INDIANA COALITION FOR **PATIENT-CENTERED** CARE

Understanding Professional Licensure and Scope in Healthcare: A Legal Analysis

Professional licensure refers to regulated processes and authorities to practice within a specific discipline as required by law. Professional licensure laws and regulations evolve as fields develop, education is optimized, and new professions are created within particular areas. In healthcare, professional licensure has been an evolving body of law in response to changes in the healthcare industry.

Examples of this evolution are numerous. Today, in Indiana, a physician is a person who holds the degree of doctor of medicine or doctor of osteopathy or its equivalent and who holds a valid unlimited license to practice medicine or osteopathic medicine in Indiana.[1] In the late 1960s, approximately 20% of the states forbid the practice of osteopathy.[2] While these two professions are distinct, the licensure in Indiana has evolved to allow both to practice to the full extent of the individual licensee's education and training.[3]

Physical therapy licensure is another more recent example. In 2012, Indiana was the only state that did not allow patients direct access to a physical therapist. While barriers still exist, in 2013, legislation changed to allow Hoosiers better access to the services offered by this profession.

Professional licensure should be viewed as the evolution of innovation and modernization within the healthcare industry. As professions become more established, the development of skills is optimized. Often, professional licensure regulatory changes are necessary to help effectuate patient access to highly trained professionals.

Licensure and Services Offered

One purpose of professional licensure is to regulate distinct disciplines that often overlap in services provided. One common non-healthcare example is an attorney advising on tax issues and an accountant advising on tax issues. Both fields have distinct professional licensure regulations and, while one is not licensed to practice law or accounting, the services offered do overlap functionally.

In healthcare, the same is true. For example, in Indiana, the practice of medicine or osteopathic medicine is someone engaged in the diagnosis, treatment, or prevention of any physical, mental, or functional ailment or defect of any person.[4] For psychologists, psychology includes diagnosis and treatment of mental and behavioral disorders and interpretation of related tests.[5] For licensed mental health counselors, mental health counseling includes counseling and psychotherapeutic techniques to help people identify and resolve personal, social, vocational, intrapersonal, and interpersonal concerns.[6] All three have distinct training that seeks to address similar issues.

The reality is that a patient with depression could seek services from a psychiatrist, psychologist, or mental health counselor. To further highlight this, that same individual could seek assistance from a family or psychiatric nurse practitioner, physician assistant, marriage and family therapist, family physician, or others. A patient seeking care related to musculoskeletal issues may be treated by a physician assistant, podiatrist, chiropractor, orthopedic or family physician, nurse practitioner, physical

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[1] Ind. Code Ann. § 25-22.5-1-1.1

[2] Limitations on the Scope of Practice of Osteopathic Physicians, David G. Epstein, https://core.ac.uk/download/pdf/217041647.pdf.

[3] "Osteopathic medicine is a distinct pathway to medical practice in the United States." American Association of Colleges of Osteopathic Medicine, https://choosedo.org/learn-about-osteopathic-medicine/.

[4] Ind. Code Ann. § 25-22.5-1-1.1

[5] Ind. Code Ann. § 25-33-1-2

[6] Ind. Code Ann. § 25-23.6-1-7.5

therapist, or more. A patient requiring surgery and needing anesthesia could receive services from a physician trained in anesthesia or a certified registered nurse anesthetist. A patient needing a procedure related to the eye could see an optometrist or physician trained in ophthalmology. A pregnant woman may be cared for by a certified nurse midwife or physician specializing in obstetric care. The reality is that not one discipline is solely qualified to address a health concern, but each can uniquely address the patient's issue within their discipline.

In all of these cases, one individual who is licensed is not practicing another discipline, but is practicing within their discipline with overlapping types of services. Ultimately, it is the patient's decision as to whom they seek care from. Due to evolving education, diverse needs of patients, and growing needs of the healthcare industry, the regulatory framework allows for this flexibility.

Control and Oversight Between Disciplines

In a professional licensure regulatory structure, it is uncommon for a distinct discipline to control and have oversight over another profession. For example, a licensed real estate broker receives compensation for buying, selling, and negotiating real estate.[7] If an individual does not have a license, they are not permitted to perform these services. There is, however, an exception for attorneys.[8] This exception exists because attorneys in the practice of law have been providing the same services since the inception of the profession. Nevertheless, there is no statute or regulation requiring oversight, even though education and training are different from one profession to another.

In healthcare, the professional regulatory structure is mostly the same. Professions have oversight within their specific discipline, like an attorney and a paralegal, or a pharmacist and a pharmacist technician, but not others. However, there is an inherent intersection, as opposed to oversight, in many professions. This is, in part, due to the proliferation of healthcare professions over time and the interrelationship of professionals.

One example is that of a pharmacist. While pharmacists must honor all prescriptions for medication, they are immune from any liability when denying a healthcare prescriber's prescription if they believe it is against the best interest of a patient.[9] This does not mean that these experts in medication management are practicing as or overseeing a healthcare provider with prescriptive privileges, but they are exercising regulatory authority due to the professions' intersection.

Another example is a practice agreement required in Indiana between an advanced practice registered nurse ("APRN") and a physician. In this professional intersection, a physician must review 5% of the APRN's prescriptions on a retrospective basis.[10] This does not mean the physician is practicing as an APRN, nor does it mean the physician dictates what the APRN prescribes. Additionally, 23 states, the District of Columbia, and the VA Health System nationally have removed this regulatory barrier.

These intersections between healthcare professions have evolved and are often removed when determined to be unnecessary, limiting access, or increasing costs – primarily when consumer need, data and science do not support such measures. These regulatory changes should not be described as increases in scope of practice, when often they are not and have been occurring in other states. Healthcare professionals are trained to maximize the discipline; the professional regulatory structure often impedes that trained scope.

Scope of Practice and Professional Licensure Intersections

Scope of practice describes the procedures, actions, and processes that a healthcare practitioner is permitted to undertake in keeping with the terms of their professional license. Although healthcare-

[7] Ind. Code Ann. § 25-34.1-1-2

[8] Ind. Code Ann. § 25-34.1-3-2

[9] Ind. Code Ann. § 25-26-13-16

[10] 848 Ind. Admin. Code 5-1-1

specific often, it is not unlike any other license. It seeks to answer the following: What does my license allow me to do and what services can I offer?

Concerning psychologists, they are licensed to diagnose and treat mental and behavioral disorders; however, in five states, including Illinois, they can also prescribe medications. Their scope of practice has evolved because their training has evolved. In those situations, there is still an intersection with other disciplines. This highlights the relationship between scope of practice, professional licensure, and our healthcare delivery system's evolution.

In another example, pharmacists in Indiana are licensed to interact with and counsel patients and other healthcare professionals concerning drugs and devices used to enhance patients' wellness, prevent illness and optimize a drug or device's outcome.[11] This also includes the ability to administer vaccinations under protocols for patients 11 years of age or older. Approximately 40% of the states allow pharmacists to administer vaccines without the protocol structure, and 30% do not have any age limitation, including Michigan.[12] Due to the COVID-19 pandemic, the US Department of Health and Human Services authorized any state-licensed pharmacist to administer childhood vaccines. This was met with opposition by certain groups.[13] Nevertheless, scope of practice, professional licensure, and the evolution of those are evident, even amidst a pandemic.

Leading Healthcare Teams

Legally, licensure risk would exist if a distinct profession has legal authority over another because each licensee is limited to their discipline. In addition, if one profession had authority over another, this would render distinct professional boards subservient to one another, which is inconsistent with the current statutory structure.[14] In a patient-centered environment, one discipline leading all others is a problematic view. The regulatory structure exists because there are different disciplines, each with its own specific training, even when an overlap in services exists. Ultimately, a patient's needs dictate what profession should be managing the patient's care at any given time.

Many physician organizations have advocated that healthcare teams must be physician-led, stating they are the only professionals capable of leading a patient's healthcare. They cite the length of education and training as the rationale behind this model. However, this negates the fact that another profession's unique skills and training might be more critical to a patient's health at any given point. Any healthcare professional, in direct collaboration with the patient, may lead the care trajectory; this professional will likely change throughout the patient's lifespan. Further, the healthcare environment has significant shortages in most professions and geographic disparities in service availability; this is highlighted most prominently in the healthcare of rural and vulnerable populations. One single profession cannot feasibly have meaningful involvement to lead every patient's care simply due to the limited number of providers available to serve all patients.

By taking the position that one profession should be leading others, or have authority over others, or ultimate discretion in what should be a patient-choice environment, creates significant mistrust by the public in our healthcare professionals and delivery system. It could also create situations in which patients themselves do not have the autonomy to control their healthcare.

Patient-Centered Interprofessional Healthcare

Tested and established movements within the state of Indiana to expand access to high-quality care and decrease costs through professional licensure regulation should be supported. This includes

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[11] Ind. Code Ann. § 25-26-13-2

[12] Pharmacist Administered Vaccines, National Association of State Pharmacy Associations, https://naspa.us/wp-content/uploads/2020/08/IZ-Authority-9_2020.pdf.

[13] Pharmacists now allowed to administer childhood vaccines, but pediatricians disapprove, Andrea Kane, CNN, https://www.cnn.com/2020/08/20/health/vaccines-pharmacists-wellness/index.html.

[14] For example, in 2019, physical therapy was removed from the Medical Licensing Board to its own Indiana board of physical therapy. See Ind. Code Ann. § 25-27-1-19.

modernizing professions in ways that other states have done. This ultimately helps effectuate a team-based, patient-centered care model based upon the interprofessional collaboration amongst these distinct disciplines.

Efforts to remove unnecessary barriers should not be viewed through the lens of expanding scopes of practice. Healthcare professionals are educated and trained to maximize the services they can offer; therefore, it is not a question of whether they have the skills to provide the service, but will archaic regulation allow it. Can a pharmacist trained to administer vaccines across the patient lifespan not be licensed to perform this function? In Indiana, unlike much of the United States, the answer is yes. Can APRNs trained to provide autonomous patient care and prescribe without limitation not be able to do so? In Indiana, unlike half of the country, the answer is yes. The modernizing of professional licensure regulations will help optimize our care delivery system, including interprofessional teamwork.

The current Indiana physician regulatory structure highlights these possibilities, even within a single discipline. The Indiana physician professional licensure framework creates a foundation for optimizing interprofessional collaboration without making burdensome restrictions resulting in low quality and expensive care. There is no mandatory oversight in the physician regulatory structure, even though physicians are trained in distinct areas of their discipline. While all physicians attend medical school, some attend osteopathic schools, and some attend international schools. While most physicians attend a residency program to specialize, not all do. In Indiana, a physician receives an unlimited license to practice medicine with one year of post-medical school training.[15]

For physicians who do attend a residency program, those are in distinct areas. A family physician can be trained in a residency program to deliver babies and perform procedures such as colonoscopies. Still, the regulatory framework does not require the more highly trained OBGYN or gastroenterologist to oversee the physician trained in family practice. Another example is an internal medicine physician who manages complex cardiovascular issues for patients; the regulatory framework does not require oversight from an internal medicine physician with additional subspecialized training in cardiovascular diseases. Indeed, in both examples, if the issue becomes too complex, the family or internal medicine physician seeks the more subspecialized physicians' input. This is an example of a profession holding itself accountable to quality care and interprofessional collaboration.

There is a natural process of interprofessional collaboration that occurs between professionals who are seeking patient-centered healthcare that cannot be captured through enforced regulatory barriers. Even so, whether it be podiatry, pharmacy, therapy, nursing, dietetics, or others, each profession maintains laws that require the profession to hold itself accountable and work with other professions as needed.[16] Further, the current regulatory framework in Indiana requires this accountability within a profession, regardless of the discipline.[17] In addition, the concept of a team leader within a multifaceted, multi-licensed, and multi-disciplined team is not driven by a single profession, but rather the needs of the patient.

To truly foster an environment in which interprofessional relationships flourish, healthcare providers are utilized to the full extent of their license, education, and training, and any professional can lead care based upon the unique patient's needs, Indiana must focus on a patient-centered approach to care that modernizes professional regulations to meet the needs of Hoosiers across the state.

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[15] Ind. Code Ann. § 25-22.5-3-1.

[16] All professions have standards of practice as outlined in their professional licensure regulations. For example, podiatrists are required to refer to another practitioner if they do not feel qualified to treat the patient (see 845 Ind. Admin. Code 1-6-1). APRNs have the obligation to recognize the limits of individual knowledge and experience, and consult with or refer clients to other health care providers as appropriate (see 848 Ind. Admin. Code 4-2-1). Even physicians in Indiana are obligated to refer to other specific healthcare professions when it would be beneficial to the patient (see 844 Ind. Admin. Code 5-2-14).

[17] Indiana maintains a standards of professional practice statute that requires that a practitioner shall conduct the practitioner's practice in accordance with the standards established by the board regulating the profession, or otherwise the individual is subject to sanctions, and loss of licensure. Ind. Code Ann. § 25-1-9-4.