



Article in Health Keepers Magazine, Volume III, Issue II, Winter 2001 (used with permission)

JOIN THE MOVEMENT FOR HEALTH FREEDOM

By Leo Cashman

Health freedom is the freedom for a consumer to have access to the kind of health care he/she wants. Like any other area of economic activity, health care practice needs to have appropriate oversight by governments at various levels. For example, there may be consumer protection issues, to be balanced against the need for consumer access and freedom of choice. Health consumers need to learn about this area of government oversight, because, in fact, the laws and regulations that are in place often go far beyond the government's legitimate role in protecting the public from harm or fraud or other unethical behavior and infringe on the basic freedom of choice that we should enjoy. The health freedom movement invites fair-minded people to learn the way the various attacks on this basic freedom play out, and to join in the broad effort to

restore to all of us the health freedoms that we need. The alternative is to submit, perhaps unwittingly, to monopoly power in the health care marketplace and a lack of a basic freedom.

Many important health care practitioners, such as herbalists, homeopaths, naturopaths and massage therapists are not licensed in the states where they practice because, very often, legislatures do not see a need to license practices. The more natural, non-invasive modalities used by these unlicensed practitioners do not suggest the need for licensure that the more invasive practices of medicine—surgery, powerful drugs and x-ray radiation—do. However, ironically, the unlicensed practitioners, therefore, become vulnerable to a certain kind of attack from the medical establishment that usually controls the state's medical board: they face charges of "practice of medicine without a license." The reason this is possible is that the definition of the "practice of medicine" is broad and practically all encompassing. A paraphrase of the typical language of the statute in most states is that "anyone who offers or undertakes to correct, treat or prevent any illness, injury, pain, wound, infirmity, deformity ... by any manner, means, method, device, or instrument" is practicing medicine and therefore must be a licensed medical doctor. This overly broad definition makes any kind of unlicensed healing fall within the practice of medicine, since they do, in fact, tend to improve health and prevent illness, at least in a general way. Since most herbalists, homeopaths and naturopaths are not licensed medical doctors and are not exempted from being prosecuted under the overly broad definition of the practice of medicine, they are vulnerable to being charged with "practice of medicine" and shut down. In most states only nurses, chiropractors, dentists and the other licensed health care professions enjoy an exemption from being charged with practice of medicine. This prompts certain segments of the unlicensed healers—such

as naturopathic physicians and message therapists— to seek licensure not only as a way to “set standards,” but also as a way to gain unquestioned freedom to practice.

But licensure is not the gateway to health freedom for all concerned. There tend to be winners and losers whenever any new licensure bill is passed in a state. Those who don't qualify because of the educational requirements or because of financial barriers posed by schooling costs or licensure fees, are left out and shut out, probably becoming more vulnerable to prosecutions. They can be prevented from practicing the healing arts that they know; they can be barred from using the titles (e.g. Doctor of Naturopathy”) written on their diplomas.

Alternative licensed practitioners, including MDs, face attack from a different angle.

They can be attacked from the entrenched professional interest groups that control the state's licensing board (e.g. the AMA, the ADA, etc.) The licensing board's power is very substantial, as these boards operate with little or no oversight. They are accountable, in theory, to the state legislature that has created them, but usually they are not subject to close scrutiny. The boards have the ability to inflict all sorts of penalties and disciplines on a targeted practitioner, including the ability to take away the practitioner's license — the ultimate punishment.

And to do so the board does not even need to prove harm or unethical behavior. All it needs to do is to charge the innovator, the “holistic” practitioner with being outside of the “standard of care.” Now, the “standard of care” is nowhere written down and it is whatever the board says it is at any moment in time. “Standard of Care” is not science based; it simply is a “community standard,” i.e. it refers to whatever most of the practitioners are doing in your licensed profession. Boards can and do thumb their nose at peer reviewed articles in scientific journals. If a dental board declares that dental amalgam fillings (half mercury) are safe, no amount of scientific evidence needs to slow them down in their question to take your dental license. If you are a licensed practitioner, if you stay within the rest of the herd, your practice is safe; if you innovate or are in some way different, like the dentist who criticizes mercury in dentistry, you will very likely find yourself being accused of being outside the “standard of care.” The boards tend to get away with dictating the answers to all scientific disputes.

As a result of these different kinds of vulnerability to attack, neither our licensed health practitioners nor our unlicensed health practitioners are safe from arbitrary, commercially motivated attacks from the medical-dental establishment. As a result, innovative and alternative health care practices of all kinds do not flourish and enjoy success based on their own merits; and we all suffer a lack of health freedom.

A few years ago, consumers in Minnesota were prodded into action by such attacks on the state's most prominent health care practitioners – a mercury free dentist, a holistic physician and a naturopath (they are not licensed in Minnesota). Concerned citizens found an attorney, Diane Miller, who had already had a taste of health freedom battles, and together they formulated a health freedom bill designed to protect both unlicensed and licensed practitioners.



A tax-exempt non-profit group, called the Minnesota Natural Health Legal Reform Project, was formed to spearhead the fundraising and organization for the massive grassroots effort that was to take place. Our “Monday night group” met virtually every Monday night for over three years. Attorney Diane Miller, was paid a monthly stipend to lobby key legislators and to negotiate with the key stakeholders, as the bill wound its way through over a dozen hearings in both the house and the senate. She was ably assisted by Jerri Johnson, a homeopath-turned citizen lobbyist, who went with her to most of the lobbying sessions at the Capitol. Leo Cashman organized the grass roots lobbying effort and found a volunteer to call through a list of supporters in the legislative district for each of the districts that a legislator on a key committee represented.

Consumers in all parts of the state played a role in reaching their elected officials. They gathered with their legislators in their districts to share their stories of the personal importance of alternative care options and to demand active reform. After a while, it was obvious that this reform bill had very broad support.

The chief author in the house was state Representative Lynda Boudreau, a Republican. Her leadership in moving the bill through key house policy committees was crucial. She was able to work with supportive colleagues to survive intense amendment discussions and formulate a bill that would meet new-found broad support.

Then it was largely the senate’s turn, with the committee deadline clock ticking. State Senator Twyla Ring, a Democrat and a rookie in the senate, was the senate author who piloted the senate version through three major dramatic hearings in one week. Senator Ring agreed to take up the senate authorship after the death of her personal friend and previous senate author, Senator Janet Johnson. Senator Ring became strongly committed to helping finish the senate journey for health freedom that her friend Janet had begun. She did, with the help of many of her senate colleagues.

Leo also wrote about the bill’s progress for Twin Cities Wellness, the main alternative health newspaper in the state. After the 1999 session, the bill had survived two hearings in the house and had moved on to the House Civil Law Committee, where it faced tough scrutiny from a few opponents. But Miller and her colleagues showed resourcefulness and an ability to negotiate and compromise when needed. Sometimes it called for careful soul searching, and gentle debate among ourselves. In the 2000 session, the bill underwent enough alterations to satisfy key opponents and finally, after ten hours of hearing time over three different days, it shot out of the Civil Law committee, and headed for the senate committees where it had to go through three different committees in a week. Frankly, we wondered to ourselves: “Is this the hearing where our bill is going to get killed? Can Diane Miller, Senator Ring and Rep. Boudreau do it again?” But the bill made it, changed some more, but remained alive and still a meaningful reform. Finally, with the government Operation Committee a breeze, the hearings began to seem easier: the bill had momentum, it had passed the key tests, and we could see that we were going to go all the way. We were left with much more policing power and oversight language than we had originally intended, but the bill was still a health freedom bill, not a licensure bill, and it protected the practices of a broad range of unlicensed health care practitioners. It roared through in the final floor votes—not even close—and Governor Jesse Ventura’s office was flooded with messages, urging him to

sign the bill. Ventura signed it into law on May 11, 2000. This path-breaking health freedom reform, an entirely new approach crafted by Diane Miller, had merit and worked!

The approach taken by the Minnesota activists is called the “Minnesota model.” The concept behind it is to seek not more licensure, with its title protection features, educational requirements and the inevitable winners and losers. Rather the Minnesota model seeks pure health freedom, in the form of an exemption from the overly broad definition of the Medical Practice Act, for those unlicensed practitioners who stay away from overtly medical activity such as surgery, prescribing drugs, and other licensed activity such as dentistry and spinal adjustments. In Minnesota’s version law, there is an assortment of ethical rules that the practitioner must abide by, and a requirement for disclosure of education, training and the theory behind the treatment offered. Versions of the Minnesota model are now under way in the legislatures of New York, New Jersey, Rhode Island, California and Georgia. Diane Miller has taken up the task of teaching interested activists the concepts of health freedom nationally for health freedom of all types. With allies across the country, she has formed a nonprofit group, the National Health Freedom Coalition, to form a “strong health freedom team, speaking with unity and a strong voice.” Other important groups who collaborate on the health freedom front are the Coalition for Natural Health, Citizens for Health, and the Health Keepers Alliance.

To learn more about the issue of health freedom and to join in the efforts that are under way in your state, contact the National Health Freedom Coalition at 651-699-8300 or www.nationalhealthfreedom.org.

STEPS A STATE SHOULD TAKE

Every state can benefit from passing health freedom legislation such as the Minnesota Model. Here are steps to take to launch such an effort.

+Hook up with others in your state who are also interested in understanding the need for reform and wanting to reform the laws in your state. Hold a meeting in a public place – a school auditorium, or even a practitioner’s office. Try to form a core group of 7 or 8 people of different skills and backgrounds, each to lend her/his unique skills to the mix. It is good to have different types of practitioners represented, both licensed and unlicensed, and also consumers.

+Start a database of interested people. In it, keep track of who donates, who attends meetings, and who wants to volunteer and how. These more supportive people are your “core” people; they will be the ones that get most of the lobbying and other work done. Keep enlarging the core.

+ Incorporate as a non-profit in your state and seek tax exempt status. Somebody in the group needs to handle the business end of it – making deposits, writing checks, paying bills. Get someone who has accounting skills and knows how to report to the IRS and to state agencies.

+ If the incorporation has been competently done, you can successfully seek tax exempt status with the IRS. In Minnesota we actually had two different non-profits: one that was primarily education (and did not lobby) and sought a 501(c)(3) educational tax exemption; the other was primarily for the lobbying and sought 501(c)(4) tax exemption. Each had its own checking account and its own reporting requirements. I, being an accountant, handled this whole area.

+In addition to needing an accountant and a lawyer-lobbyist, the group needs people who like to fund-raise, people who are good at networking, people with political activist experience, people with public relations and media experience, people who can help with desktop publishing, and, of course, people who can do data entry and maintain the data base. Meet regularly, learn to work together.

+Start cultivating friends in the legislature, starting with likely allies. When the draft legislation is ready, show it to your legislative allies. Pick your chief authors carefully, in each house. Pay attention to which political party controls that house, and preferably chose a chief author well placed on that house's health committee. Then, you're off and running. You work on gaining support from health committee members, to get through that first committee. Generate letters and calls from their constituents. It's fun!

+ For more detailed guidance and information, contact Diane Miller, of National Health Freedom Coalition, at 651-699-8300, or Jerri Johnson, of National Health Freedom Action, at 651-688-6515. Their shared web site is www.nationalhealthfreedom.org. Good luck!



Leo Cashman writes on health and the environment.

He is cofounder of Minnesota Natural Health Legal Reform Project.