

It's Time for Freedom of Access

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By David Palmer © 2001

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On May 30, 2000, the governor of Minnesota signed into law one of the most creative pieces of legislation ever seen in the health-care field. The impact of this legislation on the bodywork professions has been feverishly debated throughout the country ever since.

Known as the Complementary and Alternative Health Care Freedom of Access Act, this law intends to free unlicensed "healers" in Minnesota from the threat of being put out of business for practicing medicine without a license.

As of November 2001, there are eight states that have either passed, introduced or are drafting similar legislation: Oklahoma, Minnesota, California, New York, Georgia, Rhode Island, New Jersey and Iowa. In addition, citizens in 24 other states are exploring the issues and considering pursuing this legislation. Clearly this approach has sparked broad interest and can legitimately claim to be a national movement.

Since I have been working actively on a similar Health Freedom bill in California for the past year, I would like to offer some background and perhaps some insight into these initiatives.

There are only two statements to be made about this movement with absolutely certainty. First, the overriding goal of the proponents of these initiatives is to provide consumers with the broadest possible access to health-care services and, second, each state is developing a unique solution based on its history and the local political considerations.

To understand the need for this legislation we have to know that, in most states, unlicensed health-care providers are, at least technically, in violation of their state's Medical Practice Act. Consequently, they are subject to prosecution for practicing medicine without a license. This is because when legislation was originally written governing the practice of medicine, it was drafted so broadly as to prohibit anyone except licensed physicians from engaging in any healing practice.

The California Medical Practice Act is a typical example. It prohibits any person without a valid license as a physician, or some other statutory exemption, from practicing "any system or mode of treating the sick or afflicted," or from diagnosing, treating, or prescribing for "any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or any other physical or mental condition."

This means that Native American healers, Mexican curanderos, Chinese herbalists, movement educators, yoga teachers, practitioners of naturopathy, homeopathy, Ayurvedic healing, massage and bodywork, and dozens of other unlicensed professions are in technical violation of the law any time they assess or evaluate a condition or when they suggest or perform a treatment on a client or student.

The fact that the medical boards do not often seek prosecution of every offender does not mean that there is not a problem. Even when medical boards choose not to prosecute, the net effect is an inhibitory cloud over unlicensed practitioners.

Many practitioners, like homeopaths who are recognized and operate freely in other countries, are often forced to work in clandestine fashion so as not to attract the attention and possible enforcement action on the part of the Medical Boards. In other cases it is simply a matter of these services, old and new, not being able to develop to their highest level of competency and professionalism. This, in turn, restricts the access of consumers who, in ever increasing numbers, seek out these services.

The traditional solution has been for emerging professions to carve out their own legislative mandate by lobbying for state licensure. However, states are reticent-and sometime prohibited by their own laws-to license professions that pose no significant harm to the public.

This is why consumer advocates and unlicensed practitioners are joining forces to develop health-freedom legislation at the state level that will remove the threat of prosecution. Each state has taken a slightly different approach tailored to their legislative and political environment.

California, so far, has the most concise legislation being introduced, one-and-a-half pages versus 26 pages in the Minnesota legislation. Its brevity gives us an uncomplicated look at what the Health Freedom movement is seeking.

The California bill amends the California Medical Practices act to allow unlicensed healers to practice freely as long as they disclose that they a) do not claim they are a medical doctor, b) do not perform surgery or harmfully invade the body, c) do not administer or prescribe radiation treatments, prescription drugs, other controlled substances, or recommend their discontinuance, or d) do not provide a treatment that harms a client.(You can read the bill at www.californiahealthfreedom.org.)

This legislation would not affect any currently licensed health profession in California, and it does not prohibit any emerging profession from seeking licensing. What it does do is to offer immediate protection to massage therapists and other unlicensed healers from being charged with practicing medicine without a license.

Even more importantly, this legislation begins to create a positive climate for the emergence of alternative and complementary healing practices, replacing the current marginalized and adversarial environment.

The main “disaster scenario” presented by opponents is that such legislation will open the floodgates to every quack and flim-flam artist on the planet.

To that I respond that the mechanisms for dealing with false advertising and other techniques that take advantage of consumers are already in place in civil and criminal laws against fraud and deceit. Additionally, the California Health Freedom act specifically does not protect practitioners who cause harm to their patients. These practitioners would still be subject to enforcement action by the state medical board.

I urge all massage and bodywork professionals to study this issue carefully. Do not be distracted by pro-licensure advocates who claim that this movement is trying to prevent state licensing of massage.

This issue is much bigger than massage. At stake is the future direction of health care in this country. For too long we have been at the mercy of state medical boards that restrict our ability to choose the kinds of treatments, conventional or not, that we seek.

Americans make more visits to complementary health-care practitioners than they do allopathic doctors. It is time to modify the laws that restrict free access to these practitioners and the evolution of these healing arts. Let us bring health care in the United States into the 21st Century.

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