

Minnesota Health Licensing Boards

Biennial Reports

July 1, 2012
To
June 30, 2014



“The purpose of this office, located in the Minnesota Department of Health (MDH), is to protect consumers who receive complementary and/or alternative health care services from practitioners who fall outside of state licensing authorities.”

Program Manager

Gilbert Acevedo

The Minnesota Office of Unlicensed Complementary and Alternative Health Care Practice is administered and staffed by the Health Occupations Program within the Minnesota Department of Health. The Office does not have Board Membership, and does not have an Executive Director.

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The Office of Unlicensed Complementary and Alternative Health Care Practice (OCAP) is located within the Minnesota Department of Health (MDH). The purpose of OCAP is twofold: (1) to protect consumers of alternative and complementary health care services; and (2) to provide information about these services to the public.

Complementary and alternative health care practices include, but are not limited to, massage therapy; body work; acupressure; homeopathy; traditional naturopathy; herbal medicine; healing practices utilizing food, food supplements and nutrients; healing touch; aroma therapy; culturally traditional healing practices; traditional Oriental practices; meditation; Ayurveda; and detoxification practices and therapies.

OCAP was created specifically to provide oversight of unlicensed health care practitioners. Because OCAP does not perform any licensing or registration functions, OCAP action in fulfillment of its protective purpose is limited to receiving and investigating complaints against unlicensed complementary and alternative health care practitioners. Prohibited conduct is set forth in statute (Minnesota Statutes section 146A.08). Discipline may include civil penalties, revocation or suspension of the right to practice, censure, and imposition of costs incurred in an investigation leading to discipline.

Complementary and Alternative Health Care Practices — An Evolving Landscape

Two surveys conducted by the National Center for Health Statistics at the Centers for Disease Control and Prevention in 2002 and 2007 provide the most current and comprehensive information about American's use of complementary and alternative medicine (CAM). The 2002 National Health Interview Surveys (NHIS) found that approximately 36% of adult Americans used CAM. By 2007, use among adults had climbed to 38.3% and the first questions about use among children set usage at 12%. Within the context of Minnesota's regulatory framework, it is noteworthy that the surveys include dietary supplements, chiropractic and osteopathic manipulation, acupuncture, and yoga as CAM and that some of these, along with massage, constituted the most common such practices among those surveyed. (Nonvitamin, nonmineral dietary supplements (17.9%), chiropractic or osteopathic manipulation (8.5%), yoga with deep breathing or meditation (8.4%), massage therapy (6.8%); meditation (4.1%), and special diets (3.0%.) Quantifying use is not a simple matter. New practices develop. Practices are used in combination with one another. Practices previously considered complementary or alternative are tested and move into mainstream medicine. Thus, quantifying usage within the population is a moving target.

One thing that is certain is that CAM is not "small business." The 2007 NHIS found that Americans spent approximately \$33.9 billion out-of-pocket on CAM. While this amount spent is only 1.5 percent of total health care expenditures, it is more than 11 percent of all out-of-pocket expenditures. A great deal of spending on CAM is initiated by consumers themselves, and is neither recommended nor overseen by a traditional health care provider nor a CAM provider.

A vast amount of information about CAM is publicly available. However, sources of such information, and the credibility and motivation of those sources, differ widely. The average consumer is not likely to be adept at evaluating the information presented or the source of that information, and may not even realize that there is a need to do so. Adding to this confusion is the fact that a subset of CAM advocates reject the scientific methodology that is the basis for linking cause and effect in western medicine as a method for evaluating their practices. Even acknowledging that western science may have its limits, that each patient is uniquely individual and may respond somewhat differently, and that many CAM practices encompass a spiritual and bio-psychosocial component, if CAM is not subject to the same critical analysis as other health practices, we are left without a common metric with which to evaluate CAM practices.

Widespread use of CAM practices; administration of CAM to children; the fact that use is often self-initiated and self-directed; the lack of peer-reviewed research supporting many CAM practices; and the amount of money spent on these practices, all underscore the need for continuing or even increased regulatory oversight of these practices. Consumers, practitioners, and the public, generally, need an objective source of accurate information, including reviews of emerging research both supporting and discrediting individual CAM practices and studies of alternative and complementary modalities. Consumers are also entitled to a resource for recourse when they are injured by a complementary or alternative practitioner.

Office of Complementary and Alternative Health Practice Functions

- Providing information and education to the public and practitioners about requirements for offering alternative and complementary health practices in Minnesota.
- Responding to complaints about complementary and alternative health care practitioners, initiating and carrying out investigations.

OFFICE OF UNLICENSED COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTICE

- Pursuing educational or disciplinary action against practitioners based upon results of investigations conducted in response to complaints/reports.
- Working with law enforcement to ensure that criminal complaints against OCAP practitioners are properly investigated and concluded and that findings of criminal activity are reflected in discipline sanctions against the right to practice.
- Consulting with practitioners currently practicing under OCAP who are interested in working to achieve higher regulatory requirements within their practice.

Staffing

Staff of the Minnesota Department of Health's Health Occupations Program perform the work of the Office of Unlicensed Complementary and Alternative Health Care Practice. For the 2014-2015 biennium, staff assigned OCAP functions include investigation and enforcement staff, administrative support, management and supervision, and programming, totaling approximately 0.75 FTE

Activities during the 2014-2015 Biennium

- The office received 163 individual calls from consumers, complainants, practitioners, regulators and other interested persons.
- One hundred twenty calls were requests for information; 37 were complaints. Many of the calls for information were from individuals seeking information about regulatory requirements for practicing massage in the state.
- The office opened 14 investigations and closed two. Twenty-three investigations are pending.
- Our informational brochure was reformatted and rewritten to be more accessible to the public.
- For the first time, investigatory staff attended both basic and specialized National Certified Investigator and Inspector Training, offered by the Council on Licensure, Enforcement & Regulation.
- Staff representing the office met and/or consulted with several unlicensed groups that currently practice within OCAP and are seeking more rigorous regulation. These include massage therapists, music therapists, and homeopaths.
- Based on complaints about prescription drugs, illegal substances, and improperly labeled substances being sold by unlicensed individuals at an open air market had caused harm in the community, the office initiated a coalition that included the Board of Pharmacy, the St. Paul police, the federal Food and Drug Administration, Ramsey County, and others. After initial regulatory action, MDH continued its involvement by working to educate vendors about practices that are safe and legal and those that are not.
- 146A was amended during 2014 legislative session to clarify regulatory jurisdiction concerning practitioners licensed or registered by the commissioner of health or a board, and who utilize complementary and alternative health care.
- Increased collaboration with local law enforcement surrounding OCAP practitioners engaged in unethical or criminal behavior.

COMPLAINTS

Biennium ending	Complaints Received by Type		Complaints Closed	Cases Open as of June 30
June 30, 2014	Sexual Misconduct Deceive, defraud, or harm public Misrepresentation/false advertising Illegal practice Incompetence Using restricted medical device TOTAL: 14	5 1 4 2 1 1	2	Less than one year: 8 More than one year but less than two years: 6 More than two years: 9
June 30, 2012	Sexual Misconduct Harm to Public / Client Misrepresentation False Advertising Failure to use client BOR Other TOTAL: 23	8 9 1 1 1 3	61*	Less than one year: 3 More than one year: 9
June 30, 2010	Sexual Misconduct Harm to Public / Client Misrepresentation False Advertising Failure to follow Order TOTAL: 33	12 13 3 1 2	10	Less than one year: 3 More than one year: 46**
June 30, 2008	Sexual Misconduct Harm to Public / Client Misrepresentation TOTAL: 18	9 7 2	22	Less than one year: 8 More than one year: 20
June 30, 2006	Sexual Misconduct Harm to Public / Client Misrepresentation False Advertising Failure to follow Order Criminal conviction Failure to furnish records Failure to use client BOR Other TOTAL: 28	5 13 3 1 1 2 1 1 1 1	32	Less than one year: 14 More than one year: 20
June 30, 2004	Sexual Misconduct Harm to Public / Client Misrepresentation False Advertising Other TOTAL: 40	16 14 4 1 5	13	Less than one year: 18 More than one year: 19

* The investigator assigned to the Office of Unlicensed Complementary and Alternative Care retired effective April 3, 2012. Prior to retirement, the investigator concluded investigation and closed most cases.

**The Office of Unlicensed Complementary and Alternative Health Care Practice operations were suspended September 1, 2009 through June 30, 2010, due to unallotment, therefore, no investigative activity occurred on pending complaints during the remaining 10 months of FY 2010.

DISBURSEMENTS AND PENALTIES

Biennium Ending	Civil Penalties	Disbursements	Notes
June 30, 2014	\$0	\$140,112	Health Occupations Program replaces two investigators who retired in recent years and assigns OCAP cases according to type of allegation.
June 30, 2012	\$0	\$116,080	Investigator position vacant due to unallotment 4/3/2012 – 6/30/2012.
June 30, 2010	\$628	\$77,802	Operations suspended due to unallotment 09/01/09 - 06/30/2010.
June 30, 2008	\$805 in FY2007	\$156,785	Disbursement includes \$22,845 in costs for the Attorney General's office.
June 30, 2006	\$4,425 in FY 2005 \$705 in FY 2006	\$114,834	
June 30, 2004	\$0	\$33,332	(Investigator position vacant due to limited funding, FY 2004)