The Issue Is

NBCOT and State Regulatory Agencies: Allies or Adversaries?

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The goals assumed by NBCOT are being met at the state level. All 50 states have some form of statutorily supported regulation in place (Joe, 1996). State licensing agencies are charged with consumer protection, and many states have vigorous investigation departments. In 1995, the Texas Board of Occupational Therapy Examiners, which is accountable for 4,055 licensees, investigated 22 of 29 complaints (J. Polichino, personal communication, July 8, 1996); the AOTCB received only 69 complaints from across the entire country (AOTCB, 1995a). Many state licensing agencies affirm accountability for consumer protection through continuing education requirements for license renewal.

In April 1996, occupational therapists were notified that the American Occupational Therapy Certification Board (AOTCB) is now the National Board for Certification in Occupational Therapy (NBCOT). The name change is indicative of a fundamental shift in purpose from managing administration of the certification examination and verifying credentials to instituting a recertification program on a 5-year cycle. According to NBCOT Executive Director Roy Swift, accountability to the public is not well served by lifetime certification (Herringer, 1996). I do not disagree with Swift’s concerns for professional accountability and credibility. In an earlier article, I argued that “our professional obligation must extend beyond the provision of quality care in our own practices to support for the consumer protection practices of our regulatory agencies” (Low, 1992, p. 375). However, I do disagree with the approach that the NBCOT Board of Directors have determined.

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The imposition of recertification fees on top of license renewal fees are additional costs passed on to consumers without discernible benefit. Monitoring of credentialed personnel can be done more efficiently at the state level than through a national organization that has no statutory authority. A smaller span of control results in a more efficient response to complaints and concerns. Inquiries into complaints incur greater costs if investigators must travel long distances. Investigators employed by state licensing agencies are more knowledgeable of specific state regulations and thus more attuned to violations than those dispatched by a nationally based agency.

Another concern is the lack of NBCOT accountability to practitioners and consumers alike. The NBCOT is imposing constraints on occupational therapists and occupational therapy assistants who have no voice in the process. Adherence to principles of consumer protection demands distancing between the professional special interest group and the regulatory agency. At the state level, members of regulatory boards are appointed by elected officials. Although the practitioners whom they regulate do not have direct input into either the selection or the decision-making activities of regulatory board members, they do have recourse through contacting elected state representatives about concerns. State boards are regularly reviewed by sunset commissions and oversight committees. Everything a state agency does is subject to public scrutiny.

The original nine members of the AOTCB Board of Directors were appointed in the 1988 Articles of Incorporation (AOTCB, 1988). The Bylaws specify that a maximum of 15 members serve on the Board (AOTCB, 1995b). Although at least one third of the directors must be public members, that is, persons who are not occupational therapists or occupational therapy assistants, all members of the Board are elected from “the names proposed by the Nominating Committee [composed of current Board members] or by any Director” (AOTCB, 1995b, p. 1). Directors are limited to a maximum of three 3-year terms, but any director can be removed from the Board by vote of the other directors.

The profession of occupational therapy depends on state law for its legal existence. There is no federal statutory definition of occupational therapy. Among the dictates of the recertification process is the restriction of the initials OTR (registered occupational therapist) and COTA (certified occupational therapy assistant) to those who maintain certification. This restriction is based on the NBCOT’s action to trademark these
Many state licensing laws that precede the trademarking action contain criteria for the use of these professional designations. The potential for conflict between state statutes and the NBCOT is cause for concern.

There are many valuable services that the NBCOT can provide for practitioners and consumers. Although it is inarguable that standards and criteria for licensing and license renewal vary from state to state, this is equally true of marriage and divorce laws, child custody statutes, and even traffic laws. The NBCOT is well situated to develop a central repository of licensing regulations for every state as well as a national directory of certified practitioners. This can reduce the complexities of temporary licensing for new graduates and for those practitioners moving to a different state.

The investigative and recertification activities now in development can be offered to states that request assistance. The NBCOT can serve as the clearinghouse for information on illegal or unethical practices identified by state investigative agencies. The mobile nature of our society demands that such information be available to every state. However, before this or any other agency is entrusted with control of a national database, those persons whose records will be maintained need to know who will have access to the material and under what conditions. Test results and accusations of statutory or ethical violations are sensitive material, hence assurances of confidentiality are important.

The principles of AOTCB, now NBCOT, as stated in its Articles of Incorporation are:

(a) To encourage high standards of performance by occupational therapy personnel in order to promote the health, safety and welfare of the public;

(b) To establish, maintain and administer standards, policies and programs for the professional certification and registration of occupational therapy personnel;

(c) To sponsor and/or conduct research and/or educational activities related to (a) and (b) above. (AOTCB, 1988, p. 1)

Surely each of these principles can be upheld in ways that benefit occupational therapists, their clients, and the taxpaying public through cooperative efforts with state agencies rather than through attempts at usurping state authority.

References


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