

Licensure Laws and Healthcare Part III

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In response to last week's newsletter in which I reported the case of Dan Nuzum, a naturopath who was investigated in Ohio by state licensure boards, I received this email (I've redacted any identifying information to protect the author):

My home town is (near Toledo), Ohio and I had a patient who went to Dr. Nuzum. This patient had been on a liver transplant list and Dr. Nuzum got his health turned around and the patient was OFF the liver transplant list. This patient then shared with me a video from Hallelujah Acres and how George Malkmus turned his colon cancer off with proper diet and juicing. The patient's doctor at MCO in Toledo told him "I don't know what you are doing, but keep doing it. You no longer need a liver transplant!". My patient said he shared the video from Hallelujah Acres as well as Dr. Nuzum's practice with others as much as possible. He considered it his "civic duty" to tell others of how Dr. Nuzum's practice helped him!

Another patient came to us after seeing Dr. Nuzum who had done some special testing on him and told him exactly where he had a void or hole in his jaw. The patient came to our office to check and sure enough, he had a large hole in his jaw bone. We were intrigued. That patient had been shaking in his arms and body and no doctor could help him. Dr. Nuzum took care of his dysbiosis and the patient recovered and was thrilled.

So here are 2 great testimonies of Dr. Nuzum HELPING, at a point where allopathic medicine could not. I am sorry to hear about what transpired with Dr. Nuzum.

The Story of My Experience With A Licensure Board

Note: some names have been redacted in order to protect people from harassment – I'm used to it by now, but others – not so much!!

I never expected to be a target of a state investigation, and I was so naïve that when I occasionally heard about people who were investigated by the government, I assumed that those people had done something terribly wrong. I believed that government needed a reason to intrude on our lives. Thus, I was very shocked when the State of Ohio began an investigation of me and The Wellness Forum in 1997.

I was first contacted by the Ohio State Board of Dietetics in April 1997. According to the letter I received, the Board had received an inquiry about our "weight control program." The Wellness Forum did not at that time offer a "weight control program," and I was unaware that State agencies investigate businesses based on "inquiries." Nonetheless,

in the spirit of cooperation, I submitted answers to the questions included in the letter from the Board and received a letter from the Board some months later indicating that The Wellness Forum was in compliance with the law. I thought that the matter was closed.

The next time I heard from the Board was via a telephone call from the Board's investigator, Beth Shaffer, in mid-1998. Ms. Shaffer was investigating a company called "Fitness Resources," a private gym in Columbus. According to Ms. Shaffer, someone had picked up one of our brochures at Fitness Resources and forwarded it to Ms. Shaffer. She had several questions about the services we offered, as well as questions about the activities of Fitness Resources. During this conversation, which lasted for about 40 minutes, Ms. Shaffer also questioned me about Fitness Resources' Board of Advisors and several other people in the health care field and their activities. I answered the questions to the best of my ability, but was unable to provide any substantial information. Although I knew the owner of Fitness Resources, it was not my business. Again, at this time I thought cooperation was the best approach.

In February 1999, Ms. Shaffer again contacted me, stating that she had several questions about The Wellness Forum and wanted to meet with me personally. Ms. Shaffer informed me that a complaint had been filed against The Wellness Forum concerning a lecture called "Raw Food and Weight Loss." As a result of this complaint, she wanted to see the lecture notes from that presentation.

Again, I tried to be cooperative, thinking that this was the best way to handle the situation, so I agreed to meet her. The meeting took place on February 23 and I took notes both during and after the meeting. When asked who filed the complaint, or the nature of the complaint, Ms. Shaffer informed me that she did not have to provide me with that information. I did provide her with the notes from the lecture, but Ms. Shaffer continued to ask questions about other events on our calendar, and the speakers and their credentials. I knew this was not going to end well when Ms. Shaffer informed me during this meeting that showing the movie *Diet for a New America* could be considered the unlicensed practice of dietetics (a misdemeanor crime in Ohio) because watching it might make someone change their dietary habits.

At one time, she told me that she was very concerned because people who are not dietitians often use titles like "nutritionist" to describe themselves and their activities. In response to this, I gave Ms. Shaffer a copy of a cookbook I had authored in which I stated clearly in the Forward that I was not a nutritionist or dietitian. I thought that this cookbook might give her some assurance that I did not misrepresent my credentials to the public.

Ms. Shaffer became rude and confrontational during this meeting. She told me to inform one of the speakers listed on our calendar that she should not use the title "Dr." because people might confuse her with a "real doctor." (This practitioner was a

naturopathic physician with two Ph.D.'s). She also asked if I knew anything about my landlord, a chiropractor, because she had heard that he was giving out nutritional advice and she might start an investigation of him. (Interesting, since nutrition is within the scope of practice for chiropractors in Ohio).

I asked Ms. Shaffer about my rights to free speech under the First Amendment, as it pertains to public lectures and was informed that "there are no First Amendment Rights in the State of Ohio when it comes to discussions about food and nutrition."

At one time during our encounter, I suggested to Ms. Shaffer that I would prefer not to have such a confrontational interchange with her, to which she replied, "I am not here to be your friend. You can think of me like the police. I am an enforcer for the State of Ohio." By this time, I was getting angry and informed Ms. Shaffer that I wasn't planning to ask her to play golf but was simply wondering if we could be civil. After a little more hostile exchange, she left.

Based on the confrontational and hostile tone of this meeting, I retained a Registered Dietitian to supervise the activities at The Wellness Forum and to certify to the Board, if there were further inquiries, that we were not engaged in the practice of dietetics. I am deeply indebted to (this dietitian) and to many other forward-thinking health care professionals for being our friends and allies during this period of time.

A few months later, in June, I received a certified letter, signed by the Executive Director of the Ohio Board of Dietetics, Kay Mavko, requesting the following:

- The names and credentials of the individuals presenting workshops called "Cooking Lite" and "Fiber: The Neglected Nutrient," as well as information (again) pertaining to the lecture "Raw Food and Weight Loss."
- The names of instructors, as well as class outlines for everything on our calendar, which included such events as exercise workshops, stress workshops and yoga, which were clearly outside of the jurisdiction of the Board.
- The names of people who had received "nutrition services," even though I had repeatedly told the Board and demonstrated to them that we did not provide "nutrition services" at that time.

In the letter, Ms. Mavko referred to a cookbook and an enzyme book used in our "weight control program." The Board had been told repeatedly that The Wellness Forum did not offer a program of weight control. Ms. Shaffer was told that the enzyme book was provided by the manufacturer of a food product we sold, and the cookbook was provided simply as a courtesy to her because the Forward provided written evidence that I was not misrepresenting my credentials. Ms. Shaffer evidently either did not tell Ms. Mavko about our meeting or misrepresented what I said.

On June 10, I faxed a letter to Kay Mavko responding to her inquiry. Again, I stated that The Wellness Forum did not offer a program of weight control and that enzyme

book provided to Ms. Shaffer was provided to me by a manufacturer, which is covered by an exemption in the law; and that the cookbook had been given to Ms. Shaffer only for her to see the Forward, which stated in writing that I was not a dietitian. I explained that I had taught the "Cooking Lite" class and that there were no lecture notes, as I was comfortable presenting cooking demonstrations without notes since at the time I was writing cookbooks. I also informed Ms. Mavko that I had hired a dietitian to supervise our activities and to assure the Board that we were not engaging in the practice of dietetics.

Within a few days, Ms. Shaffer called our dietitian. She was rude and confrontational, which seemed to be her general style of communication. When our dietitian said that she was suffering from allergies and found it difficult to talk, Ms. Shaffer responded that she doubted it was allergies, but rather nerves due to the nature of the Ohio Board of Dietetics inquiry. At one point our dietitian informed Ms. Shaffer that she felt that Ms. Shaffer was uninterested in her responses to questions unless those responses were the ones Ms. Shaffer was seeking. Our dietitian contacted me immediately at the conclusion of the telephone call with Ms. Shaffer, and expressed concern about the intentions of the Board.

Later, on that same day, Ms. Shaffer left a message on my voice mail informing me that the Board of Dietetics was launching a formal investigation of The Wellness Forum and that she expected to hear from me immediately on this matter. Since all attempts at cooperation on my part had failed, I retained a lawyer to represent me.

My attorney, C. Michael Piacentino, met with Ms. Mavko and Ms. Shaffer and during this meeting, they informed him that they were investigating both me and The Wellness Forum and failure to respond to their requests would result in subpoenas and other strong actions by the Board. The areas of inquiry were centered around the public lectures: "Raw Food and Weight Loss," "Cooking Lite" and "Fiber: The Neglected Nutrient." During this meeting the Board finally agreed to stop asking about "Raw Food and Weight Loss" since they had been told on numerous occasions about the details of this lecture. Mr. Piacentino told me after the meeting that he also was concerned about the Board's intentions. It appeared to him that they had made up their mind to pursue me, and that the presentation of evidence that we had done nothing wrong would not likely dissuade them.

The regulations governing the dietetics laws showed that we were on very solid ground in presenting the public lectures and classes about which the Board was inquiring. Under "Definitions," the practice of dietetics in the Ohio Revised Code is defined as follows:

- (A) Nutritional assessment means the integrative evaluation of nutritionally relevant data to develop an **individualized care plan**. (emphasis mine)
- (B) Nutritional counseling means the advising of individuals or groups regarding nutritional intake based on **individual** needs. (emphasis mine)

(C) Nutrition education means a planned program based on learning objectives with expected outcomes designed to modify nutrition-related behaviors.

I and no one else I have consulted could understand how a public lecture on fiber or a cooking class could possibly be interpreted to mean the practice of dietetics based on these criteria.

My attorney responded to the Board via certified letter in September 1999. The letter reviewed the fact that The Wellness Forum was not engaged in the practice of dietetics based on the definitions in the Ohio Revised Code because the lectures did not include any elements of nutritional assessment, counseling, or education based on individual needs.

For several months, we did not hear from the Board. On May 19, 2000, Ms. Shaffer contacted me at my home. She asked me for a current copy of the calendar of events for The Wellness Forum. This time she told me that the reason more information was needed was that the Board of Dietetics had filed a complaint against The Wellness Forum with the Ohio Consumer Protection Agency, and that this agency had found our company to be in violation of some statute. I reminded her that I had a lawyer and that she should contact him.

The following week, Ms. Mavko called Mr. Piacentino to ask for a copy of the calendar, again citing the Ohio Consumer Protection Agency's ruling as the reason for the request. Mr. Piacentino asked her to provide a copy of the Ohio Consumer Protection Agency's findings, since we could not possibly comply with a ruling we knew nothing about, and to put her request for information in writing.

Two days later, Ms. Shaffer called Mr. Piacentino and demanded a copy of the calendar. His response was the same. By this time, this investigation was starting to cost me a lot of money. Every time the board contacted me and a response was required, I incurred a bill from my lawyer. This is one of the reasons it's hard for citizens to stand up to the government. Government officials have the unlimited resources of the state at their disposal – they don't have to worry about funding their investigations and expenses. Citizens like you and I have to pay for our own legal fees and expenses. This, I learned, is why many people either settle by agreeing to anything asked of them, or simply go out of business when faced with similar circumstances. I refused to do either – I was determined to see this incident through to the end regardless of the consequences financially or otherwise.

On June 1, 2000, the Board sent Mr. Piacentino a letter requesting the name of each workshop presented since January, 1999, the name of the presenter and credentials, along with an outline of each program, and any advertisements used to promote these lectures.

This information was virtually impossible to provide since many of the speakers were guest speakers rather than associates of The Wellness Forum, and we did not keep their bios and lecture notes on file (this was before computers kept track of everything – our calendars were produced on typewriters at that time!). In addition, many of the workshops were related to topics like stress and exercise that had nothing to do with food, and therefore were outside the Board's jurisdiction.

Again, Mr. Piacentino asked for the ruling from the Ohio Consumer Protection Agency, and again Ms. Mavko refused to deliver it.

At this time, a close friend, Linda Reidelbach, was running for election to the Ohio House of Representatives. She had been a political activist for a while, so I contacted her and sent her my file, and the files of others who had come forward and had similar experiences with this same Board. She reviewed the files, agreed that there seemed to be something amiss, and contacted then-State Representative Pat Tiberi. Rep. Tiberi had initiated an investigation of the Ohio State Dental Board for over-zealous regulatory tactics against dentists and she thought he would be interested in my case. He read the files, agreed that there was a problem and agreed to conduct a meeting in his office in an attempt to mediate the situation. The Board of Dietetics insisted that the meeting be only with me and not include the other people who had grievances with the Board. I insisted that my lawyer attend the meeting, however.

It took several weeks for the meeting to take place, and by that time, Mr. Tiberi had decided to run for national office and was quite involved with his campaign. He delegated the meeting to a new staff assistant, Beth O'Boyle.

On August 29, Mr. Piacentino and I met with Ms. Mavko and Sally DeBolt from the Ohio Attorney General's Office. The meeting was generally unproductive. After 90 acrimonious minutes, we agreed that the Board would pare down its request to a reasonable size and would provide us with the ruling from The Ohio Consumer Protection Agency.

Within one week, Mr. Piacentino's office received a request from Ms. Mavko that was slightly more cumbersome than the original one. Although the request included a copy of the minutes describing the Board's decision to file a complaint with the Ohio Consumer Protection Agency, it did not include the ruling, claiming it to be "work product." Mr. Piacentino responded to Ms. Mavko's letter, again requesting the ruling from the Ohio Consumer Protection Agency.

Ms. Mavko responded by stating that we had misunderstood the agreement in Representative Tiberi's office and refused to provide the complaint or the ruling from the Ohio Consumer Protection Agency.

A subpoena was issued immediately for the information the Board was seeking, but I was traveling at the time and it was not successfully served.

In the meantime, I contacted State Representative Jim Hughes. Rep. Hughes had been contacted by constituents in his district who were experiencing or had experienced similar problems with the Ohio Board of Dietetics. Representative Hughes wrote Ms. Mavko a letter stating that he had reviewed my file and a few others' files and had some serious concerns about the activities of the Board. He asked that all activity stop until he could investigate and sort it out. Ms. Mavko replied that the subpoena had already been issued and that she could do nothing about it.

The original subpoena expired. Ms. Shaffer again called me at home to inform me that another subpoena had been issued and delivered to my housekeeper. I again told Ms. Shaffer to stop calling me directly and to please talk to my attorney. Ms. Shaffer then called Mr. Piacentino and asked him if he would accept the subpoena on my behalf. He replied that he would not.

Following these conversations, Mr. Hughes called Ms. Mavko and informed her that since the subpoenas had all expired, there was no reason not to stop the investigation pending his own investigation. Ms. Mavko refused to cooperate and stated that the Board intended to continue to pursue me.

The Board was successful in serving me with a subpoena in early December. At this time, Mr. Piacentino recommended that I retain another attorney who was more experienced in this arena, which caused my legal bills started to escalate dramatically. His recommendation for additional counsel was made, in part, because the minutes for the Board's November meeting stated, "The Board determined that it should exercise all authority within its power to enforce the issuance and compliance with the subpoena ordered." Legally, this meant that the Board could bring me to court on a show-cause order, where failure to produce the requested material would result in imprisonment for contempt. In these cases, the term of imprisonment is either until the material is turned over, or a judge decides that no length of time in jail will compel the defendant to produce the material. Mr. Piacentino was justifiably concerned about the chance that I might have to spend some time in jail.

My primary objection to providing the Board with what they requested was that one of the items they asked for was a list of people who had spoken at our center. I had no intention of providing this aggressive agency with names and addresses of other people so that they could begin investigations of them like the one I had been enduring for the past three years. I would rot in jail before I would subject others to this treatment. I later found out that I was right about this. Employees of the Board admitted during testimony in front of a legislative committee that they often started "secondary investigations" of people who were identified while investigating another target.

By this time, we were able to access the minutes of the November 2000 Board meeting in which a Cease and Desist Order that they had voted to issue against me on December 3, 1999 was referenced. I had not, as of this time, received such an order. This was an interesting revelation; if the Board had enough information to issue a Cease and Desist order in December, 1999, why were they continuing to investigate me throughout the following year? Was this pure harassment? Or had they decided to issue a Cease and Desist order prior to having any information (in other words, determining guilt in advance). Neither scenario places the Board's intentions in a good light.

The new member of my legal team, David Frank, explained to me that there was a chance that refusing to turn over the requested information would result in jail time, and we perceived the threat to be serious enough to begin figuring out how the company would operate without me, who would take care of my cat, and other details. My parents offered to provide financial assistance if necessary. I really started to believe that I was headed for incarceration. This was a really stressful time in my life.

My attorney responded to the Board's subpoena, basically informing them that we would not be providing the information requested.

By this time, Linda Reidelbach had been elected to office, and mentioned my situation to then-Governor Taft at the Governor's Holiday Party. \ I had spoken to Governor Taft about my case at a fundraiser earlier that year, and he remembered the conversation. He was flabbergasted that the case had progressed to the point that incarceration was a possibility. He suggested that she call Bill Klatt, his legal counsel.

Mr. Klatt contacted me and, although very careful not to take sides, expressed some concern about the Board's interpretation of the law, and whether or not a judge would uphold that interpretation. He subsequently communicated this to the Board, as well as the fact that both Representatives Reidelbach and Hughes were concerned about the Board's activities.

Mr. Klatt was successful in getting the Board to provide us with the ruling from the Consumer Protection Section of the Ohio Attorney General's Office. We discovered at this time that there was no such agency as the Ohio Consumer Protection Agency. I also subsequently discovered that Ms. Shaffer and employees of the Board had used this fictitious agency to threaten others who were targets of investigations as well. The complaint was made to the Attorney General's office by the Board, not by a consumer, and the information in the complaint was false. The complaint alleged that we were holding lectures with the intent of selling food without disclosing that intent in our promotional materials. We have never claimed that the purpose of our lectures was to sell food. We claimed that our lectures were covered under the right to free speech. In other words, the Board made a complaint based on false information and used the response to its false complaint to justify years of investigation of our activities.

During the month of January, 2001, the Board continued to harass me and other associates of The Wellness Forum. Ms. Shaffer contacted the owner of The Wellness Forum in Grand Rapids, Michigan posing as a prospective client. She attempted to get in touch with a dietitian who worked with that center through the American Dietetic Association. To my knowledge, the Ohio Board of Dietetics has no jurisdiction in Michigan.

Ms. Shaffer contacted Bowling Green State University, where a nurse practitioner associated with The Wellness Forum was teaching workshops on nutrition. Ms. Shaffer was following up on a call she received from a Registered Dietitian who was upset that she was not asked to teach the nutrition classes at BGSU.

The Board insists that it only follows up on complaints. I do not understand how a dietitian upset about a lost business opportunity constitutes a "complaint."

The nurse practitioner's scope of practice, and indeed her agreement with her collaborating physician, which is filed with the state, included nutrition education. Bowling Green is an accredited institution, and is covered under an exemption in the Ohio Revised Code Section 4759.10 (D):

"Persons employed by a non-profit agency approved by the board or by a federal, state, municipal or county government, or by any other political subdivision, elementary or secondary school, or an institution of higher education approved by the board or by a regional agency recognized by the council on postsecondary accreditation..."

Did Ms. Shaffer not know that Bowling Green was an accredited institution? Or was she unsure that the individual involved was a nurse practitioner? It seems that the objective of this inquiry was simply to harass and interfere with our business relationships.

Ms. Shaffer also contacted the Director of Nursing Education at Northwest Community College, through which The Wellness Forum offered Continuing Education Programs for nurses, inferring to the Director of Nursing that The Wellness Forum and I should not be allowed to provide nursing CE's. Northwestern Community College is an accredited non-profit educational institution; its activities are not under the jurisdiction of the Ohio Board of Dietetics. The Board also has no jurisdiction over the Ohio Board of Nursing, its providers and approvers. Non-dietitians routinely offer courses related to nutrition and many other topics both in the classroom and in a home-study format for nursing CE's, so the arrangement was not atypical. Again, the purpose of the inquiry seemed to be simply harassment.

We spent a lot of time and effort during this period just responding to people and institutions who were contacted by Ms. Shaffer. Thankfully, we did not lose one client, affiliation, or relationship as a result of this harassment. If the goal of the Ohio Board

of Dietetics was to put us out of business, the agency must have been quite frustrated by now. I'll be forever thankful for those who stuck by us during this time.

Concerned about the communication from Bill Klatt about the Board's activities, Ms. Mavko and Ms Shaffer met with both Representatives Reidelbach and Hughes prior to the January 2001 meeting of the Ohio Board of Dietetics. According to both of these Representatives, Ms. Mavko and Ms. Shaffer appeared to be trying to assess how upset these politicians were, and the political implications of taking action against me.

Although we'll never know the specifics of the discussion at the Board meeting regarding the disposition of my case, the minutes show that after spending years trying to get me to produce names and addresses, lecture notes, and other information, the Board abandoned that effort and decided to finally issue a cease and desist order against me and The Wellness Forum. Many of the activities listed in the cease and desist are exempt under Ohio statute or are covered by my rights to free speech. My attorneys replied to the Board with the same information we've been providing for years:

- The Wellness Forum and I were not engaged in the practice of dietetics as defined by Ohio law.
- Many of our activities are covered by our rights to free speech as guaranteed by the First Amendment to the United States Constitution and Article I, section 11 of the Ohio Constitution.

It seemed that finally this debacle had come to an end, and we simply continued to do what we had been doing since the business started in my family room several years ago. Nothing changed. But this ordeal was extraordinarily expensive, costing tens of thousands of dollars. In addition to the out-of-pocket expenses, I spent entire work-weeks dealing with the Board and its harassment. The time spent definitely affected revenues at the company. The fear associated with potentially spending some time in jail for not complying with the subpoena was immeasurable, not only for me, but for my family.

The Board's harassment did not result in the loss of any business relationships, but did result in embarrassment and stress, as we had to constantly explain the situation to people who were being contacted by the Board's investigator. Most people were very understanding and, in fact, agreed after their contacts with Ms. Shaffer that the Board's activities were out of line.

I did not breathe a sigh of relief, however. I knew that sooner or later this board would be back if I did not do something proactive to change the laws under which they were able to pursue me the way that they did. And thus my career as a political activist began.