The right to practice herbology, legal history and basis in Law

American herbalists' realpolitik, essay #3. How to avoid the sin of "practicing medicine" without a license is systematically explored from a historical and legal perspective, stripping it of its mystery. Herbalists helping people regain health are not practicing medicine if they follow specific guidelines. The article below includes the unchanged original article from 1996 plus an update and commentary on events and experiences since that date (see last section, titled "Update, 2013 March". Updated version was first published in Plant Healer Magazine, Volume III, Issue III (2013 Jun 01).

by Roger W. Wicke, Ph.D. (who is not a "doctor", but merely a harmless herbalist)

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Preface — by Paul Bergner

My school, the North American Institute of Medical Herbalism, was investigated by the state department of education occupational schools board for the legality of what we do and teach; they have a clause that any teaching of 'medicine' must be supervised by a physician. I used Roger's information for part of my defense, and was found to be in compliance with the law by the lawyer on the board. Probably as part of the same process, the medical board came after us with a sting operation at our clinic, over the phone and possibly also in person, and we passed.
What Roger has written here is not just some theoretical bullshit — I used this approach and cited the case law he gives, and it worked for me. I had to justify to the school board that I was not teaching the practice of medicine, possibly because 'Medical Herbalism' is in the school name. In reply in writing, I responded to the primary defining section of the Colorado medical practice act which specifies that you 'diagnose and prescribe'; I, and the interns in my clinic, have clients sign a statement that they understand that we are not doctors, that we do not diagnose and prescribe, and that our services do not take the place of a physician. Then I stated that we do not use any surgical technique (by state definition) or any legend drugs, and that the substances we use are all legally sold over the counter and regulated as dietary supplements. Then I cited the case law that Roger includes in the article below. Also, we use proper language in our print materials, informed consent, and also, very important, on the phone and in person — we apparently got tested both ways by informants. We are also careful about any language we put in writing in clients' files.

The system isn't broken here in Boulder, for me, as an herbalist or any of the other herbalists in the region. No, we don't have a righteous regulatory system, and no, the industry can't make medical claims on products, and this is not ideal. However, the information in Roger's article below provides a straightforward basis for understanding how to protect our rights within a system that is not perfect.

— Paul Bergner
June 2006

Introduction

The conflict between medical monopolists and alternative health practitioners for the past 3000 years is a tale intertwined with religious fanaticism, greed, power lust, and common ignorance that has repeated itself throughout numerous cycles of time. At best, one can hope for enlightened leaders to set national and state health care policy; in their absence, our system of laws, Constitution, and Bill of Rights give numerous protections to individuals who know and use them when necessary in the face of institutional abuses. Many practitioners of natural health care are only vaguely aware of the bureaucratic and legal machinery that can potentially sabotage their business and livelihood. Health care practitioners who know their specific rights and responsibilities are less likely to be targeted with harassment.

This article presents tactics and strategy that any herbalist may use to minimize government interference in her right to assist individuals in maintaining and improving their health using herbal products. The information contained herein is not presented for the purpose of rendering legal services, which can only be provided by qualified professionals. There is frequently some risk involved in defending one's rights, and both the author and publisher disclaim any responsibility or liability for any loss incurred as a consequence of the use of any information herein. You are advised to verify the accuracy of the references and quotes in this article by reading the original sources.

Prima facie evidence of practicing medicine without a license

Most alternative health care practitioners have heard the phrase "practicing medicine without a license", but are unaware of the practical definition of this phrase and its application in the legal system. One of the most common methods for prosecuting an alternative practitioner is to document the manner in which the practitioner describes her practice to clients, both verbally and in printed promotional literature. Physicians have customarily used certain terminology to describe their profession and its purposes: "consult with patients", "treatment of disease or illness", "prescribe remedies", "diagnose illness", "cure illness", "provide therapy", "administer medicine", "relieve symptoms of illness", as well as others. The routine use of these words and phrases when describing or explaining one's profession and purpose to clients constitutes prima facie evidence of practicing medicine. And, of course, if one doesn't have a license to practice medicine, then one may be prosecuted for practicing medicine without a license.
That not many alternative practitioners know the terrible significance of these code words has been a carefully kept "club secret" among state medical societies and prosecuting attorneys, although an increasing number of alternative practitioners have discovered this secret. The defendant in court may not even recognize what is occurring before his eyes and ears, especially if he or she has used these terms routinely, unaware of their significance. This prima facie evidence will be entered into the court transcript, and unless challenged by the defendant or defense attorney, it is assumed to be fact. Prima facie evidence is evidence that can be considered proof of a violation on the face of it, unless challenged. Many defendants do not know enough to speak up and present evidence countering the prosecution's prima facie case. If you describe your professional purpose using words traditionally reserved to the medical profession, it will be difficult, but not impossible, for you to argue that you are not practicing medicine. You will have to demonstrate that in spite of the words you used, your intent was not to practice medicine but to help clients improve their health. The easiest method of protecting your rights is to avoid at the outset using medical jargon to describe your professional purpose.

Whether or not to use medical jargon is not mere nit-picking over words, but a question of intent. For even if you avoid using the forbidden words, yet by your actions demonstrate that your purpose is to diagnose and treat illness, you may still be practicing medicine. How then does one not diagnose medical illnesses and not treat such illnesses? This is a practical matter that delves into the root of one's philosophy of herbal practice.

Consider the actions of a typical herbalist in dealing with a client who asks the herbalist if she can help to cure the client's multiple sclerosis. If the herbalist patiently explains to the client that she can make no claims to cure anything, but that she assists people in building the general health and resistance of the body by providing nutrients and herbs that stimulate healing, no practice of medicine has yet occurred. If she further explains that each individual has unique metabolic differences, and that what may stimulate healing in one individual may be ineffective or perhaps even harmful to another, no practice of medicine has occurred. If she takes the client's pulse, inspects the tongue, and asks about health history and symptoms, no practice of medicine has yet occurred. If she provides an herbal formula, with instructions for preparation, together with recommendations for including specific foods in the diet, and explains to the client that certain foods may be better suited to her body type and constitution than other foods, allowing the body to function better, no practice of medicine has yet occurred. Thus far, this situation is no different from that of an athletic trainer who is recommending particular foods to an athlete to achieve maximum performance.

Now, to go one step further, suppose the herbalist shows the client a textbook with the herbal ingredients recommended for the client, and that this textbook contains information about the physiological effects of the herbs and lists a set of diseases that the herbs have been shown to cure. After all, the client could have obtained this information on her own at the local library. Now we are approaching the line, but have not yet crossed it, for the First Amendment of the Bill of Rights protects the unrestricted flow of information of this type. However, if the herbalist then says to the client: "These herbs will help to relieve your multiple sclerosis," the line has been crossed. The herbalist has just claimed to be able to cure or relieve the client's specific condition or illness, and this is entering the domain of medical practice. Many herbalists err from the outset by saying to their patient, "Yes I can help to cure your multiple sclerosis, these herbs will do the job, here's your prescription of herbal medicine. Come back next week so that we can continue your therapy."

Numerous herbalists have been entrapped and convicted of practicing medicine without a license on the basis of testimony or tape recordings verifying they have used such words and phrases to describe their business.

Competent traditional Chinese herbalists are well aware of the importance of symptoms and signs and the total context in which they occur; such patterns lead to the choice of correct herbal formulas. In principle, is this any different from an athletic trainer recommending to a client who has a tendency toward Stomach Yin Deficiency (characterized by symptoms of dry mouth and thirst yet reluctant to drink more than a few sips at a time, nausea, tendency to feel hot and somewhat fatigued, thready pulse) to drink diluted pear juice after a summer foot race? The distinction between treating illness and assisting people to improve their health is especially evident when the herbalist spends the time to educate the client about the herbs she is taking and how to know whether they are appropriate for her based upon her sensations. Educating clients to maximize their sense of well-being by monitoring sensations and symptoms to self-regulate food, herb, and spice intake.
is quite different mentally and psychologically from informing clients that the herbs will cure their illnesses.

The practitioner's words and her intent do influence the outcome, as the following example illustrates. The author knows of many individuals who have taken large doses of cayenne pepper in capsule form over a prolonged period, developing signs of agitation, thirst, irritability, localized inflammation, burning sensation in the GI tract or urethra, with manifestation of reddish tongue tissue with fissures (which a traditional Chinese herbalist may recognize as Deficiency of Yin). Some of these people may have had a predisposition to developing such symptoms at the time they began the cayenne "therapy". In almost all these cases, the individuals had decided to take the cayenne capsules because either a health practitioner, a friend, or a book they read indicated that cayenne would cure high blood pressure, candida, arthritis, disease X, etc. The common sense that these people may have possessed in regulating their daily diet, such as eating watermelon when thirsty on a hot day or drinking ginger and cinnamon tea on a cold winter night, flew out the window when faced with the authoritative claims of Dr. So&So, Ph.D., professional health food pamphlet writer.

Health is a quality that people sense and perceive in their own bodies. Medical conditions, such as emphysema, thrombocytopenia purpura, and moniliasis are abstractions that are proper for a physician to detect, monitor, and treat, if she can. The TCM herbalist and her client cannot and should not operate in this realm. To do so risks loss of common sense as demonstrated by the cayenne debacle. TCM herbalists are better off legally and ethically when they educate their clients in listening to their bodies' symptoms so that they can better self-regulate their own health. Claims of cures for medical illnesses that are only detectable with microscopes, CT scans, and blood tests changes the terrain to that of the unseen, which neither the herbalist nor her client is capable of perceiving directly. Medical entities should not be the focus of herb choices for improving the client's health, a quality that one does perceive.

Use of the title "Dr."

Besides the medical phrases "cure illness", "prescribe medicine", and others, use of the title "Dr." or referring to oneself as a "doctor" may also be used as prima facie evidence of practicing medicine without a license, when used in the context of presenting oneself as a health practitioner. Even if you have a Ph.D. or O.M.D. degree, it is safer to not refer to yourself as a doctor. If you do have such a degree, there is nothing wrong (except where specifically prohibited by state statute) with letting the public know about your education by using the specific accredited degree designation after your name, but you should correct them if they begin addressing you as "Dr." If you do not correct them as soon as possible, you may be accused of passively misleading them to believe that you are a licensed physician.

While this debate over use of the title "doctor" may seem mere word play, the social forces behind the use of this title reveal distinctly pernicious effects. In 1963, Yale University sociologist S. Milgram performed a series of experiments to determine why an individual may override her own common sense and conscience when faced with an authority figure who commands obedience. Such matters were of great interest consequent to public revelations of Nazi atrocities during the Nuremberg war criminal trials.

In Milgram's study, the head experimenter commanded volunteer participants to administer increasingly severe electric shocks to another person by operating a control panel with clearly marked shock levels. The dial that controlled shock level was marked with a maximum level labelled "Danger: Severe Shock". The person being shocked was in reality an actor, unbeknownst to the people operating the control panel under the command of the experimenter. The purpose of the study was to determine how readily people would obey commands to administer "Severe Shock", in spite of the seemingly horrible consequences to the actor-victim. The results of the study, performed on American citizens in the locale of Yale University and New Haven, Connecticut, revealed that a surprising majority of people would do so, allowing an authority figure to override their own conscience. One shocking conclusion from this experiment was that the same social forces that allow fascist governments to rule are potentially operative in America.

Another social psychologist, H. Kelman, expanded upon Milgram's work to determine those factors in the social
environment that allow individuals to override their conscience and commit destructive actions. He determined that these factors include authorization, which legitimates a destructive action, routinization, which reduces the destructive action to a standard procedure of mechanical and administrative routines, and dehumanization, which facilitates the action by minimizing or suppressing the human and personal qualities of the targets of the action.

How is this relevant to health care? The same tendency for people in fascist societies to commit violence against dissenters and individualists lies at the core of "scientific" methods commonly applied to health care. A medical procedure or treatment protocol is legitimated by a series of scientific experiments that "proves" it has the desired action (not necessarily from the patient's but from the medical researcher's perspective). The scientific literature provides the initial authorization, whereupon clinicians (and, now, insurance companies) develop standard procedures that transform the new treatment method into a routine procedure. Next, the medical conception of the human body as a bag of chemicals, cells, tissues, and organs dehumanizes the patient in the mind of well-trained and indoctrinated physicians to the point that the patient's symptoms, feelings, and perceptions are commonly ignored as being irrelevant to the protocol.

Finally, the doctor, who has been ordained by the high priesthood of the medical societies, pronounces that this treatment procedure is necessary for the patient. The full weight of this decree will be felt by a typical member of an authoritarian society, who has been carefully programmed from birth to obey authority for the presumed "greater good of society", even if this may require suppressing one's instinctive awareness, common sense, and conscience. According to Milgram, this description fits the majority of Americans who participated in his study in 1963. If the problem cannot be detected by scientific instrumentation, the doctor dismisses it as being a chimera of the patient's fevered imagination.

Wilhelm Reich, a physician who published a series of books about the psychological basis of authoritarian control strategies, revealed that fascist societies (broadly defined, include most "civilized" nations) gain control over their subjects by inducing them to suppress bodily instincts (including natural sexual function), which constitute the first line of defense of any living being against harm, and by using religious dogma and mysticism to justify and maintain such suppression. With a whole population of such zombies who have learned to suppress their own natural instincts and body sensations for fear of ridicule by authority figures, the way has been cleared for inflicting iatrogenic medical care, an ersatz food supply lacking nutrients, and a toxic environment that is unpleasant and ultimately deadly. The inevitable bottled-up emotional outrage that the population would ordinarily express toward the perpetrators of such misery is instead channeled into contrived warfare and environmental destruction of such magnitude as to endanger not only the health but the lives of a majority of the world's inhabitants.

Alternative health care providers who wish to promote among their clients a greater responsibility for their lives, should present themselves as partners in working toward a state of greater health and self-awareness, rather than as authoritarian experts, or doctors, who issue decrees. The authoritarian health care provider gains power by stealing it from clients, robbing them of common sense, and leading them to mistrust their own sensations and instincts, in many cases creating a highly profitable, though pathetic, relationship of continual dependency.

**Licensing of non-physician health care providers**

During the last several decades, states throughout the U.S. have added such professions as chiropractic, naturopathy, midwifery, massage and acupuncture to the roster of licensed professions. Many practitioners of these professions are under the illusion that having a state-granted license to engage in one of these professions automatically grants them the legal authority to prescribe treatments for diseases within their scope of practice. In the case of chiropractors, many states restrict their ability to diagnose and treat to specific illnesses of the musculoskeletal system. In many of the other licensed health professions, state licensing statutes often provide no explicit authority to diagnose or treat any illness; if this is the case in your state, you should take the same precautions as unlicensed health practitioners in avoiding the practice of medicine.
A brief judicial history of the prosecution of alternative health care providers in the U.S.

It has long been a principle of English and American common law that any activity that impinges upon the rights and welfare of others, or which created a damage to individuals or the public at large, cannot be a natural right. Instead, such activities may be regulated and even prohibited altogether. Such examples include dumping toxic waste and accumulating unsanitary and disease-ridden matter where it may contaminate others. In addition, certain privileges that are created by the state, that are not a matter of right, such as engaging in business as a corporation with limited liability, may also be regulated. The precedents for such regulation are well recognized; if the government (in principle, the People of the U.S.) creates a privilege not available to ordinary citizens, it has a right and a duty to regulate and restrict persons and institutions exercising such privileges to protect the public from unfair competition and from physical harm. The Revolutionary War was fought in opposition to such privileges of royalty and titles of nobility.

In contrast, activities of private individuals that caused no harm to others were rarely regulated in the early history of the U.S., especially in the western frontier regions where flexibility, common sense, and ability to quickly adapt to new circumstances precluded the establishment of rigid codes of behavior. The common law principle of the time traditionally held that one could be held liable for a damage only after the damage had been done; one could not be held liable for an activity that had not yet harmed anyone. The ability of the state to regulate and license private activities that ordinarily create no damage except when performed incompetently has expanded considerably since the post-Revolutionary era. Following the Civil War, federal and state governments began to expand their authoritarian powers in the domain of licensure and regulation. What had previously been left to individual judgment and common sense was increasingly seen to be fertile ground for new regulation and guidance by the state. The recent ascendance of technological and industrial power in the U.S. provided the momentum for people's faith in science as the future bringer of utopia. Along with this faith came a willingness to subjugate formerly private affairs to scientific scrutiny and guidance. The idea that every field of human endeavor could be perfected, optimized, and improved by revelations of scientific truth eventually led to the domination of medicine by the "scientific", allopathic tradition and the elimination of homeopaths and herbalists from the medical profession. The assumption that science would reveal truth with certainty and exclusivity led to the logical conclusion that one could determine "the best" way of performing any task; if such a best way existed, the argument went, why should society tolerate any but the scientifically determined best solution to all problems? Licensing of the health professions, as well as of many other human activities, seemed the logical step in enforcing these "best" solutions by law.

The social context of the late 19th century and early 20th, including industrialism, the creation of assembly-line automation, and scientific rigor, must be considered when studying the judicial decisions of that period concerning health care licensure. These decisions were consonant with the contemporary trends: standardization, optimization by scientific method, and subjugation of private life to scientific improvement.

Dent v. West Virginia: right of a state to license medical practice

Several major court decisions affirmed the state's authority in establishing licensing of the medical profession. Perhaps the most explicit of these decisions, in Dent v. West Virginia, outlined the justification for such licensing:

The power of the State to provide for the common welfare of its people authorizes it to prescribe all such regulations as, in its judgment, will secure or tend to secure them against the consequences of ignorance and incapacity as well as of deception and fraud. As one means to this end it has been the practice of different States, from time immemorial, to exact in many pursuits a certain degree of skill and learning upon which the community may confidently rely, their possession being generally ascertained upon an examination of parties by competent persons, or inferred from a certificate to them in the form of a diploma or license from an institution established for instruction on the subjects, scientific and otherwise, with which such pursuits have to deal. The nature and extent of the qualifications required must depend upon the
judgment of the State as to their necessity.

While it is recognized that patriarchal societies within the past 6,000 years of recorded history tend to enforce community standards by such bureaucratic means (ancient Rome, Babylon, and Egypt), it is by no means since time immemorial that this has been true. Although the collective consciousness of the Supreme Court justices seems to extend no further than the history of patriarchal empires and civilizations, one has only to look back into recent history of American Indian spiritual practices and healing traditions to observe that there exist very different modes for community development of the health care professions. Such modes include introspective, self-referential criteria of appropriateness, based on common sense and a deep appreciation for man's connection with nature. Since European civilization seems to have lost its reverence for nature, the organic common sense that accompanies such reverence has been replaced by hierarchies of bureaucrats who presume to make their decisions based on the decrees of scientists. The mess that science and technology have made of the natural environment during recent centuries speaks volumes about the incompetence of bureaucrats in controlling the functions of modern society, including health care.

State v. Grovett: licensing standards cannot be used to effectively destroy a profession or to prevent its practice

In State v. Grovett [6] (1901) the Supreme Court of Ohio ruled that a state cannot impose unreasonable or impossible requirements upon a profession or school of medicine so as to effectively prevent its practice. Grovett was an osteopath charged with practicing medicine without a license, under the statutes of Ohio that stipulated one is regarded as practicing medicine, whoever "shall prescribe, or who shall recommend for a fee for like use, any drug or medicine, appliance, application, operation or treatment, of whatever nature, for the cure or relief of any wound, fracture, or bodily injury, infirmity, or disease." Further stipulations of the Ohio statutes required osteopaths to pass medical courses relevant to the prescribing of drugs while at the same time prohibiting them from prescribing these very drugs. Such requirements were ruled unconstitutional under the due process and equal protection clauses of the 14th amendment, which, as interpreted by the court, requires licensing requirements to be reasonable and appropriate to the profession being regulated. Never at issue here was the fact that Gravett did "prescribe and recommend for the use of one Martha Huddle a certain application, operation, and treatment, to wit, a system of rubbing and kneading the body, commonly know as 'osteopathy,' for the treatment, cure, and relief, of a certain bodily infirmity or disease..." Had Gravett made a disclaimer to Martha Huddle that his system of osteopathy was not intended to treat specific diseases but to improve health, this case may have never reached the Supreme Court of Ohio and may well have been thrown out of court at the beginning.

Considering the Gravett decision, one marvels at the disparity between what the courts have ruled is law, and the actual state of affairs in the health care industry during the 20th century. The organized allopathic medical syndicates have hounded competing medical traditions such as homeopaths and herbalist physicians out of business and ostracized and harassed members of the mainstream allopathic tradition who dare to use herbs and other natural remedies, effectively violating the principle handed down in the Gravett decision that licensing regulations shall not prevent the practice of competing medical traditions.

It is only recently that the alternative health care traditions are making headway against established orthodoxy in the realm of law. The principle of the Gravett decision, that professional licensing standards must be reasonable and proper to the effective and safe practice of such profession, has been increasingly revived as a guideline in the regulation of health professionals. Ironically, however, legislative turf battles among members of different alternative health professions frequently involve attempts to violate this principle. As an example, proponents among the professional acupuncture community for making Chinese herbal practice the special prerogative of acupuncturists should ponder the Gravett decision well, for the National Commission for the Certification of Acupuncturists (NCCA) has determined that knowledge of acupuncture technique is not relevant to practice as a Chinese herbalist. Any requirements placed upon the practice of a profession that are unrelated to its safe and effective practice are unconstitutional and violate the due process
and equal protection clauses of the 14th Amendment.

**State v. Biggs: licensing is valid only to protect the public, not to protect a profession's economic status**

In *State v. Biggs* [7] (1903) the Supreme Court of North Carolina issued a strong decision supporting the rights of alternative health practitioners, in which it reaffirmed that medical licensing laws may be enacted solely to protect the public, not to further the economic privileges of the medical profession, and that a legislative act that attempts to limit the right of patients to seek less expensive and complex modes of treatment is not a legitimate exercise of the police power. A lower court had found Biggs guilty of practicing medicine without a license; he advertised himself as a "non-medical physician", claimed to cure disease by a system of drugless healing, and treated patients by massage baths, physical culture, manipulation of muscles, bones, spine, and solar plexus, and by advising patients what to eat and what not to eat. In spite of the numerous medically incriminating phrases used by Biggs, he successfully argued his case on appeal to the North Carolina Supreme Court. (Chiropractic was not a licensed profession then in North Carolina; if it had been, the ruling probably would have been different.)

The central issue in *State v. Biggs* was that the legislature of North Carolina had passed statutes that attempted to prohibit all other forms of primary health care, other than by allopathic medicine. The statute included the following definition of medicine and surgery:

> For the purposes of this act the expression 'practice medicine and surgery' shall be construed to mean the management for fee or reward of any case of disease, physical or mental, real or imaginary, with or without drugs, surgical operation, surgical or mechanical appliances, or by any other method whatsoever; ...

According to the court's ruling, the preceding statute would imply the following:

> That is, the practice of surgery and medicine shall mean practice without surgery or medicine, if a fee is charged....Where then is the protection to the public, if such treatment is valid when done without fee or reward? Yet, unless the act confers, and is intended solely to confer, protection upon the public, it is invalid. The Legislature cannot forbid one man to practice a calling or profession for the benefit or profit of another.

The court went on to speak of monopolies:

Is this not the creation of a monopoly, and the worst of monopolies, that diseases shall not be cured or alleviated, whether real or imaginary, mental or physical, though without medicine or surgery, 'if for a fee,' unless one has undergone an examination on 'anatomy, physiology, surgery, pathology, medical hygiene, chemistry, pharmacy, materia medica, therapeutics, obstetrics and the practice of medicine'? ...The act is too sweeping. Besides, the Legislature could no more enact that the 'practice of medicine and surgery' shall mean 'practice without medicine and surgery' than it could provide that 'two and two make five,' because it cannot change a physical fact.

In the 1850's and 1860's, many states passed limited medical licensing acts, which prohibited the practice of medicine and surgery without a license, but which also specified that the only penalty for violating these acts would be an inability to apply to the courts for recovery of fees charged to patients who were billed on credit; such acts specifically stated that no one who should practice without such a license should be guilty of a misdemeanor. In other words, in most states during this period in U.S. history, there were no criminal penalties associated with practicing medicine without a license. (There were however, statutes penalizing fraud and misrepresentation that were applicable to all business activities; if one claimed to have training as an M.D., and did not, such fraudulent claim has always been recognized as being unlawful.) Even these acts were cautiously debated in the state legislature of North Carolina, as many legal experts of the day cautioned that such acts would violate the equal protection clause of the 14th Amendment, and would also violate the section of the North Carolina Constitution prohibiting monopolies and prohibiting exclusive privileges and emoluments.
Licensing may not arbitrarily regulate private business, under the guise of protecting the public

In summarizing its justification for reversing the conviction of Biggs, the court states

In the cure of bodies, as in the cure of souls, 'orthodoxy is my doxy, heterodoxy is the other man's doxy,' as Bishop Warburton well says. This is a free country, and any man has a right to be treated by any system he chooses. The law cannot decide that any one system shall be the system he shall use.

and quotes a decision in a U.S. Supreme Court case, Lawton v. Steele, concerning the proper exercise of the police powers:

The Legislature may not, under the guise of protecting public interests, arbitrarily interfere with private business, or impose unusual or unnecessary restrictions upon lawful occupations. In other words, its determination of what is a proper exercise of its police power is not final or conclusive, but is subject to the supervision of the courts.

Use of the dreaded title "Dr." and claims to treat diseases

During the period following the Biggs ruling, other courts have limited and reduced the applicability of State v. Biggs. While many of its principles concerning due process and equal protection are as relevant today as they were in 1903, many courts have severely restricted the ability of non-medical health practitioners to use the title "doctor" or "Dr." in the context of health care. In State v. Bain (1954) the Montana Supreme Court upheld Bain's conviction for practicing medicine without a license. Bain, a physiotherapist, referred to himself as "Dr. Bain" in all his letters, advertising, and interaction with patients. He advertised himself as a physiotherapist, heart specialist, and general practitioner, and told the public that he treated diseases and ailments of the human body, particularly of the heart, by prescribing and using physical agents such as light, heat, cold, water, electricity, and massage. These claims were apparently too blatant for the court to not consider as the practice of medicine, and Bain’s conviction was upheld. Historically, the State v. Biggs ruling is important for its clarification of principles of law, but can no longer be cited as legal justification for non-medical practitioners to use the title "doctor" or any of the other medical phrases we have already discussed, because medical practice statutes have been considerably amended since then.

Consistent with the decision of State v. Bain, Reeves v. State (1927) was another case of an alternative health practitioner convicted of practicing medicine without a license solely on the evidence that he referred to himself as "Dr." in the context of providing health care, advertising his services as "Specialist in Chronic Diseases". His conviction was upheld by the Criminal Court of Appeals of Oklahoma.

The case of People v. T. Wah Hing (1926) illustrates the prosecution of an ethnic Chinese herbalist, unfamiliar with the legal significance of English words, and who was convicted primarily on the basis of his use of the word "medicine" to describe the herbs he dispensed and the word "doctor" to refer to himself. One of the witness's testimony illustrates the gist of the prosecution's case:
A third witness testified that she was present in the McBride home on one occasion when the defendant called there and remained for 15 or 20 minutes; that Mrs. McBride 'told the defendant she was awful sick'; that he 'tried Mrs. McBride's pulse' and 'gave her a dose of medicine'; that he left three kinds of medicine and gave the witness directions 'how to give this medicine'; ...and that he was addressed as 'Dr. Hing' while there and 'didn't say anything about' the use of the word 'doctor.'

The above dialog quoted from the court record reveals that if an herbalist is addressed as "doctor" by a client, and if he then fails to correct the client and clarify that he is not a doctor of medicine, this, also, may be used as prima facie evidence of practicing medicine. The court record continues to show numerous occasions on which "Dr. Hing" referred to himself as such, and others on which patients called him "Dr. Hing", as in the following testimony:

...on that occasion a 'colored lady came in and says: "Dr. Hing?" He says: "Yes." She says: "I have pains in my stomach; I would like some medicine." ... Dr. Hing says: "I am busy now; you come back after a while; I'll fix you up."

The California appeals court affirmed the conviction of the lower court on the totality of such evidence. Unfortunately, Dr. Hing did not recognize the terrible significance of "doctors" and "medicine". If his case was typical, he may not have even recognized the significance after the trial, for the judges and attorneys go about much of their business without revealing principles of law and mechanisms of legal procedure to either the jury or to the defendant, unless the court deems it necessary.

A key element of the practice of medicine is the diagnosis of disease and the claim to cure and relieve such illness or disease. According to American Jurisprudence •[12]•,

Diagnosis of the patient's symptoms to determine what disease or infirmity he is afflicted with, and then to determine and prescribe the remedy or treatment to be used in attempting to cure him, have been said to be necessary elements of the practice of medicine or surgery.

In Frank et al. v. South et al. •[13]• (1917) the Kentucky Court of Appeals ruled that the administration of anesthetics by a nurse under the direct supervision of a licensed physician was not the practice of medicine, since the nurse performed no diagnosis nor did she claim to cure any disease by her actions; her duties were confined to the carrying out of routine instructions from the doctor, and even though considerable judgment may be involved in the carrying out of the nurse's duties, this does not constitute diagnosis. In State v. Rolph •[14]• (1918) the Supreme Court of Minnesota ruled that the act of diagnosing an illness itself constituted the practice of medicine, regardless of whether any treatment was given for the condition. In this case, a chiropractor who advertised herself as "Dr. B. Elizabeth Rolph", who advertised that her services would be available in a certain community, diagnosed a particular patient who came to her for help as having an abdominal tumor, for which she recommended seeing a surgeon to have it removed. Although Dr. Rolph provided no treatment herself for this condition, she was nevertheless convicted of practicing medicine without a license, and her conviction was upheld by the Minnesota Supreme Court.

The statutes governing the practice of medicine, while sharing many common attributes among the various states, also may vary in their specific wording. The case of Foo Lun v. State •[15]• (1907) highlights the importance of knowing the specific statutes governing medical practice in the state where an individual engages in an alternative health practice. A lower court had convicted Foo Lun of practicing medicine without a license on the basis of evidence consisting of one incident of an undercover agent going to Foo Lun's office and requesting "medicine" from him. On the agent's testimony and that of the county clerk that Foo Lun had no license to practice medicine, he was thereupon convicted. The use of such undercover agents to gather evidence is common when a local medical board has determined that one may be practicing medicine without a license. Foo Lun appealed to the Supreme Court of Arkansas, who determined that since the statutes of Arkansas failed to explicitly define what the Legislature meant by the practice of medicine, the court decided to use a definition commonly applied by courts in the absence of such explicit definitions. At that time, section 5243 of
Kirby's Digest was used for such definition:

...any person shall be regarded as practicing medicine, in any of its departments, who shall append M.D. [Latin: Medicinae Doctor] or M.B. [Medicinae Baccalaureus] to his name; or repeatedly prescribe or direct, for the use of any person or persons, any drug or medicine or other agency for the treatment, cure or relief of any bodily injury, deformity or disease. [italics added]

Foo Lun's conviction was reversed because the definition applied by the court included the act of repeatedly prescribing medicine; the lower court had only proven a single incidence, even though it was likely that he repeatedly engaged in such activity, by the fact that he had an office and charged for his service.

Louisiana State Board of Medical Examiners v. Craft •[16]• (1957) is another case where statutes narrowly defining the practice of medicine provided a successful appeals argument for Craft, a massage practitioner. These statutes defined the practice of medicine as

the holding out of one's self to the public as being engaged in the business of diagnosing, treating, curing, or relieving any bodily or mental disease, condition, infirmity, deformity, defect, ailment, or injury in any human being other than himself whether by the use of any drug, instrument or force, whether physical or psychic, or of what other nature, or any other agency or means; or the examining either gratuitously or for compensation, of any person or material from any person for such purpose whether such drug, instrument, force, or other agency or means is applied or used by the patient or by another person; or the attending of a woman in childbirth without the aid of a licensed physician, surgeon, or midwife; or the using of any other title other than optician, to indicate that he is engaged in the business of refracting or fitting glasses to the human eye.

The court ruled that merely suggesting to another that he take an aspirin to relieve a headache is not practicing medicine under the meaning of the statute, unless one holds oneself to be publicly engaged in the business of diagnosing, treating, or curing illness. The incidental actions of diagnosing and treating, themselves, are not evidence of practicing medicine; for example, a massage practitioner who incidentally recommends diet and exercises for the relief of symptoms is not practicing medicine unless she also holds out to the public that she performs diagnosis and treatment of illness as a part of her business. Many state courts now interpret medical licensing statutes more narrowly, similarly to the Craft decision, to prevent the licensing laws from being used to harass individuals who are clearly not practicing medicine.

The case of Shelton v. State •[17]• (1964) reveals how a Texas chiropractor advertised and described his own work in such a manner as to successfully defeat a lower court's attempt to convict him of practicing medicine without a license. Shelton, a licensed chiropractor, was judged by the Texas Court of Criminal Appeals not to have unlawfully practiced medicine, primarily because he had never publicly professed to be an M.D., a physician, or a surgeon. In addition, he advertised his business as offering the following: "Corrective Exercise / Health Instruction / Toxin Elimination Physical Culture / Rational Fasting / Body Moulding / Natural Diet / Sun Bathing / Rest. Not a Medical Institution. NO Medicines, Drugs, Serums, Vaccines, Surgery." Besides this printed disclaimer, Shelton successfully avoided all the prohibited jargon, and his only dubious statement that hinted of a claim to cure illness, as testified by an undercover agent who claimed to have an ulcer, was that "he could get rid of the ulcer if I would stay in this establishment for six weeks." Shelton testified in his own behalf that he had never claimed to anyone to be an M.D., physician, or surgeon, and that he believed the human body could cure its own ills.

The Shelton case serves as a reminder that even licensed, non-physician health care professionals are at risk of being prosecuted for practicing medicine without a license if the state statutes governing their professional scope of practice do not include the authorization to diagnose and cure illness. The precautions these professionals must follow are the same as for unlicensed professionals. Shelton's mode of advertising and presenting himself to his clients serves as a model for
alternative practitioners to follow, with the exception of his risky claim to be able to "get rid of the ulcer".

Summary

In summary, the judicial history of prosecution of alternative health care providers reveals the overwhelming reliance of the courts on the manner in which a defendant describes his or her own practice, and the specific words used. The rights of alternative practitioners to practice their art has rarely been questioned by the courts. Rather, they have often been prosecuted for using words and language reserved by the medical profession to exclusively describe their business to the public. There is much logic in this approach, which is an extension of the statutes governing fraud and misrepresentation. It has always been considered unethical and unlawful for one to lie to the public about one's training and abilities.

The problem is that, while the legislatures and courts claim that their only purpose is to prevent the public from being deceived as to the qualifications of health care workers and to establish high standards for a complex profession responsible for people's life and health, in reality, economic and political forces have subverted this goal and have maneuvered public health policy to ensure increased profits. These nefarious forces subvert the legislative and judicial processes by legal trickery and word games. The lives and livelihoods of many honest and well-meaning alternative health practitioners have been destroyed by such trickery. On the other hand, many alternative practitioners have fallen for the temptation of enhancing their status in a patriarchal, authoritarian society by awarding themselves titles such as "doctor". It is the intent of the author to educate alternative health providers about the true and valid purpose of the law, to point out to them the nature of their rights, and to overcome the power of the word tricksters and political con men by deflating their games.

There will always be those who believe in the unlimited powers of an authoritarian government to protect people from abuse by unqualified or unscrupulous practitioners and by outright charlatans. History, however, reveals a different story: the abuses of government regulatory bureaucracies often greatly exceed the abuses by individuals. The potential abuses of herbal products will be with us as long as plants and fallible people coexist on the earth. Experience has shown that this problem cannot be regulated away. People throughout the world will continue to use herbs, even when their rulers decide to outlaw or restrict the use of herbs. Instead, it seems best to follow the advice of Thomas Jefferson:

I know of no safe depository of the ultimate powers of the society but the people themselves: and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform them.

Additional sources of information


Update, 2013 March

In updating this 1996 article for print publication, I chose to leave the body of the original article unchanged. Over the past two decades, its information and ideas have been confirmed in multiple ways that illustrate how these can be applied practically.

Personal experiences that motivated this article

In the late 1980's I had started a practice in clinical Chinese herbology in Boulder, Colorado and had built it up to a nearly
full time schedule within several years, primarily by means of public classes on various health topics and how Chinese herbal principles could be applied to understanding herbs, food choices, and problems of environmental toxicity. Within a short period, other teachers joined me and together we established a school called the Colorado Herbal Institute. I had briefly pondered calling the school something like the Colorado School of Herbal Medicine, but, fortunately for me, brevity won out.

At that time, being relatively ignorant of legal matters, I made incidental references to "herbal medicine" in our brochures and course catalogs; a subscriber mailed me an article written by a chiropractor claiming that use of the words and phrases "medicine", "diagnose", "treat disease", "doctor", "prescribe herbal medicine", etc., by an alternative health practitioner could result in risk of prosecution for practicing medicine without a license. No legal or other references were cited in the article, and I was tempted to throw it away. The idea that one could be guilty of a crime merely for using certain words struck me as absurd, but my curiosity had been aroused.

At about the same time, a fellow herbalist had introduced me to a former lawyer who was currently making a living as an organic vegetable farmer. He had ceased practicing law in disgust and quite generously explained to me the various corruptions and deceits rampant in the legal profession and in the American justice system and how to protect myself by doing my own legal research. Thus began my descent down the rabbit hole.

What did the standard legal encyclopedias, like *American Jurisprudence*, have to say about what constituted the crime of practicing medicine without a license? Upon reading the entry under this topic, it became evident that the vast majority of prosecutions for this crime were based almost exclusively on the words that the practitioner used to describe his or her practice, the words used in conversations with clients, and even the words that clients used, such as referring to the practitioner as "doctor", followed by failure of the practitioner to correct them where appropriate — such as making a disclaimer that one is not a licensed medical doctor. In the vast majority of such court cases, the client had not complained of any damages or of inferior service, so under the common-law principle of *corpus delicti*, the body of evidence of damage, it would seem puzzling that such prosecutions could be justified. There is a long history in law of many cultures that lying or deceit with respect to commercial activity constitutes fraud, and it is on this basis that public prosecutors, representing "the State", prepare indictments of non-medical alternative health practitioners unfortunate enough to use words that the courts have ruled can be considered *prima facie* evidence of practicing medicine. However, in many such cases, the clients or customers are not the ones claiming they had been deceived or defrauded, and "the State" proceeds on the basis of technical violation of the statutes. That is certainly true in the case of prosecutions in which the defense calls to the witness stand many satisfied clients of the defendant, for according to judicial precedent, that is all irrelevant; it all boils down to whether the prohibited words were spoken in the absence of a proper disclaimer.

Within a year after receiving that initial article, an internationally renowned and respected herbalist, whom I will not name here, was prosecuted for practicing medicine without a license. The news of this rapidly spread fear and panic among the local alternative health community, because the news reports and word on the street strongly implied that it was the practice of herbology itself that was illegal, and many practitioners deduced from this that if a widely respected herbalist could be brought down, then no alternative practitioner would be safe. At least that was the combination of overt and implicit messages emanating from the State Medical Board and prosecutor's office. However, friends and colleagues knew that the herbalist had, over a period of many years, routinely encouraged his clients to call him "Doctor" and frequently used words and phrases such as "prescriptions of herbal medicine", "traditional diagnosis", etc. Very few of the practitioners, including the prosecuted herbalist, to whom I presented my compiled research could believe that mere words were at the heart of this issue, insisting that the very practice of alternative health care was being threatened.

During the next decade, in studying U.S. cases of prosecutions for practicing medicine without a license, several patterns emerged:

- In prosecutions for practicing medicine without a license, the court transcript will reveal the crucial facts — that
prohibited words were used without a proper disclaimer, yet this legal basis for the prosecution is rarely explained to the convicted practitioner or to the media. Instead, there is a conspiracy of silence among judges and prosecuting attorneys to give the impression that it is the activity itself that is the crime, and not the words used to describe the activity. Yet in the vast majority of such cases, no prohibited activity, like performing surgery or injections or administering legend drugs available only by prescription, is involved (most alternative practitioners have the common knowledge and good sense to avoid ever doing any of these things); instead, in almost all such cases, the convicted practitioner had violated at least several of the guidelines in this article on multiple occasions. Is asking someone about their symptoms or looking at their tongue equivalent to the act of diagnosis? Legally, it is only if you call it that or act in a manner that makes it clear you consider it equivalent to medical diagnosis. Instead, a simple disclaimer will usually suffice stating that you are not a doctor/physician and that your services shall not be construed as medical diagnosis, treatment, or cure of disease, or as a substitute for those services, which can only be performed by a licensed physician.

- Prosecutions are often initiated for economic and political reasons, which is why so many alternative practitioners with satisfied clients and clinical success are targeted. It is these people who are the biggest threat to the pharmaceutical-medical-industrial complex, not the charlatans. To be sure, overt charlatans must be included in the dragnet or this corrupt system would be exposed for the fraud that it is, but protection of the public safety is not its primary purpose. A dentist friend who had contacts on the state medical board informed me that the board maintained an unofficial and secret watch list of all alternative and unlicensed health practitioners whose annual income exceeded a specific value, and such people were closely scrutinized for violations; to gather evidence, undercover agents would often be sent into the field to entrap practitioners, frequently posing as a married couple — one partner would pretend to be seeking help with a health problem and the other "spouse" would be there to act as a witness. Years ago, I suspected that I had become the target of such an operation: two people posing as a man and wife couple came to my office asking about my services, and after a few minutes the man asked me if I could guarantee a "cure" for his specific medical condition. After replying that the law prohibited me from making any such claim, he insisted multiple times that I promise him a cure, and if I refused, I must therefore be a charlatan. After informing them that they were behaving exactly like undercover agents determined to entrap me, I insisted that they leave immediately, or I would file a complaint with the county sheriff's office. Interestingly, they did not deny my accusation and immediately departed.

Several years ago, Paul Bergner, who is a fellow herbalist and friend, informed me that he had been investigated by the Colorado Medical Board, probably because he had been operating a school called the North American Institute of Medical Herbalism. In spite of this, he was never prosecuted, and we both agreed that the primary reason for this was the fact that he consistently issued written disclaimers to all his clients. Paul generously agreed to write a short preface to this article, which I appended to it in 2006. After carefully rereading my own article, I realized that a simple disclaimer would likely be an effective means of overcoming a prosecutor's prima facie case, which is usually comprised of evidence of the practitioner's use of specific words. This was further confirmed by my experience several years later as a health freedom activist working with a group in Montana to promote a Health Freedom bill in the Montana legislature.

In 2009, a draft of a Health Freedom Bill for Montana was prepared by the National Health Freedom Coalition. Working with other alternative practitioners throughout the state, we had a lot of support for the bill in the legislature, but it came under heavy attack by what many libertarians refer to as "nanny-state" Democrats, who believe that it is the duty of the state to micromanage people's lives and prevent them from making informed decisions about how they manage their own health. In what was clearly a party-line vote, opponents to the bill were almost exclusively Democrats, whereas the libertarian influence in our state is almost exclusively represented by Republicans who supported the bill. (The political climate in other states may be different, I'm merely reporting on the situation in Montana.)

After first reading the draft bill myself, I was struck by how similar its provisions were to the rules and guidelines already established by courts throughout the U.S. and as outlined in this article, including the preemptive issuance of disclaimers by unlicensed alternative health practitioners in order to counter a potential prosecution's prima facie case. In statutory
law, there can be various objectives: (1) to alter existing public policy so as to achieve specific changes and outcomes, presumably for the public good, but often, in reality, to benefit professional groups and industries who exert their economic and political influence on legislators via campaign donations, media, manipulation and misrepresentation of scientific research, and occasionally covert means such as blackmail and bribery; (2) to restate existing common law (judicial precedent) in order to clarify confusion among the public and/or to resolve disagreements among the courts. It became clear to me that the Montana Health Freedom Bill fell into the second category and would serve a useful public purpose, because so few people, including both legislators and alternative practitioners, were aware of their rights and responsibilities according to pre-existing judicial precedent. After all, I had to spend over several hundred hours of legal research to convince myself of the validity of that original article sent to me by a subscriber, and many readers, including fellow herbalists, have since then expressed skepticism that what I wrote was valid and yet have also been unwilling to do their own research and come to their own independent conclusions. (Too many people make important decisions on the basis of emotion, bias, and he-said she-said, never delving beneath surface appearances.)

When it became clear that Democratic Party opposition to the bill would either kill it or demand significant modifications, legislative supporters for the bill asked for my advice on how to proceed, and I advised them that, in my opinion, because the original bill represented what was already existing common law, or pre-existing judicial case law, that it would be better to kill the bill than to allow tampering by nanny-state legislators looking for ways to intrude further into the lives of alternative health practitioners.

Victimless statutory crimes and their role as tools in the rise of corporate and government corruption

A positive outcome of the failed attempt to pass a Montana Health Freedom Bill was that our efforts resulted in many more legislators, alternative practitioners, and members of the public becoming aware of the whole issue of common law rights and how we are all in danger of losing them from ignorance and inaction. During my high school years in the 1970's, the curriculum included an entire semester course devoted exclusively to a study of the U.S. Constitution and its history. Sadly, for the past few decades such courses have been expunged from many public schools, and the population at large is woefully ignorant of their rights. America has more people in prison, per capita, than any other nation in the world. Many of these are victims of a system of statutes and regulations, Babylonian in their complexity, that has sentenced them for "crimes" without victims where no one was damaged. Many of our treasonous politicians would have us believe that the government is now authorized to torture and kill American citizens without trial, to imprison or fine them for selling raw milk to their neighbors, for growing a garden in their front yard, for failing to mow their lawns or vaccinate their children, for consuming prohibited substances, or for violating any one of a hundred thousand other state and federal statutes — usually under the guise of "keeping the public safe" from terrorists, from disease, or merely from inconvenience. As recently as the 1960's, English dictionaries listed the definition of fascism as a system of government in which private business and corporations colluded with government to gain economic advantage; after the 1960's, this definition began to disappear from many dictionaries, substituted with a more nebulous definition, like "a tyrannical system of government", thus concealing the very means by which governments may become tyrannical. Complex statutory regulation almost always benefits large corporations the most, because such corporations can afford to pay political lobbyists, bribe legislators, and maintain the huge legal departments required to maneuver through the complexity, to take advantage of loopholes, and to disadvantage their smaller competitors. The FDA is the quintessential example of this put to practice:

- Over a hundred thousand deaths occur annually in the U.S. for properly prescribed (at least according to standard rules of medical practice) pharmaceutical drugs; [18a-18c] [19]
- Food additives, like Aspartame, and fluoridated drinking water that cause slow death from chronic disease are ruled by the FDA to be safe;
- Herbs and supplement manufacturers are intensely scrutinized when even one case of illness is publicized or reported, in spite of the miniscule number of adverse incidents reported annually — during many years, not even a single death has been reported for herbal products, and the vast majority of reported poisonings from plants are
from toxic ornamental house plants. [20]•[21a-21b]•

The blatant corporate self-interest, double standards, and hypocrisy in all this should be apparent to all, yet even some of my fellow herbalists continue to attempt justifying the increasingly intrusive FDA regulations of herbs and supplements. Although there have been abuses in the supplement industry, regulation by a government agency that has repeatedly demonstrated callous disregard for public health is not the way to remedy these problems.

Though some extremist libertarians would abolish most regulation of corporate activity, the American Founders made clear distinctions between corporations, which are artificial legal constructs created and chartered by the state for the public benefits that they may provide, and natural persons, for whom conscience and normal social relations act as self-regulating influences. Corporations, being artificial constructs, do not possess a conscience; for that matter, neither do government agencies, and a growing number of Internet journalists have commented on the proliferation of psychopathic behavior among corporate executives and government bureaucrats. Human beings who have been clinically determined to lack conscience are labeled as psychopaths/sociopaths, and it has been recognized by many economists that corporate behavior during the 20th century has become increasingly psychopathic in nature. During the first century following the War for Independence, regulation of corporations was commonly understood to be necessary to prevent potential abuses that are inherent in any form of concentrated, collective economic power. Our contemporary dilemma is that the distinction between corporate activity and commerce among private citizens has been lost due to a series of unfortunate judicial precedents that effectively granted corporations the status of "persons" under the 14th Amendment, with constitutional privileges and immunities equivalent to the rights of natural persons and, in some cases, even exceeding them.

The purchasing of politicians and professional credentials and the disintegration of health care education

As public knowledge of our system of Constitutional government has yielded to increasingly overt fascism and ignorance, even many "alternative" health professions have succumbed to the temptation to influence state legislatures to protect economic turf. During my involvement as a health freedom activist, I have been appalled at outright psychopathic behavior among political lobbyists and ambitious professional groups; professions that have engaged in legislative abuses and bullying tactics include massage therapists, naturopaths, acupuncturists, and dieticians. Thankfully, many herbalists seem to have strong libertarian leanings, and resistance to regulation and licensure of our profession continues to remain strong. In the good old days, alternative health practitioners experienced such bullying almost solely from the medical profession. Now it seems that many of the so-called alternative professions have joined this bullying free-for-all by lobbying state legislatures to create protected professional monopolies and to criminalize their potential competition.

Many libertarian and free-market economists, including Ludwig von Mises, Murray Rothbard, and Milton Friedman, have observed that legislative monopolies frequently result in increased costs to consumers, diminished choices, and reduction in quality of service. Over my own lifetime, all these trends have resulted in relentless deterioration of our health care system. During the 1950's, my parents and close relatives frequently payed for medical and health services out of pocket; typical services and fees constituted a mere fraction of the total cost of living, much less than they are now after decades of expansion of government licensing and regulation, increased involvement of insurance companies, and government health benefit programs like Medicare and Medicaid that remove any incentives by consumers to control costs and to act responsibly in dietary and lifestyle choices. Americans now pay more per capita for health care than any other nation in the world, yet our quality of life and nearly all statistical measures of health are consistently ranked near the bottom of all industrialized nations.

Meanwhile, almost all the health care professions, both medical and alternative, have been eager to join the parasitic regulatory-economic system that has been directly responsible for this disintegration. Having been involved in providing Chinese herbal education to health professionals for several decades, I have seen this disintegration demolish educational
standards. Traditionally in China and much of Asia, Chinese herbology was learned by apprenticeship with experienced herbalists, and even today many of the best herbalists come from family lineages of herbalists in which the older generation passes on the family tradition by apprenticeships offered to younger family members who demonstrate aptitude. In the West, however, state legislatures have generally made apprenticeship options difficult or impossible within regulated professions, replacing this time-tested system with the enforced monopoly of mediocrity provided by accredited schools. Similarly, many state legislatures have effectively waged war on home schooling families, even though the average performance of home-schooled children consistently exceeds that of students of both public and private schools; the mere existence of such young people is an embarrassment to administrators of the pathetically dumbed-down public school system.

Combined with the relentless dumbing down of the American educational system, this enforced system of mediocrity has led to a general cynicism that students, faculty, and school administrators, in moments of candor, will admit is seriously flawed. It has become common for students to view the process of education as the equivalent of purchasing credentials. A few students in my own classes who have failed to turn in required homework and failed final exams have demanded, nevertheless, a certificate of completion because they “did their time and paid their money”. Continuing education course requirements for health professionals are frequently a joke; a close colleague once commented to me that attendees would sometimes sleep through his classes (though I can attest that this man's courses were anything but boring — he is one of the most knowledgeable herbal scholars I know) and then have the audacity to demand a certificate of attendance at the end. How is this any different from purchasing titles of nobility, which wealthy people can now obtain in the UK for a fee, bestowing upon even dissipated alcoholics, who inherited their wealth and wish to acquire some status, the legal right to call themselves the Baron and Baroness So-and-So? Just as such purchases of titles have been rightly ridiculed by sensible people, so should we all question the purchase of worthless college degrees and professional credentials for which the educational standards have been steadily dropping.

What a true free market in health care and health care education would look like

In conclusion, following are some speculations on what a true free market in health care might look like in America, if we could somehow wipe clean all the corruption, influence peddling, and greed from the system:

- If mandates imposed by government regulation, subsidies, and health insurance companies were removed and people could freely choose how to spend their health care dollar, the pharmaceutical industry and its sales force, the medical profession, would quickly collapse. A majority of Americans already diagnose their own illnesses and seek out potential natural remedies by doing Internet searches. Several studies have suggested that their performance may be equivalent to or better than the advice that a medical professional can provide in a typical rushed appointment of 8 minutes or less. The dirty secrets of corrupt and falsified drug research, toxic side effects of many drugs, and massive health care fraud are already being widely disseminated through alternative online media, and a true free market in health care and health information would accelerate this trend into a sudden avalanche.

- Such a collapse would not necessarily become a boon for existing alternative practitioners nor for the schools that train such practitioners. The mediocre educational standards that are enforced by the monopoly of accredited schools would disintegrate as rapidly as the pharmaceutical industry. What about all those bright young people who had previously desired to become medical doctors? With lowered incomes, burdensome regulation, insurance companies increasingly dictating standards of care, and recently, Obamacare, there is already a mass exodus of physicians from the system who are choosing to retire early; many physicians all over the nation are actually going bankrupt. The former status and perceived glamor of the medical profession is vanishing as potential medical students awaken to stark reality — high student debts from medical school, low job satisfaction, high stress levels, and higher suicide rates than most other professions. Will these bright young people choose to learn natural modes of health care like herbology, nutrition, meditation, light and sound therapy? If so, will they choose to attend mediocre schools, or will they choose new educational alternatives that will likely proliferate once the burdens of
crippling and dysfunctional regulation are lifted? Many of those currently certified and licensed by a monopoly system of enforced mediocrity will be swept aside once a true free market is established in health care services, education, and certification.

- Common law standards of criminal guilt will be reestablished. People who have been damaged as a consequence of fraudulent medical research, pharmaceutical industry corruption, and international genocide via forced vaccination with knowingly contaminated vaccines will have their day in court. We may actually witness industry and government psychopaths be convicted of crimes against humanity, torture, and mass murder, which would be a welcome change from the current system that protects the worst corporate and government psychopaths ("too big to fail"?) while convicting many Americans of victimless statutory crimes.

References