

NHFA Opposes Licensure of Homeopaths in Arizona

Position Statement NHFA 2011

National Health Freedom Action opposes Arizona SB1175, which seeks to add a new category of licensed homeopaths into Arizona law. The bill requires licensure of homeopaths who are not medical doctors but who wish to practice medicine and call themselves doctors, and use the title licensed homeopathic doctor. And the bill has felony penalties for unlicensed practice “as a homeopathic doctor”.

Licensure is the most restrictive form of regulation of an occupation because licensure laws are not just about licensing the use of a “title”, but rather they license the right to do a dangerous “act” and they include criminal penalties for anyone who does any of the actions listed in the definition of the profession being licensed without first being licensed or without falling under an exemption from licensure requirements. In contrast for example, a certification law is less restrictive because it will certify the use of a particular title for a person who has a particular education, such as doctor, but will only have penalties for the use of the exclusive title.

When deciding whether to license a profession, whether the profession is dangerous is a constitutional question that always needs to be addressed because licensure can put out of business other persons practicing the profession. In fact, Arizona, like many other states, has laws that spell out the fact that licensure should not be resorted to unless a profession creates a clear danger to the public.

AZ Statute 32-3103 says that “a health profession shall be regulated by this state only if unregulated practice can clearly harm or endanger the public health, safety or welfare and the potential for harm is easily recognizable and not remote or dependent on tenuous argument.” And only if “The public cannot be effectively protected by other means in a more cost beneficial manner.”

AZ law further states that if a profession does cause a risk of harm to the public, the least restrictive form of regulation should be used, such as certification or registration, that licensure is the most restrictive and should only be resorted to if lesser forms of regulation are not adequate to protect the public.

NHFA shares the belief that professions should not be regulated unless necessary to protect the public, and that the least restrictive form of regulation should be used to protect the public if necessary.

Many states have medical statutes that include homeopathy within the definition of medicine, as well as many other forms of healing and this has caused problems because those laws include felony charges for practicing within that broad definition without a license. NHFA has worked to pass safe harbor exemption laws that give many holistic healers, including homeopaths, exemptions from the medical statute, so that they will not be charged arbitrarily with “practice of medicine without a license.”

Now for the first time, there is a state proposal to license homeopaths who are not medical doctors, by requiring a particular course of study in order to “practice medicine as a homeopathic doctor.” This bill in Arizona includes a felony violation section in the bill. NHFA holds that there is no public need or basis to mandate licensure of homeopaths in this way. If there are unlicensed homeopaths that wish to use the title “doctor”, then the type of law that would be appropriate would be a title protection

registration or certification law, or an outright exemption for any type of regulation, but not a licensure law with felony charges.

The very act of establishing licensure for a profession establishes the presumption that the profession is dangerous and that it should not be in the public domain because it creates a serious risk of harm to the public.

In contrast, the act of establishing a certification for use of a professional title such as “doctor” establishes the presumption that the use of the title is dangerous without a specific amount or type of education and that the specific title should not be used in the public domain because its use creates a serious risk of harm to the public.

NHFA believes that licensing homeopaths who are not medical doctors is a very dangerous precedent for homeopathy that could eventually affect all of the homeopaths in America by creating a presumption and perception of harm. NHFA believes that homeopathy itself does not rise to the level of public harm requiring government intervention into the profession and a need to regulate homeopathy to protect the public.

NHFA is a strong advocate for consumer access to health care options, and for intense review of laws that are proposed that might abridge the freedom to access healing options. NHFA reviews laws with a long-term vision in order to discern what the most appropriate relationship is to have with the government when it comes to a health care option.

NHFA opposes this licensure effort as unnecessary and detrimental to the profession of homeopathy and instead recommends passing safe harbor legislation, which would enable all homeopaths and many other healers to practice their vocation without the need for licensure or criminal violations.

Aren't homeopaths in Arizona protected by an exemption?

Arizona is one of three states that provides for licensed medical doctors to use homeopathy and homeopathic principles under Chapter 29 and the Board of Homeopathic and Integrated Medicine Examiners and Arizona also has an exemption for licensure requirements for the following persons practicing hahnemanian principles:

Arizona has an existing exemption which says:

32-2911. Persons and acts not affected by chapter

This chapter does not prevent:

10. The practice of providing treatment of the spiritual vital force in accordance with hahnemanian principles through the use of remedies that are diluted beyond the concentration of substances in drinking water and prepared in the manner described in the homeopathic pharmacopoeia of the United States.

It is the view of NHFA that there is no basis for a third category of homeopathic practice. In addition, NHFA believes that the hahnemanian exemption language may not be adequate to protect homeopaths because it does not contain the word homeopath or homeopathy and so does not refer directly back to

the definition of homeopathy in the statute. If SB1175 should pass, at the very least it should have clearer exemption language in it. We have requested the proponents of this bill to add the following language (they did not agree to add this):

This chapter does not prevent:

11. The practice of homeopathy as defined in Ariz Stat. 32-2901 11. or nutrition, as defined in Ariz Stat. 32-2901 19., as long as the practitioner does not hold him or herself out to the public by using the designation “doctor of homeopathy”, “homeopathic medical doctor”, “homeopathic physician”, “doctor of medicine (homeopathic)” or use any words, initials or symbols that lead the public to believe that the person is a licensed health care professional in this state if this is not true.