for proficiency exams. Bad as that was, worse was that these examinations were given in English, only. Very few of these world class doctors passed, not because they were not competent in medicine; rather, because of their lack of language skills.

Of course, the AMA defended this practice on the ground that unless foreigners could speak our language, fluently, they would be a danger to patients. However, the real reason for this disgraceful policy was to restrict entry and keep salaries high. How can we say this? Surely, if a patient complains of a problem with his knee, and the doctor looks at his elbow, this lack of communication will reduce the quality of care? Nonsense. First, there is such a thing as sign language, pantomime, body English, etc. Second, there are unconscious patients. No linguistics at all can be utilized with the comatose. Not English, not Spanish, not Chinese, not nothing. Third, there are hyphenated Americans who speak the same tongue as the doctors restricted from entry into the medical field. For example, a Korean-American patient would suffer no health risk whatsoever by being “forced” to speak the

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language of his home country with a physician who hails from the same place. There could be an entire hospital where Korean, only, was spoken. Fourth, this is precisely why God invented interpreters, to bridge the gap between patient and doctor, and the latter vis a vis other hospital staff. Yes, service may well cost more and the salary of the doctor who is not fluent in the domestic language may thereby earn less, but that should be his problem, and his alone. It does not constitute a valid reason for precluding him from the practice of medicine in the first place.

It is for this reason, at least before the advent of socialized medicine, that doctor's salaries were a multiple of that of people who had the capacity to enter this field, for instance PhDs in biology, chemistry, bio-medical engineering, etc. Say what you will about this vicious anti-competitive system, it cannot be denied that if it functions satisfactorily from the narrow self-interest perspective of the protected members of this profession, that is. So let us have three cheers for unlicensed teeth whiteners, hair braiders, gypsy cab drivers, and yes, unlicensed dentists, pharmacists, and doctors too in the hopes of ending this depraved guild system.

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