

THE PROFESSIONAL ASSOCIATION AND THE LEGAL REGULATION OF PRACTICE

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THE POLITICAL IDEOLOGIES, IDENTIFICATIONS, affiliations, participation, contribution to campaign funds, government employment, seeking and holding office, and other aspects of the political behavior of incumbents of various occupations, professions and strata have been investigated.¹ There are also some discussions of the political power of professions, almost exclusively concerned with the legal and medical groups. But the study of professional associations as political pressure groups and their impact on the formulation and administration of the law has been relatively neglected. Professions are prominent among the many pres-

AUTHOR'S NOTE: *This paper is based on research that was part of a larger study of the political power of professions while the author was on National Science Foundation Fellowship tenure. See R. Akers, Professional Organization, Political Power, and Occupational Laws, 1966 (unpublished Ph.D. dissertation, University of Kentucky).*

1. O. Glantz, *Political Identifications of Occupational Strata*, in MAN, WORK, AND SOCIETY 419-31 (S. Nosow & W. Form eds. 1962); J. Hardman, *The Power Motivation of the American Labor Movement*, *id.* at 431-36; S. Lipset & M. Schwartz, *The Politics of Professionals*, in PROFESSIONALIZATION 299-310 (H. Vollmer & D. Mills eds. 1966); H. Hall, *Scientists and Politicians*, *id.* at 310-21; B. Barber, *Some Problems in the Sociology of the Professions*, 92 DAEDALUS 669-88 (1962); W. Glaser, *Doctors and Politics*, 66 AM. J. SOC. 230-45 (1960); R. Lewis, *New Power at the Polls: The Doctors*, in POLITICS IN THE UNITED STATES 180-85 (H. Turner ed. 1955); see also the selective bibliographies on ideologies, politics, and occupations in Nosow and Form, *supra* at 587-88.

sure groups actively pressing claims upon and through government,² attempting to have a part in shaping any public policy that affects their interest. There is ample suggestion in the literature that major portions of their efforts are directed toward the state licensure and practice laws.³

However, there has been little research into the amount and kind of involvement of professional associations in the process of getting practice acts written, passed, and enforced. The purpose of this paper is to describe, on the basis of exploratory research, the role of professional organizations in influencing, and the interprofessional conflict relevant to, public policy regulating professional practice. The study reflects the concrete situation found in one state but also is concerned more generally with the pressure activities of state and national professional organizations.

Varying amounts of data were collected from a total of twenty-three informants representing the chiropractic, dental, medical, optometric, and pharmacy professions in Kentucky. At least one person for each profession was located who had been "in" on the groundwork and had taken an active part in influencing licensing legislation. "Formal" depth interviews lasting up to three hours were held with these informants.⁴ All persons cooperating in the study were utilized not as "respondents" but as "informants" in the sense that this latter term has come to acquire in

2. Nearly every listing, inventory, classification, or comprehensive discussion of pressure groups in American society includes the "big three" of business, labor and agriculture, occupational groups with special emphasis on professions, and usually some mention of a miscellaneous assortment of veteran, women, reform, motoring, civil rights, religious and other groups. H. ZEIGLER calls the big three plus the professional groups, the "big four" in *INTEREST GROUPS IN AMERICAN SOCIETY* 93-232 (1964); V. KEY, *POLITICS, PARTIES AND PRESSURE GROUPS* 54-65, 92ff. (1958); D. TRUMAN, *THE GOVERNMENTAL PROCESS* 68-108 (1962); R. WILLIAMS, *AMERICAN SOCIETY: A SOCIOLOGICAL INTERPRETATION* 272-75 (1963).

3. A. Carr-Saunders & P. Wilson, *The Emergence of Professions* in Nosow and Form, *supra* note 1, at 205; B. Barber, *supra* note 1, at 683-84; W. Goode, *Community Within a Community: The Professions*, 22 *AM. SOC. REV.* 195 (1957); Goode, *Encroachment, Charlatanism, and the Emerging Professions: Psychology, Sociology, and Medicine*, 25 *AM. SOC. REV.* 905 (1960); H. Wilensky, *The Professionalization of Everyone*, 70 *AM. J. SOC.* 145-46 (1964); Wilensky, *The Dynamics of Professionalism: The Case of Hospital Administration*, 7 *HOSP. ADM.* 17 (1962); TRUMAN, *supra* note 2, at 93-96; KEY, *supra* note 2, at 118, 135-37; H. Gasnell & M. Schmitt, *Professional Associations*, 179 *ANNALS* 25-33 (1935); B. ZELLER, *PRESSURE POLITICS IN NEW YORK* 158-86 (1937); D. MCKEAN, *PRESSURES ON THE LEGISLATURE OF NEW JERSEY* 72 (1938).

4. The interview schedule was constructed on the basis of an exhaustive content analysis of the relevant practice acts. Informants were questioned regarding desirable provisions in the law, the part played by the association in influencing its passage, and the nature of opposition met.

anthropological fieldwork. They were not asked their personal attitudes or opinions (although these undoubtedly influenced their replies), and there was no interest in their personal or social characteristics. Rather they were questioned as persons knowledgeable about a system in which they occupied strategic positions.

In addition, much source material, providing data that would have required many additional interview hours to acquire, was made available to the investigator.⁵ Also, published sources relating to each profession were consulted, and questions relevant to occupational laws were included on a questionnaire sent to the national offices of each association.

HISTORICAL AND GENERAL PERSPECTIVE

The foundations of state associations were often for the express purpose of promoting occupational legislation, sometimes in a defensive move to prevent other, already established, professions from regulating them. The New Jersey Pharmaceutical Association (1870), for instance, was formed only after steps were undertaken by the "medical society of New Jersey to force legislative measures on 'all dispensers of medicines' in the state."⁶ Within a week of the formation of the New York Optical Society (1896), a bill to regulate the practice of refracting opticians (the early denotation of optometrists) was introduced into the New York legislature.⁷ Securing passage of a medical practice act was one of the main reasons for the organization of the Virginia medical society.⁸ The initial organization of each of the five professions in Kentucky was shortly followed by the enactment of a practice act. (See Table 1.) Since its organization, each association has been the driving force in legislation regulating practice in its own field. "Laws have been enacted, amended, and re-enacted at the suggestion of the association, hoping to

5. Included in this material were journals, books, pamphlets, booklets, committee reports, minutes of meetings, private correspondence, personal papers, unpublished manuscripts, bulletins and communiques, copies of court decisions, copies of laws from other states, and drafts, suggestions, proposals, and bills considered before introduction to the legislature.

6. G. SONNEDECKER, *KREMER'S AND URDANG'S HISTORY OF PHARMACY* 180 (1963).

7. M. COX, *OPTOMETRY, THE PROFESSION* 35 (1957); E. ARRINGTON, *HISTORY OF OPTOMETRY* 21-22 (1929).

8. Eds. of the YALE L.J., *The American Medical Association: Power, Purpose, and Politics in Organized Medicine*, in Vollmer & Mills, *supra* note 1, at 321.

secure the police power of the state [for] elimination of the undesirable practitioner."⁹

While the state associations have always been involved and remain in the frontlines of legislative struggle to obtain suitable practice laws, effective nationwide state regulation was achieved only through the combined effort of state and national organizations.¹⁰ Medicine, which was the first of the five professions to organize at the national level, achieved licensing laws in all states first. It was followed by pharmacy and dentistry which organized nationally shortly after medicine. Optometry, nationally organized later, was licensed in all states at a later date, and the last of the five to have a national association, chiropractic, still is not licensed in all states. (See Table 1.)

TABLE 1

DATES AT WHICH PRACTICE LEGISLATION ENACTED AND AT WHICH
ORGANIZATIONS FOUNDED

Profession	Date First Organized in		Date by Which Licensed in All	
	Kentucky	Nationally	Kentucky	States
Chiropractic	1916	1910	1917	— ^a
Dentistry	1870	1859	1878	1935
Medicine	1851	1847	1870	1915
Optometry	1916	1897	1920	1939
Pharmacy	1870	1852	1874	1935

SOURCE: Based on data reported in S. SPECTOR & W. FREDERICK, *OCCUPATIONAL LICENSING IN THE STATES* 78-88 (1952), on data from interviews, and on the *ENCYCLOPEDIA OF ASSOCIATIONS* (F. Ruffner, Jr. ed. 1964).

^a By 1952, chiropractors were licensed in 44 states; in 1963 New York passed a chiropractic act, but chiropractic still is not licensed in 3 states.

9. R. SPRAU & E. GENNETT, *HISTORY OF KENTUCKY DENTISTRY* 7, 97-106 (1960).

10. S. SPECTOR & W. FREDERICK, *OCCUPATIONAL LICENSING LEGISLATION IN THE STATES* 18-21 (1952); C. STETLER & A. MORITZ, *DOCTOR, PATIENT AND THE LAW* 13 (1962); SONNEDECKER, *supra* note 6, at 179; REMINGTON'S *PRACTICE OF PHARMACY* 14 (E. Martin, *et al.* ed. 1961); ARRINGTON, *supra* note 7, at 197.

Although federal legislation has come to assume greater importance for the national associations than it did formerly,¹¹ the national bodies have not ceased to aid the state associations through the years. Each national association has a legislative committee or council which, as part of its responsibilities, cooperates with state and local societies in legislative matters. The national bodies provide the state societies with copies of state laws, charts and summaries of major provisions of various acts, results of national surveys, reports, model statutes, legal advice, and forums for discussing common problems, and in general put the weight of national organization behind enactment of state laws.¹²

INITIATION AND SUPPORT OF PENDING LEGISLATION

The state association, in conjunction with the examining board, initiates moves for legislation, decides what provisions should be added, deleted, or changed, drafts preliminary and final proposed bills, persuades a legislator to introduce the bill, and works for its passage throughout the time it is being considered. If proposed practice legislation comes from any other direction, the association will oppose it and work for its defeat.

Because its members must work with the law continually, the examining board is often the first to become aware of needed changes and inadequacies in the laws. But it is the state association that provides the manpower and organization needed to see the move for legislation through to fruition. The background and drafting of the completely revised Dental Practice Act, which passed the Kentucky legislature in 1964, was accomplished over a two-year period by a joint revision committee made up of two persons from the association's Executive Committee, two from its Legislative Committee, and two from the state board. This revision committee was appointed by the House of Dele-

11. For instance, the AMA and the ADA give regular reports through their respective journals on federal legislation of interest to the medical and dental professions; see 190 J.A.M.A. 313 & 347 (1964); 69 J.A.D.A. 58-87 (1964).

12. R. McCLUGGAGE, A HISTORY OF THE AMERICAN DENTAL ASSOCIATION 368-69 (1959); AMERICAN DENTAL ASSOCIATION, THE AMERICAN DENTAL ASSOCIATION: ITS STRUCTURE AND FUNCTION 22-23 (1957); 69 J.A.D.A. 607-12 (1964); 67 J.A.D.A. 884-92 (1963); 58 J.A.D.A. 27 (1959); 35 J.A.O.A. 1045 (1964); Martin, *et al.*, *supra* note 10, at 1698-1703; 4 J.A. PHA. NS. 202 (1964); D. ANDERSON, THE PRESENT DAY DOCTOR OF CHIROPRACTIC 9 (1956); STETLER & MORITZ, *supra* note 10, at 16; O. GARCEAU, THE POLITICAL LIFE OF THE AMERICAN MEDICAL ASSOCIATION 165 (1961); J. BURROW, AMA: VOICE OF AMERICAN MEDICINE 54-66 (1963).

gates of the Kentucky Dental Association, and after the committee had decided on the changes it wanted and the attorneys had written the amendments in suitable language, the proposed bill was presented to the association's House for its discussion and approval.

This seems to be typical of licensing bills.

The executive secretary and corresponding secretary of the [chiropractic] association were on the committee that drafted the law, and [other] . . . men and women in the association were involved in the legislation.

The board drafted suggestions for changes, then turned them over to the [optometric association's] legislative committee which went over suggestions and then discussed them with the board.

The present medical practice act was written under the guidance of the Commissioner of Health at the time, who was also secretary of the state medical association and the board of health.

The key man in the drafting and support of the bill was [Health Commissioner]. Associational personnel and facilities were involved in the discussions, making of drafts, and so on. A tremendous amount of time and effort went into the law; it went through 15 or 20 drafts before it reached the floor [of the legislature].

The secretary of the state pharmaceutical association and the pharmacy board also was centrally instrumental in the legislative efforts of organized pharmacy in the state. The pharmacy bills through the years have been associational bills, and the state organization through a Special Legislative Action Committee has instituted vigorous campaigns to gain legislative support for pharmacy proposals.

Once it has been fairly well agreed that new legislation is needed, the committee charged with the leg work holds several meetings to thrash out consensus on exactly what will be asked for and, with legal counsel, how it will be asked. Preliminary steps include consulting model statutes and/or looking at the provisions in the relevant laws of other states.

We wrote to other state boards; looked at the laws of other states, particularly laws of successful states and picked out what we thought to be the better portions . . . used suggestions and clauses from other states. Other state boards and associations were very helpful in sending us their laws and offering suggestions.

None of the organizations in Kentucky made use of nationally prepared model laws, but with one exception, all communicated with and utilized resource materials from national offices. One organization was in continuous communication with the national office during the time the bill was being prepared and when it was pending in the General Assembly. Letters were exchanged with the attorney for the national association, who tendered advice and personal assistance, and indeed wrote a suggested draft of the law.

When the bill is introduced into the legislature, the problem becomes one of mobilizing membership behind the bill, convincing legislators that it is a good law that protects public welfare, and rallying enough votes to get it through both houses. A number of things may happen to a bill to foil the efforts of its supporters. Mistiming, unforeseen objections to minor provisions, overlong committee consideration, deliberate killing in committee, or passing one house and failing the other are some of the pitfalls that must be avoided. Sometimes the workings of the Assembly seem frustratingly unpredictable and malleable under pressure yet simultaneously unyielding and grossly ineffective in producing "good" legislation.

"That legislature is a funny thing. Any bill that has any merit at all can't get through. You could propose a bill against sin and by the time it got through the legislature, it would be so changed you wouldn't recognize it."

"You ever been to Frankfort? It's something. A bill to inspect boilers was defeated on Friday. Labor groups and others went out on the weekend—there's no way to prove it, but money was passed, favors were done—and on Monday, the bill was called back and passed. We all know this happens, it's the way bills get through the legislature."

None of the informants would admit that such tactics were used by his group, although each knew of instances where they had been used by others. Each presented his group as relying mainly on moral suasion, argumentation, discussion with legislators, and public relations.¹³

One successful professional organization in the state, for example, surveys the state following the elections to find out how well its membership knows the elected representatives and senators.

Who is Senator John Doe's dentist? Who is a relative? Who is a good friend? Each contact is given the opportunity to let us know how much

13. J. Dodson, *How to Pass a Bill in Frankfort*, 27 KY. PHAR. 10-12, 24-27 (1964).

influence he can have on what particular [congressmen]. When the Legislature convenes we feel that we know all the members of the General Assembly pretty well. We keep a cross file of the legislators in the office. This includes the Governor as well as all other elected officials.

When a bill is referred to committee, several influential members of the profession are asked to be prepared to defend the bill in committee. These people are introduced to the committee and the presentation is skillfully and effectively made. "We, with the assistance of our attorney, usually draft a brief and concise statement and have available mimeographed copies for each one present [at the committee hearing]."

The amount of plain hard leg work that the above description implies is an inevitable ingredient in influencing occupational legislation.

I spent six weeks in Frankfort when we were trying to get this thing through. We would talk to a legislator at his home and then be camping on his doorstep when he came back to Frankfort.

(Your tactics were mostly personal contact and persuasion then?)

Yes, you have to talk to these fellows at their homes and then be waiting for them when they come back. They can tell you one thing there and do another in Frankfort.

(Did you attend legislative committee hearings?)

Yes, we had to just talk and present our case. We see them over and over again and talk to them about the bill.

Much work and careful planning can come to nought, however, if the support of powerful governmental officials and legislators is not forthcoming. By the same token, such support at strategic moments can insure success.

We had no trouble at all. Governor —— came to the committee meeting and went as far as he could for us. He said that no group should be prevented from upgrading itself. The bill hurt no one and it helped us; it should be passed.

THE BOARD AND ASSOCIATION

There is generally a close relationship between the statutorily created boards and the private professional associations. These ties prevail not only in the formulation of the law, but also in its administration.

The enforcement of the law is, of course, the responsibility of an examining board, but a board will quite often—and sometimes routinely—work through the ethics or grievance committee of the corresponding association in disciplining practitioners. If the association cannot bring the recalcitrant practitioner into line, the board proceeds with the more formal and legal sanctions at its command. The association's effort in dealing with unethical and illegal practice sometimes extends to financial subsidization of the board. For instance, the Kentucky Dental Association has been financially supporting the board's investigative and prosecution activities by amounts of \$2,500 to \$3,000 per year. This is a pattern found all over the United States. One state dental society's monetary assistance for a board's enforcement activities averages \$31,000 a year.¹⁴

Sometimes the board uses part of its revenues from license and renewal fees to subsidize the association. This may even be required by law, as in the case of Kentucky pharmacy; \$2 of the renewal fees for each pharmacist's license in the state must be turned over to the association. But the same thing may be accomplished more informally. "The board really helps support the association. The board pays about two-thirds of the administrative director and executive secretary's salary, and he only puts in about one-third of his time for the board."

The optometric board pays for the office space used by the association and for its promotion booth at state fairs. The chiropractic board also has made use of its funds to ease the financial burden of the association. The pharmacy, optometric, and dental boards and associations all have some type of joint personnel and shared office space, buildings, clerical employees, and other facilities, and the medical profession at one time had much the same kind of arrangement.

When the association gets too big and/or the job of keeping up with all licensed practitioners and law violations become too burdensome, the board and the association are apt to be separated.

Historically the [medical] association and the board have worked together and been very close. Until recently, the commissioner [of Health] was secretary of both the board and association. When ——— came in they were separated; he was recommended to separate the two jobs—just too much for one man to handle . . . [the associational executive secretary] had his office in the same place as the Board of Health office

14. REPORT OF THE AMERICAN ASSOCIATION OF DENTAL EXAMINERS COMMITTEE ON LEGISLATION 4 (1962).

when it was in Louisville, up to about 5 or 6 years ago. There has always been a close relation of the medical profession and public health, and the Board of Health and the KMA still maintain close contact.

Chiropractic has yet another pattern of overlapping personnel. The board of examiners appoints and pays the expenses of inspectors who keep check on practice throughout the state and report to the board. One inspector is appointed for each of the seven administrative districts of the state chiropractic association; he is considered a district officer of the association, however, and serves it as well as the board.

These are, for the most part, informal arrangements whereby the interests of the associations are more closely reflected in the actions of the regulatory boards. More formal control often is acquired through special provisions in the law giving the association control, either directly or indirectly, over appointments to board membership. In Kentucky, only chiropractic does not have a statutory clause requiring the governor to make board appointments from lists submitted by the state associations. Table 2 shows the extent to which each of the five professions has managed to secure this right in all forty-eight contiguous states.

TABLE 2
ASSOCIATIONAL CONTROL OVER BOARD APPOINTMENTS IN 48 STATES

Profession	Number of States in Which Board Is Appointed		
	Directly by Association	From Association List	Without Association
Chiropractic	0	10	35
Dentistry	3	26	19
Medicine	3	20	25
Optometry	0	17	31
Pharmacy	0	25	23

SOURCE: Based on data reported in S. SPECTOR & W. FREDERICK,
OCCUPATIONAL LICENSING IN THE STATES 78-88 (1952).

THE INTERORGANIZATIONAL CONTEXT: OPPOSITION AND ALLIANCE

Successfully influencing public policy depends not only upon the resources and organizational strength of the state and national associations, but also upon the degree of opposition from, and alliance with,

other groups. Thus, any analysis of the role of organized professions as pressure groups must include the interorganizational context in which political influence is exercised. Since the kind and degree of opposition met was different for each of the five professions, they will be considered separately. Then a "peak" organization and its membership will be described.

Chiropractic is defined by the AMA as a "cult" or "sectarian" practice¹⁵ and chiropractors perceive their only consistent and significant opposition as coming from organized medicine.

Everything we try to do in Frankfort, the doctors oppose. . . . They tried to put a spite bill in, one that would put chiropractic under the Department of Health. They were not successful. The legislators know a spite bill when they see it—but it was introduced on the floor.

. . . they just didn't want us to have a law. They didn't detail their opposition. They were just generally opposed to us.

Over the years, this medical opposition has been duplicated in state after state and at the federal level.¹⁶

By the same token, organized chiropractic is almost routinely in opposition to medically sponsored legislation. At the time the present medical practice act was pending:

Chiropractors talked to ——— . . . Chiropractors are always afraid that medical legislation will chip away their domain. Physicians consider them quacks.

They look suspect [*sic*] on any medical or health legislation; they look with great suspicion on them.

The medical profession is not, however, the only adversary of chiropractic legislation, and chiropractors sometimes find themselves opposing and opposed by, dentistry and pharmacy.¹⁷ These groups have stood together either in supporting legislation that chiropractic was opposed to or in objecting to bills sponsored by chiropractors. Consequently chiropractors have come to see themselves as a beleaguered minority fighting powerful foes.¹⁸ The other groups do not assess the chiropractors as underdogs, however; they see organized chiropractic as a strong legis-

15. AMERICAN MEDICAL ASSOCIATION, OPINIONS AND REPORTS OF THE JUDICIAL COUNCIL § 3, 11-12 (1964).

16. T. McCLUSKY, *YOUR HEALTH AND CHIROPRACTIC* 147-64 (1957).

17. KPhA News, Feb. 15, 1962 and Feb. 23, 1962.

18. McCLUSKY, *supra* note 16, at 157; ANDERSON, *supra* note 12, at 9.

lative opponent. A jointly sponsored medical-dental "cancer quackery" bill passed, but, "... the chiropractors who have quite a lobby in our state had the bill in trouble."

Chiropractors have a pretty good lobby going in Kentucky. There are about 2000 physicians, 1900 dentists, and 1500 pharmacists, but 150 chiropractors can raise more noise than all of us put together.

Optometrists have not been defined by the AMA as cult practitioners, but they are listed as "irregular practitioners." It is, therefore, deemed unethical for a physician to lecture to optometric groups or employ optometrists.¹⁹ Optometrists have met with medical opposition from the very beginning of their attempts to secure practice acts in the various states.²⁰ This medical-optometric conflict is seen in Kentucky where the major stumbling block to passage of the optometric licensing law was the combined medical-opticianry opposition.

We had to agree to the opticians law to get ours. The KMA said they would fight the optometry law to the last unless optometrists did not oppose a law to license ophthalmic dispensers. The AOA attorney advised it would be better to lose the optometry bill than to let the dispenser's bill get through. But we agreed to it anyway. It hasn't made much difference; the opticians do not have a very good law anyway.

The dentists' successful efforts to enact an extensive revision of the dental act met with little difficulty, with the exception of some last-minute attempts by the Dental Laboratory Guild in the state to amend the bill. The dental technicians were handily outmaneuvered both behind the scenes and on the floor, and the Dental Act passed with only one dissenting vote. At the same time, the dentists were able to bottle up a bill introduced by the State Dental Laboratory Guild.

Our forces were organized. We placed on call the heads of the Prosthetic Departments of both the Schools of Dentistry . . . we had our key men make personal contacts with members [of the house committee] . . . The Laboratory Guild appeared at the Capital. They sent telegrams to the Legislature and Representative ——— tried to get a public hearing on the Bill.

The bill did not come to the floor, but instead was referred to the Rules Committee where it remained until the end of the session.

19. AMERICAN MEDICAL ASSOCIATION, *supra* note 15, at 13-14.

20. ARRINGTON, *supra* note 7, at ii-iv, 19-22.

Pharmacists have for years tried to secure the enactment of a major revision of the Pharmacy Practice Act, without much success. In one instance, a bill was successfully steered through both houses only to have the Governor veto it. "He got mad at the board because we wouldn't license some friend of his . . ." But the problems have come from organized groups, also.

We have had some horticulturists oppose us in the past. This last time we had the Kentucky Hospital Association and the Farm Bureau and Hardware Association against us. Hospital administrators weren't against us in the past. They didn't have a real good organization until now. They didn't before so we didn't get much real opposition from them. Now they have their own attorney and a good organization.

The hospital administrators were opposed to sections prohibiting the dispensing of drugs for in-patients in hospitals by non-pharmacists, and the Farm Bureau and feed dealers were afraid that the bill would place commercial poisons, insecticides, etc. under the control of the Pharmacy Board.

Organized medicine, dentistry, and pharmacy in the state all have representatives, along with nurses and hospital administrators, in a peak organization known as the Council on Allied Medical Services. Each year the member organizations present their respective legislative plans for the consideration of the other members. An effort is then made to settle conflicts and differences of opinion occasioned by any member's proposals. Ordinarily, this means that each member group can present bills to the Assembly, confident that it will have the cooperation of the other members. This is not always the case, however, as evidenced by the conflict between the pharmacists and the hospital administrators. But the Council at least provides a meeting ground for pre-session compromises, so that the members are not faced with unexpected opposition from other member groups during the brief time that the legislature is in session. This alliance of health professions does not include chiropractors and optometrists, who thus do not have the opportunity to meet with other groups under agreement-inducing conditions. In fact, one of the reasons the Council was organized some years ago was specifically to combat chiropractors and optometrists.

" . . . we would not want either chiropractors or optometrists on the Council. [We] organized the Council a few years ago. One of our main concerns at the time was that chiropractors and some others would jump in on the Kerr-Mills payments."

The cooperation among the members of the Council seems to extend only slightly beyond agreeing not to oppose one another's plans, but it does sometimes extend to active support of another member's legislation or plans to fight some bill. Thus, if chiropractors and optometrists sponsor legislation which a Council member is against, other member organizations may also oppose it. If there are differences between two members of the Council, the other member groups are likely to refrain from taking sides and to try to smooth out the problems. Whereas, optometrists and chiropractors may meet objections from a coalition of other organizations, the members of the Council are less likely to find such serious opposition.

The general picture of the context of conflict among the five professions in Kentucky can be summarized as follows: Chiropractic and optometry generally do not oppose one another but have not made any apparent efforts to cooperate with and support one another. Medicine, dentistry, and pharmacy in recent times have not actively opposed one another and, in fact, are members of an allied group of health professions. Medicine and chiropractic consistently oppose each other, and sometimes optometry and medicine engage in political combat. Medicine, dentistry and pharmacy occasionally all oppose certain aspects of chiropractic's legislation. Secondarily, they may be politically opposed to optometry. Medicine and dentistry seem to cooperate more closely than any other two groups, and they seldom oppose pharmaceutical legislation, although not always wholeheartedly supporting it. Finally, each profession experiences conflict with additional groups besides the other four health professions.

DISCUSSION

While this exploratory study does not provide systematic answers to theoretical questions, it does fill some descriptive gaps in our knowledge about the operation of professional organizations as pressure groups in the enactment and administration of licensure and practice laws. But whatever empirical studies such as this contribute, their major importance lies in the relevant questions they generate and the establishment of problem parameters for future and more definitive research. Some of these issues will be discussed in this concluding section.

All of the organized professions in this study were regularly and consistently engaged in influencing the laws and constantly concerned

with the way they are enforced by the regulatory boards. The practice acts are written by, introduced to the legislature on behalf of, sponsored by, and enacted largely because of the lobby activities of the state associations backed by the national organizations. One of the aims of the political actions of these groups is the promotion of the "license and mandate" claims of professions.²¹ While the laws do regulate practice for the protection of the public, they are not so much legislated *against* as *for* and *by* the professions.

It would be a mistake, however, to assume automatically, perhaps cynically, that the *real* goal of a profession in influencing laws is to benefit itself and that only lip service is paid to benefiting the public. It is suggested that the goals of professional associations include both protection of the profession and protection of the public. The two goals, of course, need not be conflicting and are most often served simultaneously by the same law. They do conflict sometimes, however, and it is true that when both can not be served, professions often promote that which best suits their interests even though this may be contrary to the public good. Many provisions of practice acts are plainly meant to enhance the organized profession's jurisdictional claims, support its concept of what constitutes its area of competence, bring it more influence and prestige, protect it from encroachment, and support its autonomy in a particular area, with little regard to what is best for the public. At the same time, professions just as vigorously have supported provisions which safeguard against abuses, ill-treatment, fraud, incompetence, and malpractice at the hands of the profession's members or of unqualified quacks and charlatans.

In some cases where parts of a proposed act would clearly benefit the professional organization but which would have unknown or undesirable effects on public interest, the profession may in fact opt for the public by dropping those provisions. For instance, a provision was proposed for an Optometric Practice Act which would have required as a condition for license renewal that all practitioners attend lectures or two-day courses at the annual meetings of the state association for "post-graduate education." Such a provision had been incorporated into an earlier Chiropractic Act, and registration at the annual chiropractic meetings subsequently increased considerably. However, although it was recognized that such a provision would have automatically increased

21. E. HUGHES, *MEN AND THEIR WORK* 77-78 (1958); Hughes, *The Study of Occupations*, in *SOCIOLOGY TODAY* 447 (R. Merton, *et al.* ed. 1959).

attendance and registration fees at state meetings, and even though no outside opposition was met on the issue, optometrists decided to eliminate the provision from their proposals. The reason given for this action was that attendance at these meetings might be misrepresented to the public by individual practitioners as real post-graduate training, and further even if this did not happen, such a requirement carried no clear benefit to the public. As one informant said: "But you must first work to the good of the public. If [the provision] doesn't do that, then we have no business putting it in; the same is true for any of the [other parts]."

But, on the other hand, less altruistic explanations are obviously possible, and the situation is simply presented as an example of an organized profession's claim to be placing the public interest above its own. The ambiguity of such a situation is clearly apparent. There is great need for systematic data on the relative frequency with which this happens and with which the other goals of the profession are pursued at the expense of the public well-being. This research did not provide such data or furnish guidelines as to what might be done to ensure that such pressure groups do not produce legislative outcomes detrimental to public welfare. This remains a serious policy question deserving further research.

The impact of the private association on the public interest is complicated by the close interrelationship between the association and the public regulatory agency. In the literature there is little recognition of the degree of interrelationship beyond some mention of the association's power in determining board appointments and regulations.²² However, it appears that their activities, personnel, facilities, and even finances overlap to such an extent that it is not entirely correct to say that the association "influences" the board's administration of public policy in the same sense that it influences the formulation of that policy by the legislature. It is not even influence in the same sense that all "client groups" of governmental agencies come to have an impact on the agencies' decisions.²³ The cooperation between the two sometimes reaches the point of near identity. Again, there is no conclusive evidence that this arrangement necessarily results in regulatory decisions which detract

22. KEY, *supra* note 2, at 36; W. BOYER, *BUREAUCRACY ON TRIAL* 24-26 (1964); Wilensky (1964), *supra* note 3, at 145-46.

23. ZEIGLER, *supra* note 2, at 277-99.

from public welfare. But this is a possibility and one safeguard already in effect in California could be tried elsewhere. In that state, each examining board has a lay member who is supposed to represent the "public."

The point is that we do not now know the degree to which public interest is or is not served by the pressure activities of professional groups. Further insights into this would be helped if we knew the outcome not only of the type of law discussed here but also a body of comparable policy which has been formed without the participation of pressure groups. There are no licensure and practice statutes and regulations which have been enacted and promulgated without the direct participation of the regulated profession and other groups with which they are in alliance or conflict. Research into this problem, then, would have to look to other types of public policy around which no pressure groups have formed or on which they have had little impact.

Hopefully, this kind of research would also provide some answers to the related problem of accounting for the presence of direct interest group pressure on some issues and its relative absence on others. Certainly, interest groups may form around any issue in the making and administering of the law. But the question is, when are they likely to do so and when is their influence likely to be decisive? Important as they are, group pressures form only part of the total political process out of which policy grows. It grows not only out of the compromise and victory of group pressures, but also out of a range of influences in the social, economic, and normative structures of society. How influential identifiable group pressures are in the formulation and administration of law is an empirical question which must be answered for given types of issues and policies.

However, it would appear that, in general, the closer policy comes to reflecting widespread moral sentiment or agreed upon values or to attempting to solve issues of widespread concern, the more difficult it is to attribute its existence to the relative influence of specified groups. This does not mean that interest groups will not become involved in such issues and indeed attempt to sway public sentiment. But they are likely to be more circumspect about it, and the known or probable public reaction becomes a more important element in the public decision-maker's actions. Thus, even though pressure groups may be involved in these issues, the public's view of the rightness or wrongness of certain policies may be crucial in determining whether the groups have their way. Interests other than those of the groups directly involved may be

reflected in public decisions through the impact of reference groups. A legislator or a public official identifying with the interests and values of his reference groups, needs and probably will get, no direct pressure from them to act in their behalf. Specialized legislation, on the other hand, usually lacks widespread interest, relates to few other reference group values, and therefore is most influenced by direct lobby activity. We may say, then, that the more restricted the population to which the policy refers and the less visible the outcome, the more it is susceptible to and likely to be subjected to direct group pressures.

Professional practice acts fall into this specialized category. Their passage is not very much in the public eye, and popular views have, at best, an indirect and diffuse impact on their contents. Usually, each practice act governs only one profession, and it is not surprising that it will contain just about what that profession wants, unless it infringes upon the claimed prerogatives of other groups. This infringement is upon groups within—not outside of—the same sphere of activity. Opposition may come from other contiguous professional and semi-professional groups but is unlikely to come from a concerned public.

The next problem is to determine the extent to which patterns of influence and conflict found here are repeated for other political issues. For instance, the same professions included in this study also have an interest in a number of federal policies, in workmen's compensation, in publicly supported health insurance and welfare plans, and in public health laws of various kinds. These are issues which do excite wider interest, relate to segments of society well beyond the health professions to which they refer, and have relatively visible public outcomes. Supposedly, the affected professions play proportionately a much smaller part in shaping these policies than they do in the legal regulation of practice. This suggests an ideal research site for pursuing further the questions of the formation of group pressure, its relative impact on legislation, and its relationship to public interest.

Several other questions could be raised. What is the relative position of professions in the overall political power structure of modern society? What is the power status of one profession relative to others? What is the relative impact of state and national associations on occupational and other laws? And equally important, what is the impact of the laws and their administration on the actual practice and organization of the various professions? What historically has been the role of professions as pressure groups, and how has this changed?

The study of political power and the law is part of the larger theoretical issue relating to the place of law as both an independent and dependent variable in society. Obviously, the approach in this study is just one way of accounting for the content of public policy. Empirical research on this question may take the form of either a longitudinal or a current study of some policy in the making or historical reconstruction of the way a policy came into being.²⁴ Although, as noted above, the study of the law-making process is not entirely the study of pressure politics, in modern society politics and law are intermeshed. The political process in general and pressure politics in particular should receive increased attention in the sociology of law.²⁵

The bulk of the effort to answer questions about the political process, understandably, has been made by political scientists. However, some of the questions should receive more sociological attention than they customarily are given. Sociologists should be able to make valuable contributions in some of the problem areas traditionally included within the intellectual concerns of political science. For instance, one of the more interesting questions raised by this research is: Given that the professions do operate as pressure groups, what explains the varied success of the five professions in securing desired and blocking unwanted legislation? In more general form, this has remained a central theoretical issue in political science. Why is one group more powerful than another in influencing the law? What is the group basis of political power? What group properties and other variables make for political success?²⁶

It is in the study of such problems that sociologists with their knowledge of group and organizational characteristics and appreciation of society as an interdependent system should be able to make a real contribution. A sociological perspective may not provide any improvement in a comprehensive theory of the political process, but it can enable

24. J. HALL, *THEFT LAW AND SOCIETY* (1952); W. Chambliss, *A Sociological Analysis of the Law of Vagrancy*, 12 *SOCIAL PROBLEMS* 67-77 (1964); H. BECKER, *OUTSIDERS* 135-46 (1963); A. Lindesmith, *Federal Law and Drug Addiction*, 7 *SOCIAL PROBLEMS* 48-59 (1959); D. Dykstra, *The History of a Legislative Power Struggle*, *WIS. L. REV.* 402-29 (Spring 1966).

25. A. Rose, *Some Suggestions for Research in the Sociology of Law*, *SOCIAL PROBLEMS* 281 (1962); C. Auerbach, *Legal Tasks for the Sociologist*, 1 *L. & SOC. REV.* 98-99 (1966).

26. TRUMAN, *supra* note 2, at 13; M. IRISH & J. PROTHRO, *THE POLITICS OF AMERICAN DEMOCRACY* 336 (1959).

clearer specification of important aspects of the internal structure of political groups and their interrelationships with groups in the larger sociopolitical context. Pressure politics, not only of professions but other groups as well, and their ability to achieve influence in the law-making process, studied in a variety of contexts and with a variety of methods, is a legitimate and fruitful area for future sociological attention.