

# LOCKING IT DOWN

BY LON KILGORE

Lon Kilgore examines the potential negative effects of licensing on the fitness industry—and those it serves.





Licensure for personal trainers has recently created a tremendous amount of banter, politicking and press.

In March 2014, Washington, D.C., became the first area to require licensure of personal trainers, although the law has not been enforced due to very confusing details and a subsequent review process. In May 2015, the Department of Health's Physical Therapy Board—the governing body, according to the [Omnibus Health Regulation Amendment Act](#)—was still reviewing the act and its details. Interestingly, President Barack Obama earmarked US\$15 million in his [2016 budget](#) for states to identify “areas where occupational licensing requirements create an unnecessary barrier to labor market entry or labor mobility.”

If the president is actively attempting to reduce frivolous employment regulation, why do people believe a license to work in certain occupations is needed? And what will happen if states actually begin to require such licensure?

## PROFESSIONS AND OCCUPATIONS

People in general have been led to believe that licensure of a personal trainer—or anyone, for that matter—guarantees good service or high skill.

Licensure is based on a lack of faith that an individual will deliver quality service and employ good business practices without some motivating oversight. Licensing is touted as a means to protect the public from quacks, cheats and charlatans. In order to ensure physicians, attorneys, barbers, masseurs, plumbers or any other occupational practitioners are able to deliver to a specified standard, they are required to fulfill a set of requirements for issuance of a government license.

Originally only three professions were recognized: clergy, medical practitioners and lawyers. Everything else was an occupation or vocation. The terms “occupation” and “vocation” describe an individual's means of earning a living. Occupation and profession are often incorrectly used interchangeably. An occupation or vocation generally does not require extended and formalized education and prolonged training. Occupations have training requirements, but they can generally be delivered with a short period of instruction or on-the-job training. Historically, personal training and coaching have been occupations.

In the 1950s, the number of licensed professions had grown from three recognized professions to a point where slightly less than 5 percent of the total U.S. workforce required licensing. By the 1970s, the figure had grown to about 15 percent. By 2000, an estimated 20 percent of the work force needed a government license to work, with approximately 30 percent requiring a license by 2008, according to [“Analyzing the Extent and Influence of](#)

[Occupational Licensing on the Labor Market.”](#) It is interesting that the number of occupations requiring licensing increased faster in the past decade than at any other time in history, more than doubling the rate of increase in any other decade.

The Council of State Governments now estimates that at least 1,100 occupations are currently licensed in U.S. states. The steady growth in numbers of licensed professions mirrors the rate of conversion of U.S. employment patterns from manufacturing to service industries.

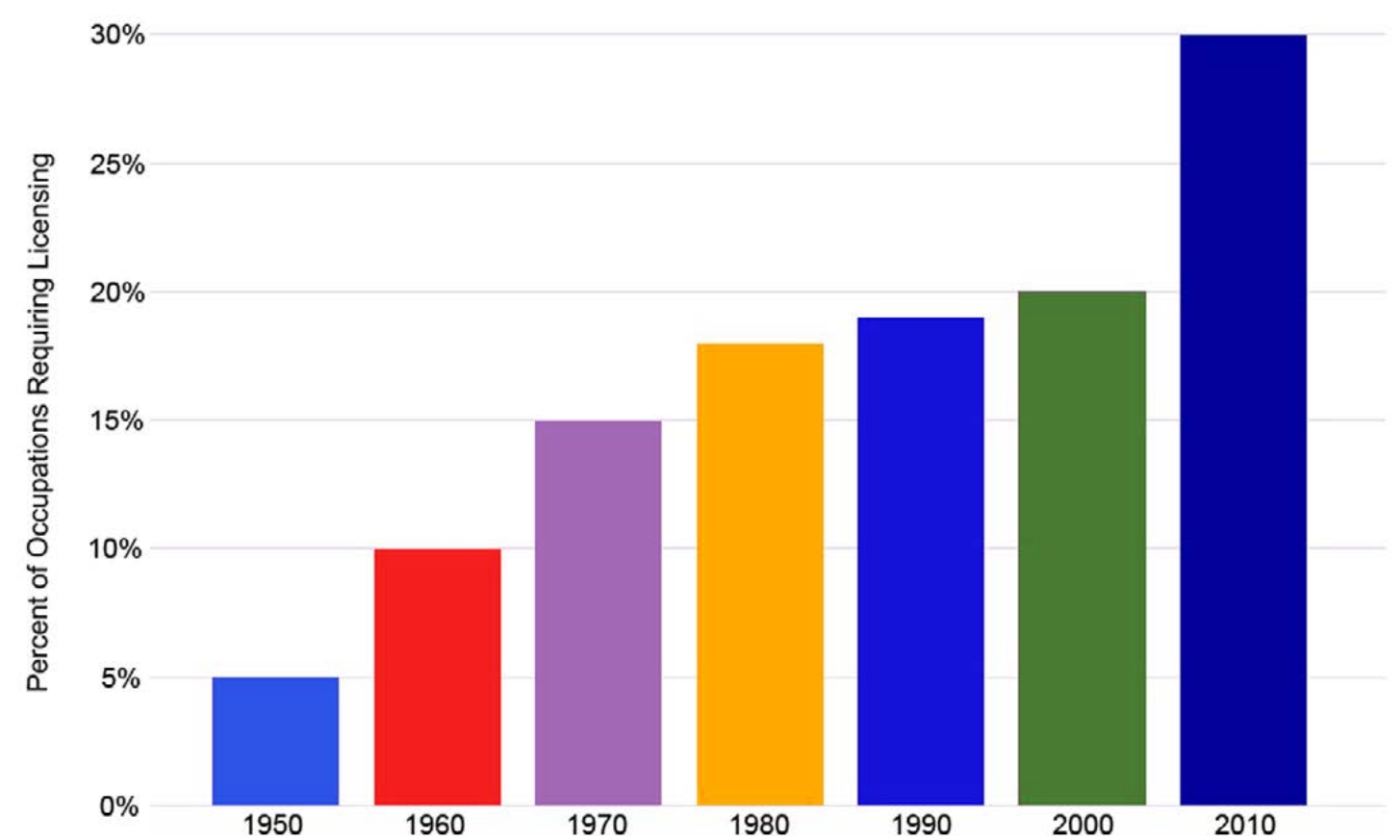
The structure of the process of licensure derives from a definition of “profession”—an undertaking that requires a body of knowledge, an education and licensing by an overseeing body, generally a government office. This widely adopted concept of professions is most directly articulated in “The New Fontana Dictionary of Modern Thought” as “the development of formal qualifications based upon education, apprenticeship, and examinations, the emergence of regulatory bodies with powers to admit and discipline members, and some degree of monopoly rights.”

Many press releases and articles explain the benefits of licensed professions. For example, if you listen to the hype from organizations that certify personal trainers, you will be presented with the rationale that licensure is a means of controlling the quality of service delivery to fitness clients. It seems these organizations believe a stroke of a government pen would ensure personal training would become cohesive and uniformly executed.

But could it be that those organizations actually feel incapable of influencing and policing their membership or of extending their influence to the body of fitness professionals in entirety? By seeking required licensure, are they attempting to marshal support from the government to force their ideals, membership and training upon the working masses? Possibly.

**The alphabet soup of fitness-professional organizations all compete against each other for influence and membership dollars. Are those organizations that are lobbying for licensure simply attempting to reap some type of monopolistic benefit?**

The last clause in the passage above might identify a more telling motive. The alphabet soup of fitness-professional organizations all compete against each other for influence and membership



Increase in licensed professions over time. (Source: adapted from “Analyzing the Extent and Influence of Occupational Licensing on the Labor Market”)

dollars. Are those organizations that are lobbying for licensure simply attempting to reap some type of monopolistic benefit?

As early as 1962 in [“The Economics of Occupational Licensing,”](#) Simon Rottenberg had already noted “the requirement that practitioners be licensed is either a low-cost device for enforcing rules of behavior, or a revenue measure.” While the former device—standardizing practitioner work output—is an attractive and oft-used rationale for promoting the implementation of licensing law, it is the latter measure that’s most likely at the heart of the matter.

In the investigation [“A License for Protection,”](#) Morris M. Kleiner estimated that “regulation redistributes between \$116 and \$139 billion (2000 dollars) from consumers and reduces economic output by \$35 to \$42 billion per year.” That amount equates to about 1 percent of total U.S. consumer spending.

This is a significant financial encumbrance on the consumer and an artificial restriction on economic output and employment. Kleiner further stated, “With no obvious benefits, the net effects of licensure for the occupations examined appear to be negative.”

Surely there has to be some quality improvement in products or services by virtue of simply establishing standards for professions. Can monetary gain and limitation of competition actually be the only motives of those who push for licensure? With specific reference to the fitness industry, is money at the heart of the mantra “exercise is medicine” and the desire to expand scope of practice for members of many exercise and fitness organizations?

If we look at objective data about the effects of licensing on the quality of products or services, the picture is not what the professional fitness organizations portray. A 2010 [Institute for Justice Report](#) demonstrated that unlicensed and licensed workers produced equivalent work in terms of quality. In 2001, the [Canadian Office of Fair Trading](#) reviewed existing literature and noted that only 13 percent of studies on the effects of licensing of professions demonstrated a positive outcome of regulation on outputs. That means 87 percent of all the studies reviewed either showed professional outputs were not improved by regulation or—worse—negatively affected them.



With regard to trainers, it's unlikely more red tape will improve their ability to increase their clients' fitness.

So if licensure does not protect the customer or improve the service received, what is it actually doing? It appears licensure protects and benefits the organizations and governments that propose and operate the system. In the 1989 article *"The Effects of Economic Regulation,"* Paul L. Joskow and Nancy Lin Rose asserted that, "Rather than seeking to provide consumers with the benefits of economies of scale or scope, regulation may protect firms that are not natural monopolies from the threat of competition and lower prices. Rate structures are likely to reflect interest group politics rather than narrow efficiency criteria. New technologies may be discouraged, rather than encouraged, to protect incumbents."

It is a very troubling concept that professional organizations will champion and actively lobby for government regulation of their membership and profession if they do so for financial gain and limitation of market competition rather than for a benefit to their membership and to the consumers they serve. It is not responsible behavior to restrict innovation and advance additional costs and legal encumbrance upon membership if there is no tangible increase in quality or safety of licensed activities.

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Despite the lack of benefit to the customer, more and more occupations seek licensure. Government officials and offices have rarely turned down licensure requests because regulation adds another revenue stream for the government. The Wall Street Journal article *"A License to Shampoo: Jobs Needing State Approval Rise"* indicated that the state of Connecticut reported \$21 million net revenues from license fees over a two-year period. In 2008, the California state government borrowed \$96.5 million from its licensing branch in order to pay for other state operations.



Many people find it difficult to get to a gym. Licensing costs will be passed on to clients, placing yet more barriers in their way.

**THE WHAT-IF WORLD OF LICENSED FITNESS PROFESSIONALS**

It's tough to say what the world of personal training would look like if a nationwide effort to require licensing of personal trainers succeeded, but numerous examinations of the aftermath of implemented regulation have produced a list of inevitable outcomes:

**INCREASED OPERATIONAL COSTS TO THE PRACTITIONER**

The bureaucracy of licensure costs money, and that money is supplied by the practitioner before he or she draws any income from work. Other indirect costs to the worker come in the form of required memberships, examinations (85 percent of licensed professions have entry exams) and reporting; regulations on where and how business is to be conducted; and, very importantly, the education required to be eligible for licensing.

If commercial education becomes the standard, the burden is only mild, ranging from several hundred to several thousand

dollars. If a university education is required—about 43 percent of all licensed professions require a university education—the burden becomes many tens of thousands of dollars.

Any increase in the cost of entering a profession restricts the number of people who can practice.

Ongoing educational costs also increase, as 70 percent of licensed professions require their practitioners to obtain some type of continuing-education credit in order to maintain licensed status.

**INCREASED INCOME FOR THE PRACTITIONER**

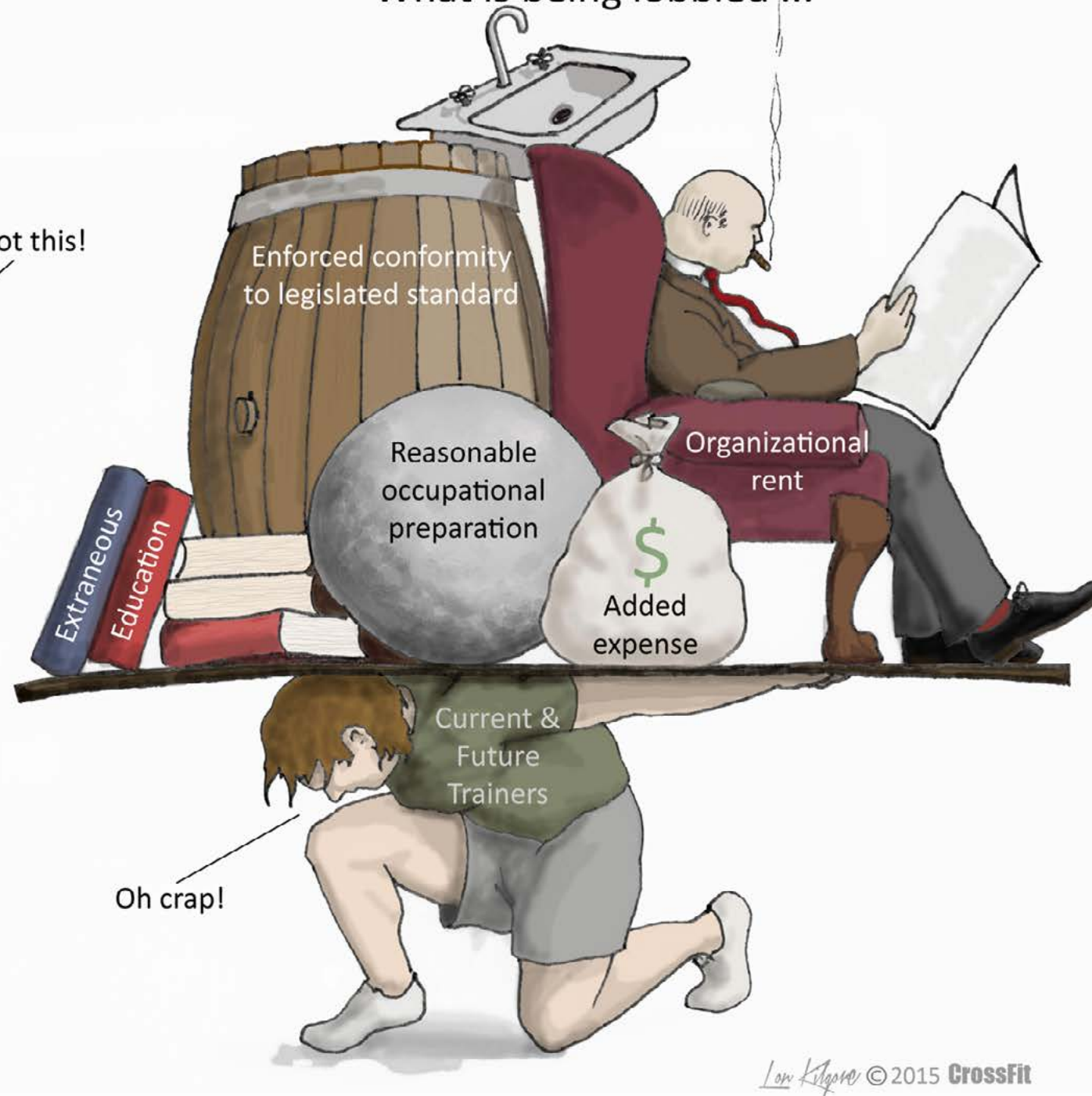
The groups lobbying for licensing of personal trainers often spout data that suggests practitioners can expect about an 18 percent increase in wages if an occupation becomes a licensed profession. The reality is that several studies, including *"Analyzing the Extent and Influence of Occupational Licensing on the Labor Market,"* have found the increase to be quite variable, ranging from no increase up to the commonly promulgated 18 percent.



## What is needed ...



## What is being lobbied ...



How does this play in exercise-related occupations? A bachelor's education for the unregulated (except for Louisiana) and small occupation of **exercise physiologist** creates a median annual income of \$46,270, according to U.S. Bureau of Labor Statistics data. There are currently 6,600 U.S.-based exercise physiologists working primarily in hospitals, clinics and physician's offices. **Athletic trainers**—a roughly similar exercise-related occupation also working in allied-health and clinical environments—are heavily regulated and licensed and earn a median annual wage of \$43,300, also according to U.S. Bureau of Labor Statistics data. Are the 22,400 currently practicing athletic trainers enjoying the increased income benefit of professional licensing?

Even if wages increase, a question arises: Do the increased wages exceed the new financial burden of obtaining and maintaining licensure? Also of note is that it is only federal or state licensure that seem to produce increased income. Local legislation tends to have no effect, as noted in "Analyzing the Extent," cited above.

### INCREASED COSTS TO THE CONSUMER

Increased costs to the practitioner are offset by raising the fees charged to the customer. This is a well-documented association. Within the commercial gym industry, two current business models exist: pay for access and pay for results. The former describes membership structures in which clients pay to access the equipment and facilities with no training services delivered. The latter describes a system in which clients pay for access as well as the delivery of services that produce fitness gains.

If legislated licensure becomes reality in the fitness industry, increased costs will motivate clients paying for access only to drop memberships at commercial gyms in favor of home fitness. Clients who pay for services would be more likely to reduce their financial investment in exercise and move to paying for access only.

This phenomena has been seen in other occupations: Where electricians and plumbers are highly regulated and thus highly priced, the amount of do-it-yourself activities by homeowners is much larger than in areas of less regulation and lower prices, according to S.L. Carroll and R.J. Gaston in "**Occupational Restrictions and the Quality of Service Received: Some Evidence**," published in the Southern Economic Journal in 1981. The higher the cost of service, the more people will do it themselves. Or, invariably, participation might completely cease, as cost is a critical barrier that influences an individual's choice to not start or prematurely end engagement in exercise, according to "**Understanding Participation in Sport and Physical Activity Among Children and Adults: A Review of Qualitative Studies**."

Increased cost also has an unintended consequence in that it can potentially price services outside the range available to some income brackets. For example, the poorest might not be able to afford access to gyms at all, to say nothing of using the services of a personal trainer or acquiring home fitness equipment. If "exercise is medicine"—as several professional organizations espouse—then their lobbying for licensure will affect the health prospects of the economically disadvantaged.



## MONOPOLY

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This means Organization X's personal-training instruction is valid and Organization Y's is not, nor is that of any other groups. Customers, therefore, will only have access to training according to Organization X. If customers want to partake in any other type of training, they are out of luck unless they want to find someone willing to break the law and risk fines or arrest.

The concept might seem far-fetched, but it really isn't. Take, for example, the National Strength and Conditioning Association (NSCA), a group that constantly lobbies both for regulation and to be involved in setting the standards of regulation. Imagine the government installs any group's professional standards in legislation. If the NSCA became the gatekeeper to fitness, CrossFit trainers, martial-arts instructors or yoga instructors would be forced to try and fit their educational experiences into the noose of NSCA documentation. The financial windfall to any gatekeeper should be obvious.

## LIMITATION IN NUMBER OF SERVICE PROVIDERS

After an occupation becomes a licensed profession, the number of practitioners goes down significantly, according to "Analyzing the Extent." This is generally due to changes in entry requirements.

How bad could this reduction actually be? If university education is part of the licensing requirement for fitness professionals, it could be catastrophic: An estimated 70 percent of fitness professionals do not have a university degree, according to "Importance of Health Science Education of Personal Fitness Trainers." Seventy percent of practicing fitness professionals would no longer be able to work, leaving a significant number of clients without access to personal trainers.

Proponents of licensure will say existing practitioners would be "grandfathered" into licensure. If 70 percent of licensees do not

meet the criteria for actual licensing and are licensed anyway, has anything been accomplished? If the overseeing body is happy to have the majority of licensees failing to meet standards for the next 10 or 20 years, what is the real motive behind the desire for oversight?

If university education is not required but certification through another organization is, that organization becomes the gatekeeper described above. What if that organization only represents 10 percent of the total body of personal trainers in the U.S., as the NSCA does? Employability will be lost and customer service will decline as 90 percent of fitness practitioners scramble to fulfill licensing requirements.

## LIMITATION IN PRACTITIONER MOBILITY

Since the 1888 decision of the U.S. Supreme Court in the matter of *Dent v. West Virginia* (1888), licensure has been the realm of states and municipalities. As regulations will always vary by state and city, licensure restricts a practitioner's ability to move and start up a practice without going through licensure processes again. This can prevent migration of professionals to underserved areas or to markets of opportunity.

## PERSONAL TRAINING AND LICENSURE: STRANGE BEDFELLOWS

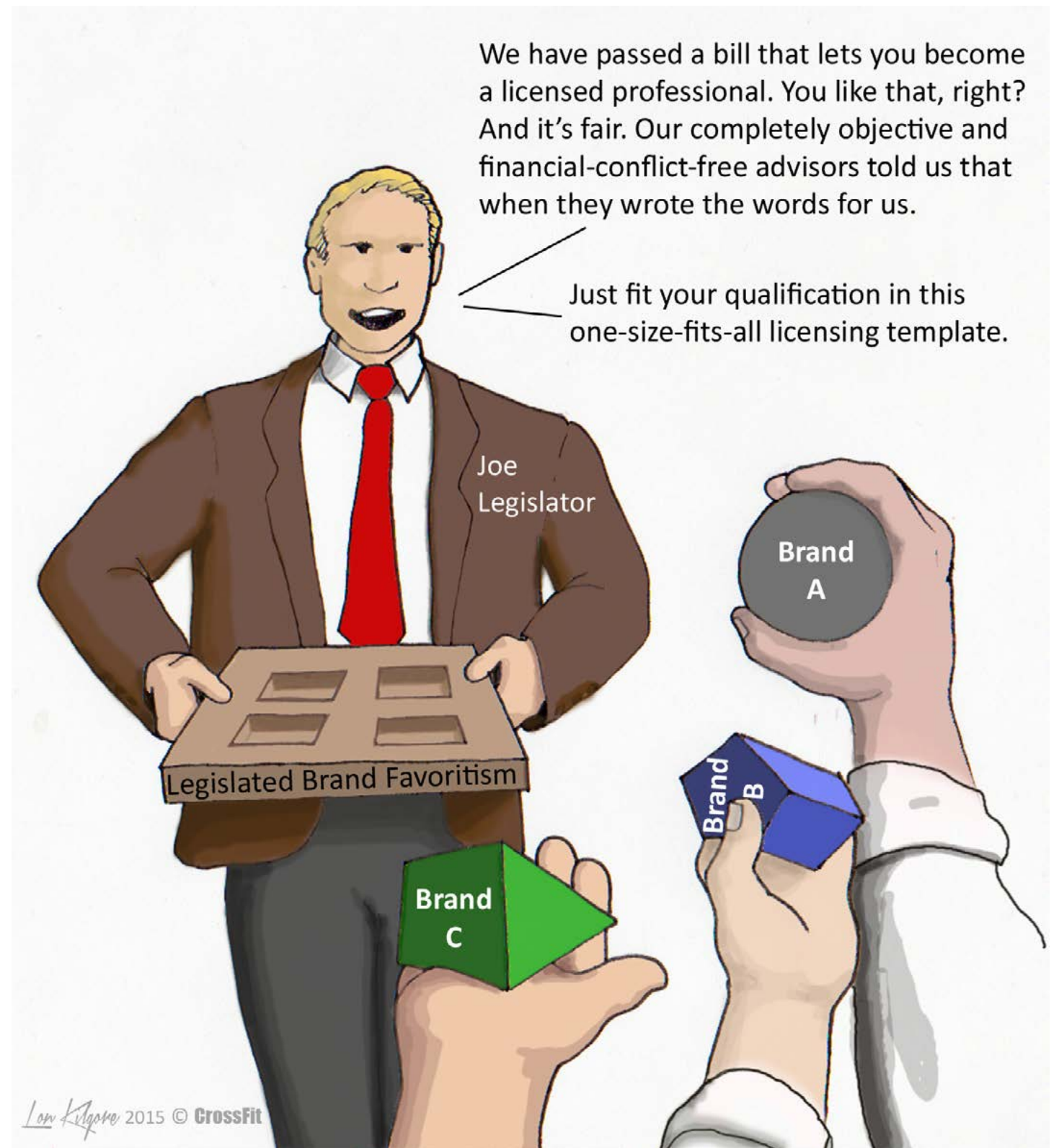
It seems the drawbacks of licensing for personal trainers are manifold and the benefits few, especially given the fragmented and under-informed state of the fitness industry. But it is also certain professional organizations will always lobby aggressively for legislation. Can organizations such as the NSCA, the American College of Sports Medicine (ACSM) and the United States Registry of Exercise Professionals (USREPS) go forward and make a strong case?

In answer, we must ask if personal training currently possess all the characteristics of a profession.

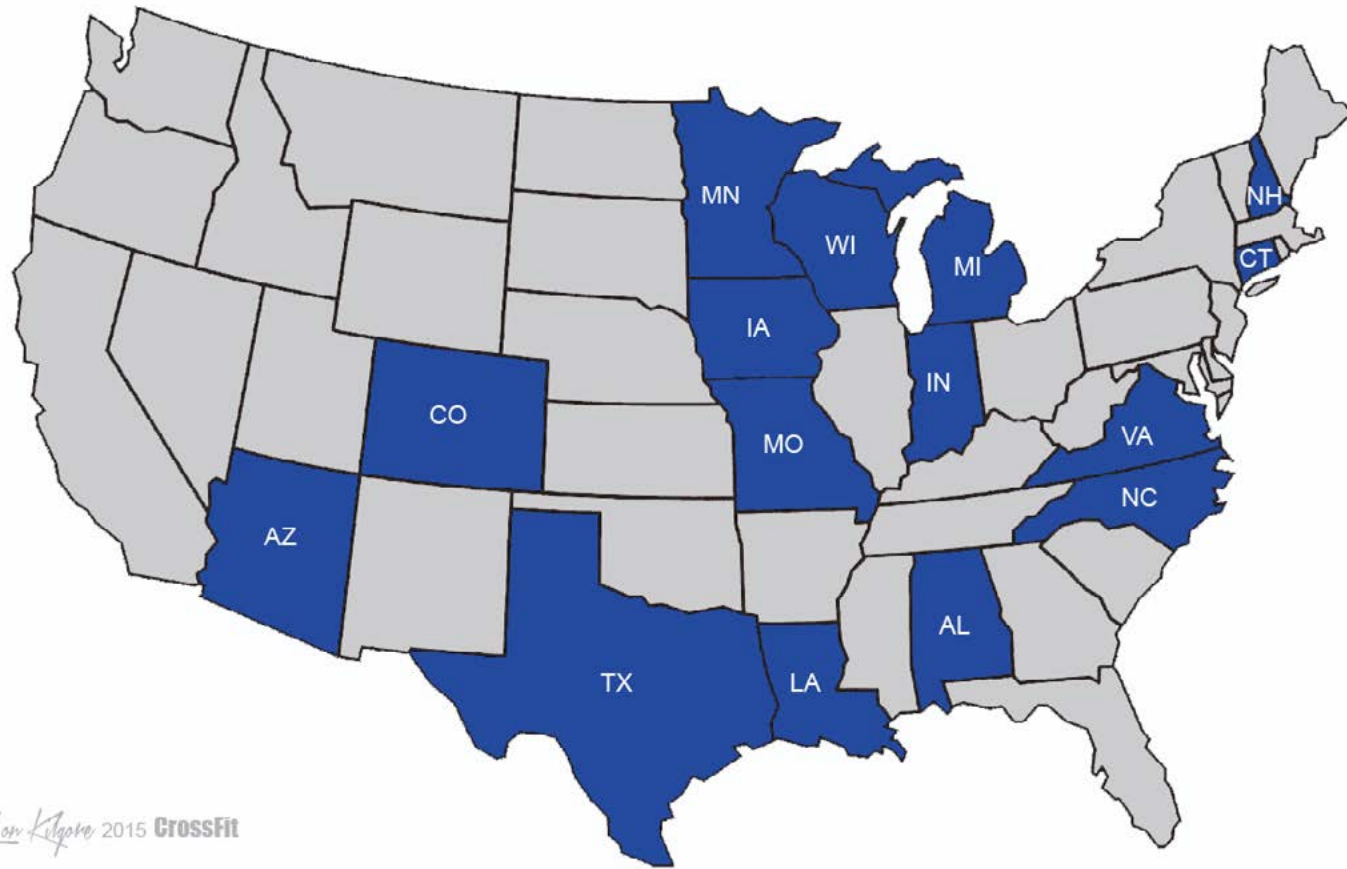
## BODY OF KNOWLEDGE

Fitness has a body of knowledge, but is it relevant? Just look around for authoritative information on improving fitness. Can you find a cohesive, evidence-based, and universally agreed-upon body of literature that informs and guides personal-training practice? Of course not.

Remember that we are not just talking about science but also general literature on effective practice. Every fitness organization has its own brand of content that differs from its competitor, and



The majority of personal-training licensing legislation is legislated favoritism, protecting the interests of a select few organizations who do not represent the majority of fitness-industry workers.



Lon Kilgore 2015 CrossFit

U.S. map identifying 16 states with recent or current government actions on restricting licensing of new professions or de-licensing existing regulated professions.

academic knowledge is more directly related to health and medicine than fitness. Can we say we are any more informed about fitness training now than we were in 1961, when the Fisher Act (California Licensing and Certificated Personnel Law of 1961) classified physical education as a non-academic discipline?

### IN-COMMON EDUCATION

There is no agreement upon how much education is needed. No education, a four-hour workshop, up to four years of university education—they can all allow a person to practice as a personal trainer. Further, every fitness organization has its own method of instruction, and the content varies dramatically. And if we look at university course catalogs across the globe, a trend will be noted: Academic offerings are most frequently related to health, medicine and disease. That's fine and can be useful in some contexts; it's just not the study of fitness and fitness instruction.

### OVERSEEING BODY

Yes, there are many overseeing professional bodies. They are legion and so variable in number that absolute enumeration and identification cannot be obtained. When the number of organizations claiming authority is in the dozens, no unified or coordinated oversight can be found.

With all of the above points taken together, personal training in the U.S. cannot be accurately classified as a candidate to be a licensed profession. Personal training is, however, a firmly established and thriving occupation. This is not an insult or a bad thing. It simply means the occupation requires work to be done before anyone—or any organization—moves the practice toward status as a licensed profession. But it does mean that the existing fitness organizations have not attended to achieving the tenets of professionalism. There are too many holes, too many questions, too many inconsistencies and too many competing agendas that do not benefit personal trainers or their clients.

Even though the fitness industry is far from classification as a licensed profession, attempts will still be made to get states or municipalities to enact legislation requiring licensing of personal trainers. Some of these attempts might even be successful. The promise of revenue has a way of swaying philosophies and votes. It is, however, unlikely licensure legislation will be easily accepted and enacted.

In 2013, Indiana Gov. Mike Pence tried to push his state to eliminate licensing from more than a dozen occupations and vetoed two bills that granted licensed professional status to three occupations. In 2014, Michigan's legislature deregulated eight occupations. And Texas Gov. Greg Abbott is proposing deregulation of many occupations and abolishment of criminal penalties for practitioners who do not comply with licensing requirements except in cases of bona fide risk to public health and safety. And President Obama's \$15 million might motivate more states to eliminate pointless legislation.

Personal trainers are important. They exert as much influence on the public as workers in any occupation. Can you think of any occupation where its practitioners work with their clients in excess of 150 days per year (assuming a client trains three times per week)? A physician sees the same patient for a few minutes on average of four times per year, according to the [Centers for Disease Control and Prevention](#). School teachers clock in at an average 180 days per year with their students and represent the high end of personal influence by a licensed occupation. Personal trainers will likely see an individual client approximately 150 times per year, and it is not unheard of for a CrossFit trainer to see clients far more than that if you assume athletes are training four or five times per week, as many do.

This interaction represents a profound potential impact upon the lives of fitness customers, and proponents of regulation could use this as fodder for their barrage on politicians. Shouldn't such an important job be regulated and licensed? Of course not: Just because a job can be done poorly does not provide a justification for regulation, nor does regulation prevent someone from doing a poor job.

Licensure would threaten the livelihoods of a huge percentage of current practitioners, and the economic effects would be far-reaching. These practitioners need only unite in voice and put forth cohesive arguments that overwhelm those of the minority who would prefer licensure.

And that can happen. But it will require fitness trainers to stay alert and actively oppose regulation. They must watch for proposed legislation and participate in any forums in which it is debated. They must contact each other and local representatives

to create a united front. And they must educate their clients and their colleagues as to why licensure would be nothing more than a barrier to life, liberty and the pursuit of fitness. ■

### ABOUT THE AUTHOR

Lon Kilgore graduated from Lincoln University with a B.S. in biology and M.S. in kinesiology from Kansas State University, and he earned a Ph.D. from the Department of Anatomy and Physiology at Kansas State University's College of Veterinary Medicine. He has competed in weightlifting to the national level since 1972 and coached his first athletes from a garage gym to national-championship event medals in 1974. He has also competed in powerlifting, the first CrossFit Total event, wrestling and rowing. He has worked in the trenches, as a coach or scientific consultant, with athletes from rank novices to professionals and the Olympic elite, and as a collegiate strength coach. He was co-developer of the Basic Barbell Training and Exercise Science specialty seminars for CrossFit (mid-2000s). He was a certifying instructor for USA Weightlifting for more than a decade and a frequent lecturer at events at the U.S. Olympic Training Center. He is a decorated military veteran (sergeant, U.S. Army). His illustration, authorship and co-authorship efforts include the best-selling books "Starting Strength" (first and second editions) and "Practical Programming for Strength Training" (first and second editions), "Anatomy Without a Scalpel," "FIT," and recent release "Deconstructing Yoga," magazine columns, textbook chapters, and numerous research-journal publications. His professional goal is to provide the best quality, most practical, most accessible and highly affordable educational experiences to fitness professionals through his university work and through his curriculum development work for universities and for continuing education for the fitness industry. His students have gone on to become highly notable figures in weightlifting, powerlifting, cycling, coaching, fitness and academia.