ECONOMIC INNOVATION GROUP

THE NEW BAZAAR

DECEMBER 5, 2025

THE LICENSING RACKET

REBECCA HAW ALLENSWORTH ON HOW PROFESSIONAL LICENSING BOARDS PROTECT THEIR OWN

CARDIFF GARCIA: Hey everyone. Cardiff here. Today's guest is Vanderbilt Law Professor, Rebecca Haw Allensworth. She's the author of a new book called *The Licensing Racket: How We Decide Who Is Allowed to Work, and Why It Goes Wrong*.

It's about the process that requires workers to get licensed so that they can do their jobs — and not just a few workers: nearly one in five workers throughout the country. That's roughly 30 million workers.

That's more than 10 times the number of workers who are subject to the federal minimum wage. It's also roughly double the number of workers who are unionized.

And yet the licensing process doesn't get nearly as much attention as it should, especially given the huge effects it has on people's lives and on the economy overall.

And I gotta say, Rebecca's book is one of the most eye-opening things I've read all year. It is so, so good. It's the product of not just a scholarly understanding of the topic, but of years and years of painstaking reporting, interviewing hundreds of people, and unearthing some frankly shocking anecdotes. But rather than go on gushing about it, I am just gonna ask her to help me introduce the topic, and then we're gonna talk about some of the astonishing things she learned and reported in it.

Rebecca joins me now remotely from her hometown of Nashville, Tennessee. Rebecca, can't wait to talk to you about this. Welcome to *The New Bazaar*. How are you?

REBECCA HAW ALLENSWORTH: I am great. Thanks for having me.

CARDIFF: Why do you think this topic doesn't get as much attention as it should?

REBECCA: Well, I think the answer is it's kind of… it's kind of sneaky. Like, it's just kind of creeped over the years into our existence. And it's happened so slowly — it's gotten as big as it has so slowly — that we kind of just accept it. Doctors basically started professional licensing a century and a half ago, and I think that on

its face seems appropriate. Like, yes, there should be some barriers to entry to becoming a doctor, and so we'll have a state license. But that license itself has grown slowly and steadily. And then other professions have copied it slowly and steadily. And as they have, they've grown.

I mean, it would be unfair to say that people haven't noticed or cared about this problem. In fact, it's been like the obsession of economists for many decades. And I kind of think one of the things my book does is it brings this lawyer's perspective to it, which is to say, okay, the economists have said what they're gonna say about this and their findings are super valuable. Let's try to figure out why — given everything the economists now know about this — why does it keep growing?

And I think the answer there is more legal and regulatory than it is a story of economics.

CARDIFF: You bring the legal perspective, and in a second we'll discuss why that matters so much. But you also bring, frankly, a reporter's perspective, journalist's perspective.

You attended these meetings of state licensing boards. These are the boards within states that decide the rules for how to get a license, who can get a license, how many people end up getting licenses.

This is something I think people should understand just at a very basic level: the process for how you can get a license for the jobs that require it is not something that's determined by the federal government. It's determined by the 50 individual states. And each of those states can have different rules that govern how you get a license. As you explain it, the decisions of these boards end up having the backing of the law. Like once they decide how to get a license and what the rules are, if you live in one of those states and you don't meet those requirements and you try to work in that profession, like they can call the cops, right?

Give us some background on how these boards are comprised, what gives them legitimacy, and what kind of authority they have.

REBECCA: Yeah, so every state licenses a profession — if they're gonna license that profession — through what's called a practice act. That's an act of the legislature. So the Tennessee State Legislature makes this rule that you have to have a license, and in that piece of legislation, they create a board. So that board has the authority to interpret the state law, interpret the practice act, decide in the final instance who gets in the profession, decide some of the details of how you get in the profession. And then very importantly, that board decides whether or not you've violated the practice act and are you gonna be punished or even kicked out of the profession.

So these boards have tremendous authority because the practice acts tend to be vague. And so a lot of the regulation is actually done by these boards, which are — importantly — by statute made up mostly of currently working practitioners, volunteering their time, a couple nights, a couple days a month, a couple days a quarter, to come to the capital city and to do this work.

And I think that's where it really all goes wrong.

CARDIFF: Yeah. So when you say a practitioner, you mean somebody from *within* the profession. This isn't a professional regulator coming in from the outside to determine the rules. This is essentially people inside a profession governing who else can get into the profession. And there already you start to see a little bit of a… I guess a conflict of interest — where there's an incentive for the people who are already in the profession, already have a license, to keep people *out* of it. Because the fewer providers there are of a given service, the higher the wages you can actually demand.

And this is where the economics argument starts coming into play. But it's really important to understand the legal side of it too — the institutional structure of these boards — because that's what enforces it and it's what leads to all these kinds of, frankly, strange and perverse incentives for how these boards act and how they determine who is allowed to work in a given profession.

Can you elaborate a little bit on the setup and what it kind of leads the members of these boards — who are already in their own professions, they're self-regulating in a sense — to do?

REBECCA: Yeah. So let me give you an example. The Alcohol and Drug Abuse Counselor's Board has some regulations set by the state legislature, but a lot of the decisions about who is gonna be let in the profession, how you get in the profession, are made by the board. And they recently — while I was watching the board work — were deciding on rolling back a requirement that you had to have a college major in a mental health field.

And the way this plays out… like an economist would tell you, okay, this is a protectionist-type requirement because this isn't really super close to public safety. These licensed counselors would already have had like the coursework necessary. Why do they also have to have decided to major in it, right? Sort of irrelevant to the protection, and it's gonna make it harder to enter into the field.

The way that the board was thinking about it — made up of currently licensed therapists themselves — they were thinking, “Well, psychologists have this. Other mental health professions in our state have it. We're just as important as them. And I think that we look better, I think we look more professional and we garner more

esteem the more education we have. And by requiring a major in this at the bachelor's level, then we're gonna create, augment that."

So what's interesting about that is that it's not actually really explicitly a comment about pay, although they made that argument also in the debate — that they were worried about pay for the counselors in the trenches. But it is ultimately an effect on pay. And I think that these arguments about prestige and esteem and pay on some level are often in tension with what the board is really supposed to be doing, which is protecting the public.

And so they just have a very hard time separating the priorities of the profession from the things that might be better for the public.

CARDIFF: Yeah, that's where that argument within at least economics comes into play as well. On the one side, economists — especially economists of a kind of libertarian bent, as you write in your book — would say, "Well, wait a minute. This is protectionist, this bars people from coming in." And it's great for the people who are already in: they get the prestige, they get the higher wages, but it means that there's less competition for how well people do these jobs.

And also it's bad for consumers, because higher wages for the people already in the profession means that consumers pay higher prices for their services. And then there's the other argument in favor of licensing, which is the argument from safety.

The question of whether or not these boards actually succeed in making consumers safer is a big part of your book and something we're definitely going to get into. But those are sort of the stakes, right? Am I missing anything in terms of how this usually plays out in abstract terms before we go into some more details?

REBECCA: An economist would say it's the same problem as the higher prices, but I think it's really important to also think in terms of scarcity. So yes, it raises the cost of these services, but it also makes them so much less available. And that was something that really stuck out to me in the Alcohol and Drug Abuse Counselors Board, because this is a state with 70,000 people suffering from opioid use disorder alone —

CARDIFF: Tennessee is, specifically.

REBECCA: Tennessee is. And multiply that by approximately 50 and you have the number of people in the US who are suffering from this very serious mental health condition. You would expect that an alcohol and drug abuse counselor might be a great fit. And so by restricting the supply of this, yes, you're raising the cost of that therapy, but perhaps even more importantly from my perspective, you're limiting the people who can really get access to that treatment.

As a consequence, we have only 400 such therapists in Tennessee. And that, I think, is the public protection that really gets missed by the boards who are thinking all in terms of, “The higher the credentials, the more public protection.” Well, no, because the higher the credentials, the fewer people get the protection of the services that can be lifesaving.

CARDIFF: Yeah. You also write that these rules can get stricter and stricter over time because of those incentives of the people on the board. I want to stay on the example of drug and alcohol abuse counselors for a second, because there's a passage that I actually grabbed from your book that I want to read to listeners now and then talk about it, because it's one of the many, many shocking things in the book that you unearth.

So here's what you write. I'm essentially quoting you to yourself:

“When they were initially licensed in the 1990s, alcohol and drug abuse counselors needed 1,500 hours of supervised practice to be licensed to provide counseling on their own. As a professionally dominated licensing board worked the ratchet over the years, that number doubled to 3,000 hours, then again to 6,000 hours. Thus, by the time I started watching the board, as it considered relenting on another recent hike that they had made in their entry requirements, the supervised practice requirement for addiction counselors was as long as a medical residency.”

That's the end of the quote. That's kind of shocking. You're essentially requiring drug and alcohol abuse counselors to now go through as much training as doctors, in a state where, as you just mentioned, there's a really dire shortage of these kinds of employees. And so that ratcheting up effect has real consequences.

REBECCA: That's right. When I talked to some alcohol and drug abuse counselors at that meeting, I said, “Tell me about the stakes of your profession.” And they said, “It's life or death.” I think that although most professions said that — I actually made a little inside joke with myself of how many professions I could get to tell me, when I ask them what the stakes of their profession are, “life or death” — in the case of alcohol and drug abuse counseling this is a credible claim.

Somebody who really suffers from opioid or alcohol use disorder is vulnerable to an overdose or to suicide. And I think the part they were really missing is: the more education we have, the safer we are, and that's public protection — yes, doctors operate in life and death, we operate in life and death, so let's justify it that way. But like I said before, it's the people who don't get the counseling who face the consequences.

That happens when you're going to require somebody who's, by the way, not going to make a doctor's salary, to do essentially a medical residency after they graduate from their schooling.

CARDIFF: Yeah. In terms of that ratchet effect, you also describe the dimensions along which the rules get tighter and tighter over time. You write that they can start requiring more experience to get a license. The cost of the license itself can go up — and I think that's something that's easy to forget, that for some of these licenses you actually have to pay a lot of money.

Well, what if you're a low income person and you want to start working in a profession, but you can't afford the license itself? So it kind of goes really against that pull-yourself-up-by-your-bootstraps mentality. We tell people if they're lower income, "Hey, work hard and you'll have a better life," but then we also put in place rules that make it harder to do exactly that.

And then finally there are those continuing education requirements, where you can just keep saying, "Well, you need more and more hours just to stay licensed, to keep doing the thing that either you're already doing or you want to be doing more of." You can see how there are all these different levers that these boards can pull to make it harder for people to work in these professions in the first place.

REBECCA: Yeah, and I think one thing that's worth emphasizing also is the amount of time out of your work life that you have to take to do the education. For the higher earning professions this is kind of baked into it. I think that a lot of doctors and lawyers expect to spend a ton of time in school and to not really be making any money during that time.

But if you want to be a hairstylist, you have to take an entire year off of any sort of earning situation. These are people who typically have a high school degree. In fact, many states require that you have a high school degree, which is another thing. And so to actually take a whole year off of earning anything is really, really tough.

There's another barrier that you didn't mention that I think is, again, something I only could really observe as a lawyer and as somebody who is watching this stuff up close. A lot of these professions have very complicated entry paths. You need this, and then you need that form. It's different in every state, so if you're moving states it's going to be a totally different process. If you don't get it in by this deadline, then whatever.

To the point where in some professions, even some board members did not know how you could actually go from point A to point B and get a license. I talked to an educator who said, "I know more about how you get a license in this profession than the board does. I have kind of taken over the calls for the state licensing board about what you need to do, the hoops you need to jump through to get that license."

So it's just complicated, intimidating, bureaucratic, really difficult to navigate.

CARDIFF: Let's talk about a specific example, a story that you followed over time and that actually comes up in a few different chapters throughout the book, because the story itself is such a great illustration of all the different topics that you're describing here.

So why don't you start by telling us the story of Fatou Diouf — if I'm pronouncing that correctly, and if not, please correct me.

REBECCA: No, that's right. So Fatou arrived in the late 1990s from Senegal. She had been braiding hair her whole life. Her mom taught her, her grandma taught her. She came to the US to study business, but started braiding hair because that was something she could do to connect with other African immigrants in her area, and it was something she could do to make some money.

She eventually started working at this shop. There was this thing that happened every couple of months where they were braiding, braiding, braiding — and then here comes the inspector and everybody runs out the back door. This is just so common. This is just the deep structure of hair in America. You've got the licensing board inspector who comes in, he wags his finger, he signs some forms saying, "You owe us a bunch of money for these unlicensed hair braiders," and you go on your way.

So this is a little questionable from a public protection standpoint if we think that hair braiding is indeed super dangerous if you don't have a license.

But Fatou got tired of this and she went to the Hair Board in Tennessee. They don't like to be called the Hair Board, but I call them the Hair Board because it's a very long name—

CARDIFF: (CHUCKLES) Some technical name. Right.

REBECCA: Yeah, Board of Cosmetology and Barbering Examiners, I believe. Anyway, she goes to talk to them and she's like, "Look, we're braiding hair. We're not dyeing, we're not cutting. This really is not cosmetology. Be reasonable."

I think she really expected them to. I think she thought hair professional to hair professional: maybe you don't understand what braiding is, and this is what it is, and it's really safe. And they were like, "Oh no, absolutely not. You are stepping into a whole turf war that has already been settled," and that turf war resulted in a 300-hour license that you have to get to braid hair.

So Fatou thought, "Okay, well I'll figure out how to get this license, I guess." What she would have learned if she had actually gotten any farther than that board meeting is that there are almost no schools that teach hair braiding.

Fortunately, a white owner of a hair salon and school approached her after the meeting, ran out the door after her and said, "Hey, I heard what you were saying in

there. Just come to my school. I'll give you the 300 hours for free and I'll sign off on them. But I also don't know anything about hair braiding, so you're kind of on your own there." And Fatou said, "Oh, well that's fine. I know how to braid hair."

CARDIFF: She's been doing that her whole life. She's somebody who could teach at a school like that.

REBECCA: And so she goes to a beauty supply store that has some books about how to pass the test. She reads these like we all do — like back when Barnes & Noble was a thing.

CARDIFF: Sit in the corner. Cram. Yeah, I get it.

REBECCA: You don't really buy it, but you sort of get the gist.

So she reads this book about the American test on African hair braiding. She takes the test, passes, gets her license. Then she's a licensed hair braider, but she continues to employ other African immigrants, more recent immigrants that she wants to bring into the fold, who don't have their licenses.

She still gets these raids and they run. But she told me she leased a store with no back door and she was like, "This is what we're going to do. We're going to—"

CARDIFF: You can't run out the back when the inspector comes anymore.

REBECCA: You can't run out the back. So they stood their ground and she got so many fines. She got $11,000 of fines in one year. This was, I think, about the same, maybe more than her rent for the space.

That was business as usual. They didn't close her down. They didn't say, "These hair braiders are unlicensed and unsafe and so we've got to close you down." But it was kind of this racket — to name-drop the book — it was this racket.

She eventually went on the Hill and campaigned to have the license rolled back. What was really interesting to me was the way in which she had this lobby, if you will, of African immigrant colleagues that were against the hair braiding bill. On the other side were a bunch of African-American cosmetologists who were very much for — they weren't against the bill, they were for the bill because the bill was for reform — but the African immigrants were very much for being able to braid without a license.

The African-American cosmetologists really wanted to hang on to that license and were very resistant to reform. It was this tension between these two different sets of hair professionals and two different ideas of the American dream.

To some people the American dream is a professional license, and I think that actually makes a lot of sense and is true in the way that we talk and think about work. To another set of people, the American dream is free entrepreneurship: "I should be able to open a shop and do what I want if it's safe."

That whole chapter of the research really fascinated me.

CARDIFF: It's such a great point. One of the things you write repeatedly in the book is that you actually met with and spoke with so many members of these state boards themselves, people who were in these professions, and you find that their individual incentives weren't malign. These weren't bad people.

Sometimes they maybe didn't realize what the consequences were of pursuing a stricter licensing requirement regime. They just didn't realize it. To them, they weren't doing anything wrong, and they believed that. It's fascinating what you just said, how a licensing regime can actually end up causing a schism not between rich and poor necessarily, but sometimes within marginalized groups.

It's fascinating because it's true: when we complete something and we finish it and somebody hands us a nice diploma or something, there is a sense of pride, a sense of achievement. You feel like you do deserve to make more money. But on the other side of that, there are people who are barred from gaining access into that who might be just as good as you are, even though you're already on the inside at the job itself.

So it's really interesting the way it sets up this dichotomy, this tension between two groups of people that ought to have a lot in common — and do have a lot in common — but instead they're driven apart.

REBECCA: I think it's important to note that the extra benefit that the license gives you — and by that I mean not just the license, but the extra benefit that the idea of licensure gets, having a profession be a licensed profession — does come at the cost of a bunch of people who are left out of it.

We need to think about those people too. And we need to think about the person who's in charge of drawing the line between the people who are going to get the license and not going to get the license. Do they have, as you said, the larger perspective on all the collateral consequences of their regulation?

Maybe it's too much to say that anybody ever has the perspective of all the collateral consequences of their regulation. But I think as a busy, working, full-time auctioneer, hair braider, lawyer, you're not going to have that sort of systemic understanding about access and what having this policy — or keeping this kind of person out of the profession — is going to have on issues that really matter, like access to care, but also fairness and equality and a pathway into a profession.

I guess it's a good time to bring up the idea of people with criminal histories having a hard time getting into professions. One of the huge markers for recidivism is not being employed. So the idea that we would create extra barriers to somebody who's trying to rehabilitate themselves, who's trying to reenter after doing time in prison or in jail, and create a barrier to entry — that's going to be appropriate if there's a safety issue, but so often it goes well beyond that. I think that's just not on the minds of the board members.

CARDIFF: It's interesting too because there are so many examples in the book of some frankly preposterous rationales that boards use to keep in place really tight requirements. One that comes to mind immediately was, I think, a meeting at the legislature level — or maybe it was a board meeting, I can't remember the details, you can tell us — having to do with interior design.

There was a question of, "Well, how can we make this a safety issue?" And somebody had said something like, "What if somebody walks into this room with a gun and there's no back exit?" That's an interior design safety issue or something like that. Really a kind of absurdist logic to use at a meeting of interior designers.

Anyways, can you tell us—

REBECCA: Well, so yeah, and actually the context for where that happened is even more interesting, because it was not at a board meeting, it was at an association meeting. So it was all interior designers talking about their own profession and how can we advocate for licensure within our profession.

CARDIFF: Yeah. To be clear, this is an association of interior designers, so it is interior designers, but not the interior designers who are on the board — although many boards have people who, I guess, overlap between the two. Is that right? There's a lot of influence from associations to boards. Let's just clarify that for the listeners first.

REBECCA: Yes. One of the major claims of the book is that these licensing boards, which are state agencies nominally, are functionally associations. What associations are, literally, is advocacy groups for the profession.

That's fine. The book's argument is: let's not give them the final decision in regulation. But obviously it's appropriate to have private entities that think and talk about what's good for their profession.

So I was at one of these meetings of the private association. They were talking about how to advocate for licensure, how to talk to your state representative about this pressing safety need for interior designers. They suggested going into their office — you're in an elected official's office — and saying, "What if someone came in here right now with a gun? How would you exit?"

By the way, the presence of an exit, a door, that's all covered in codes. I think what this must mean is the furniture was in the way, or there was some sort of interior designing system that made it a little bit harder to get to that exit. So this was the idea: you were going to scare politicians into thinking that interior designers needed to be licensed.

I don't think I asked the interior designers the question of, "What's the biggest risk in your profession?" so I didn't get them to say "life or death," but I suppose that anecdote shows—

CARDIFF: (CHUCKLES) They might have eventually gotten there.

REBECCA: Might have eventually gotten there.

CARDIFF: Staggering. Yeah. So let's talk now about some safety issues, because this is one of the big, prominent reasons that a lot of boards give for essentially why they exist, why they're necessary. But the whole second half of your book is an investigation of that question itself, and you actually find that a lot of these boards just outright fail because their incentives, again, are not necessarily aligned with consumer safety. They're aligned with their own benefit — the benefit of the people in the profession itself.

Take us through that and maybe give us an example or two of where they fail and what you found.

REBECCA: Yeah, so this was the most shocking finding for me. One thing I didn't mention is I'm an antitrust professor. I got interested in this stuff because of the effects on competition. So this whole story about too much red tape and going too far in the name of public safety — really though, maybe to suppress competition — that was the hypothesis I came into this with.

I started, however, with the profession that people who were into licensing reform and sort of had that red tape hypothesis didn't spend enough time studying, in my opinion, and that was medicine. I suspected: if we're going to worry about people going too far and lots of red tape, we should be especially worried about medicine. Not because we should deregulate medicine, but because it's so expensive. If we're right that price goes up and access to care goes down when you have too many barriers to entry, these are going to be the professions — doctors and nurses — where it's going to be most important.

So I went to this meeting, the first board meeting I went to, which was a medical board meeting. I went because they were considering a rule and I was like, "Oh, this is going to be super interesting, it's going to be a new rule." No. They just read the rule into the record. They had already debated it. It was a five-minute thing and it was over.

But I stuck around and I heard the case of a new applicant. His name was — I'm going to say Dr. Owens, I've changed his name. Dr. Owens had lost his license the year before because he had admitted to having sex with 11 of his patients. He was an OB-GYN in Memphis.

What he admitted to was basically over his ten-year career repeatedly having sex with his patients, compensating them with off-book prescriptions, prescriptions for drugs of street value like OxyContin and benzodiazepines. He knew that they were selling them. He did drugs with them at work.

He had a very long history of malpractice, as you might imagine somebody struggling with those sort of mental health issues would. He had ten peer-review cases. He lost his license, which I can tell you now is a really, really hard thing to do. But what the medical board did is they said, "We want to give you another chance."

Usually when we revoke a license, we make you wait for a year to reapply. They said, "You can reapply in one day." I was at the meeting where he was reapplying for a new license. What just knocked me over was that this meeting was about giving him a second chance. It was not about public protection. It was not about how can we care for your patients. It was, "You've gotten yourself clean, you've made a lot of changes, you've been very brave, and we want to give you a fresh start."

A fresh start means a new license in Tennessee. They did want to put a restriction on his license about having a chaperone while he was seeing patients. But most of the debate there was about how they could do that without raising any red flags with his patients. They didn't want the patients to know that there was a reason why he had somebody else in the room with him.

CARDIFF: So the debate was about everything but safety.

REBECCA: But public protection, right. I would say the one piece of public protection they had in place — other than ongoing drug and alcohol abuse monitoring — was a chaperone, which, by the way, has been shown to be almost completely useless in keeping patients safe from sexually abusive doctors and other professionals.

What further shocked me was that afterwards I heard a board member say to another one, "I would never let my daughter see him." This was somebody who had voted to give him his license back.

CARDIFF: Wow.

REBECCA: So this is my very first board meeting and I'm thinking, "Okay, I've just seen something really weird, something really crazy, some one-off. Somehow I showed up on this day." But actually what I learned going to that particular board

over and over again, and also learning about other boards in other states and going to other professions in my own state, is that this is actually a really serious and pervasive problem in discipline.

For all the red tape, for all the idea that it makes you a little bit safer to have another thousand hours of supervised whatever, we're getting very little public protection on the back end.

CARDIFF: I want to stay on the topic of medicine because one of the great virtues of your book is that you don't just look at certain professions that are not really related to safety. And that, frankly, is where a lot of the sort of academic debate takes place — we mentioned barbershops and cosmetology and whatnot.

You spend a lot of time on medicine itself, which doesn't usually get that kind of scrutiny. I wanna, again, read a quote from your book, and then there's something within it that I really wanna talk about because it's really powerful and frankly, incredibly disturbing. So here's what you write:

"Reporters for the Atlanta Journal Constitution gathered years of data on medical discipline nationwide and found that an alarming number of doctors who engaged in sexual misconduct kept their license. Reporters gathered 2,400 licensing board cases of sexual misconduct involving patients, finding that state boards kept half these physicians in practice. Among the doctors still practicing were ones who had performed oral sex on patients during pelvic exams and assaulted patients under anesthesia."

That's the end of the quote. So in addition to the horrifying details, it also shows that this is not just a few bad actors, like, "Oh, we rooted out the one bad guy and didn't treat them harshly enough, but at least we found them."

This is systematic. This is something that exists at a large enough scale that it should be a freaking scandal if you ask me. So I came across that part of your book and I was stunned by it and I'd love to hear more about it from you.

REBECCA: Yeah, and I think what's also really interesting is the sort of contortions that the boards can get into about how putting a practitioner like that back in practice makes sense. I think, ironically, one of the things that made it possible for them to do this was the fact that they were physicians and therefore believed that everybody is sick and everybody's capable of getting better.

Most of these really egregious bad actors had some sort of substance use disorder. And they were able to say… they were sort of able to point to that problem as the root of all of it. And it was as if you could say, "the sex abuse, everything else was

caused by this problem and I have solved that problem. I'm in recovery. I have experienced redemption." And I believe in that as an idea, but they would use that as a way of saying, "and that's why I need to get my license back." And I think the piece that was really missing was that… I love the physician attitude of "everybody can get better." I love the idea of forgiveness. But forgiveness does not have to come in the form of a state license to practice medicine. You can find forgiveness in many other parts of your life. There are some things that you do that just cross a line, and also frankly make you just unsafe going forward. And I think that any sort of common sense person, anybody in the room including, frankly, people who worked for the state, who were the bureaucrats, who were not the board members, not voting board members, but the lawyers or the executive directors, I kind of felt like they also were very uncomfortable by these decisions that were being made. But this story was about redemption.

And then the other part of the story, weirdly, was about access to care, actually. This is where it seemed to matter. It was like, "Well, if we take him, there's not a lot of OB-GYNs in inner city Memphis. There's not a lot of people who will see 10 care patients if we take him out of the profession. He's a fully trained doctor. That's a huge investment that that society has made in him. If we can fix him, it's better for everyone."

CARDIFF: Yeah, I totally agree with you about forgiveness versus what the just outcome is here. Forgiveness is a private matter. The point of these boards is supposed to be to protect consumers, and certainly to be mindful of how their licensing requirements and their licensing decisions affect the safety of their communities.

And in so many of these boards, the safety rationales are ludicrous, as we've already discussed. In this case, where there's an actual legitimate and frankly quite terrifying safety threat, they end up protecting their own. I gotta say, this was an infuriating and illuminating part of the book.

And it's interesting that you bring up the point of access too, because in other areas the licensing board tries to restrict access to more medical services and healthcare by making certain licensing requirements on doctors so broad. Here I want to bring up the turf wars with nurses, because this is fascinating as well.

Nurses obviously have their own licensing procedures and then doctors have theirs. There are places where doctors essentially define themselves as the only ones who can provide certain services, even though nurses could provide them just as easily. It ends up leading to this big turf war between doctors and nurses.

And the big loser seems to be all of us — people who want healthcare, right? So anyway, let me stop. I'm over-explaining this. You're the one who wrote the book.

Let's hear about that: this turf war between doctors and nurses and how it affects everybody.

REBECCA: Yeah. With the rise of the nurse practitioner and physician assistants, there's been this potential big expansion of care. Nurse practitioners are typically trained in primary care medicine, which, by the way, is one of the most in-need areas of medicine that we have in the US.

They can do a lot of well-child visits. They can provide a ton of care that's really essential and especially needed in rural areas. In response to this, it's kicked off this decades-long turf war with doctors who see this as an encroachment.

Another thing is they can diagnose and they can prescribe. If you talk to a doctor, the things that make them who they are is that they can diagnose, prescribe, and cut. The only thing that nurse practitioners can't do on that list is surgery, as far as I know. And somebody's going to say, "Oh no, actually there's some kind of minor surgery they can do," I don't know — but two-thirds of what doctors can do are technically within the realm of nurse practitioners, and doctors really don't like that.

Part of their concern, I think, is competition and pay. Some of it is just professional identity: to be able to say, "I entered this class of physicians and I worked super hard for it and paid a ton of money for it." And now here comes somebody with, at one time, maybe a Bachelor's. Now you need a Master's.

Oh, and by the way, nurse practitioners are going to go to a doctorate pretty soon, I think, because the ratchet comes for everybody. You can use the lower-trained professions to push back against the ratchet, but eventually they will also start exerting their own ratchet.

CARDIFF: So you've got ratcheting up of licensing requirements happening here, and it's just so fascinating the way they end up in confrontation. The nurses are trying to increase licensing requirements for new nurses, so they're keeping other nurses out, but the doctors are keeping the nurses out of the things that the nurses could do.

And like I said, people who need healthcare — especially in these vulnerable places and especially in rural areas where there's a huge shortage of medical care — are the ones that end up suffering the most.

REBECCA: Yeah. Staying on that ratchet for a second, because I think it sucks other professions up into it too. For example, when I had my babies, I hired a doula in part because the nurses and the doctors who were going to be there in the hospital with me didn't really have time to sit there with me, because medicine is scarce and expensive.

They would come in every two hours and be like, “How you doing?” Look at my monitors, and then take off. So I hired a doula, who was not licensed because that’s not a licensed profession in general. I mean, doulas do lots of different things, but I hired her because she had been in the room with many, many babies being born. She could explain to me what was going down and what was going to happen next. And it was just an extra person there. My husband was terrified — we didn’t know what we were doing.

Well, now doulas are getting licensed because they want to be able to get third-party payment. So now we’re going to have a licensed profession of doulas that’s then going to become expensive and scarce. Then we’ll come up with another profession for somebody who just sits at your bedside when you’re having a baby. The ratchet just goes on and on.

CARDIFF: Becomes competitive almost. Yeah.

REBECCA: Yeah, and I think one thing I really got up close to in this book was the psychology of that new profession. The work that I do is super important and bad things can happen — and that’s true in just about every line of work. Certainly births are no exception to that.

“I work really hard for what I do and I’m really good at it. There are some people who are in my profession who aren’t very good and maybe even dangerous. So we need licensure. We need third-party payment,” which is also something I’m sympathetic to. Typically you need to have that state imprimatur to get the third-party payment.

I feel like I understand really well now, almost on a sociological, psychological level, the push for licensure. But it has all these really perverse effects once you get on that track and get ratcheted up. As you say, the consumer is the one that loses out.

Going back to nurses and doctors, the thing I saw really up close was this idea of supervision. In many states — I think in most states, or certainly most of the population of the US — nurse practitioners must be supervised by a physician. How much supervision and what kind of supervision is required is a licensing board matter.

You can imagine if you ask this question of a bunch of doctors, they’re going to give you an answer that is more in keeping with what doctors want than with the access-to-care question at the nurse practitioner level. That’s basically what we’ve seen.

CARDIFF: I want to also talk about the COVID experience as it pertains to medicine and licensing requirements. For people who weren’t following the story at the time — because there was obviously a lot going on — some of these

requirements were successfully loosened temporarily during the era of COVID because there were some states that just had a massive shortage of healthcare practitioners.

They needed more doctors and nurses. In normal, non-COVID times, if you are licensed to practice in one state, you can't just go to another state without getting new licenses. But in this case, those requirements were suspended in some places — not in every place, but in some places. Some forms of telemedicine were also allowed. And then it went away.

Tell us about the experience — what happened, what the backlash to that was. This was fascinating. This was a chapter that I'm so glad you wrote, because I think the world has needed a clear explanation of just what the hell was going on there. For those of us who even just read the newspaper carefully every day, it was confusing.

One day something great and new was happening — more healthcare availability, more access — and then it goes away. What happened?

REBECCA: Yeah, so we were all watching the news in March of 2020 and our jaw was dropping for various reasons. But I will say one reason why my jaw dropped is that most states — I think actually all states — suspended the in-state licensure requirement for the health professions.

This was something I never thought I would see, because I had at that point been following the boards for two or three years and I knew the entrenched interests and the strength with which the professions were holding on to state-by-state licensure. This was just something they were never, ever going to give on.

And all of a sudden, in a day — at the signing of an executive order, or I guess 50 executive orders — if you had a license in any state, you could practice in any other state. If you ask somebody walking down the street whether that would be good or safe, I think they would say yes. You're a doctor in Kansas and now you need to practice on somebody in Nebraska — it's not at all clear to me that you're an unsafe or unfit doctor for that.

COVID forced our hand. We had these hotspots. New York was the first one, and we needed to have more practitioners go. I think it really laid bare how much of a dire shortage of healthcare professionals we have in this country. Obviously we weren't going to seamlessly deal with something like COVID, but most countries did better than us. I think a big part of that has to do with our healthcare shortage, and a big part of that has to do with licensure.

So they do this — they loosen the mobility, they loosen the out-of-state requirements. But then it turns out it's not enough, because the hotspot phenomenon

kind of went away. We just had COVID everywhere and a huge surge in demand for services.

There were all kinds of heroic things that Cuomo did in kind of, "We're going to bring a whole bunch of healthcare workers to New York City," and then something like that happened in LA. Or, "We're going to have this special hospital for the surge." They just couldn't staff them, so they closed them down.

CARDIFF: For listeners, when you say the hotspot phenomenon ended, you mean this thing where doctors go from one state to the state where COVID is the worst ended, because COVID ended up being bad everywhere. So now there was just a nationwide shortage.

REBECCA: Right. Obviously there were still hotspots over the course of the year, but it wasn't like we only had one or two hotspots at a time, where you could kind of flex your workforce to one or the other.

I really think this illustrates something that I had thought even before COVID, which was: too much of licensure reform arguments are focused on mobility. A lot of people who want to fix the licensing system say the most important problem is that we need to get interstate mobility. It's ridiculous that you can't practice between states. If we had more compacts — which I'm happy to explain what compacts are, basically just a way of helping you practice across state lines — or if we had better reciprocity — same thing with slightly different rules — it would be much better.

My response to that is: yes, of course, and that's an important area, but it doesn't actually expand the number of workers you have. It doesn't make that person who's getting out of jail, it doesn't give them an opportunity. It doesn't actually lower price or availability very much.

But the thing about it is that the professionals themselves like it. And so it's not a bad—

CARDIFF: They like interstate stuff or they like not being able to cross states?

REBECCA: They like interstate stuff. For reasons that I'm actually having a hard time understanding, the professions that are advocating for the profession want to stick with state-by-state licensure. They will never, never give ground on that, as I said before. But individual professionals want to be able to practice wherever, right? They want to be able to go from Texas to Tennessee.

So there's more political will for it, let me put it that way, because you can please the professionals, you can maybe expand access a bit by allowing a little more mobility, and so it's a win–win. At these licensing reform meetings, it was kind of a feel-good

thing we could all get behind. But I just felt like we were shuffling the cards around and not really expanding and not really solving the problem.

CARDIFF: There's another economic lesson in there as well, which is that it makes it hard to use new technological advancements to actually make people's lives better. Telemedicine is a relatively recent thing from the last couple of decades, but the technology to make it really good and really possible is just from maybe roughly the last decade or so.

You would think, normally, without these kinds of restrictions, that would be great. We can make people's lives better with more accessibility, maybe cheaper healthcare. That's great — we have a huge healthcare cost problem in this country. And because of these restrictions, we only got some telemedicine allowed in some places, for a limited period of time, and then the window suddenly closed.

And it's a problem because the technology itself exists. The politics — the regulation — is not getting out of the way.

REBECCA: Yeah.

CARDIFF: So it's really, it's… what good is the technology if you can't actually use it? And it's interesting because it stymies dynamism. It stymies the incentives to come up with new stuff, new and better stuff, as well.

It has all these powerful, reverberating effects. It's not just a static thing of "right now we can't use it." It affects progress into the future as well.

REBECCA: Absolutely. There's no doubt that the professions, and the boards they control, are very resistant to change and technological change and innovation. This is another thing that an economist would tell you: competition is good for lowering prices, it's good for expanding output, and it's good for innovation.

And that last one is the thing that's hardest to measure — you don't know how to measure the things that didn't get made. I did see some specific examples of boards shutting down innovative new ideas because, when in doubt, it's like: "That's different. I don't know. I've never seen that before. Yes, that seems like it is the practice of my profession. So we're going to close it down."

Telemedicine is a great example of this. In most states — maybe all states — you can have a telemedicine appointment, but you have to physically be in the same state as your doctor. If you've ever noticed, when you go on a telemedicine appointment, they ask you where you are.

And you know how many people have lied about that?

CARDIFF: (LAUGHS)

REBECCA: I don't… I'm not going to admit to that exactly, but… "Yeah, I'm in Tennessee. Sure"

CARDIFF: "Yeah, why not? Yeah, I'm down the street, whatever. I'm just waiting for a delivery, I just can't go to the office today because you know…"

REBECCA: (LAUGHS) So it's these fictions. It's the unlicensed hair-braiders running out the back door. There are all these little workarounds and silly things we have to do as a result of this regulation. But it really does add real friction, and it has access to care—

CARDIFF: You give this great example, by the way, of how these restrictions can end up stopping new innovations. There was a guy named Adam Jackson that you write about who came up with this new, really sophisticated facial-recognition idea for screening out people who come to your door. I think he ran into trouble with the alarm installers' licensing board and they didn't let him do it, and that was it — this great new idea gone.

REBECCA: He said he had hundreds of millions of dollars of handshake agreements for this technology with schools and hospitals. It was very early AI — obviously AI has been around forever, but this is in the late 2010s — and he was really at the front of it.

The sad part about this is that I think he went to the board because somebody said he probably should. "I'm not sure this is alarm system installing, but you'll want to get clearance from the board." He should never have done that. He should have just done it.

The other thing about these boards is that they're pretty low-resource, they're pretty casual. They're not really able to go out there — in cases where we want them to, like the medical board — go out there and figure out what's going on and find the bad guys.

So when presented with this, the person who told him to go to the board probably thought they'd say, "Oh yeah, that's fine, this is different from alarm system installing."

Instead, the board said, "No, I think this is alarm system installing. We don't really have a specific definition from the legislature, but it's going to raise an alarm and you're installing it, so we're going to call this the installation of an alarm." By that point, investors are not going to be okay with you doing something the board has said is unlicensed practice. So that was kind of the end of it.

CARDIFF: Somebody else could come up with the same thing, *not* check with the board, go do it themselves.

REBECCA: And I think that's basically what happened.

CARDIFF: Yeah, that was a very sad example.

The Federal Trade Commission versus North Carolina Board of Dental Examiners went before the—

REBECCA: The "case that shall not be named" — that's what the professions call it.

CARDIFF: (LAUGHS) Oh really?

REBECCA: Oh yeah. I was at a meeting of boards — it's like the board of boards — and they called it "the case that shall not be named."

CARDIFF: Because they sort of lost it but sort of didn't. Your book comes out pretty ambiguous on what happened there. Tell us about it.

REBECCA: This was the case that actually first got me into professional licensing. I was writing an article with a mentor of mine when I first went into the academy.

We were saying, "Maybe these boards, which are basically cartels, should be subject to the antitrust laws. You should be able to sue them if they go too far." As I was doing the research, I learned that they actually kind of maybe *are*, and the FTC was making this same argument in a case against the North Carolina Dental Board that had issued cease-and-desist letters to a bunch of mall-kiosk teeth-whiteners, saying, "You're practicing dentistry; you've got to shut down."

The argument is basically that a state licensing board, if it is actually a state agency, will be immune from the antitrust laws, because you can't sue the government for restricting competition — that's kind of the government's job. But a state licensing board is not really a state agency, as I argue in the book, because they are made up of unaccountable members of the profession who all have the wrong incentives. That makes them really private.

So if they're private and they're not adequately supervised by the state — which, in my opinion, they're not — then they are subject to antitrust liability. And that's what the case held. So that case went all the way to the Supreme Court. It cited my article, which was awesome because I was pre-tenure, so that was like: okay, I'll take that football. I write two more articles and made a touchdown, I guess is the metaphor.

CARDIFF: The quote, I believe, was that "boards are cartels" or something like that, right? Like where you make that argument.

REBECCA: Well, that is the title of our article, *Cartels by Another Name*, and they cited that article. So yes, that phrase was in their opinion. And then, it kind of went nowhere.

Theoretically, all 1,740 — and yes, I have found them—

CARDIFF: (CHUCKLES) Counted them all.

REBECCA: Me and some research assistants have counted them all — 1,740 professional licensing boards in the US are potentially subject to antitrust liability. The "potentially" is doing a lot of work here, because what's very unclear is what counts as supervision.

It may be that whatever states are doing — and states did scramble, that was one effect of the case — they scrambled after that case came out to put things over the boards that could be described as "supervision." I think that has created enough of an appearance of supervision that litigants are just not interested in taking the risk of all the expense of bringing an antitrust lawsuit, just to be found at the end to have been supervised and therefore immune.

CARDIFF: I see. I want to close with your final chapter, where you actually do recommend a better way of doing this. After all this work, you've come up with a really interesting new way for licensing boards to define what it is that they do.

I really enjoyed it because it starts with a kind of process of elimination. There are some things where you may not need a board at all — market forces are fine. If you don't like the person who cuts your hair, go find somebody better. With more competition, that shouldn't be too hard.

But you do say there are some places where these licensing boards are important. They do serve a legitimate purpose, but they have to be properly scoped. What is that scope?

REBECCA: There are tons of professions that we license that shouldn't be licensed at all. I would put the hair professions in that category, for the reasons you identify. And don't forget that I don't think that means we can't regulate them at all.

For example, restaurants are regulated — you have to have inspections and follow food-handling rules. I think that could be true about hair too: you have to clean your instruments, etc. But licensure, where you have to get a whole education, pass a test, and then hold this personally held license — that's just too much.

Even down from that, even where you can identify some major public risk that should be mitigated by some kind of permit or license, we don't to do it through a licensing board. I saw this most starkly illustrated in Tennessee.

We have a Board of Funeral Services, which involves funeral directors. And then we have a program run by the state for crematoria and burial services. If you think about it, the public risks here are actually pretty similar. There are two: one is the appropriate handling of remains. The other is that you make these long-term financial commitments to people — when they're 70, they pay for a burial and a funeral, and then you have to honor that 20 years later. There's a risk of graft there.

Both entities mitigate these risks through regulation, and they both have requirements, but they look really different. The funeral director board is run by funeral directors. The requirements are super high; there are very few of them in the state. The barriers to entry are very high, and their discipline tends to be only against unlicensed practitioners.

If you look at the program, which is run by a more accountable governmental entity, it's really straightforward. You have to have bonding, some certain financial requirements, for the long-term commitments you make to somebody. And there's a lot of straightforward rules about how you handle a body.

That's worth keeping in mind because we could do this without the licensing board. But then there is a certain set of professions for which professional judgment is going to be really important. You can't just put it in a list. You can't say, "This is how you handle a body." You can't say, "This is how you handle a murder defense. This is how you diagnose cancer."

For these complicated professions, where you have to have individualized professional judgment, we might have to have something like a board, and we might have to have licensing where you go to school, pass a test, and there's more. The assessment of your qualifications is more indirect because we can't tell you exactly how to do your job.

That's where we need professional licensing. And for those professions, we need something other than self-regulation. We need actual accountable governmental regulation, where the profession is there to provide expertise about good practice — and that's about it — as opposed to running everything from entry to discipline.

CARDIFF: Last question. This book is the product of years and years, as I said at the outset, of firsthand reporting and observation. I don't want to even think about what your notes look like — the accumulation of notes must be a total nightmare. It's so much work.

So my last question is: what is something about this that you'd really want to leave listeners with that they either underappreciate or misunderstand, given that you've been in the trenches for more than a decade on this now?

REBECCA: I think it's hard to appreciate, just from hearing the topic of the book, that this is actually kind of a beach read. That's what someone told me — "your book is kind of a beach read."

I like to think that it's lively. Sometimes it's sad, sometimes it's funny. It's really showing you the real, deep, full human story behind what has so far been this wonky policy–economics topic.

So I think it's maybe more entertaining than it sounds at first.

CARDIFF: Yeah, because there are real characters in it. There are real people, and there's some really wonderful stuff that you came across. I recommend it — it's absolutely one of my books of the year.

Rebecca Haw Allensworth, thanks so much for doing this. Really appreciate you coming on the show.

REBECCA: Thanks. I really enjoyed it. Thank you.