

Office of Unlicensed Complementary and Alternative Health Care Practice Biennial Report

September 2010

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**Office of Unlicensed Complementary and Alternative Health Care Practice
Minnesota Department of Health
Biennial Report
July 1, 2008 to June 30, 2010**

I. General Information

**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 massage therapy, bodywork, homeopathy, traditional naturopathy, herbology, healing practices utilizing food, food supplements and nutrients, healing touch, culturally traditional healing practices, and traditional Oriental practices. The Office of Unlicensed Complementary and Alternative Health Care Practice (hereinafter “OCAP”) was created within the Minnesota Department of Health (hereinafter “Department”) 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 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 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 the action(s) 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 Department's obligation to protect the public from harm in a cost effective way.
- Holding investigative interviews and 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 and complainants.
- Subsequent to disciplinary action, setting up a system to continue monitoring practitioner's conduct to ensure it complies with the disciplinary Order.
- Taking further enforcement actions if there is evidence to conclude that practitioner violated terms of the Order of the Department.

Acting as informational clearinghouse on complementary and alternative health care services provided by unlicensed practitioners through information about practitioner responsibilities, consumer legal rights, types of alternative and complementary practices, and information about other relevant state and federal regulatory agencies

- Responding by telephone, e-mail or in writing to questions about regulations pertaining to unlicensed complementary and/or alternative health care service providers in Minnesota and consumer rights.
- Maintaining a website to provide 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 the requirements of the Client Bill of Rights.
- Preparing and distributing brochures and other printed materials to both consumers and practitioners to describe consumer rights and options. Educating the public and practitioners about the OCAP and informing 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 activities.

B. Major Activities during the Biennium

- OCAP responded to 406 inquiries from practitioners, consumers, complainants, regulators and other interested persons. These inquiries included responding to questions, providing information about disciplinary actions taken, and mailing out brochures/information and complaint packets.
- OCAP suspended operations during the second half of the biennium due to unallotment. This suspension covered the period of 09/01/2009 through 06/30/2010. OCAP resumed operations 07/01/2010.
- OCAP continued to develop and maintain a collaborative relationship with the local office of the Federal Food and Drug Administration (FDA). The FDA has continued to assist OCAP in understanding medical device regulation. OCAP and the FDA do not have overlapping jurisdictions, and such collaboration is necessary in order to be efficient and effective.
- OCAP continued to revise and update its website to include better consumer and practitioner information. Interested persons can now review all disciplinary actions taken by OCAP since inception in 2001.
- During the 2007-2008 legislative session, the legislature passed a proposal for the registration of naturopathic doctors by the Minnesota Board of Medical Practice and instructed the Commissioner of Health to convene a work group, which included the Director of the MDH Health Occupations Program and an OCAP representative, to make recommendations about naturopath registration. This task was completed and the recommendations were submitted March 2009. At the close of the biennium, there were 22 persons listed as registered naturopaths with the Minnesota Board of Medical Practice. This registration will have little impact on the operations of OCAP as less than one percent of OCAP practitioners will meet the requirements for registration as naturopathic doctors. Traditional naturopaths, not registered with the Minnesota Board of Medical Practice, remain under the jurisdiction of OCAP.

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

- Complementary and alternative health care modalities continue to be a widely accepted and accessed option for health care consumers in Minnesota and across the nation. There is need for continuing regulatory

oversight and personnel to disseminate information to practitioners, consumers and interested persons, along with reviewing research and studies of alternative and complementary modalities.

II. OCAP Staff and Budget

A. Employees

July 1, 2008 to June 30, 2009, 1 FTE investigator.
 July 1, 2009 to August 31, 2009, 1 FTE investigator.
 September 1, 2009 to June 30, 2010, no staff.

B. Receipts and Disbursements and Major Fees Assessed By Office

The OCAP is part of the Health Occupations Program within the Compliance Monitoring Division in the Minnesota Department of Health. The program is funded by the General Fund. There are no credentialing components to the OCAP, therefore no fee-based revenue exists.

Civil Penalties Received

FY 2009	\$ 628
FY 2010	\$ <u>0</u>
TOTAL	\$ 628

Expenditures

FY 2009	\$ 66,855
FY 2010	\$ <u>10,947</u>
TOTAL	\$ 77,802

III. Licensing and Registration

There are no licensing or registration activities in OCAP.

IV. Complaints

A. Complaints Received

	<u>FY 2009</u>	<u>FY 2010</u>
Complaints Received	28	3
Complaints Per 1,000 Regulated Persons (Estimated 2,700 practitioners)	10.3	1.1
Complaints by Type of Complaint	<u>FY 2009</u>	<u>FY 2010</u>
Sexual Misconduct	11	1
Harm to Public/Client ¹	13	0

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

Misrepresentation of Credentials	1	2
False Advertising	1	0
Other Disciplinary Action Taken	0	0
Criminal-personal or OCAP related	0	0
Failure to furnish records	0	0
Failure to provide bill of rights	0	0
Failure to follow Commissioner's order	2	0
Failure to refer ²	0	0
B. Open Complaints on June 30	<u>FY 2009</u>	<u>FY 2010</u>
Total Number of Open Complaints	47	49
Open Less than three months	3	0
Open 3 to 6 months	10	0
Open 6 to 12 months	15	3
Open more than 1 Year (explain ³)	19	46
C. Closed Complaints on June 30	<u>FY 2009</u>	<u>FY 2010</u>
Number Closed	9	1
<u>Disposition by Type</u>		
A. Dismissed/Unable to Locate	6	1
B. Revoked	1	0
C. Suspended/Restricted Practice	0	0
D. Advisement/Warning Letter	0	0
E. Referred to other Board/Agency	2	0

established. This would include unsafe services and puncture of the skin

2 Failure to Provide Referral” 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: There are multiple factors contributing to a case being open more than one year. OCAP investigations are very time consuming because legal jurisdiction must be established and many of the legal issues presented are novel and allege serious misconduct. Additionally, OCAP operations were suspended between September 1, 2009 through June 30, 2010, resulting in no investigative activity during this time

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 2010	3	1.10	49
FY 2009	28	10.30	47
FY 2008	8	2.96	28
FY 2007	10	3.70	33
FY 2006	14	5.18	34
FY 2005	14	5.18	37
FY 2004	18	5.94	37
FY 2003	22	7.26	25
FY 2002	16	5.28	8
FY 2001	1	.33	1
FY 2000	0	0	0