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## **2019 NCSBN Annual Meeting - Occupational Licensure Panel: Past, Present, Future Video Transcript**

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### **Event**

2019 NCSBN Annual Meeting

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### **Presenters**

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- [Paul] I want to start by thanking you very much for inviting me to speak today. I'm one of those people who believes that in this life, there are two very different types of jobs.

The first type is saving lives and alleviating suffering, and the second type is everything else. You work in that first type of job. I work only in the everything else. So, it's my pleasure to speak to you to try to help you do your jobs better because what you do matters greatly in terms of the effect it has on individual people.

I'm going to talk a little bit about the history of occupational licensing, to try to set up where we are today, and the problems that you face and that others in your position face, and that you will have to deal with in each of the different fora in which public policy is made, the legislatures, the executive branch, and the courts.

Don't discount that last one. If there is not sufficient movement forward in various areas in occupational licensing, you will likely see the courts step in and the result will not be what either the legislatures or the executive might be willing to do.

It might not be to your liking. So, keep all this in mind. Now, for those of you who had a classical education, you are familiar with Caesar's Commentaries, which began by saying, "All of Gaul is divided into three parts." The same can be said of the history of occupational licensing. There are essentially three stages to its development.

The first one began a very long time ago, mostly in the Middle Ages, when you saw guilds begin the limitation on people entering into this field. During the classical period when the Greeks and the Romans held sway, medicine, including surgery, was essentially open to anyone.

Although the Romans essentially showed that there was a preferred status for physicians and surgeons because they exempted them from military service and from taxation and the like. But it wasn't until the guild started limiting the number of people who could actually practice that you saw regulation of medicine become an institutional reality.

They developed an apprenticeship program similar in some ways to what we still have today. You would serve two to four years as an apprentice, and maybe four to six years as a journeyman, and thereafter pass an exam to become a master. Now, this was primarily for surgeons.

Doctors oftentimes had a slightly different approach to all of this. Universities took over a great deal of the regulation of physicians. And in towns where there were not universities, particularly in England, you saw medical colleges and the like. They used, ironically, the church at the time because the church had the ability to reach down into many of the small boroughs, shires, and the like in order to get an opinion as to whether or not someone actually was practicing in a competent manner.

But universities and medical societies such as the Royal College in London and then later in Edinburgh controlled the great deal of the access to that profession. In America, you saw something similar. America was hard-pressed to find anyone early on who had been trained in England as a physician, so you wound up seeing a lot of people just trying their own hand at it.

Gradually, America started moving into the same sort of approach that England had, not surprisingly. Universities developed medical schools in the 19th century. And then you wound up seeing some early medical societies also come into play to regulate this matter. But it wasn't just the medical profession that was subject to occupational licensure.

The colonies, then the early states, decided to regulate a variety of other professions as well, for example, ferry operators, later steamboat operators, innkeepers, bakers, embalmers, pawnbrokers, and anyone dealing with the Indian tribes.

This continued on generally until late in the 19th century. And I think the two most significant features of this first stage were these. One, there was no general theme as to what should and should not be regulated. It was not done by the federal government and not done by many states.

It was done principally by localities and there was a hodgepodge of different rules in different cities and towns. But secondly, the medical profession was always treated separately. There was always a recognized need to make sure that there was some way of ensuring that people who could engage in the practice of medicine, particularly surgery, who were qualified to do that.

Now, this period ended late in the 19th century. And the next stage picked up. And the next stage picked up principally with a decision by the Supreme Court of the United States in a case called *Dent versus West Virginia*. Dent went to the Supreme Court challenging a West Virginia statute that gave licensing requirements to practice medicine to people only if they satisfied two requirements.

One is they had to have graduated from an approved medical school. And secondly, they either had to pass a comprehensive examination or could show that they had practiced for 10 years or more. The Supreme Court upheld this limitation on those who could practice medicine in this regard.

And that decision is very significant for two reasons. One, it was the first time the Supreme Court had upheld a limitation on someone's ability to practice any lawful profession. That's significant because beginning in the 18th century and carrying on forward to late the 19th, the Supreme Court reflected the prevailing view in American society that anyone should be free to enter any lawful profession regardless of what it is and allow either the tort system or the criminal justice system, after the fact, to regulate who could enter whatever line of work was at issue.

This was, in fact, a very, very strongly held view in the 18th century. The framers were quite clear that they saw your right to enter any profession as an element, ironically, not of the liberty that people had, but as an element of the property they had.

Liberty, unlike the way it's viewed today, was essentially viewed as the freedom from external restraints imposed by government principally on freedom of movement. Property included not only land and any personalty that you may own, it included all of your legal rights.

So, whatever rights you had under the common law or statutes were deemed property rights and the right to engage in any profession was one of the property rights that the framers sought very much to protect. Dent changed that. Dent said, "No. The state is entitled, for what appeared to be reasons peculiar to the medical profession, to go ahead and limit people who can practice in this field."

Now, that was the first reason Dent was important. The second reason was, the Supreme Court immediately forgot or ignored what it said in the Dent case because it then went on to uphold state laws restricting entry into a host of other types of professions.

You wound up seeing virtually every type of profession or at least line of work that we today associate with the term profession being subject to licensing, not just the medical ones such as dentistry and pharmacy, but accountancy, securities brokerage, real-estate brokerage, insurance brokerage, and other areas of activity.

States started to regulate professions. They had always generally regulated the law, but you started seeing it move on into other areas. And the Supreme Court in a series of cases upheld them, upheld the state laws quite clearly and without much dissent in any of these cases, so it became quite clear.

Now, that's significant because not only did the court uphold those, but it then went on in a series of other cases to strike down various other types of regulation of the economy. The most famous case is a case called *Lochner versus New York*, where the Supreme Court struck down a state law limiting the number of hours that bakers could work.

This indicated that perhaps once again, the medical profession and some others should be treated differently, but it also indicated the Supreme Court was a little bit perhaps confused as to what it wanted to do in this area. This period extended through the 30s and 40s. During the Depression, the biggest

problem was getting people to work, not keeping them from it, and in the Second World War, the biggest issue was getting people into the service.

So, the second period continued on through in this regard, a period that I would describe primarily as one of regulation of the professions. And that brings us now to the third period, the one that we're in now, beginning in the '50s or '60s. A 2015 White House report noted that in 1950, only 5% of the American workforce was employed in activities requiring an occupational license.

Since then, there has been a 500% explosion in the number of people subject to those requirements. And it's not simply because or even primarily because more people are moving into those traditionally regulated professions. It's because the number of professions subject to occupational licensure has increased dramatically.

There are more than 1,100 now in the United States that are subject to some type of occupational licensing requirement. The result is that somewhere between one quarter and one third of today's American workforce is governed by these sorts of rules. Now, why did this happen? Why the explosion now and not earlier?

The macro economy changed. In the first stage, most economies are primarily agricultural. In the second stage, they were early industrial. In the stage we're in now, they are primarily service-oriented. And service-oriented professions lend themselves to occupational licensing regulation.

Why? Because it fits the classic economic model that was developed in the 1930s. The rationale was by and large information asymmetry. Someone who knows a particular skill is in a much better position to sell that skill to others who don't, and members of the public don't have the time to make judgments about who is and is not skilled or the ability, essentially, to learn what it is he or she needs to know to make those judgments.

We also have a variety of other justifications that have been offered such as the interest in encouraging people to develop their personal human capital by pursuing advanced education and not being able to be undersold by someone who is far less qualified. But that is the rationale that was offered beginning in the 30s for licensing and that has carried through.

What has happened, however, is we have seen tremendous pushback against that. Why? For several reasons. One, the whole rationale for licensing is that the government does a better job of regulating who can enter into professions than the market. And by substituting the government for the market, everything will work for the better.

I've spent 20 years in the federal government and I can assure you, the government makes as many mistakes as anybody else does. Second, the public interest rationale rested on the assumption that not only people in the executive but the legislative branches would always act with the public's best interests in mind.

Okay. The twittering I just heard indicates that you have your doubts about that too. What essentially has happened is the realization because of the third factor that the second one is not remotely true. And the third factor is one that was pointed out by a Nobel economist by the name of George Stigler a few

decades ago. He noticed that most of the support for occupational licensing came from people in the licensed profession, incumbents, not from the public.

Why? Because the incumbents could use them as barriers to entry. You would wind up seeing barbers and others wind up encouraging the states to do for them what they could not do on their own, adopt their own barriers to entry. For barbers to agree would be a violation of the federal antitrust laws, but for the state to do it for barbers, does not.

And so that's what happened. We now, therefore, are in the third phase of occupational licensing which I call cartelism. What you have seen is the development of state-licensed cartels in order to increase price without providing the compensating increase in quality. That has become, in fact, the widely recognized rationale for occupational licensing today.

Want proof? Here's a list, a partial list, I should add, of some of the professions that are subject to occupational licensing today. Auctioneers, ballroom dance instructors, barbers, bartenders, cosmetologists, florist, fortune-tellers.

Let me stop there for a minute. What's the licensing exam for a fortune-teller? How many fingers am I holding up? Who's going to win the next Super Bowl? And what's the success rate? Is two out of three good enough? And do you automatically fail as a fortune-teller if you're not richer than Croesus?

So, it's a little questionable as to what the rationale is there. What about barbers? The difference between a bad haircut and a good one is two days. Okay? Let's face it. Bartenders. What are you trying to make sure?

That they're good listeners? That they know the difference between, you know, a Manhattan and a vodka tonic? I mean, it's just absurd some of these, but it goes on and on. Makeup artists, interior designers, home entertainment installers, tour or travel guides, upholsterers. There are, as the White House, found 1,100 of these. And it's quite silly to think that these are being justified on the same ground that regulation of the medical profession is.

Now, I know there are some people out there that will say, "We shouldn't even regulate the medical profession." In fact, some of them are very well known. Milton Friedman, the Nobel-Prize-winning economist, once said that we should just leave to the tort system or the contract system all regulation of the professions, do it ex-post rather than an ex-ante.

And I don't purport to have nearly the economic knowledge that he did. But I can say, even today, we see that there is a difference between the societal acceptance of occupational licensing for members in the health care profession and there is for all the others. There are far too many legislatures that have regulated far too many professions for reasons that are far too flimsy to justify that sort of regulatory approach.

Medical profession, however, is one where there is still widespread near-universal consensus that there is a justification for it. But even there, there are problems and those problems have to be dealt with, such as mobility.

I saw, for example, in a handout that was on one of the desks outside, it looked like a majority of the states now have joined the compact that you have put together, and allowing people to move with a nursing degree from one state to another helps not only them, but helps the people they can serve in their new home.

I also noticed that the entire West Coast hasn't yet joined. And seeing how California has between 15% and 20% of the nation's population, that's a lot of people being unserved. I hope that changes. I hope states will realize that anatomy, physiology, pharmacology, and the like isn't different on the East and West Coast.

I hope they realize also that if they don't do something to remedy this problem, it will get remedied for them. Right now, in Congress, Senator Tom Cotton has promoted a revision to the National Defense Authorization Act to nudge states in the direction of allowing spouses of service members to port their licenses.

That's about as gentle a nudge as it is possible to do. In five years, if they haven't done it, he or someone else may decide that some people just haven't gotten the message and more needs to be done.

In the meantime, it is very possible you will see litigation over these matters, and then you are in the hands of the federal judiciary. The Supreme Court, a few years ago, said that the federal antitrust laws can be applied to state regulation of the professions.

Now, the states may or may not take heed in that regard. But if they don't, they may see federal judges decide that whatever their rules are either interfere with the competitive flow of people from one state to another or deter them from moving from one state to another and infringe on their right to engage in interstate migration.

There are 700-plus federal judges out there and you can find one to say anything. If the states don't address this problem and Congress doesn't do it for them, don't be surprised what the federal judiciary does. And it may be that they will adopt something that neither the states, nor Congress, nor the executive branch would want to see.

Let me end with this. I began with Julius Caesar and I'm going to end with Mae West. Mae West once said, "Too much of a good thing is wonderful." And she was right for what she had in mind. Occupational licensing can be a good thing.

There's no doubt about that. It is a way not only of protecting the public, but allowing the public to feel confident that they're being protected by the government in this regard. But as good a thing as occupational licensing can be, the more it's abused, the more it weakens, more it cheapens the currency.

I hope that the problems you face and that others in other professions face get resolved through compacts and the like, because that allows states to come together and do this. I fear if you don't, you'll see the federal government intervene, and then you'll find out that Mae West was right, but unfortunately, it's too late to do much about it.

Thank you very much. - [Dr. Nunn] All right. Thanks very much. I'm delighted to be here.

Thanks to the NCSBN for inviting me. I have a deep interest in both the research and the policy side of occupational licensing and, in particular, the health care policy that is related to that, so I'm delighted to talk about this. What I would like to do today is to talk about...as a labor economist by training, I'd like to tell you about the contemporary evidence and research that we have now on occupational licensing with a focus on the health care system.

And then I want to talk about where I think the policy discussion is, where it's going, and where I'd like to see it go. So, I have a number of slides here. I'm going to get a little bit wonkier here because I want to tell you about some of this evidence and data. But first, I'm going to give you kind of my core framework for thinking about occupational licensing.

I think of licensing as both public protection and barrier to entry and different degrees of those two aspects depending on which particular licensing regime we're talking about. Health and safety concerns, as Paul discussed, don't explain all the details of occupational licensing in many places. So, one thing that people have focused on is the substantial variation across states in the regulation of the same profession, which, as Paul mentioned, you know, is often conducted in the same way across the country but regulated very differently.

Many licensing requirements are not plausibly linked to public health and safety concerns. And then one aspect of the labor market data that we think is relevant here is that licensed workers have advantages over unlicensed workers when you make them comparable in terms of the observable characteristics of those workers.

And I'll talk more about that in a moment. I also think that the tasks that licensed workers are permitted to undertake are really important for competition and for how serious a barrier-to-entry licensing can be. So, I'm going to talk about that.

One aspect of those rules that I think is very important and that I know that this group has thought a lot about are the rules that matter for interstate reciprocity for interstate migration. And there is a developing body of research that suggests that that is an important impediment to movement across states. So, I'm going to define licensing as a credential that is legally required to work.

As Paul said, a bit more than 20% of workers are now licensed. That started out much lower about 70 years ago. Much of that increase in licensure is associated with the extension of licensing into new occupations as opposed to the shift into the services sector. Women are a bit more likely to be licensed than men, and licensed workers are much more likely to have higher levels of educational attainment.

Interestingly, despite the variation across states in the way that they regulate occupations, the fraction of licensed workers across states is actually fairly constant. Now, that's in contrast to the variation across occupations in the fraction of licensed workers.

So, as you can see in the figure on the left, as won't surprise most of you, health care occupations, legal occupations, occupations in education, those are all licensed at rates above 50%. And then there are occupational groups and the arts, and sciences, and mathematics, where you see much lower rates of

occupational licensing. The figure to the right is showing you the fraction of all licensed workers who are in big groups of occupations.

And what's notable about this is that health care constitutes 25% of all licensed workers in the United States. So, this is a really important piece of the labor market picture of occupational licensing. So, I mentioned a moment ago that there are substantial gaps in the labor market outcomes of licensed and non-licensed workers.

These gaps remain after you make sort of econometric adjustments for the characteristics of those workers. And economists think about those gaps as suggestive of the barrier-to-entry story that I mentioned a moment ago. So, to some extent, what's happening is you have crowding of workers into the unlicensed occupations that's lowering wages in those professions and raising wages a bit in the licensed occupations, and that creates this gap in the labor market outcomes of the workers.

So, these gaps are informative about the barrier-to-entry story. The earnings gaps are a bit larger than wage gaps. And the wage gaps themselves vary quite a bit across occupations as I'll show you in a moment. They're larger in occupations that have been licensed for longer. So, this is a challenging area to study because many of the effects happened with fairly long lags.

So, I did some analysis here using some recent data that we've really just had over the last few years on the licensure status of workers. And what you can see is that, there in the top line, you've got licensed workers and their hourly wage at different ages. The bottom line is the hourly wage of unlicensed workers.

And the middle line is the hourly wage of unlicensed workers who have been adjusted through a common statistical procedure to sort of look like a licensed worker, so that we're not getting confused by differences in educational attainment and other characteristics. And what you see is there's still a substantial gap between the wages of the licensed and unlicensed workers.

You also see that those gaps are different across occupations. So, it may be a little hard to see the names here, but the wage gaps are larger in transportation, and in health care, and in some other occupations towards the top there and then the gaps are much lower in occupations like food prep and the sciences.

We also have evidence recently that total employment is lower when occupational licensing exists or is more stringent. So, there's a recent paper by Blair and Chung showing substantially lower labor supply in adjacent counties across the state border that are licensed versus those counties where licensure doesn't exist for a particular occupation.

And then there are many occupation-specific studies that have found similar employment effects. I've done some work looking at non-wage outcomes and the story is broadly similar. Licensed workers have advantages in other labor market outcomes as well. As I mentioned before, there are substantial differences in the licensing requirements across states even within a single profession.

So, I give you an example here from the Institute for Justice's work, where they look at manicurists across the 50 states. And they see very large differences in the number of days of training and education



that are required for those workers. So, I think that's relevant to the policy discussion that we're having today. There's also wide variation in the state revenues that are raised from occupational licensing.

This is the subject of some work that I'm doing now, but I think we need a lot more investigation to kind of think about how those revenues play into the decisions about licensing and the burdens that the licensing represents for individual workers. I did want to focus your attention on the data we have regarding interstate migration. So, what's fascinating in the recent data that we have on licensing is that licensed workers are not particularly different in their movement within states versus other workers, and in particular, versus certified workers, who have a credential that is not legally required to work, but they're much less likely to move across states.

And that's due to the statutory impediments that exist to that movement, as Paul just discussed. And then academic research by Johnson and Kleiner and others bears this out that we do see a substantial impediment to interstate movement from many licensing regimes. Okay.

Now, I'd like to just focus for a moment on the health care sector. As I already showed you a moment ago, health care is a very big piece of the licensing picture in the labor market. It's also a big piece of the overall economic picture for the United States. The U.S. spends 18% of GDP on health care services. This is a very large fraction. The wage premiums and licensing prevalence are both quite high in the health care sector.

And so, I think that this means that we need to subject licensing rules in the health care sector to a lot of scrutiny, that there are important economic consequences of the details of those rules, and so we need to be quite focused on them. As everyone in this room is familiar, there are a number of scope-of-practice restrictions that states impose to different extents across the country.

I'm going to mention a little bit of work that the Hamilton project, where I work... we've done on these scope-of-practice restrictions. I think that they have economically consequential implications. This is maybe slightly dated, but the nurse practitioner scope of practice varies quite a bit across the country.

I think that we're seeing a shift towards more expansive scope of practice. And I think part of that is related to the ACA. So, the ACA created more demand for health care services and some new institutions that really benefit from more flexibility in how non-physician providers are used in our health care system.

Okay. I want to make sure that there's time to talk a bit about the reform options as I see them. I think there's an increasing understanding that licensing affects different groups in different ways. People with criminal records, people with credentials from abroad, military veterans and spouses, all face particular impediments associated with licensing rules.

There's also been, as Paul alluded to, a robust discussion in the antitrust and competition space of occupational licensing. And I think that that is going to be important to focus on as we move forward. And, of course, there's also been quite a bit of discussion of different ways of achieving more interstate reciprocity or recognition of out-of-state licenses.

I also want to say a bit about the discussion and the rhetoric around licensing. I actually think that while there is certainly a place to talk about the patently indefensible licensure, you know, the florists who are licensed in Louisiana, where there's not a compelling justification for doing so, we also...we don't want to lose sight of occupations that essentially everyone agrees should be licensed, but where the rules may not be well aligned with the public health and safety concerns that justify them, and where the rules may impose economic costs that we could minimize.

So, I want to focus people on the optimal type of regulation in any given occupation and the optimal extent of the regulation. And I think what we need to do there is to subject the regulations to cost benefit scrutiny that is quite rigorous that incorporates the estimates of labor market costs that we're now developing.

That's been the focus of some of the recent policy work on licensing. So, the Obama administration's 2015 report was an important prod to this sort of thinking. It lays out a number of best practices as well as the existing evidence that we had at that time on licensing.

I'll mention just a few other important recent initiatives on licensing. The NCSL, CSG, and NGA consortium I think is doing great work in bringing states together to talk about the best practices, the ways they found to move forward on licensing. There are numerous FTC briefs and analyses that are valuable here.

The Institute for Justice has done great work just documenting the variation in licensing rules across states. And many others have done important work including the NCSBN. So, I'll also mention the work at the Hamilton Project, where I sit. Morris Kleiner wrote a proposal in early 2015 that has many of the recommendations that made their way into the White House report.

I've also done some work just analyzing the new labor market data that's come out. And we've done a bit of work on criminal justice and on scope-of-practice reform as they pertain to licensing. So, I want to also say a word about the White House best practices, which I think are an important way to think about how we can move forward. So, what we really should be trying to do is to tailor licensing requirements to the public health and safety objectives.

We should be thinking about alternative regulatory mechanisms where appropriate, trying to minimize the procedural burdens of obtaining licenses, and maximizing the scope of practice for licensed workers. All of these are important to minimizing the economic costs while still achieving the public goals that we want to achieve. Applying cost-benefit analysis and trying to harmonize licensing requirements across states is an important piece of this.

So, as we move forward and think about what states are doing, where I think the discussion is going, it's important to note both the consortium that's led by NCSL as well as some of the things individual states are doing. One that I want to focus on, in particular, is the example of Arizona and Pennsylvania, where the states have looked to unilaterally recognize licenses from out of state as a way of reducing those barriers to both interstate migration and, as everyone here is aware, also to interstate practice, which is becoming a more and more important piece of the story here.

And there are a number of other initiatives that states have taken to try to lower the barriers that licensing presents for particular groups. So, what I'll leave you with is my preferred directions for continued reform. I think we should be subjecting all licensure proposals, particularly, new ones to rigorous cost-benefit analysis.

We can do that through sunrise review. We should be thinking about trying to tailor those rules to the legitimate public health and safety risks, avoiding unnecessary burdens for groups that are particularly disadvantaged by the rules. And our overarching goal here should be to just minimize the barrier to entry associated with licensure, maximizing the scope for competition while still protecting public health and safety.

So, I look forward to your questions into the discussion. - [Maryann] Okay. Thank you. Okay. Well, I'm going to begin by asking a few questions.

Number one, Paul. You ended us on a cliffhanger. You talked about litigation that could be coming to states that aren't part of the nurse licensure compact. Could you tell us more about that and how we'd be prepared and how we answer to that?

- I think that you have to worry whenever you see a serious national problem, particularly, involving an interstate element that what will happen is that the states will react too slowly. They won't think about the problems that they're creating for other states or because state legislatures generally are part-time employees, don't have the time available in their limited sessions in order to deal with potentially long-term problems or maybe anything other than the immediate emergencies that they see.

And occupational licensing reform may not be one of them. But if you have a major interstate type of problem, and interstate mobility of licenses is one of them, you're going to see that wind up either in the federal government's hands or in the federal court's hands.

Now, how is that going to happen? You know that there are some people in the federal government that have already shown an interest in this. I mentioned Senator Tom Cotton trying to do something to help out military spouses. But he's not the only one. There were several other members of Congress both in the Senate and the House that signed on to that bill.

You know also that you're going to see people not bothered to wait until they get Congress to address this problem, and they're just going to go to court. And what will happen is they will bring one of two different types of lawsuits. They will either sue the state officials involved in licensing under the Sherman Act, or they will sue those officials under the civil rights laws on the ground that the state laws they implement prevent them from migrating from one state to another.

The Constitution guarantees you the right to leave New York and go to California. Now, as a former New Yorker, I can't understand why anybody would want to do that. New York has the Yankees and nobody else does, so it's just that simple. But it is a serious problem and there is very little that has been done to address it, and if you don't see it addressed either by getting more states to join the compact, the entire West Coast, for example, or you see Congress do it, you're going to see people come into court and do this.

The problem is persuading the people in the state legislatures that they need to spend some time trying to address this problem now when they can do it as a legislative body rather than try to clean up whatever a federal judge orders them to do. It is an important problem. There isn't a very good argument for a lot of the limitations that we see.

And if you don't do it, you'll see it wind up in court. So, it's something that I think needs to be addressed, and if people can push to have their states join the compact, it'll avoid either Congress or the federal courts getting involved.

- Thank you. There is a concern right now that legislators group all professions together, that they think the market can decide even when it comes to something as serious as health care. How do we respond to those legislators that say, "Let the market decide on who should be working somewhere," and, "These requirements may or may not be necessary."

- I would just start by saying that I think we need to apply a kind of common framework to that sort of policy decision, and I think that that starts with cost-benefit analysis, that starts with an assessment of what the genuine benefits of licensing are, what the benefits of an alternative regulatory mechanism would be, and then what the labor market costs are of the proposed mechanism.

So, I think you can take that framework and apply it to any occupation, whether it's in health care or outside, and that that can lead us to make better decisions about the optimal regulatory mechanism.

- Can I just add? I think adding a little common sense in here probably helps too. A lot of the types of professions that are governed by occupational licensing shouldn't be, and some should. So, you know, one way to persuade someone is to say, "Okay. Do you want to see your name show up on the cover of *The New York Times*, above the fold, as having supported the elimination of an occupational licensing requirement that then led to a very large number of fatalities or serious injuries?"

Okay? I don't think home entertainment installers are going to cause that sort of problem. Physicians, and pharmacists, and nurses could. And you always just have to, I think, fall back on that. You can have reasonable limitations on professions because part of the reason is to protect the public in individual cases, but part of the reason is also to give the public the confidence that the entire structure of government is working to protect them.

And where you have people regulated in fields that don't need to be regulated to protect the public, that problem then splashes over onto everybody else.

- Thank you very much. I want to refer to an article that I read on...yours on reforming American medical licensure. And you give some suggestions as to alleviating the physician shortage, streamlining entry for physicians abroad and provisional licensing for medical school graduates that can't find residency programs.

We have a solution to that and it's called advanced practice nurses. They are ready to take care of patients in primary care, and rural areas, and across all sectors of the population, and yet they are held back by legislators and they are held back by special interest groups, namely, medicine, that are concerned about... And it becomes a turf battle and a money issue.

You know, how do we overcome that? And isn't that a solution rather than looking outside even our country for the solution?

- Yeah. I wrote an article, as you described, talking about those two solutions to deal with the physician problem. I did not address in that the scope-of-practice issue because that was more complicated. There were a couple of co-authors and I.

We were trying just to address the physician shortage problem by allowing more qualified physicians to be able to practice. The other way of addressing it is by addressing the scope-of-practice issue. And think about this for a minute. If you have someone in the military, particularly, someone, say, in one of the Army Special Forces units, the Green Berets, they're going to be not only treating the soldiers, they're going to be treating the people in whatever community they're trying to help.

They are going to be treating them not just for battlefield injuries, which are bad enough, but also for, you know, all of the different problems and diseases that people are going to have. I mean, one way to try to address the scope-of-practice problem is, I think, take examples like that and say, "These people are trusted by the United States military to deal with our soldiers and other people. Why shouldn't they be trusted to deal with other people in the United States?"

Because when you can make a persuasive case about any particular expansion of the scope-of-practice rules, you then make it easier to make the next one, and the one after that, and then one after that. Now, will you be able to go all the way? I don't know.

Legislation is all about drawing arbitrary lines and it's all about getting together a collection of minority interest to perform a majority result. And it may be that you won't get as far as you would if you looked at it logically in a purely intellectual sense. But pointing out specific examples of where the federal government has already done this may help you with state legislators by saying, "Look, these people can do it. You would want them to be able to do it. Let them do it."

And then here's another group that has basically got the same training as the one you just approved. Do it piece by piece rather than on a large-scale basis, one step at a time.

- Just to add very quickly that I don't think that these kinds of different ways of relaxing licensing restrictions are intention. That you can both relax scope-of-practice restrictions and also do more to recognize credentials from abroad and these can work together.

- Ryan, I know you talked about cost-benefit analysis, but what other research is necessary?

- I think we're going to... We are already seeing a lot more labor market research that's coming out of this new data that we now have in multiple data sets. It's really shocking, from a labor economics perspective, how little information we had about licensing comprehensively, given how important it is to our labor market.

But we now have more of that. I think we need more research on quality effects of licensure. Much of the research that exists already does not show large or, in some cases, any quality impacts of variation in

licensure rules. I think we'll see more evidence coming about that. I do think some licensure rules have large quality impacts, but it can be harder to study them because they don't tend to vary across states.

I think we need more research on the revenue side, as I mentioned, and I think we'll know a lot more in 5 or 10 years.

- Thank you. Well, I'd like to open it up now to the audience to ask questions regarding to both Paul and Ryan. Microphone 7. - [Janet] Good morning. Thank you.

I'd like to ask the question of, what... Oh, Janet Haebler, ANA. Sorry. What unintended consequences do you foresee with the regard to licensed health care occupations with the deregulation of other occupations, whether it be florists or some of the examples you gave?

- Yeah. So, I think it is... So, one nice thing about the state-based system is that we do have the laboratory of democracy. We can learn a lot from the different state experiences. So, to the extent that there are changes to licensing rules, this presents a great opportunity to learn about what they do and we can, you know, know more as other states look to learn from them.

So, I do think that there's that aspect of things.

- You've got nearly 1,000-year history of treating the health care professions differently. And I think there's a great deal of common sense behind that. I don't think that's going to change because you see florist and home TV installers no longer subject to licensing. I think what you're going to see is instead a recognition that it's appropriate in some places, but not everywhere.

And making people defend an unreasonable argument is a good thing for public policy development because it then strengthens the areas where you have a reasonable argument. So, I don't see the downside.

- And I would just add very quickly that I think focusing more on the way that licensing rules are structured and how burdensome the licensing is, will help with this because we can focus a little less on whether or not an occupation is licensed and more about how it's licensed.

- I'll just elaborate a little bit. I was thinking less about nursing and medicine as I was about nursing assistance, medication assistance, I think other personnel that have had licensure requirements imposed on them in recent past because their roles have changed, the requirements have changed. I think... I don't know if that helps, but perhaps you've already addressed that.

Anything you'd like to add?

- No.

- Microphone 3. - [Shirley] Shirley Bracken [SP], Minnesota. You cited, Paul, the recognition that it's the western...you looked at the West Coast and those states that have not passed the nurse licensure compact, but I call attention to the fact that if you really look across the country, the majority of states

that have not passed the nurse licensure compact are highly unionized, you know, and especially that, you know, the nursing unions which oppose the nurse licensure compact for obvious reasons.

They see it either as strikebreaking or... primarily strikebreaking or, you know, really diminishing their power in the negotiations process. In your wisdom, the two of you, do you have some advisement as how to deal with the unions in relationship to that?

- Media. Make people publicly defend unreasonable rules. If they can't do it, the listener, the viewer will over time realize it can't be done.

And you do the... you use the media in various ways. Show people who can't get medical care because of a certain rule. People who are in communities in rural America and the like. Show people who can't afford to have all of the money they have devoted to simply medical care and the like.

You wind up using the media to persuade the public because one thing politicians respond to is the public. If you get enough people upset that health care isn't being adequately provided, and this is a reasonable way of doing it because you're not putting public health at risk, then you'll see it done.

- Microphone number 1. - [John] Yes. John [inaudible], Louisiana. When you talk about licensing and restriction and opening up some areas such as licensed hair braiding or, you know, those areas that maybe don't need to be licensed, you also see some movement in protective scope of practice such as North Carolina, versus the board of North Carolina dental examiners, versus the FTC, where they're picking out even a particular item in a scope of practice that's been a sort of protectionist practice.

Do you see more movement in that as well?

- I think that has slowed down to some extent nationally because of the fear of being sued under the antitrust laws. Many antitrust laws allow a plaintiff to recover treble damages. And that is a severe, a serious hit on anyone that loses. And I think there has been... Although I haven't done any empirical work, perhaps Ryan has.

I think there has been some breaks applied to more jurisdictions trying to do that for fear they will wind up being sued.

- I would just add that I think this antitrust discussion you're talking about has led, to some extent, to you know, more active public oversight of these decisions, which I think is all of the good, you know, including more public members on boards and as well as other ways of just exercising more active supervision, and I think that can lead to better decisions about policy.

- Last question. Microphone number 3. - [Phyllis] I thought it was... I'm hoping it's a robust last question. Phyllis Mitchell from Vermont.

Dr. Nunn, you spoke about the sunrise doing the cost-benefit analysis. Do you have any thoughts on sunset? And Mr... - I think sunset review... - Thank you.

- Sunset review is an important part of this. It was another one of the recommendations in the White House report. I think that some of the focus on sunrise review comes out of the observation that de-licensure is extremely uncommon, that sunset review, while in principle it could be very useful, has not often resulted in the rollback of unnecessary licensing restrictions.

And given the tendency to extend licensure into these new occupations that we've been talking about, you know, it might be a more effective strategy to focus on the sunrise review on exposing the new proposals to rigorous cost-benefit analysis, but I think there's a role for both of them.

- Well, thank you very much. Thank you, Paul and Ryan, for your presentations and this enlightening conversation.