

Licensure Laws and Healthcare Part II

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Licensure boards have been investigating and disciplining both licensed and unlicensed healthcare practitioners for a very long time. This is not new; there is just more of it and more people know about it due to COVID-19. Following are two examples of enforcement actions taken by licensure boards against healthcare practitioners, one licensed and one unlicensed. As you will see, investigation and enforcement are for the purpose of ensuring compliance and eliminating competition. The process is onerous, heavy-handed, and expensive.

Dr. Bob Sears

In 2018 the Medical Board of California revoked the license of Dr. Bob Sears, an Orange County pediatrician. The reason for the revocation? Sears issued a vaccine exemption letter for a two-year-old child in 2016. The child's mother had told Dr. Sears that her son had a negative response to previous immunizations. The exemption was written without taking a full medical history of the child.

Sears denied wrongdoing, stating "Isn't it my job to listen to my patients and believe what a parent says happened to her baby? Isn't that what all doctors do with their patients? After all, I don't want a child to receive a medical treatment that could cause more harm. I am going to first do no harm, every time."¹

Sears decided to settle the case in order to avoid going to trial, which would have been prohibitively expensive. This involved 35 months of probation, which included these requirements:²

- 40 hours of continuing education per year in addition to the CMEs required for licensure renewal. Sears was required to pay for the courses and to submit them to the Board for approval.
- Ethics courses at his expense that were also to be pre-approved by the Board.
- Find and hire a physician to monitor his practice, who needed to be approved by the board. The monitor was required to submit quarterly reports to the Board during the probation period, and any expense associated with monitoring was to be paid by Sears.
- Sears was required to make himself available for interviews by members of the Board or its representatives with or without prior notice.
- And he was forced to reimburse the board for the expense of administering this supervision.

Sears is a well-known doctor who describes himself as pro-vaccine. He is the author of several books, including *The Vaccine Book: Making the Right Decision for Your Child*, in which he presents alternative vaccine schedules to the schedule recommended by the

Centers for Disease Control. He has publicly stated that parents are entitled to informed consent concerning vaccines.

Disciplining Dr. Sears put California doctors on notice: Writing vaccine exemptions might involve considerable expense and potentially even the loss of one's medical license.

Dan Nuzum's Story

Note: I have first-hand knowledge of this story, which was brought to my attention while working on licensure reform legislation in Ohio in the late 1990s. The state did not then and does not now license naturopaths, and they can face felony conviction for practicing without a license.

Dan Nuzum was a naturopath in Toledo, Ohio who faced 5th degree felony charges as a result of an investigation by the Ohio Chiropractic Board.

Dan studied at the North American College of Naproprathic Medicine in Arkansas and graduated in 1997. He then enrolled in the Southern College of Naturopathic Medicine in Mexico, where he received a Naturopathic Medical Degree.

In 2000, Dan moved to Ohio to work with Dr. Robert McKinney at Central States College of Health Sciences, joining the teaching staff at the school.

Dr. Nuzum opened his office in Toledo, Ohio in January 2003. In April 2004 the Ohio Chiropractic Board opened an investigation of Dr. Nuzum's practice. An undercover police officer visited the office with a hidden camera and obtained footage of Dan performing mechanotherapy on a patient.

On November 9, investigators from the chiropractic and medical boards, along with a police officer and SWAT team officers in full gear raided his office. They interrogated eight patients, an office assistant, and the staff nurses. They threatened to arrest anyone that did not provide a full name and social security number. Dan was arrested, handcuffed, and taken to jail, where he spent the night and the next day incarcerated in the same cell with a rapist and a convicted murderer. He had no prior criminal record. He was eventually released on his own recognizance.

Police officers who know Dan told him that they have never seen a person arrested in this manner for a 5th degree felony. They said that people are usually given an opportunity to turn themselves in. Surprise arrest and immediate incarceration is reserved for those who have a criminal record, are a threat to public safety, or a flight risk.

Dan believes it was a chiropractor who suggested that the Board look into his activities, rather than a complaint from a bona fide patient. This is most likely true. State Representative Linda Reidelbach reviewed over 100 cases investigated by The Ohio Board of Dietetics and found that there were no *consumer* complaints; the complaints came from other licensed dietitians and employees of the board, who regularly spent time looking through the phone book, gathering information from flyers posted in health food stores, and looking for signs on buildings in order to dig up targets for investigation.

On December 15, 2005, Dr. Nuzum's case went to trial. He was found not guilty by the Court.

Unfortunately, and this is so often the case, Dr. Nuzum won his case, but at tremendous cost. The police confiscated his computers and equipment, which essentially closed his practice the day he was raided, and prevented him from earning a living. His legal fees totaled tens of thousands of dollars. The investigation was widely covered by the media, effectively ruining his name in the Toledo area. And his patients were deprived of their health care practitioner during this period of time.

Follow-up note: While testifying in front of a legislative committee concerning licensure reform, I related Dan's story as an example of regulatory overreach by licensure boards. I reported that six SWAT team officers were involved in the raid on Dr. Nuzum's office and was quickly corrected by an Ohio official who was involved in this episode. There were only four SWAT team officers involved, I was told. This, of course, makes the entire episode considerably less heinous: four SWAT team officers in full gear is significantly less frightening than six. Amazing that these people can deliver statements like this with a straight face.

Next week: Part III

¹ Soumya Karlamangla. "California doctor critical of vaccines is punished for exempting 2-year-old boy from all childhood immunizations." *Los Angeles Times* June 29 2018

²<https://www2.mbc.ca.gov/BreezePDL/document.aspx?path=%5CDIDOCs%5C20180627%5CDMRAAGL14%5C&did=AAAGL180627201150927.DID>