

## The Right to Be Healthy

PERSPECTIVE • December 23, 2009

By Bruce Fagel

It is unfortunate that for all of the brilliance and foresight of our founding fathers, the lack of scientific knowledge about the human body in the late 18<sup>th</sup> century was such that the Bill of Rights does not contain a right to be healthy. The right of free speech and the right of protection from unreasonable search and seizure grew out of justified concerns at the time that people needed protection from an over-bearing government. The right that property could not be seized without reasonable compensation arose from similar concerns. The right to bear arms reflected the need for protection from armed enemies, which at the time meant either Indians or the British. But with an average life expectancy in the 40's and little scientific understanding about the nature of disease, being healthy was mostly a matter of luck. If the founding fathers could have imagined the state of scientific knowledge that exists in the 21st century, they would certainly have added a right to be healthy in the Bill of Rights.

Our system of government was based on a rejection of prior systems in Europe and an enlightened belief and hope in the concepts of liberty and freedom as a foundation for a true representative democracy. The Bill of Rights was an essential compromise that the founding fathers agreed to as condition for the ratification of the Constitution by the individual States. The fact that all powers not specifically given to the Federal Government in the U.S. Constitution are reserved for the States, confirms the concerns that both our founding fathers and most Americans had about a large Federal Government. But the progress of mankind has increased both the size and powers of government, both at the Federal level, as well as at the state, county, and municipal level.

One power of the Federal Government that all Americans would agree with is the power and need to maintain a military force for protection from foreign enemies. For all of the 20th century the amount of money that our government spent on our military (even between wars) far exceeded the amount of money spent in our health care system. However, in the 21st century, spending on health care has increased so dramatically that it will exceed all military spending, with no indication that it will ever level off. Beyond the military, our government provides a system of public education, police and fire protection, and even public health services that never existed when the Constitution was enacted. Few doubt the need and propriety of government, at some level, to provide such services, paid for by our tax dollars. While we may differ on how much should be spent on such services by government, these services acknowledge that we, as Americans, all have the right to fire and police protection, a right to education, and a right to "public health." Government at every level is involved in public health, but this mostly consists of dealing with issues that can affect many people at the same time, like epidemics of infectious diseases or maintaining the quality of our food supply or drugs.

In the late 18th century, so little was known about disease and the human body that "consumption" was listed as a common cause of death, and leeches and "bleeding" patients was thought to be a way of curing diseases. It was more than 100 years before "consumption" was identified as tuberculosis, and another 75 years before tuberculosis was cured. Cancer, heart disease, and hypertension were unknown to the founding fathers, and they were not identified as public health problems until the mid- 20th century. But the concept of public health has never advanced to the level of individual patients, with several significant exceptions. The military has maintained, and paid for, a separate health care system that provides medical care to all active duty military, their families, and dependants. All veterans are provided free medical care through the Veteran Affairs' (VA) Medical care system, which is separate from the system of military hospitals. Medicare provides the bulk of funding for all of the major medical centers and teaching hospitals in the country. Federal funding through the National Institutes of Health provides most of the funding for the medical research that forms the basis of modern medical care and most of the new drugs that are developed in the U.S.

Despite the involvement of our government, at all levels, in our health care system, the efforts to expand this involvement have met with stiff resistance from both the providers of healthcare and the public, for reasons that are more historical than logical or economic. Until the beginning of the 20th century, physicians were trained through an apprentice method with little scientific basis. Modern medical education with medical schools with extensive scientific curriculum and residency programs that formalize specialized training are less than 100 years old. Except for closed systems like the military or VA healthcare, most Americans obtain their medical care from a mix of non-profit and for profit systems of physicians and hospitals that charge individual patients for individual services.

The concept of health insurance came into existence during the wage and price controls imposed during World War II, as a way providing benefits to workers that did not violate wage controls. After the war, many labor unions were able to obtain the benefits of all-inclusive health insurance programs as a way of obtaining benefits over wage increases. The Kaiser Foundation Health Plan, which is the largest closed system for healthcare in California, and provides health care to about 25 percent of all Californians who have health insurance, was established by Henry J. Kaiser during World War II as a way of attracting workers to his large defense projects. When Medicare came into existence in the mid 1960s it quickly became the biggest player and payor in American healthcare. As a result of all of the separate systems of providing health care, from the "socialism" of the Kaiser health plan to the profit making hospitals and health insurance plans, the American healthcare system is so large and complex that an attempt to provide adequate health care to more Americans will surely fail, unless and until we first come to accept the idea that health care is a basic right of all Americans, no less than life, liberty, and the pursuit of happiness.

Our founding fathers, in the Declaration of Independence, recognized life, liberty, and the pursuit of happiness as unalienable rights. If the U.S. Constitution were written today, it would have to necessarily include health care as a right, since adequate health care is an essential pre-requisite to our ability to live, function as a free society, and being able to enjoy all of the benefits of our labors. As everyone who has ever had any health issue, either personally or with a family member, without your health, everything else that we work for in this free society is without meaning or purpose. If health care were acknowledged as a basic right, then we would and could expect our government to provide it in the same way that it provides military protection at the Federal level and police and fire protection at the State and local level.

**Bruce G. Fagel, MD, JD** is a physician and medical malpractice attorney. He is a regularly invited speaker before organizations of attorneys, physicians, and hospitals internationally, and has been interviewed by CBS, ABC, NBC and various media affiliates.

\*\*\*\*\*