

BY RAYMOND T. BONNER

Consumers Need More Voice on State Panels

"No taxation without representation," the colonists shouted 200 years ago. Today, consumers should be raising a similar cry. Doctors, embalmers, lawyers, exterminators, nurses, barbers and a host of other professionals are making the rules and regulations that affect the costs and quality of goods and services bought by consumers. But consumers have only token representation in the process.

In California, more than 30 boards, bureaus, commissions and committees are regulating a potpourri of professional services. By law, these

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regulatory boards have only one or two "public" members; the remainder are licensees of the profession being regulated.

The Board of Medical Examiners, for example, consists of 11 doctors and one public representative; of the six persons on the Board of Funeral Directors and Embalmers, only one is a public member. Thus, doctors and morticians are permitted to license, regulate and discipline their own colleagues—and exclude potential competitors.

A recent investigation by San Francisco Consumer Action disclosed that the Board of Pharmacy refused to spend money appropriated by the Legislature to enforce a law requiring the posting of prices of prescription drugs. Seven of the eight members of the board are registered pharmacists; presumably, consumer members would have been more vigorous in enforcing the price-posting law, which was designed to help consumers shop wisely for their prescription needs.

The record is replete with examples of conflicts between the interests of consumers and those of professions:

—While truthful, dignified advertising has the salutary effect of informing consumers and increasing competition, architects, engineers and accountants join the chorus of other professionals who flatly condemn advertising as unethical.

However, a federal court recently declared unconstitutional California's law which prohibited the advertising of prescription drug prices.

—According to the California attorney general, a Pharmacy Board regulation which forbids a pharmacist from dispensing a lower-cost but otherwise equivalent generic drug in lieu of the more expensive brand-name drug indicated on the prescription is costing California consumers "millions of dollars annually" and should be repealed. Presumably consumer members of the Pharmacy Board would not tolerate the continuation of this regulation.

—For years, the Board of Barber Examiners, the majority of whose members are barbers, had the authority to fix minimum prices for haircuts, a price-fixing scheme which was finally halted in 1972 when a court declared it unconstitutional.

Even the power to license, which is often said to protect consumers, is fraught with anticonsumer implications. The authority to license is also the power to limit the number of competitors. All other things being equal, the more persons who are excluded from practicing a profession, the less competition there will be and consequently the higher prices consumers must pay.

Even though the licensing of professionals has significant anticompetitive consequences, it is permitted on the theory that it is necessary to protect the public from incompetence and fraud. Whether licensing is the best method for protecting the public is subject to serious debate. A recent FTC study reported fewer instances of fraud and lower prices among television repair shops in California, where anyone may operate a television repair shop upon payment of a small fee, than in Louisiana, which requires licensees to pass an examination and to have had two years' training.

The anticompetitive, anticonsumer consequences inherent in any licensing scheme are exacerbated by the authority most of the boards possess to deny licenses to applicants lacking "good moral character." The Assembly recently voted to expand the Veterinary Medicine Board's control over dissident veterinarians by granting the board power to revoke the license of any veterinarian who does "any act" which reflects "unfavorably on the profession."

The wisdom of bestowing this power is highly questionable; the need

for a majority of public members on the board to guard against its abuse is painfully evident. BART's engineers who spoke out against the costs and safety of that system were castigated by several engineering societies for having violated an ethical canon against conduct "likely to discredit or unfavorably reflect" on the profession. Without public members, the Veterinary Board might revoke the license of a veterinarian who criticizes high fees.

Since it is the public's health, safety and welfare that are designed to be protected by the boards, it follows that the public should have a majority of representatives on them.

The traditional justification for excluding public members from professional boards—that laypersons lack the expertise necessary for informed and intelligent decision-making—cannot withstand analysis.

First, many of the boards' decisions are not technical in nature. For example, Gov. Brown's proposal that the Board of Medical Examiners consider how better to distribute medical care throughout the state is a matter of obvious concern to all consumers and an issue which qualified public members would be competent to address.

Second, boards would still include professional members and staffs capable of grading examinations and providing expertise on technical decisions.

Finally, the boards could and should conduct hearings and solicit the advice of non-members, including professional organizations.

The issue is not whether the rules and regulations which professional boards have adopted are necessary to protect the public. Rather, the question is whether such rules should be enacted by persons who have an economic interest in restricting competition, or by a majority of qualified consumers without divided loyalties.

In announcing his proposals to resolve the malpractice crisis, Gov. Brown has called for a majority of public members on the Board of Medical Examiners. He also expressed his belief that the same standard should apply to the board which regulates attorneys, a board which currently includes only lawyers. Sens. Moscone and Beilenson have introduced legislation which would provide for a majority of public members on all professional boards and bureaus. Respect for consumer sovereignty commends the adoption of these reforms.

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