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Minnesota Department of Health

Office of Unlicensed Complementary and Alternative Health Care Practice *Biennial Report*

December 15, 2002

Health Policy & Systems Compliance
Health Occupation Program
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Office of Unlicensed Complementary and Alternative Health Care Practice

Biennial Report December 15, 2002

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**Office of Unlicensed Complementary and Alternative Health Care Practice
Minnesota Department of Health
Biennial Report
July 1, 2001 to June 30, 2002**

I. General Information

Introduction:

The statutory authority for the Office of Unlicensed Complementary and Alternative Health Care Practice (hereinafter AOCAP@) was enacted by the 2000 Minnesota State Legislature with a funding date of July 1, 2001. Start-up activities began about six months before July 1, 2001 by staff in the Health Occupations Program. This report lists some of the activities occurring before July 1, 2001 but focuses primarily on OCAP=s activities from July 1, 2001 through July 30, 2002.

A. Office Of Unlicensed Complementary and Alternative Health Care Practice Mission and Major Functions:

Mission:

To protect consumers who receive complementary and/or alternative health care services from practitioners who fall outside of state licensing authorities, including, but not limited to, persons who provide: herbology, acupuncture, homeopathy, body work, massage, massage therapy, naturopathy, and culturally traditional healing practices. The OCAP was created within the Minnesota Department of Health (MDH) to receive and investigate complaints against unlicensed complementary and alternative health care practitioners, to take enforcement action for violations of prohibited conduct, monitor practitioner conduct after discipline, and act as an information clearinghouse by providing the public with information about regulation of unlicensed complementary and alternative health care practitioners in the state of Minnesota.

Major Functions:

Investigating complaints

- Accepting complaints and reports from the public, health care service providers, and other health care regulators regarding the conduct of unlicensed complementary and alternative health care practitioners.
- Determining whether a complaint or inquiry is jurisdictional and, if so, obtaining sufficient evidence to determine if a violation of Minnesota Statutes, Chapter 146A occurred.

- Engaging in fact-finding by interviewing complainants, witnesses, and the practitioners, and obtaining relevant documentation about the allegation(s) including a completed complaint form from the complainant.
- Coordinating investigations involving matters within the jurisdiction of more than one regulatory agency by making appropriate referrals to other state boards, agencies, departments responsible for licensing health related occupations, facilities and programs, and law enforcement personnel in this and other states.
- Informing complainants of action taken to resolve their complaints as allowed by the provisions of the Minnesota Government Data Practices Act.

Taking and enforcing disciplinary actions against all unlicensed complementary and alternative health care practitioners for violations of prohibited conduct

- Evaluating the case against a practitioner while balancing the constitutional due process rights of the practitioner against the Commissioner=s obligation to protect the public from harm in a cost effective way.
- Holding conferences with practitioners to clarify information received during an investigation, identify the practitioner=s role and responsibility in a matter under investigation, and allow the practitioner an opportunity to make a meaningful response.
- Obtaining voluntary and negotiated agreements with practitioners for discipline whenever possible.
- Protecting the identity of clients when sexual misconduct or other serious violations occurred.
- Subsequent to disciplinary action, setting up a system to continue monitoring practitioner=s conduct to ensure it complies with disciplinary Order.
- Taking further enforcement actions if there is evidence to conclude that practitioner violated terms of the Order of the Commissioner.

Acting as informational clearinghouse on complementary and alternative health care services provided by unlicensed practitioners through dissemination of information to the public about avenues for relief, consumer rights, sexual exploitation by practitioners, and to practitioners about their legal responsibilities

- Responding by telephone or in writing to answer questions about regulations pertaining to consumer rights and unlicensed complementary and/or alternative health care service providers in Minnesota.

- Responding on-line via the website which provides information about regulation of unlicensed complementary and alternative health care practitioners in the state of Minnesota, consumer rights, how to file complaints against practitioners, and public disciplinary action which has been taken by the OCAP.
- Preparing and distributing brochures and other printed materials to both consumers and practitioners to describe consumer rights and options, to educate the public and practitioners about the OCAP and to inform practitioners about their legal responsibilities.
- Collecting and recording data about both investigations and enforcement actions for distribution to the public and legislative authorities about OCAP=s activities.

B. Major Activities during the Biennium

- Staff attended and testified at the White House Commission on Complementary and Alternative Medicine Town Hall Meeting, which was held in Minneapolis on March 16, 2001.
- In June and July 2001, developed mailing list of stakeholders, practitioners and interested persons from newspapers, yellow pages, advertisements and callers.
- In July 2001, staff met with Board of Nursing staff to discuss and decide unique jurisdictional issues relating to OCAP and registered nurses in Minnesota.
- In July 2001, Minneapolis Star and Tribune interviewed staff about the new OCAP office and responsibilities. [See Addendum AA@]
- In August 2001, staff drafted a AQuestion and Answer@ memo based on questions the Department had received from interested persons and practitioners. The memo was mass mailed to approximately 800 persons on the mailing list in the same month.
- In August 2001, completed the complaint form for the OCAP and the cover letter.
- In October 2001, mailed AQuestion and Answer@ memo to City Administrators in the state notifying them about the new laws because many cities also regulate massage therapists.
- December 2001 to April 2002, staff handled several calls from other states wanting information about OCAP administration and laws in Minnesota.
- In late March 2002, hired Health Care Program Investigator to handle investigations, enforcement actions, and public information activities for the OCAP.

- Issued the first OCAP news release on September 27, 2002. Contacted various metro area media outlets to publish information about the OCAP and consumer rights. [See Addendum AB@]
- Completed the OCAP brochure AConsumer Rights@ and distributed it to over 1,000 practitioners, clients, and interested consumers. [See Addendum AC@]
- Responded to nearly 330 inquiries from the public and/or practitioners to provide information about regulation of unlicensed complementary and alternative health care practitioners.

C. Emerging Issues Regarding Regulation of Unlicensed Complementary and Alternative Health Care Practitioners and Practices

- Greater acceptance of complementary and alternative health care by the general population, especially Minnesotans in rural areas.
- Unwillingness by complainants to pursue complaints or cooperate with the investigative process. Ten Atelephone complainants@ refused to complete and return OCAP complaint forms, or refused to identify offending practitioners. Complainants sometimes maintain anonymity for both themselves and for the affected client (if different from complainant). Some clients are receiving therapy for themselves and prefer to focus on their own healing rather than assisting the Department in its investigation.
- An operating budget of \$95,000 designated for the first fiscal year for the OCAP decreased to \$50,000 for the second fiscal year. The lower funding amount affects the OCAP=s ability to support investigations and enforcement actions.
- Sexual misconduct by massage therapists/body workers is significant compared to other types of unlicensed complementary and alternative health care practitioners.
- Proposed legislative initiatives for the 2003 legislative session. These proposals include: strengthening reporting requirements; language which clarifies podiatric medicine as being exempt from inclusion in complementary and alternative health care; adding two restricted, protected titles to the descriptions of service an unlicensed complementary and alternative health care practitioner may not use; and requiring practitioners to keep records that document having given a recommendation that a client see a health care provider who is licensed or registered by a health-related licensing board or the commissioner of health.

II. OCAP=s Staff and Budget

A. Employees

The OCAP has one full-time investigator.

B. Receipts and Disbursements and Major Fees Assessed By Office

The OCAP is part of the Health Occupations Program within the Health Policy and Systems Compliance Division in the Minnesota Department of Health. Legislation enacted by the Minnesota State Legislature during the 2000 session created the Office and its budget. During fiscal year 2002, \$50,164 was expended by the OCAP. This amount included expenditures on salaries, publication materials, postage, office supplies, and website development. As there are no credentialing components to the OCAP, no fee-based revenue exists. Also, due to the relatively short period of time that the Office has been in existence, no civil penalty monies have been assessed and collected.

Expenditures

FY 2001	\$ 0
FY 2002	\$50,164
TOTAL	\$50,164 (excluding indirect costs)

III. Licensing and Registration

There are no licensing or registration functions in this Office.

IV. Complaints

A. Complaints Received

	<u>FY 2001</u>	<u>FY 2002</u>
Complaints Received	1	16
Complaints Per 1,000 Regulated Persons (Estimated 2,700 practitioners)	0.0004	0.006

Complaints by Type of Complaint

Sexual Misconduct	0	3
Impaired Objectivity	0	3
Harm to Public ¹	1	3

¹ AHarm to the Public@ constitutes conduct by a practitioner likely to deceive, defraud, or harm the public; or demonstrating a willful or careless disregard for the health, welfare, or safety of a client; or any other practice that may create danger to any client=s life, health, or safety, in any of which cases, proof of actual injury need not be established.

Complaints By Type Of Complaint (cont'd.)	<u>FY 2001</u>	<u>FY 2002</u>
Failure to Provide Recommendation ²	0	2
Misrepresentation of Credentials	0	2
False Advertising	0	1
Unhygienic services	0	1
Puncture of the Skin	0	1
B. Open Complaints on June 30		
Total Number of Open Complaints	1	8
Open Less than three months	0	5
Open 3 to 6 months	0	2
Open 6 to 12 months	0	1
Open more than 1 Year (explain) ³	1	0
C. Closed Complaints on June 30		
Number Closed	0	6
Disposition By Type		
A. Reprimand	0	0
B. Dismissal	0	0
C. Non-jurisdictional	0	2
D. Complainant non-compliance	0	4
E. Referral to Licensing Boards	0	2

V. Trend Data as Of June 30

<u>Fiscal year</u>	<u>Complaints Rec=d</u>	<u>Complaints Per 1,000</u>	<u>Open Complaint Files</u>
FY 2002	16	0.006	8
FY 2001	1	0.004	1
FY 2000	0	0	0

² AFailure to Provide Recommendation@ is defined as failure by the unlicensed complementary and alternative practitioner to provide a client with a recommendation that the client see a health care provider who is licensed or registered by a health-related licensing board or the commissioner of health, if there is a reasonable likelihood that the client needs to be seen by a licensed or registered health care provider@.

; Explanation of cases open for more than one year: The OCAP had only one full-time investigator/manager between July, 2001 and March, 2002 who was responsible for all investigations and operation of the public clearinghouse function for the state. Investigations can be very time consuming. Factors contributing to time taken in investigations include investigating to determine whether jurisdiction exists, numbers of witnesses, the time client-victims take in deciding to cooperate fully with the Department, and practitioner non-cooperation.

State

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Tuesday, July 3, 2001 • Section B

Natural healers feel great about new state office

By Maura Lerner
Star Tribune Staff Writer

For the first time, natural healers such as Jerri Johnson have an office in Minnesota state government to call their own.

Although the main job of the Office of Complementary and Alternative Practice is to investigate consumer complaints, Johnson, a homeopath from Eagan, calls it a cause for celebration because it implicitly recognizes the right to practice alternative medicine in Minnesota. "That's a very fundamental freedom ... that we didn't have before," said Johnson, a member of the Minnesota Natural Health Coalition, which lobbied for the law creating the office.

The office, believed to be the first of its kind in the country, quietly opened Monday.

HEALTH continues on B7:

— Several states are considering laws patterned after the Minnesota model.

INSIDE

Gifted students

The St. Paul school board is looking at new ways to identify gifted students. Turn to B3.

Hiring defended

Horse-racing regulators stood by their hiring of a steward who was fired in Arizona. Turn to B3.

COLUMNIST

C.J.

U.S. District Judge Jim Rosenbaum dressed up for his elevation to chief judge. Turn to B4.

JULY 4TH

A.

the ceremonial kiss, they after a "demo" in 1999.

HEALTH from B1

Law is designed to protect patients, not practitioners

For now, it is operating with a part-time manager and not much more at the Department of Health headquarters in St. Paul.

But already, Johnson said, several states are considering laws patterned after the Minnesota model, which was approved last year.

Advocates lobbied hard for the law, which took effect Sunday, to try to fend off efforts by the Board of Medical Practice to prosecute alternative healers, such as herbalists and naturopaths, for practicing medicine without a license.

But state officials say the law is designed to protect patients, not practitioners.

"Quite frankly ... I think that there are more restrictions in place now on alternative and complementary care than there were [before]," said

Robert Leach, executive director of the Board of Medical Practice. "Why would they want this? I never did quite understand it."

The law prohibits practitioners from several types of conduct, such as false advertising and having sex with clients. It also allows the state to order them to cease practicing if they violate the law.

It does not, however, take a stand on the merits of alternative medicine itself.

"It's really only an investigations and enforcement system," said Susan Winkelmann, an attorney who oversees the new office under a program that regulates several health occupations. "It gives consumers the ability to get redress or, have kind of a clearinghouse for complaints."

So far, the office has a phone number (651-282-5623)

and a boss (Winkelmann, who will devote about 20 percent of her time to it). But she has yet to hire its only full-time employee, an investigator. During the budget impasse, she didn't think it was responsible, she said, knowing that she might have to lay off the employee on the first day of work if the state government shut down Sunday, as threatened. Now she's ready to fill the job. The Legislature allotted \$95,000 to set up the office.

Although complaints will be confidential, the office is expected to release the names of anyone disciplined and summary data on the complaints it receives.

Many supporters of alternative medicine, however, have referred to the new law as the "freedom of access" law. They say it has, in effect, carved out a legal niche for alternative medicine that didn't exist in 1996, when the Medical Board accused a St. Paul naturopath, Helen Healy, of practicing medicine without a license. The Healy case

prompted a public outcry and, after it was settled out of court, inspired a campaign to change the law.

"This law gives them guidelines," Johnson said. "But within those parameters they have the right to be able to help other people get well ... without being arbitrarily prosecuted for the practice of medicine. And that opens up a whole world."

Leach, of the Medical Board, sees it differently. "I think that alternative healers felt the board was out to get them, which was not true," he said. But he said the new law won't exempt natural healers from possible action by the Medical Board, particularly if they attempt to diagnose illness.

"If there are allegations of practicing medicine without a license, we're certainly in the same position we were in before," he said.

— Maura Lerner is at mlerner@startribune.com.

WWW.BCSOFMN.COM

612-789-4345

Portland Ave S. Com-
plate notice later,
Morts Nilsen Chapel
612-869-3226

From: Communications Office (Melody Pizzuti)
To: All-MDH-Employees; CHS/PHN@listserv.health.state.mn.us; Health reporters
Date: 9/27/2002 12:03:39 PM
Subject: News Release - Alternative health care practice

Minnesota Department of Health information describes consumer rights about complementary and alternative health care practice Consumer input helps successful investigations that protect the public

A new brochure is available from the Minnesota Department of Health for consumers interested in knowing more about complementary and alternative care. It includes information on the Client Bill of Rights, questions a client can ask a practitioner about their practice and education, how to register a complaint against a practitioner, and the MDH procedure for investigating complaints.

A separate information packet has information for practitioners who want to know more about their obligations to clients.

Examples of complementary and alternative health care practices include but are not limited to acupuncture, aromatherapy, healing touch, massage therapy, and naturopathy. They do not include surgery, or administering or dispensing legend (prescription) drugs and controlled substances.

The MDH Office of Unlicensed Complementary and Alternative Health Care Practice was established by statute in July 2001 to provide information to the public about unlicensed complementary and alternative practitioners and practices, to investigate complaints, and to discipline the practitioner if necessary. The Office is part of the MDH Health Occupations Program.

The law requires practitioners to provide clients with a Client Bill of Rights before providing treatment. The document must include the address and telephone number of the Minnesota Department of Health should the client want to file a complaint.

Consumers with concerns or complaints about such care are encouraged to contact MDH and provide information if an investigation is opened.

"We encourage people who have concerns to contact us," said Susan Winkelmann, investigations and enforcement manager for the Health Occupations Program. "We're here to protect Minnesotans from unsafe practices and unscrupulous practitioners. The information will also be helpful for us to determine appropriate disciplinary action where it's needed."

Examples of prohibited conduct are having been convicted of a crime, engaging in sexual contact with a client, and using advertisements that are false, fraudulent or misleading.

Consumers can be assured that the law provides data privacy protection for clients and other complainants. Individuals (except for the practitioner in question), health care facilities, businesses and organizations are immune from civil liability or criminal prosecution for reporting and/or cooperating with an investigation.

For more information, to obtain a copy of the brochure or information packet, or to file a complaint, contact MDH at (651) 282-6319 or toll-free at 1-800-657-3957.

Information on the statute is online at: <http://www.health.state.mn.us/divs/hpsc/hop/ocap/ocaphome.html>.

To view the statute in its entirety, visit: <http://www.revisor.leg.state.mn.us/stats/146A>.

B.

QUESTIONS & COMPLAINTS

If you have any questions or complaints about an unlicensed complementary or alternative health care practitioner, please contact:

Minnesota Department of Health
Health Occupations Program
Office of Unlicensed
Complementary and Alternative
Health Care Practice
121 East Seventh Place, Suite 400
P.O. Box 64975
Saint Paul, Minnesota 55164-0975

Phone: 651-282-6319 or
Toll Free: 1-800-657-3957
Fax: 651-282-5628

<http://www.health.state.mn.us/divs/hpsc/hop/ocap/home.html>

<http://www.revisor.leg.state.mn.us/stats/146A>

If you feel that a practitioner has behaved inappropriately with you (see the Client Bill Of Rights for examples), you can talk with us confidentially about it. The law makes it possible for us to investigate the practitioner while at the same time prohibits us from identifying the complainant's name. Clients' sensitive data is not accessible to the public. People who decide to file a complaint help us protect others.



Health Occupations Program Office of Unlicensed Complementary and Alternative Health Care Practice

CONSUMER GUIDE

YOU HAVE RIGHTS AND OPTIONS AS A CONSUMER/CLIENT

- ◆ What is complementary and alternative health care?
- ◆ Do you have questions about improper behavior, personal safety, the privacy of your records, or false advertising?
- ◆ Do you (or someone you know) want to make a complaint and need to know how?

This consumer guide answers these questions and tells you how state law protects you. If a practitioner is not acting professionally in the best interests of you and other clients, please contact the Minnesota Department of Health, Health Occupations Program, Office of Unlicensed Complementary and Alternative Health Care Practice, at 651-282-6319, or toll free at 1-800-657-3957. We can help you sort out your options and tell you how your privacy is kept safe.

Office of Complementary and Alternative
Health Care Practitioners
121 East Seventh Place, P.O. Box 64975
St. Paul, MN 55164-0975



C.

WHAT ARE COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTICES ? These are healing methods and treatments that are not usually provided by traditional Western medical practitioners in clinics and hospitals. They include, but are not limited to:

Acupressure	Homeopathy
Anthroposophy	Meditation
Aroma therapy	Naturopathy
Ayurveda	Body work
Massage	Massage Therapy

Cranial sacral therapy

Culturally traditional healing practices

Detoxification practices and therapies

Energetic healing Folk practices

Gerson Therapy and Colostrum Therapy

Healing practices utilizing food, food supplements, nutrients, and the physical forces of heat, cold, water, touch, and light

Polarity therapy

Healing touch

Herbology or Herbalism

Mind-body healing practices

Nondiagnostic iridology

Noninvasive instrumentalities

Traditional Oriental practices, such as Qi Gong energy healing

WHAT IS NOT INCLUDED IN COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTICES ? THE LIST OF SUCH PRACTICES DOES NOT INCLUDE:

- ◆ Surgery
- ◆ X-ray radiation
- ◆ Administering or dispensing prescription drugs and controlled substances
- ◆ Practices that invade the human body by puncture of the skin
- ◆ Setting fractures
- ◆ Use of certain medical devices
- ◆ Any practice that is included in the practice of dentistry
- ◆ Manipulation or adjustment of articulations of joints or the spine that would be included under chiropractic

It is important to ask questions of any complementary and alternative health care practitioner. If you are receiving care from such a practitioner, or are looking into it, you can make more informed decisions for yourself by asking:

- ◆ Are you licensed?
- ◆ What is your professional title?
- ◆ What are your credentials? Including education and training?
- ◆ What are your fees? Are your services covered by insurance?
- ◆ Do you have a supervisor? How are you supervised?
- ◆ How will we determine the number of sessions or length of service I will receive?

CLIENT BILL OF RIGHTS

- Unlicensed complementary and alternative health care practitioners are required by Minnesota law to provide you with a "Client Bill Of Rights." You have the right to receive a copy. A partial listing of your client rights are listed below:
- ◆ You have the right to seek service from any other type of health care provider, including a licensed physician, at any time.
 - ◆ You have the right to be allowed access to your records.
 - ◆ An unlicensed complementary and alternative health care practitioner may not provide a medical diagnosis or recommend discontinuance of medically prescribed treatments.
 - ◆ You have the right to expect courteous treatment and to be free from verbal, physical, or sexual abuse by the practitioner.
 - ◆ Inappropriate touching, sexual contact, or verbal harassment of a sexual nature by an unlicensed complementary or alternative health care practitioner towards a client or former client is prohibited.
 - ◆ You have the right to choose freely among available practitioners and to change practitioners after services have begun, within the limits of health insurance, medical assistance, or other health programs.