Michael Ellsberg (http://www.forbes.com/sites/michaelellsberg/) Contributor

I write about people and the publishing industry.

Opinions expressed by Forbes Contributors are their own.

LISTS (/LISTS) 7/10/2012 @ 2:56PM 60,103 views

Is The ADA Intentionally Using State Legislatures To Block Alternative Nutrition Providers?

[Disclosure: My wife is a weight loss consultant whose work could conceivably be seen as competition to Registered Dietitians. Also, as I have written about extensively in this piece for Forbes detailing my own journey overcoming Bipolar II (http://www.forbes.com/sites/michaelellsberg/2011/07/18/how-i-overcame-bipolar-ii/), I have been a longtime consumer of holistic nutrition counseling services from people who are not RDs.]

In January of this year, health and nutrition blogger Steve Cooksey received a disturbing letter (http://www.diabetes-warrior.net/2012/01/28/this-site-free-speech-are-being-investigated/) from the North Carolina Board of Dietetics/Nutrition.

The letter contained a 19-page markup of Cooksey's own blog, highlighting in handwritten red pen an extensive series of changes (http://www.diabetes-warrior.net/wp-content/uploads/2012/01

/Website_Review_Cooksey_Jan._2012.pdf) the Board demanded that Cooksey make.

(http://blogs-images.forbes.com/michaelellsberg/files/2012/07/iStock_000016558836XSmall.jpg)He had to make these changes, the Board censors told him, or he would face arrest (according to the NC dietetics licensing statute the lett (http://www.ncga.state.nc.us/EnactedLegislation/Statutes/pdf/ByArticle/Chapter_90/Article_25.pdf)er cited (http://www.ncga.state.nc.us/EnactedLegislation/Statutes/pdf/ByArticle/Chapter_90/Article_25.pdf)) and up to a month and half in prison, a criminal record for blogging in America.

Specifically, the Board censors said, he had to remove or change all writing they construed as constituting "nutrition advising" or "nutrition counseling" without a license—which was a lot.

Bloggers around the nation reacted in upset and outrage at the Board's censorship of Cooksey's blog. "This is the sort of story you expect to come from a third world superstitious kleptopcracy – yet it happened here on American soil, in North Carolina, thanks to good old fashioned state-level bureaucracy," writes Mytheos Holt (http://www.theblaze.com/stories/blogger-could-be-thrown-in-jail-for-writing-about-his-diet) on TheBlaze.com.

"The state board declared that Cooksey couldn't even offer free and private advice to his friends over the phone. With that kind of legal standard, who among us would not be a criminal?" writes Kelly Jane Torrance (http://www.weeklystandard.com/keyword/Steve-Cooksey) on WeeklyStandard.com.

Here's an important twist on this developing free speech story. Forbes was granted exclusive first-look at a new series of internal documents, freshly leaked by outraged members within the Academy of Nutrition and Dietetics, the professional association behind the NC State Board of Dietetics/Nutrition which censored Cooksey. (That association is also known widely among the public by its old name, the American Dietetic Association–I use the two names equivalently in this article.)

In these newly-available internal documents, which I quote and outline at length in this article, the American Dietetic Association:

- Openly discusses creating and using state boards of dietetics/nutrition (including in NC and in every other state in the union) for the **express purpose of limiting market competition for its Registered Dietitian members**.
- Openly discusses a nation-wide plan of surveilling and reporting private citizens, and particularly all competitors on the market for nutrition counseling, for "harming the public" by providing nutrition information/advice/counseling without a license —through exactly the same means by which Cooksey was reported to the NC Board. Again, for the explicit purpose of limiting marketplace competition.

Background

Three months ago, I wrote an article for Forbes entitled "Is the American Dietetic Association Attempting to Limit Market Competition in Nutrition Counseling? (http://www.forbes.com/sites/michaelellsberg/2012/04/05/american-dietetic-association)" Notice the question mark at the end of the title.

At that time, I had access to only one already-available internal ADA document (http://www.reallyeatright.org/wp-content/uploads/2011/11/MarketPlaceRelevanceBackgrounder.pdf), which rabidly attacked market competitors, and seemed to imply that the ADA should take legistlative action to restrict this market competition.

("We must be aware that existing legal and regulatory constraints on practice are unlikely to prevent robust, broad competition in these growth areas," writes Pepin Tuma in that document; Tuma is now Director of Regulatory Affairs at the ADA.)

Despite the obvious implications of that document, at that time I did not have any direct "smoking gun" linking the ADA's explicit intention to limit marketplace competition (expressed in that document), with its aggressive action in the legislative sphere to create the very kinds of dietetics practice acts, and state boards of dietetics, under which Cooksey was threatened.

All that has changed now.

Next: The Smoking Gun Document

In the wake of that original article, I received an email from Judy Stone, Executive Director of the Michigan Nutrition Association (http://michigannutritionassociation.org/), a coalition of Michigan nutrition consumers and practitioners. The subject line of her email to me was "ADA Smoking Gun Document. Naturally, I was intrigued.

Stone showed me a new internal document which had just been leaked to her from someone from within the ADA. This new document was far more detailed than the one I had access to when I wrote the last article. In the new document Stone showed me, the ADA openly strategizes on how to create NC-like licensure laws and dietetics boards across all 50 states, for the express purpose of limiting competition.

With this new document, there is now direct evidence linking the ADA's stated desire to limit competition, to their legislative action (about which the ADA lies to the public, by saying the laws they are creating and lobbying for are designed to protect public safety, not limit competition.)

This document—among many others—had recently been leaked to Stone and the Michigan Nutrition Association, by members within the ADA disgusted by the organization's monopoly-seeking behavior in state legislatures.

(Stone told me: "The ADA has not just angered non-dietetics nutrition professionals, but its own members as well, many of whom simply don't want to be associated with this kind of power-grabbing under the guise of protecting the public. Willingness to share incriminating internal documents is one of the only ways for those members to effect change in their trade organization run amuck," alluding to additional documents she has ready to share.)

She also gave this internal ADA document to the Alliance For Natural Health (http://www.anh-usa.org/and-dietitians-monopoly/), a longtime critic of the ADA. The Alliance has now published the document on the Web (http://www.reallyeatright.org/wp-content/uploads/2012/05/HOD-Licensure-Backgrounder-2011-07-22-11.pdf).

The document opens boldly: the purpose of the document is to help allow "the profession of dietetics to be identified as the preferred and qualified provider of nutrition services."

The document focuses on what it calls a "Mega Issue," which is this: "What is needed to create greater understanding among RDs/DTRs of the value of licensure and the importance of active engagement to the long term future of

the profession?"

In other words, the "Mega Issue," as the document puts it, has nothing to do with protecting public health or safety, as the ADA claims frequently when it talks about its licensure efforts in public and with legislative representatives. Rather, the Mega Issue focuses around protecting the health, safety (and presumably profit margin) of... the profession itself.

The internal document then goes into what can only be described as a tirade against competitors:

> There is a proliferation of nutrition-related titles and credentials available to individuals seeking a foothold in the field. . . . Many aggressively challenge the notion that dietitians should have practice exclusivity outside of the clinical setting, and they continue pushing legislative initiatives that allow use of the "nutritionist" title and permit them to perform holistic and other nutritional counseling.

The ADA further bemoans that. . .

> As government funding for preventative care and wellness increases and private insurers continue expanding clinical coverage to include visits to nutrition professionals, there will likely be a concomitant growth in the number of competitor health care professionals willing to provide some form of nutritional counseling. . . . Registered Dietitians and Dietetic Technicians, Registered (DTRs) face a significant competitive threat in the provision of various dietetic and nutrition services.

All of this is particularly bad, the professional association says internally, because:

> State affiliates [chapters of the ADA] have experienced organized opposition to licensure in all states in which current laws have been proposed. Grassroot opposition has been focused on the American Dietetic Association and has included arguments that dietitians lack preparation to delivery wellness and nutrition care outside of the hospital setting, that **licensure creates a monopoly and restricts freedom of choice of provider by the public**, creates job loss for non-RDs providers. . . and that licensure requires those who practice to be members of ADA (Appendix A). Rather than respond individually to these media campaigns, ADA can achieve a position of strength by developing and executing an initiative that **supports licensure and the dietetics profession while adding member value.** [Emphasis added]

Notice the focus on "adding member value." NOT "protecting the public" or "ensuring public safety" but "adding member value." Again, spoken like a true professional association.

For the benefit of ADA lobbyists, the document goes on to provide a state-

by-state chart (p. 7 of the document) of which states have enacting the restrictive licensing laws the ADA has been lobbying and pushing for over decades—the kind of laws that "add member value" by allowing the censorship of competitors such as Cooksey.

The chart contains a handy color coding. States that have full "Licensure" regulations on the books—the type of regulation under which Cooksey ran afoul, and which the ADA is actively trying to create in all 50 states—are highlighted in yellow. (North Carolina, of course, is in yellow. ADA, 1; Steve Cooksey's free speech, 0)

States that have less-restrictive "Certification" regulations are highlighted in green. States that have even less-restrictive "Title Protection" statutes are highlighted in red. And states with "No statutes" are highlighted in gray.

The open intention of the ADA, as expressed in this internal document, is to make every state on that chart yellow—i.e., to create NC-like censorship laws in every state in the union—for the clear purpose of limiting market competition.

The document discusses in detail how a secretive unit within the ADA, the "Work Group on Licensure, Scope of Practice and Competition" (WGLSC) created a "Model Practice Act" in 2010 (Appendix B in the leaked document), designed to spread restrictive NC-like dietitian licensure laws across the nation.

The document states:

> Key components of the dietetics licensure statutes include: title protection, scope of practice, practice exclusivity clause [the clause that got Cooksey], operations of licensure board [the board that got Cooksey]. . . .
>
> The Model Practice Act will provide a foundation for affiliates [state ADA chapters as in NC] as they seek to lobby for their licensure bills. . . ADA can achieve a position of strength by developing and executing an initiative that supports licensure and the dietetics profession while adding member value.
>
> ADA staff provides a licensure toolkit to all states seeking licensure and sometimes travels to states seeking licensure to assist with development of bill language, provide guidance on lobbying strategies and develop appropriate messaging. ADA often assists with selection of the lobbyist and provides guidance on how to effectively work with the affiliate lobbyist for licensure success. . . .
>
> It is important that dietetics licensure acts maximize the registered dietitian's unique skills and expertise in the scope of practice. All registered dietitians and dietetic technicians, registered need to be mindful in these competitive times that other practitioners are seeking expansion of their services, creating "scope creep".

Finally, as if shocked—shocked!—that someone might consider all this anti-competitive and protectionist behavior to be monopolistic, the document includes, as Appendix A, a reproduction of a critical article entitled, "The American Dietetic Association's Monopoly Continues to Grow—But You Can Stop it Cold!"

For some reason, the document blocks out the website and author of the article, but a quick Google (http://www.forbes.com/companies/google/) search of the title reveals it to be a reproduction of this article from the Alliance for Natural Health (http://www.anh-usa.org/american-dietetic-association-monopoly/).

In introducing it in the Appendix, the document states, "The following is an excerpt from a website complaining that the ADA is a 'monopoly.' The website continues to provide information about multiple states negatively portraying ADA and our members."

The critical ANH article excerpted in the document's appendix contains the following choice statements:

> New bills have been introduced in a number of states that will give the ADA a monopoly over the practice of nutrition therapy—these are the people in charge of wonderful hospital food. Please take action in your state to stop this power grab and ensure consumer choice! . . . .
>
> This is the organization that lists among its corporate sponsors (http://www.eatright.org/corporatesponsors/) soft drink giants Coca-Cola (http://www.forbes.com/companies/coca-cola/) and PepsiCo (http://www.forbes.com/companies/pepsico/), cereal manufacturers General Mills (http://www.forbes.com/companies/general-mills/) and Kellog's, candy maker Mars [... and Hershey's], and Unilever, the multinational corporation that owns many of the world's consumer products brands in foods and beverages.

Next: Is this America, or East Germany?

So far, the ADA is acting like pretty much every other professional association in existence: it wants special laws passed, conferring special rights and privilges on its members, for the express and primary purpose or limiting competitors and upstarts. Nothing new under the sun.

But here's where it starts to get truly kooky.

The ADA, in this freshly-leaked document analyzed here, outlines a detailed policy of surveilling and reporting citizens who provide nutrition advice publicly, under state dietetics laws, for the primary purpose of maintaining, justifying, and strengthening the laws themselves:

> States generally require that someone file a complaint before an investigation into a violation can be opened; the complaint process is integral to aggressive enforcement of dietitian licensing acts. Because all too often state dietetics boards receive few (or no) complaints alleging violations, one is led to conclude either that (a) few, if any, violations are occurring in these states and licensing is not necessary or (b) violations are occurring, but are not being reported. If the latter scenario is accurate, dietitians and others benefitting from licensure must be more vigilant in identifying and reporting violations.

The document says it plain and clear: the reason to surveil and report citizens who provide public nutrition advice (people like Steve Cooksey) is not that there's any evidence that these citizens actually harm the public. Rather, the reason to surveil and report citizens like Cookey is that doing so is necessary to maintain licensure laws (which were designed by the ADA explicitly to limit market competition.)

Of course, the ADA tosses a bone to public safety in all of this: "The purpose of licensure is to protect the health, safety, and welfare of the public."

But it is quite clear from the document the *real* purpose of the licensure laws they're lobbying for in all 50 states. In the very next sentence, the document

informs us: "Because **professional regulations act as a barrier to entry** and usually provide a mechanism for removing harmful practitioners from practicing within the state, they **effectively restrict the supply of practitioners** and **often lead to an increase in the cost of services**." [Emphasis added.]

You can almost see the ADA bureaucrats who wrote this, and the Registered Dietitians they represent, shedding a tear for the consumers who will regrettably have to pay more for RDs, with less choice of competitors.

(However, the ADA reassures us, of the licensure laws they're pushing for: "Their purpose is not to increase reimbursement." Higher costs for the public, and higher profits for RDs, are just an unfortunate and regrettable consequence of defending the public interest against harmful citizens like Steve Cooksey, the unlicensed Paleo diet blogger.)

I am reminded of a passage from libertarian author Milton Friedman, from his classic Capitalism and Freedom (http://www.amazon.com/Capitalism-Freedom-Fortieth-Anniversary-Edition/dp/0226264211). This book contains by far the most cogent, damning and sustained critique of protectionist professional licensure laws ever put into print. Friedman writes:

> In the arguments that seek to persuade legislatures to enact such licensure provisions, the justification is always said to be the necessity of protecting the public interest. However, the pressure on the legislature to license an occupation rarely comes from the members of the public who have been mulcted or in other ways abused by members of the occupation. On the contrary, the pressure invariably comes from members of the occupation itself.

Running through the ADA's internal plan for creating licensure laws across the nation to "protect the public," is an almost comic (were in not so pathetic) self-recognition that the public is not actually calling for this protection. ("Few of the representative states sampled by the author actually receive significant numbers of complaints alleging practice violations. . . ")

One would think, if these laws were necessary, there would be reams and reams of complaints from ordinary citizens about how they were harmed by following the advice of non-RD nutritionists and nutrition bloggers.

Alas, there are none (or very, very few). So just as Friedman predicts, the ADA has to manufacture these complaints by recruiting its own members to "report" the activity of competitors such as Cooksey, as harmful.

Next: "How to Be a Spy for the ADA"

Milton Friedman's predictions on licensure (and particularly, how it's always the monopoly-seeking members of the occupation itself, not the public, who call for it) were first published 50 years ago this year. Now, they come to full fruition in another leaked internal document from the ADA, at which Forbes was also given exclusive first look.

A few days after Judy Stone at the Michigan Nutrition Association sent me and the Alliance for National Health the leaked internal document analyzed and discussed here, she sent me another email, with the subject line "How to Be a Spy for the ADA"

This email contained a second internal document which had just been leaked to Stone, by someone inside the ADA disgusted with their monopolistic ambitions.

(Stone told me: "In Michigan, the dietetics association leadership has arrogantly, in print and in public, referred to any potential competitors as 'uneducated wannabees.' Training members in witch hunts seems to be their new action plan.")

The document is an internal ADA Powerpoint presentation entitled "Reporting Harm: Who, What, When, Where, Why, and How?" prepared by Kay Mavko, identified as the "Chair of Licensure Workgroup." Again, the Alliance for Natural Health has just published this document on the Web (http://www.reallyeatright.org/wp-content/uploads/2012/07/Reporting-Harm-StateIssues_WorkshopA_Handout.pdf).

The very first slide reads, "Who Should Report Harm?"

The ADA's answer? "Health professionals who understand dietetic practice and want to protect their scope of practice – the RD. If you don't report, who will?"

Notice the intense focus in this statement, not in protecting the public, but in protecting the profession's scope of practice (i.e., practice exclusivity, the property of the licensure laws that allows them to put Cooksey behind bars.) Friedman would be rolling in his grave.

The rest of this document continues on in exactly this manner. Another slide reads "Licensing Boards need continual incidents to investigate."

This is rather like saying, "Police departments need continual incidents to investigate." The point of licensing boards—and police departments—is to protect the public from actual harm that is actually occurring in the real

world. Not to *create* "incidents" to justify the existence of the department itself.

If the bureaucrats at the NC Board of Dietetics and other state dietetics boards are sitting around, twittling their thumbs and waiting for incidents to act upon in order to justify their existence and their cherished practice exclusivity, then perhaps the necessity for these boards (at taxpayer expense) should be questioned.

Otherwise, in their boredom, these bureaucrats—like a sheriff deep on a Saturday night in a sleepy village—might start getting antsy and restless, and drum up some action by, say, shutting down paleo diet bloggers for providing meal plans to readers on websites.

Indeed, one state at least—Michigan—seems to have had enough of the bored-Saturday-night-sheriff shenanigans of the ADA, and essentially told the ADA: we don't need your damn licensure laws.

In April, the state's Office of Licensing and Regulation Affairs [LARA] released a ground-breaking and gutsy press release (http://www.michigan.gov/lara/0,4601,7-154-10573_11472-275935--RSS,00.html) making the following recommendations to the Governor:

> "[We] carefully considered the public health and safety benefits of 87 different occupations. We found that there were at least 18 occupations that did not require regulation. These regulations provide little or no significant protection to the public," said Shelly Edgerton, Deputy Director of LARA. . . .
>
> Occupational regulations, while in many cases necessary to protect consumers and public health, **operate as a barrier to entry** into a given profession. This inhibits entrepreneurship and **restricts competition**, leading to **increased costs** and decreased levels of service for consumers." [Emphasis added]

What was one of the 18 professions recommended for deregulation and de-licensing, in the name of promoting competition and entrepreneurship? "Dieticians & Nutritionists"

What was one of the 9 occupational boards recommended for elimination? "Board of Dietetics & Nutrition."

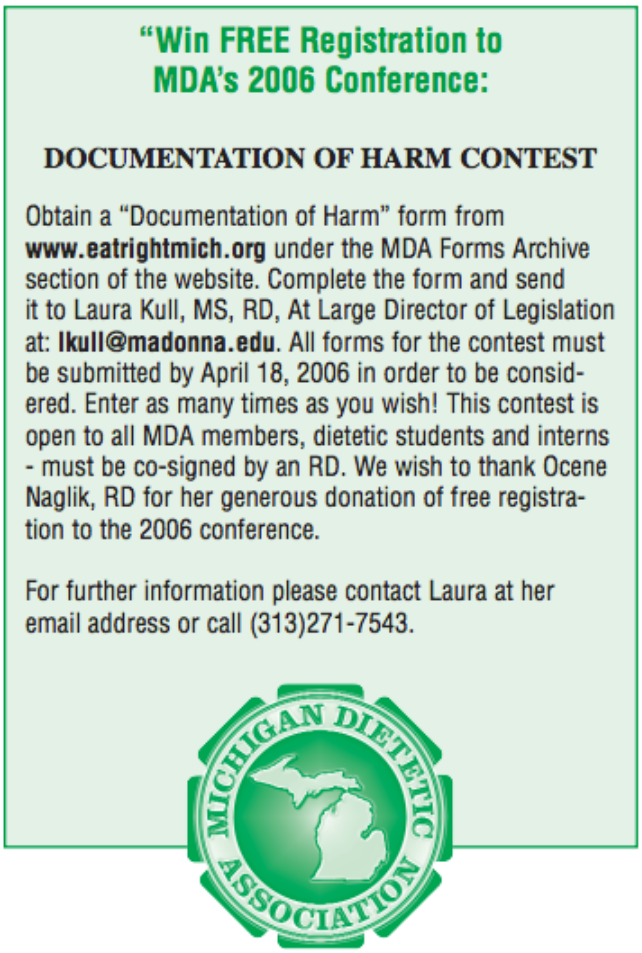
(North Carolina Board of Dietetics/Nutrition: You're next.)

Perhaps sensing their cherished protectionism and monopoly at risk, the ADA and its state-level minions seem to be engaged in a crash course to

manufacture and report "harm" among unlicensed citizens (à la Cooksey) who provide nutrition advice publicly, in order to justify the continued existence of these protectionist laws and the state dietetics boards that enforce them, against Michigan-style common sense.

In fact, Darrell Rogers, Communications Director at the Alliance for Natural Health, sent me a 2006 newsletter he had collected from the Michigan Dietetic Association (the state chapter of the ADA), advertising to its members a "Documentation of Harm Contest" (http://www.anh-usa.org/wp-content/uploads/2012/05/2006ConferenceBrochure-1.pdf).

The internal advertisement announces that Michigan dietitians can "Win FREE Registration to MDA's 2006 Conference" if they only turn in enough information on unlicensed people providing nutrition information to the public, for use in reporting them to the state's Board of Dietetics and Nutrition (a.k.a. reporting unlicensed people who provide paleo meal plans to readers on blogs.) "Enter as many times as you wish!" the advertisement announces cheerily, as if this were some sort of carnival in Oceania, Orwell's land of Big Brother.



The actual "Documentation of Harm" form that the advertisement refers to (http://www.anh-usa.org/wp-content/uploads/2012/05/Documentation_of_Harm-1.doc), and which Michigan dietitians were encouraged to fill out as many times as possible to increase chances for winning, asks dietitians to report on the "Potentially Harmful Nutrition Information" provided to the public by unlicensed citizens (presumably including unlicensed Paleo diet bloggers.)

Written on the form itself is the actual reason for reporting unlicensed citizens for the "harm" of disseminating nutrition information freely to the public:

> This information will help us **make a stronger case to our legislators** regarding why we need to have State Legal Recognition of the "Registered Dietitian." These cases will also help to show why the Registered Dietitian is a necessary member of the healthcare team as the most qualified provider of medical nutrition therapy and nutrition services. [Emphasis added]

Yes, they actually come right out and say it right on the form. And remember,

all the spying solicited from this contest was intended to be collated and given to the Michigan Board of Dietetics and Nutrition—the same Board that the state's Office of Licensing and Regulatory Affairs just recommended for elimination. No wonder.

Back to the new leaked "How to Spy for the ADA" document.

The next slide reads, "When is it too late to report?"

The answer? "When your governor has put your licensing board on the elimination list."

(Uh, Michigan?)

Also, "When a competing profession decides to expand their scope of practice to include nutrition assessment and counseling."

(Damn Paleo diet bloggers!)

"Don't wait until it's too late!" the document emphasizes in red.

Notice, again, the focus on protecting the licencing board itself, and protecting the scope of practice statutes, not the public. The "public" is nowhere to be found in this slide.

Moving on: "Why Should You Report?" a later slide asks. Answer:

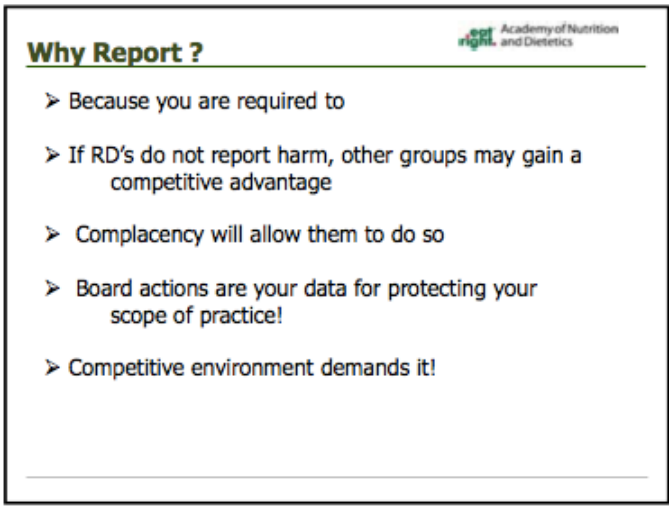
“ Without reports of violation and harm. . . .

- Value of licensing Board gets questioned.
- Board’s Existence is diminished!
- Sunset can occur!

So, Steve Cooksey’s professional life gets ruined, and his readers are deprived of the benefits of Cooksey’s free and open speech, and the First Amendment gets flushed down the toilet... so that the NC Board of Dietetics/Nutrition’s “Existence” doesn’t get “diminished,” and isn’t subject to Michigan-style legislative sunset.

Next slide: “Why Report?” Answer:

- If RD’s do not report harm, other groups may gain a competitive advantage [i.e., unlicensed Paleo bloggers.]
- Board actions are your data for protecting your scope of practice!
- Competitive environment demands it!



I think at this point, a little editorial commentary to the ADA is in line.

Dear ADA: Protecting the "Competitive environment!" is not an acceptable or valid reason for destroying bloggers' freedom of speech.

(Fortunately, Steve Cooksey agrees, and with the help of the Institute of Justice, has filed a major first amendment case in federal court (http://www.ij.org/paleospeech) against you and your ilk.)

Next: One-Time Free-Speech Crusader Joins the Dark Side, Now Fights to Limit Speech

The day my previous article about the ADA came out, three months ago, Pepin Tuma, Director of Regulatory Affairs for the ADA, sent me an enraged set of emails:

> Just finished reading the article, and am shocked how many demonstrably false conclusions you make and quotes you included. I had hoped the article would be honest (or that you would come back to me so I could refute the lies your article contains), but you chose not to.
>
> Please expect a detailed refutation by tomorrow, and I look forward to discussing the process by which you will correct your embarrassing mistakes. . . .
>
> You also may want to run a spell-check on your article.

The "detailed refutation" he emailed me next business day (http://hod.webauthor.com/vault/2481/forum/Academy%20Response%20to%20Forbes.pdf) (and apparently emailed widely within the ADA, as it started popping up across the Web on ADA-related sites) took exception with just two quotes from my article, just 113 words out of a 3,245-word article.

Tuma also forwarded the same letter to Mr. Steve Forbes, complaining of "egregious factual inaccuracies" in my article, requesting that Mr. Forbes please "review the letter [to me] and consider an appropriate response from Forbes [magazine]," and stating that "it is very important for your readers to be armed with the facts rather than Mr. Ellsberg's opinion and misstatements."

What were the "lies," "embarrassing mistakes," "egregious factual inaccuracies," and "misstatements" Tuma accused me of to me and Steve Forbes?

They center around a Clinton-esque verbal sleight-of-hand that Tuma (a lawyer himself) tries to make, revolving around the distinction between "nutrition counseling" and "nutrition information." In the crux of his "refutation," Tuma writes to me:

> "Licensure laws are drafted to ensure that anyone—yoga teachers or personal trainers—can provide general non-medical nutrition information. . . .
>
> Nutrition is such a critical issue now in this country, there are roles for many different groups and individuals to play. . . .
>
> Let me be as clear as possible: **Licensing of dietitians and nutritionists is not intended to restrict the provision of general non-medical nutrition information**. That's something we have been very careful to include in both laws and exemptions." [Emphasis in original]

The licensure laws I criticized in that article, and under which Cooksey was threatened, do technically allow for some limited distribution of "nutrition information" by people who are not licensed by the state as dietitians. Tuma attempts to use that loophole to say, essentially, "Nothing to look at here, folks! Our laws allow broad freedoms for anyone to provide nutrition information!"

This response of Tuma's exhibits bad faith (otherwise known as bullshit, even bordering on lying) in two massive ways. The first of these ways, I explained in my email reply to Tuma (available in full on the Update at the end of my previous article (http://www.forbes.com/sites/michaelellsberg/2012/04/05/american-dietetic-association/4/) on the ADA for Forbes):

> [In my article, I make it clear that] what I am talking about is "competitor professions," as your document refers to them, providing **nutritional counseling** (as in 1-on-1, back-and forth professional practice with a paying individual client), **NOT** providing general "nutrition information."
>
> I understand there are exemptions for dissemination of nutrition information. Of course there are. This nation has a first amendment protecting free dissemination of information (My father, for example, has tested the first amendment's protection of disseminating information (http://en.wikipedia.org/wiki/Daniel_Ellsberg) about as far as it can be tested, quite successfully.)
>
> I'm not talking about disseminating nutrition information, I'm talking about practicing nutrition counseling i.e., practicing nutrition with clients. . . .
>
> [A]s the ADA's critics quoted in my article state, many competitor professions such as chiropractors, acupuncturists, and non-RD nutritionists, routinely provide nutrition **counseling** (not information but counseling), yet may not yet have gone through the same lobbying your organization has done, and thus may not yet have nutrition counseling legally specified in their scope of practice. . . .
>
> Indeed, that is the very thing it is designed to do, so far as I can tell: prevent people who don't yet have a legally-defined scope of practice in nutrition in their state, and who haven't jumped through the very dietitian-oriented licensure requirements you propose, from practicing nutrition counseling in that state.

As I said in the Update to my last article, Tuma's refutation letter to me was craftily-worded, reflecting brilliant lawyering skills to obfuscate the issue.

It traded on a verbal sleight-of-hand—pointing to the ADA's putative support for the free dissemination of "nutrition information"—to attempt to distract my (and your) attention from this dark truth: the bills are extremely harsh on any citizen whom the Dietetics Boards construe to be practice nutrition **counseling** or **advising** without a license. Which, we've now seen in the Cooksey case, is just about everyone. It was thus, in my opinion, bordering on an open, intentional lie to me, to you, the readers of Forbes, and to the public.

But Tuma's public bullshit didn't stop there. Now, with the Cooksey case out in the open for all to see, we can see clearly a deeper layer of Tuma's BS and near-lying. Let's look again at this quote from Tuma's letter to me:

> “Licensure laws are drafted to ensure that anyone—yoga teachers or personal trainers—can provide general non-medical nutrition information. . . .
>
> Nutrition is such a critical issue now in this country, there are roles for many different groups and individuals to play. . . .
>
> Let me be as clear as possible: **Licensing of dietitians and nutritionists is not intended to restrict the provision of general non-medical nutrition information**. That’s something we have been very careful to include in both laws and exemptions.” [Emphasis in original]

Well, tell Steve Cooksey that. Here are some of the demands for censorship, sent to Cooksey by the ADA-influenced NC Board of Dietetics/Nutrition in red-pen highlighting:

- On his blog, as in blogs around the world, Cooksey offers that his readers write in for advice on his topic, and he responds to these questions for free (Q+A). The Board’s censors, however, write: “If people are writing you with Diabetic specific questions and you are responding, you are no longer just providing information–you are counseling–you need a license to provide this service.”
- In one section, Cooksey advises readers that reducing carbohydrates in their diet and instead eating more veggies, will help their diabetes. The Board’s censors write, “Assessing and advising–requires a license.... [I]ndirectly you conducted an assessment and provided advice/nutritional counseling.”
- In another section, Cooksey advises a reader to reduce whipping cream in her diet in order to help her blood sugar issues. The Board’s censors write, “When helping her with this issue you were assessing and advising–these activities require a license.”
- In a particularly baffling section, the Board’s censors state that it is OK that Cooksey provided a meal plan on his site, but it was not OK that he *recommended* that his readers follow the plan. “It is acceptable to provide just this information, but when you start recommending it directly to people you speak to or who write you, you are now providing diabetic counseling, which requires a license.”

If these are “exemptions” for free speech, then the ADA is a freedom-loving organization which deeply respects the rights of other professionals to compete freely and fairly on the open market.

Rather, the Board’s actions against Cooksey belie the real meaning of Tuma’s claim that “Licensure laws are drafted to ensure that anyone. . . can provide general non-medical nutrition information.”

Anyone, except someone who is not a licensed RD. Or who is named Steve Cooksey. Or who *recommends* (!) a meal plan to readers on their blog. Those people are all providing “unlicensed nutritional counseling,” and they should

all stop competing with the RDs in their state, or haul their asses off to jail.

When "Eat Your Veggies" becomes illegal, something has gone terribly wrong in our country.

Coda

Here's deep irony to the ADA's nation-wide fight to create speech-limiting laws in all 50 states. The single person currently most responsible for the proliferation of the type of NC-style licensing laws under which Cooksey was threatened, is Pepin Tuma himself, the ADA's Director of Regulatory Affairs.

(Note: There is also strong reason to believe Tuma is the author of the new "smoking gun" document analyzed here. He is the author of the original internal document I analyzed in my last Forbes article. Large parts of that document are present, word-for-word, within the much longer newly-leaked document analyzed here.)

Yet, if you Google Pepin Tuma's name, you will find that, according to Google, Tuma's main claim to fame is not as a creator of regressive speech-limiting laws on a state-by-state basis.

Rather, his main claim to fame, according to Google (nearly all top search results on his name relate to this): a plaintiff in a major ACLU-backed first amendment case.

Three years ago, Tuma was walking in Washington D.C., and noticed some police officers engaged in what appeared to be a routine traffic stop of a single citizen.

Tuma decided to use this opportunity to test the limits of his own free speech in America.

"I hate the police! I hate the police!" Tuma called out to taunt the officers, in a reportedly "sing-song voice," from across the street.

Officer James Culp charged 40-50 feet, across the street, shoved Tuma against a utility box, and cuffed him. As Tuma—a gay man—was in the back of the police car on his way to jail for disorderly conduct, Culp said to him, "Shut up, faggot."

Tuma wrote on the op-ed page of the Washington Post (http://www.washingtonpost.com/wp-dyn/content/article/2009/08/07/AR2009080702999.html), "My behavior was juvenile, but nothing I did

was illegal." Both assessments there are absolutely spot-on.

Tuma rightly sought out the help of the ACLU (http://www.metroweekly.com/news/?ak=6391), and eventually Tuma's name was cleared in that case, and the violators of his free speech were brought to justice.

Here's the deepest irony. Three years later, Tuma is a major architect of and lobbyist for ADA licensure laws across the nation—much like the NC laws which destroyed Cooksey's free speech—which are now the subject of a first amendment case in federal court. Indeed, the ACLU could conceivably get involved fighting the legal henchmanship of the same man whose own free speech it helped protect in a high-profile case only three years before.

Mr. Tuma, as you remember the valuable role that our nation's blessed First Amendment has played in your own life, keeping you out of jail as you exercised your own free speech, I suggest you watch this video about the free speech you are now doing everything in your power to destroy. The video is entitled "Caveman Blogger Fights for Free Speech and Internet Freedom"

Mr. Tuma, you opened your Washington Post op-ed, about the horrendous past limitation on your own free speech, with the following words: "It happened not in China or Iran but right here in Northwest Washington."

Indeed. And, I might say: It happened not in China or Iran, but right here in Northwest Washington.... at the offices of the American Dietetic Association (http://www.eatright.org/ANDPAC/content.aspx?id=5435).

And in North Carolina.

Shame on you, Tuma. Shame on you, North Carolina Board of Dietetics. Shame on you, ADA.

Lovers of freedom across the nation, unite against these despisers of free speech.

***

Michael Ellsberg is the author of *The Education of Millionaires: It's Not What You Think and It's Not Too Late (http://www.amazon.com/Education-Millionaire-What-Think-Late/dp/1591844207/ref=sr_1_1?ie=UTF8&qid=1307038965&sr=1-1-spell)* (Penguin/Portfolio). Michael sends recommendations, tips, and other exclusive content to his private email list, which you can join at www.ellsberg.com (http://www.ellsberg.com/). Connect with him on Twitter @MichaelEllsberg (http://twitter.com/#%21/michaelellsberg) or subscribe to profile on Facebook (http://www.facebook.com/ellsberg).