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HEALTH FREEDOM

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You asked for information about the “health freedom” movement including the policies the movement promotes and states that have adopted similar policies in statute.

SUMMARY

The “health freedom” movement generally advocates for patients’ increased access to non-traditional health care treatments. Among other things, supporters of “health freedom” criticize government restrictions on the practice of complementary and alternative medicine by unlicensed practitioners. According to the National Institutes of Health’s National Center for Complementary and Alternative Medicine, “complementary medicine” generally refers to using a non-mainstream approach together with conventional (Western) medicine, while “alternative medicine” refers to using a non-mainstream approach in place of conventional medicine. Examples of complementary or alternative treatments include homeopathy, naturopathy, acupuncture, and massage therapy.

“Health freedom” advocates also generally support increased access to nutritional supplements and natural foods. Some supporters also criticize government-mandated vaccinations and water fluoridation.

A small number of states have enacted legislation implementing “health freedom” policies. At least seven states allow practitioners of complementary and alternative medicine to practice without a license. While the specific requirements vary, these laws generally (1) set certain parameters and conditions for such unlicensed practice and (2) require such practitioners to make certain disclosures to their patients.

There are also “health freedom” organizations and state laws that oppose the federal Affordable Care Act’s individual insurance coverage mandate. This report does not discuss this aspect of “health freedom” advocacy. If you would like more information about this issue, please let us know.

HEALTH FREEDOM MOVEMENT

In general, “health freedom” advocacy groups promote patients’ rights to access health care treatments outside the scope of traditional medicine. Thus, among other things, they advocate reduced regulation of complementary and alternative medicine practitioners. Their work generally involves lobbying, public education, and outreach.

For example, the [National Health Federation](#) is an international nonprofit organization established in 1955 which describes itself as the world’s oldest health freedom organization. The federation’s Declaration of Health Freedom Rights includes the right to receive alternative medicine and treatments (such as those provided by chiropractors, acupuncturists, naturopathic doctors, massage therapists, and clinical nutritionists) and the right of such practitioners to determine and use those treatments best suited for their patients, without government restrictions. Among other things, the declaration also advocates for the elimination of (1) government restrictions on dietary supplements; (2) pesticide, hormone, antibiotic, and irradiation use in food; (3) water fluoridation; and (4) mandatory vaccinations. The full declaration is available on the federation’s [website](#).

Another example of an organization advocating “health freedom” is the nonprofit [National Health Freedom Coalition](#) (NHFC). According to its website, the organization’s mission is:

to promote access to all health care information, services, treatments, and products that the people deem beneficial for their own health and survival; to promote an understanding of the laws and factors impacting the right to access; and to promote the health of the people of this nation.

In both [2012](#) and [2013](#), NHFC hosted a Health Freedom Congress in June. Each congress included over 30 voting members from various organizations. The 2012 congress adopted resolutions on a number of issues, such as opposition to (1) mercury-containing drugs, (2) mandatory vaccinations, (3) water fluoridation, and (4) dental amalgam (mercury) fillings. Among other things, the congress also adopted several food-related resolutions, including support for mandatory labeling of genetically-engineered food.

Another such organization is the nonprofit Alliance for Natural Health USA (ANH-USA). On its [website](#), the organization describes itself as “part of an international organization dedicated to promoting sustainable health and freedom of choice in healthcare through good science and good law.” Some of the issues ANH-USA supports include (1) expanding the right of natural health practitioners to practice, (2) reducing regulation of dietary supplements, and (3) enhancing food safety and increasing access to natural food. Among other forms of advocacy, the organization has filed lawsuits challenging government regulation of natural products and dietary supplements.

STATE LAWS ON UNLICENSED COMPLEMENTARY AND ALTERNATIVE MEDICINE

At least seven states have laws allowing complementary and alternative medicine practitioners to practice without a license under specified conditions, thus exempting them from penalties that could otherwise apply to unlicensed health care practice. These states include California, Idaho, Louisiana, Minnesota, New Mexico, Oklahoma, and Rhode Island.

The specific requirements and limitations upon the practitioners vary across such states, but the laws generally (1) specify certain procedures or treatments that unlicensed practitioners must not provide (e.g., performing surgery or prescribing prescription drugs) and (2) require the practitioners to give various disclosures to clients, such as informing clients that they are not licensed. (Oklahoma law does not require disclosures; it specifies that its allopathic (conventional) licensing law does not apply to other healing practices, including homeopathy (59 Okl. St. Ann. § 480)).

To provide examples, we summarize the key features of laws in two states—California and Minnesota. Laws in the other states contain generally similar provisions. If you would like information on other states, please let us know. Also, please note that Rhode Island’s law is generally similar to Minnesota’s, but Rhode Island does not have a separate office to enforce the unlicensed practice law and has less extensive reporting requirements (see R.I. Gen. Laws § 23-74-1 et seq.).

California

California law exempts health care practitioners from penalties for practicing medicine without a license under the following conditions. Prior to providing his or her services, the person must disclose to the client in a written statement using plain language:

1. that he or she is not a licensed physician;
2. that the treatment is alternative or complementary to healing arts services licensed by the state;
3. that the services to be provided are not licensed by the state;
4. the nature of the services to be provided;
5. the theory of treatment upon which the services are based; and
6. his or her education, training, experience, and other qualifications regarding the services to be provided.

Before providing services, the person must also obtain a written acknowledgment from the client stating that he or she has been provided with the information described above. The practitioner must maintain the written acknowledgement for three years and provide the client with a copy of it.

All of the above information must be provided to the client in a language he or she understands (Cal. Bus. & Prof. Code § 2053.6).

When advertising his or her services, the practitioner must disclose that he or she is not licensed by the state as a healing arts practitioner.

The exemption from penalties for unlicensed practice does not apply if the practitioner does any of the following:

1. conducts surgery or other procedures that puncture the skin or harmfully invade the body;
2. administers or prescribes X-ray radiation;
3. prescribes or administers legend drugs or controlled substances;
4. recommends the discontinuance of legend drugs or controlled substances prescribed by an appropriately licensed practitioner;
5. willfully diagnoses and treats a physical or mental condition under circumstances or conditions that cause or create a risk of great bodily harm, serious physical or mental illness, or death;
6. sets fractures;
7. treats lacerations or abrasions through electrotherapy; or
8. holds out, states, indicates, advertises, or implies to a client or prospective client that he or she is a physician, surgeon, or physician and surgeon (Cal. Bus. & Prof. Code § 2053.5).

These provisions do not (1) affect the scope of practice of licensed physicians and surgeons or (2) limit any person's right to seek relief for negligence or pursue another civil remedy against a person providing such unlicensed services (Cal. Bus. & Prof. Code § 2053.6).

Minnesota

Minnesota was among the first states to enact legislation setting conditions for complementary and alternative medicine providers to practice without a license (Minn. Stat. Ann. § 146A.01 et seq.). The law is administered and enforced by the Office of Unlicensed Complementary and Alternative Health Care Practice (OCAP), within the state Department of Health. The office's website is <http://www.health.state.mn.us/divs/hpsc/hop/ocap/>.

By law, OCAP must also serve as a clearinghouse on complementary and alternative health care practices and unlicensed complementary and alternative health care practitioners. It must provide objective information to consumers and public education and outreach regarding such health care practices and practitioners (Minn. Stat. Ann. § 146A.02).

Definition and Applicability of Act. The law defines “complementary and alternative health care practices” broadly as complementary and alternative healing methods and treatments. It lists 22 examples of these practices, including (1) acupressure; (2) aroma therapy; (3) culturally traditional healing practices; (4) herbology or herbalism; (5) homeopathy; (6) body work, massage, and massage therapy; (7) meditation; and (8) naturopathy.

The term specifically excludes, among other things, (1) surgery, (2) x-ray radiation, (3) dispensing legend drugs and controlled substances, (4) practices that invade the human body by puncture of the skin, and (5) the manipulation or adjustment of articulations of joints or the spine as described in the chiropractic licensing law.

The complementary and alternative health care practices law does not restrict lawful marketing or distribution of dietary supplements, including educating customers about such products. But an unlicensed complementary and alternative health care practitioner may not provide a medical diagnosis or recommend that a patient discontinue using a medically prescribed treatment.

The law applies to complementary and alternative health care practitioners who are either:

1. not licensed by a Minnesota health-related licensing board or the commissioner of health or
2. licensed by a board other than one governing medical practice, dentistry, chiropractic, or podiatry, if they do not hold themselves out as being licensed by a health-related licensing board while engaging in complementary or alternative health care.

Licensed practitioners who engage in complementary and alternative health care while practicing under their license are regulated by their applicable licensing board, not OCAP (Minn. Stat. Ann. § 146A.01).

Client Bill of Rights. The law generally requires unlicensed complementary and alternative health care practitioners to provide their clients, prior to treatment, with a copy of the complementary and alternative health care client bill of rights. Such practitioners must also post a copy in a prominent location at their office. (These requirements do not apply to practitioners who are employed by or volunteer at a hospital or hospice.)

The bill of rights must include notices and information on various subjects, such as:

1. information on the practitioner's education and training;
2. a statement that the law prohibits such practitioners from providing a medical diagnosis or recommending discontinuance of medically prescribed treatments, and the client may at any time seek a diagnosis or services from a physician or other providers;
3. the practitioner's fees and other information on paying for treatment, such as participating insurers; and
4. contact information for OCAP and a notice that the client may file complaints with the office (Minn. Stat. Ann. § 146A.11).

Prohibited Activities. The law prohibits various activities by practitioners and authorizes the state health commissioner to take various forms of disciplinary action (such as revoking, suspending, or imposing conditions on the right to practice or imposing civil penalties). Some examples of the grounds for discipline include:

1. conviction of a crime (a) reasonably related to engaging in complementary and alternative health care practices or (b) against a person;
2. failure to comply with specified reporting requirements;
3. engaging in sexual contact with a client;
4. false, fraudulent, deceptive, or misleading advertising;
5. any practice that may create danger to a client's life, health, or safety (proof of actual injury need not be established);
6. drug or alcohol abuse;

7. failure to provide a client with a copy of the client bill of rights or violating any provision of the client bill of rights;
8. using the title “doctor,” “Dr.,” or “physician;”
9. failing to recommend that a client see a licensed or registered health care provider, if there is a reasonable likelihood that the client needs to be seen by such a provider; and
10. failing to comply with any other provisions of the unlicensed practice law (Minn. Stat. Ann. § 146A.08).

The law requires practitioners who are the subject of an investigation, or questioned in connection with an investigation, to cooperate fully with the investigation. Among other things, this includes providing copies of client records as reasonably requested by OCAP to assist in an investigation (Minn. Stat. Ann. § 146A.06).

Reporting Requirements. The law requires unlicensed complementary and alternative health care practitioners to report to OCAP information regarding professional disciplinary action against them and related matters. It also requires various institutions or people to report to OCAP about disciplinary action they take against such practitioners or other information about their conduct.

For example:

1. state or local agencies, private agencies, hospitals, other health care institutions, and prepaid medical plans in the state must report actions they take to (a) suspend, revoke, restrict, or condition such a practitioner’s right to practice or (b) deny privileges or take other disciplinary action for conduct that might constitute grounds for disciplinary action by OCAP under law;
2. state or local professional societies must report any termination, revocation, or suspension of membership or other disciplinary action taken against such a practitioner;
3. licensed health professionals must report personal knowledge of such an unlicensed practitioner’s conduct constituting grounds for disciplinary action, such as conduct showing that the person may be incompetent or mentally or physically unable to safely provide services; and

4. insurers providing professional liability insurance to such unlicensed practitioners must report specified information about malpractice settlements or awards against such unlicensed practitioners.

If a person or entity has a duty to report as specified above, the practitioner who is the subject of the report also has a duty to report the information. A practitioner must also report:

1. any disciplinary action against his or her license or right to practice in another state if the reason for the other state's action could subject the practitioner to discipline in Minnesota and
2. the filing of charges regarding his or her license or right to practice in another state.

Courts are also required to report specified information about such practitioners to OCAP, such as judgments finding that the person is mentally incompetent or guilty of (1) a felony or drug crime or (2) Medicare or Medicaid abuse or fraud (Minn. Stat. Ann. § 146A.03).

The law specifies that any individual (other than the practitioner himself or herself) or organization is generally immune from civil liability or criminal prosecution for reporting information to OCAP or cooperating with an OCAP investigation. Someone who knowingly or recklessly makes a false report is subject to civil liability, including possible punitive damages. To establish such liability, there must be clear and convincing evidence that the defendant made the statement with knowledge of its falsity or with reckless disregard for its truth or falsity (Minn. Stat. Ann. § 146A.04).

Statistics on Complaints and Disciplinary Action. We obtained information on complaints to OCAP filed against practitioners. Table 1 below displays the number of complaints by type, complaints closed, and civil penalties assessed by OCAP from FY 07 through FY 12.

Table 1: Complaints to Minnesota’s OCAP and Civil Penalties

| Biennium Ending | Complaints Received by Type | Complaints Closed | Civil Penalties |
|-------------------------------|--|--------------------------|------------------------|
| June 30, 2012 | <ul style="list-style-type: none"> • Sexual misconduct: 8 • Harm to public/client: 9 • Misrepresentation: 1 • False advertising: 1 • Failure to use client bill of rights: 1 • Other: 3 Total: 23 | 61 | \$0 |
| June 30, 2010 (see below)* | <ul style="list-style-type: none"> • Sexual misconduct: 12 • Harm to public/client: 13 • Misrepresentation: 3 • False advertising: 1 • Failure to follow order: 2 Total: 31 | 10 | \$628 |
| June 30, 2008 | <ul style="list-style-type: none"> • Sexual misconduct: 9 • Harm to public/client: 7 • Misrepresentation: 2 Total: 18 | 22 | \$805 |

*OCAP’s operations were suspended September 1, 2009 through June 30, 2010, due to budgetary reasons; during this period, no investigative activity occurred on pending complaints and new complaints were not taken.

Source: Minnesota Health Licensing Boards, Biennial Reports July 1, 2010 to June 30, 2012 (pp. 145-148), <http://www.asu.state.mn.us/portals/0/2012%20biennial%20final.pdf>

SOURCES AND ADDITIONAL INFORMATION

Alliance for Natural Health USA: <http://www.anh-usa.org/>

Lescure, Paige. *Health Freedom: The Practice of Complementary and Alternative Medicine*. Maryland Bar Journal (Nov./Dec. 2009).

Minnesota Office of Unlicensed Complementary and Alternative Health Care Practice:
<http://www.health.state.mn.us/divs/hpsc/hop/ocap/>

National Health Federation: <http://www.thenhf.com/>

National Health Freedom Coalition:
<http://www.nationalhealthfreedom.org/>

National Institutes of Health, National Center for Complementary and Alternative Medicine: <http://nccam.nih.gov/>

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