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Office of Unlicensed Complementary and Alternative Health Care Practice

Biennial Report

December 15, 2002

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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 "OCAP") 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, acupressure, 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 "A"]

- In August 2001, staff drafted a "Question 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 "Question 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 "B"]

- Completed the OCAP brochure "Consumer Rights" and distributed it to over 1,000 practitioners, clients, and interested consumers. [See Addendum "C"]

- 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 "telephone 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

	FY 2001	FY 2002
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] "Harm 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.)	FY 2001	FY 2002
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

Fiscal year	Complaints Rec'd	Complaints Per 1,000	Open Complaint Files
FY 2002	16	0.006	8
FY 2001	1	0.004	1
FY 2000	0	0	0

[2] "Failure 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".

[3] 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.