

Protecting Your Access to Health Care Freedom

An interview with Diane Miller, JD, by Spirit of Change publisher Carol Bedrosian

Safe harbor practitioner exemption laws allow holistic professionals to practice freely in the public domain, while giving consumers maximum freedom of choice in health care options.

The right to freely live and work as you choose is enshrined as the bedrock of our free society in the Constitution of the United States. The State may not restrict your liberty — nor do you need permission — in the pursuit of vocation or happiness as long as you are not causing harm to others or defying existing laws of order. When a risk of harm is identified, it is the State's responsibility to issue laws and restrictions that protect the public welfare. This is the basis for many types of professional licensing mandated by individual states for services that have been determined to carry a risk of potential harm to the public. Absent this risk, states have no constitutional basis for demanding licensure of personal livelihoods.

All fifty states require licensure for the legally and broadly defined practice of medicine. However, these broad definitions can technically deny an unlicensed person, which includes many practitioners in the complementary and alternative health care spectrum, the right to deliver any type of healing service to the public without fear of retribution for practicing medicine without a license. And in some states that can even include you, Grandma, and your famous chicken soup!

Diane Miller, JD, is an attorney and Legal and Public Policy Director for National Health Freedom Coalition (NHFC) and its sister lobbying organization, National Health Freedom Action (NHFA). For well over two decades, Diane has worked to protect the right of all people in the United States to access all health care information, services, treatments and products that they deem beneficial for their own health and survival. To date, she has worked with people in thirty states to address their state laws surrounding the practice of medicine and delivery of health services.

As the co-moderator of the US Health Freedom Congress and as an educator, lobbyist, and advocate for collaboration, Diane's work involves state, national, and international health freedom advocacy including: promoting safe harbor exemption state laws for homeopaths, naturopaths, herbalists, and state laws for medical professionals to practice holistic and integrative care; protecting access to dietary supplements and truthful health claims about them; advocating for laws that mandate labeling of GMOs and other toxic substances; protecting consumers rights to decline vaccines or other dangerous medical treatments, and the rights to choose non-toxic health options; protecting access to raw milk, organic food, and natural resources; protecting Mother Earth and her natural resources; and finally supporting leaders who are working to impact the decisions of international forums in order to protect health freedoms around the world. She is the author of *The Principles of Health Freedom*.

"I believe that laws and customs must be carefully reviewed, revised, and even repealed if necessary, and new ones created, to reflect the continual development, evolution, and spiritual maturation of a people," notes Diane, as she discusses medical licensing laws in this interview.

Carol Bedrosian: How did you get involved in writing health freedom legislation?

Diane Miller: After receiving my medical technologist degree, I decided to go to law school. I was asked to be on a case of a farmer who was charged with practicing medicine without a license in Minnesota. He was helping people by using colostrum from his dairy herd, and he was shut down for practicing medicine without a license. I was asked to be on the case to read the medical records of that case, and eventually I became co-counsel as it

went forward. The farmer had cured Congressman Berkley Bedell of Lyme disease and other issues, and it was a very visible case because there were so many people who had been cured of many ailments, including cancer.

I was shocked to see how they could shut a farmer down for practicing medicine without a license. So I looked to see what that law was and I eventually found out that in almost every state, the definition of the practice of medicine includes almost all healing. Anything you do to prevent, cure, treat, ameliorate any disease, wound, fracture, deformity or immediate defect for any person in many states is considered the practice of medicine — and it has criminal charges with it if you're not a licensed medical doctor.

The law also includes an exemption list of people who would be exempt from those criminal charges, such as other licensed professionals — nurses, chiropractors, etc. In that exemption list, the only unlicensed public domain healers are included by state; some states have an exemption for prayer, spiritual healing. Iowa has an exemption for people who heal with water from the springs of their farm. Massachusetts has an exception for clairvoyants. So, literally, this farmer could have been charged just for helping people with anything from his farm, and I was really shocked about that. I said that's just wrong, that's a wrong law. So we fought for his freedom and we got two hung juries working as pro bono attorneys, and they were going to go forward with a third trial when the state decided to withdraw all the charges.

Carol Bedrosian: Why did they withdraw the charges?

Diane Miller: My understanding is that it may have been because they had already spent over a million dollars trying to prosecute the farmer and we kept defending him and there were a lot of people who were angry that they were prosecuting this farmer who wasn't hurting anyone. Since the prosecutors always have discretion as to what cases to take forward in the public interest and since they had lost twice, I believe that they just decided to withdraw the charges.

When the jury members saw the law, they were very confused. One of the jury members was a schoolteacher who worried if somebody got hurt on the playground and she put a Band-Aid on their knee she might be charged criminally. Some people said that it would mean Grandmas giving out chicken soup would be criminally charged. The law was very, very broad for unlicensed practitioners, which most of the culture used to be before doctors became licensed in surgery and drugs. So I looked at that law, and when I found out it was almost in every state, I said let's change that law in Minnesota. And it was a very big challenge. I'm writing a book now about how we helped to change that law in Minnesota.

With the national work that we now do, we have supported groups in states that have also gotten together to change that law. There are now ten states that have what we call “safe harbor practitioner exemption” laws. This new type of legislation is not like going and asking the government for permission to do a healing act like a licensing law does in order to do a dangerous act. It's a different model that says as long as you're not doing anything dangerous, you're free to practice in the public domain, provided you avoid doing any of the prohibited acts listed in the statute, and you also provide certain required disclosures that define who you are, what your training is, and notice that you are not licensed as a conventional health care professional. The new laws create a safe harbor box that an unlicensed healer in the public domain can practice in. And if you go outside of that box you could be charged under the regular criminal act of practicing medicine without a license.

Carol Bedrosian: How many states you have worked with in passing some kind of a safe harbor act?

Diane Miller: We have worked with about thirty states. There are a number of states in process right now. Ten of them have passed. Two of those ten were historical; there were old laws on the books already that were partial exemptions. Minnesota was the first that did a full

exemption.

Carol Bedrosian: What does a full exemption include?

Diane Miller: It would include the broad domain of complementary and alternative health and healing practitioners that are not state licensed health care professional as long as they were avoiding the prohibited acts and giving out all of their disclosures.

Carol Bedrosian: What are prohibited acts?

Diane Miller: The prohibited acts list is developed by the people passing the bill and the legislators in that state. Each state is very different as to what is on that prohibited acts list. Minnesota has a list of 28 prohibited acts. An unlicensed complementary and alternative health care practitioner can't puncture the skin, they can't give out prescription drugs. They can't do a chiropractic adjustment. In Minnesota we include ethical considerations such as a practitioner can't have sexual contact with a client. So, there are a number of prohibited acts in Minnesota. Most states have a prohibited acts list. The states that are working on the legislation develop their own prohibited acts list to make sure that unlicensed people are not doing things that their state would consider to pose danger to a client.

Carol Bedrosian: What has the effect of this safe harbor law been in Minnesota?

Diane Miller: I love it. It's almost 20 years now that we've had the law.

Carol Bedrosian: Have people been brought forward on charges of practicing medicine without a license since then?

Diane Miller: Not that I am aware of. All of the unlicensed people work under Minnesota 146A, or as we call it, the Complementary and Alternative Health Care Practice Act. They don't have to get permission to practice before they practice. It's not like a licensing or registration statute. They are practicing in the public domain and they're practicing within the safe harbor parameters. If they go outside the safe harbor box, that is when they could be charged or disciplined by the Minnesota Department of Health.

Carol Bedrosian: But basically it's people who are not causing harm.

Diane Miller: That's right. If you're not posing imminent risk of harm to the public, there is no reason for you to need to get permission to practice your vocation.

Carol Bedrosian: So, for instance, a Reiki practitioner poses no imminent risk of harm.

Diane Miller: Right.

Carol Bedrosian: Or a meditation teacher or a yoga teacher or many of the alternative therapies that are unlicensed.

Diane Miller: There's a lot of difference between education and treating a person. If you're a yoga teacher and you're teaching a class, that's education and this bill does not apply to or restrict education and educators.

Carol Bedrosian: Did you find states that did not have the practicing medicine without a license law?

Diane Miller: No, I have not. Every state that I have researched has a law that you cannot practice medicine without a license. And the definition of the "practice of medicine" is different in every state. All the doctors are licensed and they have a definition of what practice of medicine means. Some of them are more narrow, some are broader.

Carol Bedrosian: What about massage?

Diane Miller: Massage is licensed in some states. In Minnesota we have always opposed massage licensing because we don't believe massage is dangerous and it should always be in the public domain under a safe harbor bill. We just have local licensing for some of the cities for massage.

The United States is really about people being able to practice their professions and their vocations and make a living in a free society. The states are responsible for keeping the public safe. So the states say, "Well if you want to do something dangerous then we need to put some restrictions on it." But if you're doing something like painting houses or mowing

lawns or whatever your vocation is, it is your livelihood. There are many people who have the vocation of healing that are not doing dangerous things. They're doing a whole host of complementary and alternative healthcare things. Homeopathy, traditional naturopathy, herbalism, qigong. They're giving out advice about food and nutrition.

So what we're trying to educate the public on is that there are a lot of vocations in the public domain that have to do with healing that should remain in the public domain and not be funneled into the dominant medical structure. The government does not have the constitutional right to demand licensing of any vocation that's not posing an imminent risk of harm to the public. The only time it can act in terms of setting up licensing statutes is when they think something is dangerous, because the state is the steward of the people. They don't give out permission and rights. The people have the right to do what they want to in their life and the only time the state can step in is when they're causing danger.

That's different than other countries where the monarchs gave a privilege for people to act. That's not how the United States was set up. We said people are free to act and then the government can act to serve the people if needed, when and if there's a problem. So, we are teaching the legislators that they should not demand licensing for things that are not dangerous. Many legislators don't know that.

It has become commonplace regarding the healing arts and professions to provide state licensure where the states set up administrative Boards and demand practitioners get particular education from particular schools, and put restrictions on all others that do not have that training, even when the profession is not causing any public harm. Some vocations move forward to seek licensure just so they can get government endorsement and insurance coverage. Constitutionally we do not think that is a valid reason why states can mandate licensing and make other people criminals. Instead of depending on their own academic and good reputation, some professions want the government to do the rubber stamp, but that's not what government is for.

The ten states that have safe harbors are wonderful examples of protecting access for consumers to these gentle yet powerful therapies where practitioners spend a lot of time with their clients. In Minnesota I can just pick up the phone and call a homeopath, an herbalist, a traditional naturopath, a shiatsu practitioner. I have a plethora of wonderful people at my fingertips and that's the kind of health care that some people use to keep well. The environment that the safe harbor practitioner exemption laws create in a state are very nurturing, yet they let a practitioner's credentials speak for themselves through the disclosures. For people who have maybe only had two weeks of herbalist training, when somebody wants to go to them, they have to disclose that. Someone else might be able to disclose I've been trained for 27 years in India.

Carol Bedrosian: That's for the consumer to do their own education, and like anything else that you purchase, you search out reviews ahead of time and do your research as to which product or practitioner you will choose.

Diane Miller: Our National Health Freedom Action organization is extremely supportive of having a safe harbor protection act in every state. I hope the legislators think it's a really great common sense solution, too.

The advocacy work of Diane Miller and staff at National Health Freedom Action in educating citizens of any state about passing health freedom legislation is funded by donation only. Please support this important work at www.nationalhealthfreedom.org.

Carol Bedrosian is the publisher and founder of Spirit of Change Magazine, New England's largest free holistic health publication. www.spiritofchange.org.