

Part 3: Medical Monopolies –Leveling the Playing Field

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“The chiropractics, the mechano-therapists, and several others.... are unconscionable quacks.... The public prosecutor and grand jury are the proper agencies for dealing with them.

The “Flexner Report” of 1910 – republished version 1990, p. 158.

“...15,000 CHIROPRACTORS PROSECUTED DURING THE PROFESSIONS FIRST 30 YEARS....”

Keating, J.C., *B.J. of Davenport*, 1997, p. 115.

"History teaches us that virtually all progress in science and medicine has been accomplished as a result of the courageous efforts of those members of the profession willing to pursue their theories in the face of tremendous odds despite the criticism of fellow practitioners. Copernicus was thought to be a heretic when he theorized that the earth was not the center of the universe.... **In our own era chiropractic treatment has been slow in receiving the approval of the other professions of the healing arts.** We can only wonder what would have been the condition of the world today and the field of medicine in particular had those in the midstream of their profession been permitted to prohibit continued treatment and therapy and impede progress in those and other fields of science and the healing arts."

Rogers v. State Board of Medical Examiners, 371 So. 2^d 1037 (Fla., 1979)

I have a confession to make - when I was a prosecutor I shared the opinion expressed in the Flexner report that all chiropractors should be prosecuted as quacks. I was wrong and so was the author of the “Flexner Report”. Who was Flexner? Has the Flexner Report impeded the development of the holistic, intelligent/teleological principle that “the power that makes (organizes) the body heals (regulates) the body”?

In “Part 2” we considered evidence showing that Claude Bernard, the leading medical physiologist of the 19th Century, disagreed with Rudolph Virchow’s theory that disease starts within the individual, autonomous, cells. Bernard asserted that disease starts with dysfunction in the “**terrain**” and demonstrated that the nervous system is a most important component of the “**terrain**”. We will return to the subject of the **terrain** in the “Part 4”. We are presently concerned with how Virchow’s theory became an established monopoly and some implications of that monopoly relative to **patient choice** and **practitioner’s constitutional rights**. Of course, another legal option to challenge market monopolies is to file an anti-trust action as was done in the Wilks case.

Rockefeller - Flexner

E. Richard Brown in *“The Rockefeller Medicine Men”* (1979) traces the rise of the monopoly of allopathic medicine during the early part of the 20th Century and the influence of the Rockefeller and Carnegie Foundations on that process. Actually, he is careful to point out that Rockefeller, Sr. and Andrew Carnegie were not themselves directly involved in the development of this monopoly. The allopathic monopoly arose, in significant part, as result of the funding decisions of a few men who worked for the foundations and based, in part, upon their relationship with the leadership of the AMA. The layman Frederick T. Gates of the Rockefeller Foundation was the prime mover in this process. (His objective was as much cultural authority as economic self-interest.)

In 1910, The Rockefeller and Carnegie Foundations commissioned an evaluation of each “medical” school in the United States and Canada. This process resulted in the “Flexner Report” cited above. Two points will suffice for our present purposes: 1) Rockefeller, Sr. instructed Gates to make sure homeopaths (the AMA’s major competitor at that time) were treated fairly in the funding process. But, Gates had concluded “Hahnemann was a lunatic” and so he circumvented those instructions, 2) Flexner, also a layman, in his report, specifically endorsed Virchow’s cellular theory and totally ignored Bernard’s **terrain** theory.

The handwriting was on the wall: homeopathic and eclectic (herbal) practitioners were going to face oppression, the **terrain** theory was destined to be marginalized and allopaths’ competitors, including especially chiropractors, would face criminal prosecution. These things all happened; including the prosecution of over 15,000 chiropractors in the early years of the profession. However, history also shows that the allopaths are inclined to leave chiropractors alone if they choose to take three times as much school work as PTs in order to practice as glorified physical therapists. Not good enough; the intelligent/teleological, holistic (**terrain**) paradigm is simply too important for that.

Patient Choice

In the Rogers case, (quoted above) an MD sought judicial review of a decision of an administrative law judge upholding a decision of the Florida State Board of Medical Examiners revoking his license for practicing chelation therapy. The administrative law judge had upheld the decision based upon his determination that “chelation therapy is ‘quackery under the guise of scientific medicine’.”

The Florida intermediate court of appeal ruled that a State Constitutional provision similar to the right to privacy established in Roe v. Wade (abortion decision) protected the right of patients to choose chelation therapy. Based upon the patient’s right to choose, the intermediate appellate court concluded that the physician’s license could not be revoked for performing chelation therapy because the physician had fully informed his patients about the safety and effectiveness (not proven) of the procedure and because the state had failed to show the procedure to be unsafe. A patient’s right to choose should be a cornerstone of all future cases seeking to defend chiropractor’s practice rights and for parity in compensation schemes established under state or federal law. But, there is more to it than that.

Practitioner's Rights

The medical board appealed the intermediate appellate court decision referred to in the preceding section to the Florida Supreme Court. (387 S.2d 937) The Supreme Court found it unnecessary to rely on the patient's right to choose and decided in favor of the physician based upon his own constitutional rights. The court stated that although a state has the power to regulate the practice of medicine "the regulations imposed must be reasonably related to the public health and welfare and must not amount to an arbitrary or unreasonable interference with the right to practice one's profession which is a valuable property right protected by the due process clause."

A companion principle of constitutional law with the "due process clause" is that of "equal protection of the law". The equal protection clause prohibits governmental action that treats similar classes of persons differently. That point was not relevant in the Rogers case but it generally is with respect to chiropractor's rights. Both due process and equal protection arguments should be forcefully raised in all cases dealing with a lack of parity between chiropractors and other practitioners; including matters related to compensation and reimbursement schemes based upon state or federal law.

I will borrow from Harvard law professor Lawrence Tribe and broaden the concept of practitioner's rights: **"What it (the government) may not take away without clear and focused justification is a fair opportunity for an individual to realize their identity in a chosen vocation."**

