



1. Why isn't advice-giving *action*, rather than speech?

The speech/conduct distinction is a popular way for courts to distinguish what is protected by the First Amendment (speech) and what is appropriately the subject of regulation (conduct). However, the distinction assumes (a) that speech is protected without really explaining why, and (b) that spoken words can sometimes be defined as conduct and sometimes as speech, depending on the desired outcome. In other words, this distinction does not tell us much about *why* something is protected or not. And, to complicate things even further, the action (*e.g.*, taking a specific medication) in this context is usually *performed by the listeners themselves on the speaker's advice*.

2. What about “experts” who give advice because they have a monetary stake in the product (*e.g.*, drug, herbal remedy, etc) they are promoting?

Despite my exclusive focus on advice-giving in this talk, I do not mean to suggest that there aren't *other limits* on wrong information such as *false advertising*, contained for example in the COVID-19 Consumer Protection Act, Pub. L. No. 116-260, 134 Stat. 1182, Division FF, Title XIV, § 1401.

3. Even if they lose their license, speakers can still disseminate bad advice (and be perceived as experts even if they're unlicensed).

That's true. But the reliance interest of the listener is even higher if the speaker comes with the imprimatur of a professional license. Despite only addressing a slice of the mis-/disinformation ecosystem, this approach protects the reliability of expertise in the public interest.