



## Lawyers Treat Symptoms, Too!

by

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The sad plight of James Forsythe, M.D., H.M.D. as reported in the January 2007 *Townsend Letter*, “Sea Change in Government Tactics Against Cam Providers,” bemoans vitriolic violation of due process rights by governmental authorities. When this happens to you, or to the average alternative/complementary medicine practitioner, naturally, the very first step is a quick visit to your nearest sympathetic legal eagle, your attorney.

Just as all doctors are not equal (no matter how their state license reads), neither are all lawyers equal (no matter how their state license reads).

And, just as your friendly neighborhood medical doctor must also earn a living, so must your empathetic attorney. Conflicts between self-survival and solving the client’s problem can easily ensue in both instances.

Although qualified to do otherwise, and as your family doctor usually draws upon a specific population, or practices jointly with particular hospitals, so does the lawyer draw from those of specific need and also normally practices as an officer of the court under particular jurisdictions.

There are many distinctly Machiavellian tactics used by governmental authorities to “get” alternative/complementary practitioners.<sup>2</sup> For now, keep in mind that, no matter how clever your friendly neighborhood lawyer, s/he is not really prepared for the depth and extent of the tactics that will most likely be employed.

Let’s set up one of the most common ploys by State and Federal officials:

John Doe is well known for his expertise in treating cancer. By word-of-mouth patients flock to his medical center where not only are their tu-

mors put into regression and cancer spread is halted, but each patient is taught metabolic nutrition and change of life-style so that when they return home they sustain their gains.

A member of the Quack, Quack Busters organization — or an equivalent sub-species — gets wind of the fact that Dr. Doe is not using FDA and State Medical Board “approved” radiation, surgery, or chemotherapy, and so he has secretly reported John Doe to the State Medical Board.

Digressing briefly from John Doe’s tribulations, let’s address this so-commonly used tactic, “you’re not using FDA ‘approved’ procedures.”

Remember, Federal law normally trumps state law!

Ray Evers, M.D., (deceased) often cited as the father of chelation therapy, lost several fortunes defending from the multiple evil empire, but finally succeeded in bringing his case before the United States Supreme Court. Derived from rulings in his favor is a paragraph from the “Foreward to the 50th Edition,” *Physician Desk Reference* (1996: the only copy available to me):

“The FDA has also recognized that the FD&C [Food Drug and Cosmetic Act] does not, however, limit the manner in which a physician may use an approved drug. Once a product has been approved for marketing, a physician may choose to prescribe it for uses or in treatment regimens or patient populations that are not included in approved labeling. The FDA also observes that accepted medical practice includes drug use that is not reflected in approved drug labeling.” [See *United States v. Evers*, *supra*, 643 F.2d at 1048, quoting 37 Fed. Reg. 16503 (1972).]

Two observations can be made from the above quotation:

1. State (and FDA) insistence on drug use only according to “FDA approval,” is not the law of the land.

2. Since most state constitutions do not address this specific legal point, then accusations against you for so doing should immediately be removed to Federal jurisdiction — not to be heard in any State court, although, within limits, State Courts

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Federal preemption over state law consists of two types:

“Express preemption” occurs where Congress says within the statute ‘we hereby preempt.’ Here, federal laws are explicitly precluding state and local regulations.

“Implied preemption” has, within itself, three sub-categories: conflicts preemption, preemption because state law impedes the achievement of a federal objective, and preemption because federal law occupies the field.

An apparent conflict preemption in the State of California, for example, when treating cancer, mandates by law that licensed physicians use only “approved” methods, which interprets to mean radiation, chemotherapy or surgery.

So, how does one reconcile the Supreme Court’s prior, strong statement that the physician has carte blanche to use treatments he deems necessary with this blanket State usurpation of physicians’ legal and professional right to choose and patients’ freedom-of-choice rights?

Probably Federal case law — those court cases testing the conflict between these diametrically opposed directions — is or will be complex and circuitous, depending upon specific litigagous details before reaching a direct confrontation.

Presumably the Federal Government’s power to determine what constitutes “safe and effective” drug use does, however, trump California’s law on the liberal use of marijuana!

Conflicts between State and Federal law are complex and often settled in favor of the State provided the Federal Court can find a way to do so. Numerous preemption cases follow no predictable jurisprudential or analytical pattern.<sup>9</sup>

But, back to Dr. John Doe:

After due hurrumphing, members of the state’s distinguished set of political appointees, the medical board, turns the quack, quack busters’ pseudo complaint over to the attorney’s general office.

No copy will go to Dr. Doe so that, at this point, John Doe doesn’t know who is complaining about him, or what the complaint is about, or even that a complaint exists. We can all be assured, however,

that it will not be one of Dr. Doe’s patients!

The State attorney’s general office is an extremely busy place. Who gets the assignment to go after John Doe is pretty much a matter of office economics and personnel availability. Let’s say that Jim Dumdum gets the assignment.

The probability is very high that Jim Dumdum is young, relatively unfamiliar with the real world of legal eagleing, and that he’s immersed himself in nothing but overly bloated legal language and definitions for 6 or 7 years, just like a medical doctor has done in medical territory. Assistant Attorney Dumdum most likely has never heard of alternative/complementary medicine, but does know all the State laws and regulations so far as he can find them in the encyclopaedia of laws named after his state; i.e. [State] Code Annotated, called [S]TAs.

A small group of men, the medical board, a quasi-state political-appointee agency, has declared that John Doe has probably done wrong, and therefore, as a defined function of the attorney general office, Jim Dumdum has been called upon to defend his state’s citizens from alleged gross evil.

So far as Jim Dumdum is concerned, he must represent “the people” (all the remainder of the people in your state, including those who think you’re a really swell doctor) and he must attack you. (That’s the beauty of our legal system! Everyone gets to attack!!)

So, at this point Dr. Doe might receive a letter from an official directing him to come in and justify himself. Depending upon the state, he must report to any one of a variety of official offices: State Medical Board, State defined Administrative Review Board, Attorney General Office, or, perhaps, even before a Court of Law.

Dr. Doe’s best strategy, of course, is to seek professional legal assistance. But, not really knowing what’s to be charged, or even the nature of declarations against him, he’s in poor condition to discriminate between attorneys — State or Federal — and whether or not Constitutional rights are involved.

Most family neighborhood lawyers make their living in the nearest State courts, and will almost invariably lean toward State courts or toward administrative law jurisdiction. (Note: Unless the

Medical data is for informational purposes only. You should always consult your family physician, or one of our referral physicians prior coming fight at a lower court [or administrative review] level — John Doe’s counter-assertions — includes constitutional claims, such as violation of constitutional rights, higher state courts will not review violation of constitutional rights claims, and John Doe will be precluded at any further step from claims of violation of constitutional rights at higher State Courts. However a claim in Federal Courts might still be permitted.)

If rights assigned to Dr. Doe by the Federal Bill of Rights have been violated, or are believed to be violated by the State processes, then Federal Courts should be the first and only recourse, although similar claims are permitted in State courts, especially when State law includes similar rights.

[Although some States have reserved stronger rights to the people, some weaker, and some about the same, it’s in Federal Courts where thousands of Federal case histories — legal guiding lights - abide, and are most easily understood. And it’s the Federal judges who are most familiar with those cases.]

So, let’s say that the next State action is the coordinated frontal attack on Dr. John Doe: (1) Distorted newspaper reports about Dr. John Doe, in efforts to discredit and slander him (“poisoning” the judge or jury pool); (2) Ousting of Dr. Doe from hospitals, based on innuendo and rumor; (3) Appearance of armed government agents in the waiting room with announced intention of arresting Dr. Doe or his personnel; (4) Collection of all the patients’ personal medical files; (5) Ripping out of the hard drive from the good doctor’s computer; (6) Searches thru drawers, offices and, yes, even outside garbage containers for either evidence or objects that can be construed to be evidence.

Notice!

Probably no warrant, or other identification has been provided during this obvious violation of constitutional rights in the name of “protecting the public.”

By this time it’s clearly occurred to Dr. Doe that he needs professional legal advice. Where does he turn? To the lawyer he knows best, perhaps one who has in the past handled his auto accident, civil contracts, or covered another type of domestic dispute.

Will the attorney refer him to a Constitutional expert? Usually not. The attorney will quickly pull out his encyclopaedic [S]CA and read up on all of the State’s administrative and other pertinent law, preparing himself for a charged battle of wits — in a somewhat biased arena.

### **What Relief Will Dr. Doe’s State-Oriented Attorney Seek?**

Most likely Dr. Doe’s attorney will seek both Declaratory and Injunctive Relief from State violation of Due Process Rights.

Declaratory relief is primarily relief from confusion created by statute, by interpretation, or by actions of the law. It’s a statutory remedy for “the determination of a justiciable controversy where the plaintiff [Dr. Doe] is in doubt as to his legal rights.”<sup>8</sup>

The theory is that an early resolution of Dr. Doe’s legal rights will resolve some or all of the other issues in the case.

Injunctive relief would be a court order in favor of Dr. Doe “prohibiting the State from doing some specified act or commanding someone to undo some wrong or injury.”<sup>8</sup>

At the core of injunctive relief is a recognition that monetary damages cannot solve all problems. An injunction may be permanent or it may be temporary. A preliminary injunction is a provisional remedy granted to restrain activity on a temporary basis until the court can make a final decision after trial. It is usually necessary to prove the high likelihood of success upon the merits of one’s case and a likelihood of irreparable harm in the absence of a preliminary injunction before such an injunction may be granted; otherwise the party may have to wait for trial to obtain a permanent injunction.

Temporary injunctive relief would be applicable, for example, in prohibiting the State from withdrawing Dr. Doe’s license until the full facts of the case can be heard.

Such judicial determinations [remedies] to be won as outcomes of Plaintiff’s State trial would be based upon an itemized listing of claims and counter-claims between the State and the Defendant, Dr. Doe.

As we are assuming for the sake of this article that Constitutionally guaranteed due process rights

Medical data is for informational purposes only. You should always consult your family physician, or one of our referral physicians prior have, in fact, been violated by State or Federal employees under color of law, it is mentioned only in passing that the judicial body hearing the State's additional complaints will also hear Plaintiff's point-by-point rebut to them when and if the court decides it is appropriate to hear them.

Since all State Constitutions also include Federal guarantees of Constitutional rights, including rights to due process, the really bright attorney will also seek an award of attorneys fees and costs pursuant to 42 U.S.C. 1983 — violation of Plaintiff's rights under color of law.

This is the point where relief sought reflects "customary" practices based upon the experience of the regional State attorney. He "knows" that if he can get the local judge to provide Declaratory and Injunctive relief, and to declare violation of due process rights, he's got the Plaintiff "saved."

If he can also get "attorney" fees, he's reached the Leprechaun's pot-o'-gold — and he's become Dr. Doe's real savior!

John Doe's attorney, being a very good one, will have inserted in his multiple answer to charges the assertion that Dr. Doe's rights have been violated pursuant to U.S.C. Title 42, Section 1983. It's highly doubtful — in the writer's opinion — that the really generous pot-o'-gold — monetary penalties and punishment to violators of due process rights as provided by Title 42, Section 1983 — will be reached at this State trial level.

A rule just now invented is this: The amount of dollar award siphoned from wrong-doing State employee pocketbooks is directly proportional to the distance from State Courts.

Unfortunately (or fortunately), State Court, Judges and State licensed lawyers are mostly creations of the State, not the Federal Government. They're more responsive to the sensitivities of State officialdom and State tax-payers. (Being accused of "raiding" State coffers or administrative officials reflects badly on "professionalism.")

Also Constitutional issues are most often strongly and/or completely entertained at the appeal levels, not the State trial court levels — and this writer, probably along with Dr. Doe's attorney — is of the opinion that monetary penalties based on Title 42, Section 1983, even if reached at this

State trial court level, will be of minimum restitution for Dr. Doe.

There will almost certainly be reluctance to haul specific State or Federal Administrative personnel before the trial court. Consider this second general rule (also just now invented): Subpoenas — a court order to appear as a witness — for individual State or Federal officials at trial court are issued in inverse proportion to the height of the administrative level!

State subpoenas have absolutely no power across State boundaries. Federal authorities — those administrators who, along with others, may be most likely to have initiated your local judicial problems — such as those located in Washington, D.C. at the FDA, cannot be reached via State Subpoena.

Federal Court, when necessary, can reach across all State boundaries!

In a 1970s Tennessee State University violation of due process rights a college professor, Chapdelaine, had received a project director's grant of half a million dollars from the National Science Foundation to help develop computer assisted instruction — quite a generous project grant in those days. From the very moment the grant arrived school officials tried every imaginable Machiavelian tactic to control the funding or the project's findings. Eventually they fired the professor without cause although he held tenure both by virtue of contract as well as State Statute.

"Holding tenure" simply means that prior to discharge the professor has a right to an unbiased hearing, and that his firing must be based upon a set of objective standards which were in violation by the professor.

This "due process" hearing was denied at all State levels — College up through the Commissioner of Education.

Clearly, explicitly defined due process rights were violated.

After long, diligent search Chapdelaine at last found legal representation.<sup>11</sup> As a generality, lawyers did not want to tackle a strong, local power structure, thus the "long, diligent" search for representation. Since this was the first time that State officials had been challenged to implement their

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own tenure laws — even though it was held that Tennessee’s constitutional bill of rights was stronger than those of the Federal Government — stiff legal resistance was expected and did occur, the State Attorney General Office, of course, eagerly “protected” the citizens of the State of Tennessee.

The fight finally reached the Supreme Court level (highest) where Chapdelaine’s claim was fully vindicated, he had, indeed, tenure rights both by contract and by State statute.

So, what was the State remedy?

Did the Department Head, the Dean of Arts and Sciences, the Dean of Faculty, the University President, and/or the Commissioner of Education suffer any penalties?

None whatsoever!

Plaintiff’s award was simply a years’ pay plus interest — no reinstatement, no objective, unbiased hearing judged by explicit standards as promised both by Statute and Contract law given “tenure” — and also a continuation of an underhanded employment blackballing for equivalent teaching positions and other possible State benefits such as desperately needed food stamps (ten children).

All personnel at all administrative levels were free at any future time to deny others a fair and objective hearing!

The attorneys who represented Chapdelaine were pleased, of course. They’d won a precedent case as well as one-third of the award. Further, their names could now be found associated with a precedent setting “key” case. A key case is one that is referred to and quoted as a major guiding light thereafter.

But, more a slap-in-the-face to Chapdelaine than a great victory was the automatic change in the style of the case. Whereas it had begun as Chapdelaine versus the State of Tennessee and Tennessee State University, President Torrence, et. al., the style was changed, now becoming State ex. rel. Chapdelaine v. Torrence [532 S.W. 2d 542-550 (Tenn 1976)]. (This means “State of Tennessee on the relation of Chapdelaine.”)<sup>10</sup>

Since the State is sovereign, it can do no wrong! Therefore, on the State Supreme Court declaring Chapdelaine the winner — and after all of his lawyer’s fight and his own pain and deprivations

against the State’s unlimited funds — the State joined the Plaintiff so that the end results published in the Tennessee case histories appear to say that the State of Tennessee had all along agreed with and had joined the plaintiff!

It was all along the University President’s and “et. al.” fault, not the State’s!

President Torrence and his co-conspirators, of course, retained their jobs and salaries, and were totally free to deny another professor his/her constitutional rights!

So why does Dr. Doe’s exceptionally bright local attorney bother to include Title 42, Section 1983 in his State trial court pleadings?

In this writer’s opinion the reasons Dr. Doe’s bright attorney included a Title 42, Section 1983 claim at the State trial level was primarily twofold (1) if it were not claimed at the trial stage, it could never be reviewed at State appeals stages; (2) to pressure the other side, to get the due process violators to look at the possible penalties their misbehavior might lay on them — a kind of subtle warning, as it were.

### **The Problem: Treating Symptoms**

When Dr. Doe’s lawyer wins this case (Declaratory and Injunctive relief and some costs) and Dr. Doe returns to his alternative/complementary practice, the basic problem of State and Federal supported and funded suppression has not been solved, nor will the proper and complete remedy have been provided by the State trial court.

But, Dr. Doe’s lawyer saved Dr. Doe’s bacon! Right?

We’re all happy for Dr. Doe, if he wins Declaratory and Injunctive relief as well as some costs — but those evil ones are still lurking behind the legal shadows of State or Federal protection (under color of law) — and they’re ever so free to go after Dr. Jane Doe (or you) next in the same manner, using the same violation of due process rights.

One cannot obtain a permanent injunction against an act that has never been performed! Prior restraint is often considered a particularly oppressive form of censorship in Anglo-American jurisprudence. Realistically, to ask for a prior restraint against individuals in a Governmental agency would be asking for a violation of rights guaran-

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ted by the U.S. and State Constitutions at the same level as has already been applied to Dr. Doe.

In a manner of speaking, Dr. Doe's lawyer has done everything he set out to do. He's protected his client's rights, brought in some money, and slapped one of the State or Federal governmental bodies on their non-tender wrist.

Dr. Doe's attorney is not in business to crusade against bad governmental departments! Or bad governmental employees!

He's done his job! He's pulled his client out of a deep, dark hole!

But, where it has cost John Doe, M.D. perhaps \$500,000 or more and loss of patients and reputation during and for his adequate defense, it has cost those who've made the decisions to violate his basic rights absolutely nothing! In fact, they continued to collect their monthly salary during the many months of altercation — and the court's slap on the wrist to the whole department is absolutely meaningless — of zero effect — against those individuals who violated Dr. Doe's Constitutional rights!

Further, unknowingly, all of the tax payers in the state have pooled their resources to pay State costs for this legal farce — whether they wanted to or not!

In Dr. John Doe's case, where obvious due process rights have been violated by State functionaries, no one has been held accountable, except the held-in-ignorance tax-payer.

Like mainstream medical doctors, John Doe's lawyer has just treated a symptom, not a cause!

### **The Solution:**

#### **U.S. Code Title 43, Section 1983, Civil Action For Deprivation of Rights**

This Civil Rights Act provision was formerly enacted as part of the Ku Klux Klan Act of 1871 and was originally designed to combat post-Civil War racial violence in the Southern states. Reenacted as part of the Civil Rights Act, section 1983 is today the primary means of enforcing all constitutional rights. This Federal Act is powerful and wide in scope. It reads:

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the Dis-

trict of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.” [U.S. Code as of: 01/19/04]

This act clearly states that any government official — Federal, State, County, City — who deprives a citizen of any of their constitutional rights, such as due process, under color of law, can be held personally responsible!

In other words, assuming Dr. John Doe's due process rights have indeed been violated, then every Federal or State employee who entered into the end-game of “getting John Doe” is liable for personal financial penalties.

Bluntly, John can reach into each responsible person's pocketbook and pull out a substantial amount of money for his own inurement! Such an action, it is believed by former lawmakers, as well as by this writer, serves as a huge barrier to the willy-nilly “going after doctors” that now exists.

Advantages to this legal approach are clear: (1) Wasted taxes and court time is lessened; (2) Good doctors are saved; (3) Suppressive or outright ignorant civil functionaries are identified and suppressed in turn; (4) Governmental agencies begin operating as Congress intended.

In Monroe v. Pape 365 U.S. 167 (1961) six black children and their parents brought a Title 42, Section 1983 action in federal district court against the city of Chicago and thirteen of its police officers for damages for violation of their rights under the Fourteenth Amendment. They alleged that,

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Were the police officers and the city of Chicago liable under Title 42, Section 1983 for what was done to the plaintiffs?

According to the U.S. Supreme Court, police officers acting illegally and outside their scope of authority may be liable under Title 42, Section 1983 despite the requirement that the officers must have been acting under color of state law. The statutory words “under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory” contained in 42 U.S.C. 1983 do not exclude acts of an official or police officer who can show no authority under state law, custom, or usage to do what he or she did or who even violated the state constitution and laws. The city of Chicago, however, was not held liable, because the Court ruled that Congress did not intend to bring municipal corporations within the ambit of Title 42, Section 1983. This ruling was later overturned by the Court in Monell v. New York City Department Of Social Services, 436 U.S. 658 (1978).

Monell virtually opened the floodgates of the courts to civil rights (or Title 42, Section 1983) litigation. Prior to this, it was difficult to hold public officials liable under Title 42, Section 1983 because of the requirement that they must have acted under color of state law. Most civil liabilities, however, stem from the abuse of power or authority by the police, and such actions were considered outside the color of state law. Monell changed all that. Now police officers can be sued under Title 42, Section 1983 if what they did arose out of a “misuse of power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.” An officer who abuses his or her authority

can now be sued under Title 42, Section 1983 as having acted under color of state law. Under Monell, the term “under color of state law” is not synonymous with “acting within the scope of authority.” An officer can act outside the scope of authority, or even illegally, and still be sued under Title 42, Section 1983 as having acted under color of state law.

Of course, what applies to officers also applies to all other State employees! Indeed, all governmental employees, Municipal, State and Federal, can be held personally responsible!

### **How Many Cases Have Been Decided Under U.S. Code Title 42, Section 1983?**

This writer has spent hours thumbing through the thousands of cases recorded at the Federal District Court and U.S. Supreme Court levels. They cover almost every abuse of power that one can imagine. Clearly the Congress and President were wise back in the 1800s when this law was first adopted and also later when revised by broadening.

Wiser, still, would be any alternative/complementary doctor who, on experiencing violation of constitutional rights, under color of law, aims directly for the Federal Courts, and, together with proof, who also invokes U.S.C. Title 42, Section 1983!

### **The Overt/Motivator Sequence**

L. Ron Hubbard<sup>5</sup> long ago codified the Overt/Motivator Sequence. One can commit an overt act against another by commission or omission. “By commission” is an actual act, while “by omission” is failing to act when you should.

Whenever someone, such as those “regulating” our medical services commits an overt act against us, s/he will have reached into their own mind to pull out a motivation, often a memory from years past or a justification in the present for having performed the overt act against us. These are self justifications for destructive behavior. Each justification forms the basis for further overt acts against the same person or group.

This process, plus money, is obviously the operational basis for quack, quack busters.

It is a process that never ends until you end it!  
You get her/him to end it all by exposing her/

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Each hidden third party is also creating their own motivators as to why it is necessary to get you!

As a corollary to false accusations, Hubbard adds that if you and others are falsely accused of some impropriety — quackery, lying, cheating, stealing, unprofessionalism, et. al. — then if you do your investigative homework on the accuser you will almost invariably find that the accuser stands guilty of acts identical to, or similar to, her/his false charges against you! Hubbard says, “The criminal accuses others of things which he himself is doing.”

In a violation of constitutionally guaranteed rights, U.S.C. Title 42, Section 1983 is the only remedy in law that (1) optimizes the opportunity to confront the actual personage behind claims against you; (2) opens an opportunity to learn who are the actual hidden third parties; (3) punishes (reaches the pocket-book) of the guilty parties, especially governmental employees. Specific administrative individuals who've made the decisions against you can be ascertained, and confronted!

State administrative law and/or medical board reviews or State judicial hearings generally, by habit or ignorance, deny or minimize the opportunity for all of the above.

### **The FDA is Not All Bad**

The FDA as a protective institution is not all bad!

It's easy to condemn the whole of this organization without identifying specifically who, in the organization, is responsible.

News media practices inadvertently condition us to accept glittering generalities, a method of condemning the whole without pinpointing decision responsibility.

To some extent we all swing blanket blame: “The FDA did so and so.” “The AMA is no good.” “The ADA is harmful,” “The State Medical Board is corrupt!,” etc.

Only specific people employed by these orga-

nizations have made specific decisions that affect health professionals placed in constitutionally impermissible jeopardy!

U.S.C. Title 42, Section 1983 permits one to determine who these specific people are, how they did it, why they did it, and provides penalties for what they did!

Well meaning Congressmen, responding to one pressure group or another, try their best to pass laws that — even when against our will — protect us from harm.

Sometimes their watchdog efforts pay off!

Consider the case of thalidomide. Thalidomide was synthesized by Chemie Grünenthal at Stolberg, Germany in 1953. Touted as an ideal morning sickness remedy, it was used throughout Europe and other parts of the world under numerous tradenames, primarily for morning sickness with pregnant women.

FDA's Frances Kelsey, new to her job, and for perhaps good reasons — although some say bumbling bureaucracy — denied persistent requests for approval in the United States.

An estimated 8,000 to 12,000 infants were born with deformities caused by thalidomide. Of these, only 5,000 survived beyond childhood.

The medication never received approval in the United States at that time, but 2.5 million tablets had been given to more than 1,200 American Doctors during Richardson-Merrill's “investigation,” and nearly 20,000 patients received thalidomide tablets, including several hundred pregnant American women<sup>7</sup>. Seventeen American children were born with thalidomide-related deformities, by best estimate. (As thalidomide is not a mutagen, these defects were not passed on.)

Primarily because of this world-wide tragedy — and faulty method of ascertaining drug utility — Tennessee's U.S. Senator Estes Keauver, resurrected and had rewritten a new FDA function, signed into law by John F. Kennedy on October 10, 1962, The Kefauver Harris Amendment which demanded that pharmaceuticals pass both a “safety and effectiveness” standard.

Because of thalidomide tragedies FDA's “safety” requirement was increased to “safe and effective!”

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Whoa! Wait a minute!

If thalidomide was effective — and it certainly was — then what form of circumulative illogic added to our protective requirements an “effective” standard?

Or is this the way Congress always works?

Note that thalidomide was perhaps one of the best-ever solutions to morning sickness. It was definitely “effective!” It just wasn’t “safe” for its intended purpose!

There can be absolutely no doubt — whether stumbling or shrewd science — Kelsey (and the FDA) saved thousands of American tears!

But wasn’t this new standard deceptively installed by whipped-up emotion? Wasn’t this a matter of charging after one bull, and goring another?

Did the Kefauver-Harris bill really become a significant force for good?

### **The Symptomatic Nature of the FDA’s Safety and Effectiveness Standard**

No one wants to intake food or drugs that are unsafe. But safety is relative! Too much water given to a drowning woman — or even voluntarily drunk — can be very unsafe. Tolerating temporary but painful side-effects while actually healing an intransigent disease can become an accepted standard of care.

The chief problem with the Kefauver-Harris Amendment, and the FDA, is a faulty interpretation of the meaning of “effective.”

Ask any American citizen if they want a law protecting them from ineffective drugs, and their answer will be a resounding “Yes!”

To the average lay person — and possibly many Congressmen who were in favor of the Kefauver-Harris Amendment — “effective” means “it works!”

To the pharmaceutical companies, and to the FDA, “effective” means that it suppresses a symptom.

Consider a no-brainer: “This cold medicine, SniffleSnaffle, will dry up your cold like magic. No more sniffing, sneezing, coughing or lethargy. One tablet will last for 12 hours.”

By the standards of the Kefauver-Harris Amendment, all that SniffleSnaffle need do is halt those symptoms of colds, not cure your cold.

“Effectiveness,” to most of us lay folks means, “it works,” that is, “it cures the cold.”

“Effectiveness” to drug companies and the FDA means that it accurately depicts a symptom reliever, and that side-effects can be tolerable under certain specified conditions.

The lower bar, of course, leads to billions of dollars expended for symptom relievers and virtually nothing for cures.

We call this medical progress?

### **Symptom Relievers are Everywhere!**

So there you have it!

Lawyers knowingly or unknowingly avoid legal-source causation and seek symptomatic relief for medical practitioners who’ve been denied their constitutional rights.

Pharmaceutical companies spend exorbitant amounts of money and research seeking a patented symptom reliever.

The FDA’s standard of effectiveness seeks only to show that a marketed substance buries a symptom temporarily.

Most health practitioners are taught, and practice, the art of treating and suppressing symptoms.

It’s no wonder that those complementary/alternative health professionals who’ve become “due process” endangered under color-of-law, end up with lawyers who seek to follow benign (to the offending bureaucrat) judicial remedies.

Violation of due process rights, under color of law, properly belongs in Federal Courts, not State Courts, even though State Courts may permit their entry.

Explore for yourself the multitude of case histories bound together under U.S.Code Title 42, Section 1983!

And remember — there’s nothing at all like making officialdom responsible for their own actions!!

Holding decision-makers responsible for their decisions will, more than any other remedy, halt the offensive destruction of those alternative/complementary health professionals who seek patient wellness rather than symptomatic relief!

### **Disclosure**

The author of this article is neither a licensed health practitioner, nor a licensed attorney of any

Medical data is for informational purposes only. You should always consult your family physician, or one of our referral physicians prior kind.

He has no vested interest in State or Federal courts, nor in seeking Plaintiffs.

Advice provided is merely to point toward what seems to be a proper direction and solution to an outstanding 21st Century problem — that of suppression of constructive medical practices — and is not to be taken as either medical or legal advice.

But —

The author thinks you're very, very foolish if you don't at least explore U.S.Code Title 42, Section 1983 before you begin your time-consuming, costly expense of defending yourself from violations, under color of law, of your constitutionally guaranteed American civil rights, such accusations most likely triggered through uncaring or unknowing State officialdom by the ramblings of faulty quack, quack busters who are themselves incapable of rational reasoning!

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### References

1. *Handbook of Section 1983 Litigation* is a must for any lawyer who prosecutes or defends a Section 1983 case. If you need the short answer to a Section 1983 question, and you can't afford to waste time running down the wrong research path, turn to the *Handbook of Section 1983 Litigation*, 2006 Edition. This essential guide is designed as the practitioner's desk book. It provides quick and concise answers to issues that frequently arise in Section 1983 cases, from police misconduct to affirmative actions to gender and race discrimination. It is organized to help you quickly find the specific information you need whether you're counsel for the plaintiff or defendant. You will find a clear, concise statement of the law governing every aspect of a Section 1983 claim, extensive citation to legal authority, every major Supreme Court ruling on Section 1983, as well as key opinions in every circuit, and a detailed overview of case law.

George S. Corbyn, Jr. says: "The handbook is a new publication which is the product of over twenty years of work by its author, Oklahoma City attorney David Lee. Lee has a rare combination of attributes to author this book. He is an exceptional trial lawyer who has been litigating Section 1983 claims for years. He is also a nationally recognized

scholar and expert on all aspects of Section 1983 law. Simply put, Lee knows Section 1983 law as well as anyone in the country, and he knows what trial lawyers need in a book to properly handle a Section 1983 claim."

In April, 2005, Aspen Publishers, Inc., 1185 Avenue of the Americas, 37th Fl., New York, NY 10036, published the fifth edition. The book is available through Aspen's website at [www.aspenpublishers.com](http://www.aspenpublishers.com).

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8. *Black's Law Dictionary*, 6th Edition, West Publishing Co., St. Paul, Mn. 1990.

9. "Reassessing the law of preemption" *Georgetown Law Journal*, Jul 2000 by Dinh, Viet

D.

10. The author has personal knowledge of this case.

11. Chapdelaine was exceedingly grateful for the legal representation provided by attorney James D. Petersen of Franklin, TN, when, after canvassing numerous others, no other attorney would take the case. Further, without having filed a Pauper's Oath, this case could not have been fought the distance. Health professional's cannot file a Pauper's Oath until the state finishes with them, and makes them paupers, perhaps the main reason so many good alternative/complementary practitioners cave before assessment of their constitutional rights.