

AN ACT

RELATING TO HEALTH CARE; ENACTING THE UNLICENSED HEALTH CARE PRACTICE ACT; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Unlicensed Health Care Practice Act".

Section 2. DEFINITIONS.--As used in the Unlicensed Health Care Practice Act:

A. "complementary and alternative health care practitioner" means an individual who provides complementary and alternative health care services;

B. "complementary and alternative health care service" means the broad domain of complementary and alternative healing methods and treatments including:

- (1) anthroposophy;
- (2) aromatherapy;
- (3) ayurveda;
- (4) culturally traditional healing practices, including practices by a curandera, sobadora, partera, medica and arbolaira, and healing traditions, including plant medicines and foods, prayer, ceremony and song;
- (5) detoxification practices and therapies;
- (6) energetic healing;

- (7) folk practices;
- (8) Gerson therapy and colostrum therapy;
- (9) healing practices utilizing food, dietary supplements, nutrients and the physical forces of heat, cold, water, touch and light;
- (10) healing touch;
- (11) herbology or herbalism;
- (12) homeopathy;
- (13) meditation;
- (14) mind-body healing practices;
- (15) naturopathy;
- (16) nondiagnostic iridology;
- (17) noninvasive instrumentalities;
- (18) polarity therapy; and
- (19) holistic kinesiology and other muscle testing techniques;

C. "controlled substance" means a drug or substance listed in Schedules I through V of the Controlled Substances Act or rules adopted pursuant to that act;

D. "conventional medical diagnosis" means a medical term that is commonly used and understood in conventional western medicine;

E. "dangerous drug" means a drug that is required by an applicable federal or state law or rule to be dispensed pursuant to a prescription; that is restricted to use by

licensed practitioners; or that is required by federal law to be labeled with any of the following statements prior to being dispensed or delivered:

(1) "Caution: federal law prohibits dispensing without prescription.";

(2) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.";
or

(3) "Rx only";

F. "department" means the regulation and licensing department;

G. "health care practitioner" means an individual who provides health care services;

H. "health care service" means any service relating to the physical and mental health and wellness of an individual; and

I. "sexual contact" means touching the primary genital area, groin, anus, buttocks or breast of a patient or allowing a patient to touch another's primary genital area, groin, anus, buttocks or breast and includes sexual intercourse, cunnilingus, fellatio or anal intercourse, whether or not there is any emission, or introducing any object into the genital or anal openings of another.

Section 3. LICENSING EXEMPTION.--A complementary and alternative health care practitioner who is not licensed,

certified or registered in New Mexico as a health care practitioner shall not be in violation of any licensing law relating to health care services pursuant to Chapter 61 NMSA 1978 unless that individual:

A. engages in any activity prohibited in Section 4 of the Unlicensed Health Care Practice Act; or

B. fails to fulfill the duties set forth in Section 5 of the Unlicensed Health Care Practice Act.

Section 4. PROHIBITED ACTS.--A complementary and alternative health care practitioner shall not:

A. perform surgery on an individual;

B. set fractures on an individual;

C. administer x-ray radiation to an individual;

D. prescribe or dispense dangerous drugs or controlled substances to an individual;

E. directly manipulate the joints or spine of an individual;

F. physically invade the body except for the use of non-prescription topical creams, oils, salves, ointments, tinctures or any other preparations that may penetrate the skin without causing harm;

G. make a recommendation to discontinue current medical treatment prescribed by a licensed health care practitioner;

H. make a specific conventional medical diagnosis; HHGAC/HB 664
Page 4

I. have sexual contact with a current patient or former patient within one year of rendering service;

J. falsely advertise or provide false information in documents described in Subsection A of Section 5 of the Unlicensed Health Care Practice Act;

K. illegally use dangerous drugs or controlled substances;

L. reveal confidential information of a patient without the patient's written consent;

M. engage in fee splitting or kickbacks for referrals;

N. refer to the practitioner's self as a licensed doctor or physician or other occupational title pursuant to Chapter 61 NMSA 1978; or

O. perform massage therapy on an individual pursuant to the Massage Therapy Practice Act.

Section 5. COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONER--DUTIES.--Except for persons providing health care services pursuant to Section 61-6-17 NMSA 1978 or to employees or persons acting pursuant to the direction of licensed health care facilities or licensed health care providers while working within the scope of their employment or direction, a complementary and alternative health care practitioner shall:

A. provide to a patient prior to rendering

services a patient information document, either in writing in plain language that the patient understands or, if the patient cannot read, orally in a language the patient understands, containing the following:

(1) the complementary and alternative health care practitioner's name, title and business address and telephone number;

(2) a statement that the complementary and alternative health care practitioner is not a health care practitioner licensed by the state of New Mexico;

(3) a statement that the treatment to be provided by the complementary and alternative health care practitioner is complementary or alternative to health care services provided by health care practitioners licensed by the state of New Mexico;

(4) the nature and expected results of the complementary and alternative health care services to be provided;

(5) the complementary and alternative health care practitioner's degrees, education, training, experience or other qualifications regarding the complementary and alternative health care services to be provided;

(6) the complementary and alternative health care practitioner's fees per unit of service and method of billing for such fees and a statement that the patient has a

right to reasonable notice of changes in complementary and alternative health care services or charges for complementary and alternative health care services;

(7) a notice that the patient has a right to complete and current information concerning the complementary and alternative health care practitioner's assessment and recommended complementary and alternative health care services that are to be provided, including the expected duration of the complementary and alternative health care services to be provided and the patient's right to be allowed access to the patient's records and written information from the patient's records;

(8) a statement that patient records and transactions with the complementary and alternative health care practitioner are confidential unless the release of these records is authorized in writing by the patient or otherwise provided by law;

(9) a statement that the patient has a right to coordinated transfer when there will be a change in the provider of complementary and alternative health care services; and

(10) the name, address and telephone number of the department and notice that a patient may file complaints with the department; and

B. obtain a written acknowledgment from a patient, HHGAC/HB 664
Page 7

or if the patient cannot write an oral acknowledgment witnessed by a third party, stating that the patient has been provided with a copy of the information document. The patient shall be provided with a copy of the written acknowledgment, which shall be maintained for three years by the complementary and alternative health care practitioner providing the complementary and alternative health care service.

Section 6. APPLICABILITY.--The following individuals shall not provide complementary and alternative health care services pursuant to the Unlicensed Health Care Practice Act:

A. former health care practitioners whose license, certification or registration has been revoked or suspended by any health care board and not reinstated;

B. individuals convicted of a felony for a crime against a person who have not satisfied the terms of the person's sentence as provided by law;

C. individuals convicted of a felony related to health care who have not satisfied the terms of the person's sentence as provided by law; and

D. individuals who have been deemed mentally incompetent by a court of law.

Section 7. DISCIPLINARY ACTIONS.--If the department determines that a complementary and alternative health care practitioner practicing pursuant to the Unlicensed Health Care Practice Act may have violated a provision of that act, it may

take one or more of the following actions pursuant to the Uniform Licensing Act against the complementary and alternative health care practitioner if that practitioner is found to have violated a provision of the Unlicensed Health Care Practice Act:

A. provide written notice to the complementary and alternative health care practitioner requesting the practitioner to correct the activity that is a violation of the Unlicensed Health Care Practice Act; this action shall be the first option if the offense is a violation of the disclosure requirements of the Unlicensed Health Care Practice Act;

B. issue a cease and desist order against the complementary and alternative health care practitioner pertaining to the provision of complementary and alternative health care services that are not in compliance with the provisions of the Unlicensed Health Care Practitioner Act; or

C. impose a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) for each violation.

Section 8. DUTIES OF THE SUPERINTENDENT.--The superintendent of regulation and licensing is expressly authorized to promulgate rules as necessary to implement the provisions of the Unlicensed Health Care Practice Act.

Section 9. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to

other situations or persons shall not be affected.

Section 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.=====