

Legal and Regulatory Issues Affecting the Practice Of Tibetan Medicine In The United States

Presented at the 1998 International Congress On Tibetan Medicine, Washington D.C.

©1998 Eliot Tokar

In speaking about American legal or regulatory issues that might become significant to the field of Tibetan medicine it seems useful to follow a Tibetan medical teaching tradition. At the beginning of any major lecture the teacher first recounts the history of the field. So before we discuss the future of Tibetan medicine in America let us first examine the past and the present.

Tibetan medicine first became known in America in the late 1970's with the visits of Dr. Yeshe Dhonden. Dr. Dhonden was followed by other senior Tibetan physicians, such as Lobsang Drolma, Trogawa Rinpoche and Tenzin Choedrak, who periodically toured the U.S. lecturing and seeing patients, before returning to India. In 1990, Dr. Trogawa instructed those of us who are his North American students to work together to provide follow-up clinical care for patients of Tibetan medicine. Additionally, in recent years there have been a small number of other practitioners of Tibetan medicine living and practicing in the US. During this period, to the best of my knowledge, there have been no significant legal issues or problems facing Tibetan medicine in this country

There was, however, one potential disaster over a decade ago. H. H. the Dalai Lama's Personal Physician, Dr. Tenzin Choedrak, visited the United States for the first time in 1987 upon the invitation of Terry Clifford, with help from John Giorno and John Avedon and sponsorship by the New York Office Of Tibet. When Terry Clifford fell fatally ill she asked me to stand in for her.

One of the aims of Dr. Choedrak's visit was to further explore the new AIDS crisis and determine the nature of and correct Tibetan treatment for the disease. With the help of John Giorno, Dr. Choedrak made contact with the gay and AIDS organizations in New York, and gave a public talk to those groups. He also saw some AIDS patients whom, upon the insistence of myself and others were sponsored, receiving care at no cost. This approach seemed appropriate, given that Dr. Choedrak was acting as a visiting doctor studying a relatively new epidemiological problem here and due to the sociologic and economic circumstance of those patients he wanted to examine. The visit was successful and doctors and patients were generally satisfied.

In 1988 Dr. Choedrak came back to the US. This time he was hosted by a group of American supporters of the Tibetan cause, who were otherwise uninformed about Tibetan medicine. In that group there were some health professionals but no one with significant knowledge or experience with Tibetan medicine. When I approached that group and offered my assistance I was rebuffed and told that this group was not interested in such collaboration. I was told that they regarded

past work with Tibetan medicine in the U.S. as having been a failure. A few days after this meeting, I was called by a friend who told me to turn on the local TV news.

I put on the TV and saw an investigative report exposing AIDS frauds. The journalists had obtained a pamphlet, written and handed out by the American group sponsoring Dr. Choedrak, claiming he had a cure for AIDS. The TV station sent in a hidden camera, and then presented a rather damning expose of what they saw as fraud. Fortunately before any action could be taken, Dr. Choedrak had left the country.

The Tibetan community in India was not accurately informed about what had happened. As a result, for years after this incident, several different versions of the story evolved, blaming the Chinese, the news media, the gay community and/or others. The problem was, however, misguided and aggressive action by, an otherwise well intentioned, but uninformed group who were unwilling to work in a cooperative manner with their fellow Americans who were experienced and knowledgeable in the field of Tibetan medicine.

As Tibetan medicine becomes more accessible in the U.S., it is important to realize that there is a significant difference between it and the other rich information and knowledge that the Tibetan people have already communicated to the West. Whereas religion, culture, and politics can be freely disseminated here under the First Amendment, the conditions under which medicine can be practiced in this country are limited to some degree by our culture, science, economics and law.

Fortunately, the above story is the only history, I am aware of, where difficulties occurred with Tibetan medicine being practiced here. All other visits by Tibetan doctors, as well as the work of North Americans practicing, have not resulted in any meaningful problems.

So having summarized the past let us examine the present.

For the past thirty years the American people have been expressing a view that the medical system that has dominated this country for most of this century is not wholly adequate. This expression took one form in the growth of the grassroots alternative medicine movement.

In 1993 Dr. David Eisenberg of Harvard University created front-page news with an article in the New England Journal of Medicine documenting the extent to which people are paying out of pocket for so-called alternative or unconventional medical care. The growing awareness of increased marketshare in this area has lead to an explosion of interest from doctors, researchers, the government and industry.

In some ways this interest has created important strides forward. A new openness by scholarly institutions, hospitals, physicians and medical schools has resulted. In 1995, in Washington D.C., I lectured at a conference on the subject of alternative medicine and found a renaissance

atmosphere where doctors, researchers, legislators and independent practitioners of natural medicine met on equal ground, freely exchanging ideas, experience and knowledge. Since that time I have spoken to positively interested audiences at institutions such as Columbia Presbyterian Hospital and the American Association of Medical Colleges.

But there is another reality as well. Now present on the scene are those in the healthcare industry who are seeking to co-opt and control this renaissance through professional, political, legal and commercial means. Remember that the article by Dr. Eisenberg did not take as its theme the principles, techniques, and efficacy of alternative medical approaches. The article's main theme was the economics and the demographics of the alternative medicine business. In the context of this awareness of millions of healthcare dollars being spent on alternative health practices, there is a growing attempt to regulate and control this expansion of new choices.

At the root of the danger facing Tibetan medicine and all natural medicine in the U.S. is economics. A goldrush has begun in allopathic medicine as it has begun to 'integrate' alternative medicine. The grassroots alternative medicine movement is being forced aside with the building of a new Complementary and Alternative Medicine [CAM] industry. As the pharmaceutical industry's salespeople continue to inordinately influence allopathic physicians, these selfsame companies are an integral part of the growth of the new Nutraceutical industry. These new businesses are directed towards creating power within the existent healthcare industry, establishing a market, developing professional hierarchies and selling their product, and are supplanting the traditional ecological and humanistic ethic of the alternative medicine field.

It is within this present context that Tibetan medicine is now receiving greater attention from the public, scholars and the media.

So what about the future?

Tibetan medicine is slowly beginning to be promoted as a new product, by the Complementary and Alternative Medicine [CAM] industry, and among some in the Tibet support community. But market forces alone cannot present the true Tibetan medical tradition to the West. The Western medical tradition has already shown us the dangers of developing medicine as a commodity. In fact, the alternative medicine movement grew as a direct response by the American people to the negative impact such a development had on the quality of allopathic medical care.

From the perspective of the Tibetan community there are dangers as well. In order to introduce a true practice of Tibetan medicine into the U.S., the Tibetan medical community in India, Tibet and Central Asia needs to develop a greater critical understanding of the protocols and uses of Western medical research, the workings of Western medicine, and the culture and economics of the American medical industry. There has been a growing attempt by individuals in the CAM industry, and in the Tibet support community to misinform Tibetan doctors and medical

institutions in the East about the legal, scientific, cultural and economic issues related to the practice of natural medicine in the U.S.

If our goal is to preserve a genuine practice of Tibetan medicine here we must be conscious of the powerful cultural influence of allopathic medicine especially as it relates to clinical practice as well as legal and regulatory matters. The economy of time and commerce and the influence of the allopathic medical approach place the more classical, holistic approach to Tibetan medicine at risk of being lost. We must avoid to the greatest extent possible negatively affecting Tibetan medicine as we attempt to encourage its preservation and introduction to the West.

It is urgent at this time that there be greater communication between both Tibetan and American Tibetan medicine practitioners so that we can work together to maintain the true tradition here and protect it from exploitation. To allow a true flowering of Tibetan medical practice here the small number of North Americans who are serious long-term students of Tibetan medicine need assistance from our Tibetan colleagues. As we succeed in our attempts to study and faithfully practice this tradition, we can begin to work with our Tibetan colleagues to build the practical and the legal and regulatory basis appropriate for the proper use of Tibetan medicine here.

If experimental studies are to be done to determine safety and efficacy, research protocols must be specifically designed which are appropriate for investigating the theory and practice of Tibetan medicine. There is questionable value in investigating Tibetan herbal medicines as if they are simply a complement to allopathic treatment or interchangeable with allopathic pharmaceuticals.

There are people in medicine that would say that only that which is proven or provable by research is safe or should be legal. But, speaking at the 1997 National Institutes of Health [NIH] conference on acupuncture Dr. Alan Trachtenberg, former head of the NIH Office of Alternative Medicine, made the point that “a majority of interventions recommended to Americans by their physicians are not based on randomized and blinded trials but on” the clinical experience of those physicians and their teachers. He made the point that a majority of those interventions that are used are used not due to research but because they have “stood the test of time in American medicine”. That fact would be surprising to a majority of Americans and Tibetans who have been misinformed that proof through research is the scientific [and legal] basis of all allopathic medicine. It is not surprising to practitioners of traditional Asian medicine whose own ‘test of time’ is counted in centuries.

We must work together to support the laws whereby herbs are currently classed as food supplements in the U.S. Under this law herbs are freely available and are not required to be researched in advance of usage. Supporting this means taking the responsibility to regulate our own field. We must prevent Tibetan herbal pills as being confused with the sum total of the Tibetan medical system. To practice Tibetan medicine one must first arrive at an individualized, complex diagnosis explaining the systemic imbalances that have manifested as illness. Only then a multi-level therapeutic approach, including counseling, spiritual advise, behavior modification, dietary therapy and, where appropriate, herbal and/ or physical therapies, is created in order to

achieve a truly curative effect. Neglecting this classical approach can lead to an excessive emphasis on the use of herbal medicines to cure a narrowly defined model of illness. We must also be concerned about herbal products marketed as Tibetan medicine which are coming onto the market for generic use.

As with other fields of traditional medicine that have succeeded here, the key to Tibetan medicine's success in the U.S. will surely be native practitioners working in concert with those of us who are American students and practitioners to consistently help individual patients suffering from illness. To make Tibetan medicine available and to avoid improper legal constraint or illegitimate commercial exploitation those of us knowledgeable and experienced in the field must form a professional association. We should not, however, make the mistake occurring in some disciplines of what is termed alternative medicine. We should not professionalize in the manner of allopathic physicians or simply to gain acceptance by health insurance companies.

With interest in Tibetan medicine growing, many Tibetan doctors are being forced to speak in western medical diagnostic terms this is quite problematic. We must remember that, for example, diabetes, cancer, arthritis, etc. are not things. They are ideas of allopathic medicine about the etiology and treatment of certain illnesses. If presented with a patient with a Western medical diagnosis of diabetes or cancer there are several possible diagnosis and treatments that the Tibetan doctor will use. If we want to establish a true complementary approach for Tibetan medicine, we must create an accurate language through which Tibetan doctors and allopathic doctors can communicate clearly about their disciplines. Creating such a language is a complex but essential task that is often overlooked or attempted in an intellectually and scientifically inadequate fashion.

As legal and regulatory issues become pressing, a means of explaining the relative effectiveness and limitations of Tibetan medical approaches is needed. If Tibetan medicine is to be integrated into our healthcare system it is our job to educate our fellow citizens so they can develop a clear understanding of its theory and practice. Like other systems of traditional Asian medicine, Tibetan medicine is not simply about herbal pills, acupuncture points or other therapeutic techniques. Rather, it is about the scientific and spiritual knowledge that gives rise to and defines the clinical indications for those applications. It is our job to make that understood.

Given the speed of developments in the modern world, it will probably not take us the seven centuries the Tibetans utilized to create a new model of medicine in this country. However, trying to arrive at this point too quickly will give us the Disneyworld version of unique and complex medical approaches. That is, we would have some of their form and some of their substance squeezed into an easily marketable and salable form. Such an approach would betray the needs and insult the intelligence of the American people whose grassroots movement began this current renaissance in healthcare.

If we take a proper course we can reach a point where different systems of medicine can act independently or in a complementary fashion where appropriate for a patient's condition. Once

freed from the dangers of hegemony and commercially motivated regulation, Tibetan medicine will fulfill its promise in broadening American health care.