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Judge Declares Board's Actions Illegal

By Scott Bullock

IJ's campaign to protect economic liberty took us across the Potomac to Maryland where two powerful licensing boards tried to stop an entrepreneur from pursuing a harmless occupation. This battle culminated in a July court victory, which both got our client back in business and marked a meaningful step forward in defending the right to earn an honest living.

Starting in 2006, IJ client Mercedes Clemens did what entrepreneurs have always done; she combined something she loved with a successful business plan. After spending 15 years in the graphic arts world, Mercedes decided that she wanted a career change. Mercedes had always loved horses and had been around them her whole life, so she began to study

the practice of equine massage, a practice valued by horse owners because it alleviates their horse's sore muscles, helps prepare for and recuperate from equestrian events, and simply relaxes naturally skittish horses.

In 2006, she completed both a private certification course in equine massage and graduated from a massage therapy school. She opened a massage practice for people, operating out of a medical office in Rockville, Md., while also offering equine massage to more than 30 clients throughout Maryland.

No sooner had she set up her business, however, than she received a cease-and-desist letter from the Maryland Board of Chiropractic Examiners, ordering her to stop performing animal massage and to take down her website. The board's position was

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IJ attorneys **Paul Sherman** and **Scott Bullock** meet with IJ client **Mercedes Ciemens** and her trusty steed, Chanty.

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clear: Unless Mercedes stopped practicing animal massage, she would face immediate revocation of her license to practice massage therapy for people, which is her main source of income. With no other choice, Mercedes stopped performing animal massage and stopped advertising the service on her website.

Initially, the Chiropractic Board was working hand-in-glove with the Maryland Board of Veterinary Examiners. The Vet Board issued a directive that it considered animal massage to be the practice of veterinary medicine. Therefore, in order to practice animal massage, Mercedes would have to attend four years of veterinary school at a cost of about \$150,000 in order to become a fully licensed vet. The Vet Board's position was as absurd as requiring massage therapists who work on people to become medical doctors.

With her animal massage business shut down, Mercedes contacted IJ and we agreed to represent her to challenge this assault on her ability to perform her chosen occupation. Perhaps recognizing how indefensible its position was, the Vet Board relented a couple of months after we filed suit and issued a public statement declaring that animal massage was not, in fact, the practice of veterinary medicine and that folks like Mercedes were free to engage in the practice without being licensed.

One would think that would have been the end of the matter. But we then saw what we have witnessed over and over again in our fights against regulatory and licensing boards: The unwillingness of most boards to relinquish any degree of their supposed authority.

The Chiropractic Board continued to make the argument that people who are licensed massage therapists cannot also practice massage on animals. We also saw in this case a tactic used repeatedly by regulatory boards: invoking procedural roadblocks to avoid having a court rule on the substantive issues in the case. The Chiropractic Board filed three separate motions to dismiss Mercedes' case, all in an attempt to vest total control and discretion in the board without ever having to answer for its decisions in court.

Thankfully, a Montgomery County trial judge would have none of this. In July, he ruled that the Chiropractic Board had no authority to regulate animal massage and that it was illegal for the Board to force Mercedes to stop her practice.

Mercedes is now back in business, doing what she knows and loves best. But the Institute's campaign for economic liberty continues. Economic liberty is under assault throughout the nation. And Mercedes' case provides a prime example of the mindset and tactics many licensing boards use to trample on the right to engage in an honest occupation. IJ is committed to fighting injustice by ensuring that licensing and other boards are held accountable for their actions and forbidden from engaging in unconstitutional and illegal actions. ♦

Scott Bullock is an IJ senior attorney.



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