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S T A T E O F R H O D E I S L A N D

I N G E N E R A L A S S E M B L Y

J A N U A R Y S E S S I O N , A . D . 2 0 0 1

A N A C T

R E L A T I N G T O H E A L T H A N D S A F E T Y - U N L I C E N S E D H E A L T H C A R E P R A C T I C E S

I n t r o d u c e d B y : R e p r e s e n t a t i v e C o r v e s e

D a t e I n t r o d u c e d : M a r c h 1 4 , 2 0 0 1

R e f e r r e d T o : C o m m i t t e e o n H e a l t h , E d u c a t i o n a n d W e l f a r e

I t i s e n a c t e d b y t h e G e n e r a l A s s e m b l y a s f o l l o w s :

S E C T I O N 1 . T i t l e 2 3 o f t h e G e n e r a l L a w s e n t i t l e d " H e a l t h a n d S a f e t y " i s h e r e b y a m e n d e d b y a d d i n g h e r e t o t h e f o l l o w i n g c h a p t e r :

C H A P T E R 7 2

U N L I C E N S E D H E A L T H C A R E P R A C T I C E S

23-72-1. Definitions. -- (a) As used in this chapter, the following terms have the meanings given them:

(1) "Director" or "director of health" means the director of the department of health or the director's designee;

(2) "Unlicensed health care client" means an individual who receives services from an unlicensed health care practitioner;

(3)(a) "Unlicensed health care practices" means the broad domain of unlicensed healing methods and treatments, including, but not limited to: (1) acupressure; (2) Alexander technique; (3) aroma therapy; (4) ayurveda; (5) cranial sacral therapy; (6) crystal therapy; (7) culturally traditional healing practices; (8) detoxification practices and therapies; (9) energetic healing; (10) rolfing; (11) folk practices; (12) healing practices utilizing food, food supplements, nutrients, and the physical forces of heat, cold, water, touch, and light; (13) Gerson therapy and colostrum therapy; (14) therapeutic touch; (15) herbology or herbalism; (16) polarity therapy; (17) homeopathy; (18) nondiagnostic iridology; (19) body work; (20) meditation; (21) reiki; (22) mind-body healing practices; (23) naturopathy; and (24) traditional oriental practices, such as Qi Gong energy healing.

(b) "Unlicensed health care practices" do not include surgery, x-ray radiation, prescribing, administering, or dispensing legend drugs and controlled substances, practices that invade the human body by puncture of the skin, setting fractures, any practice included in the practice of dentistry, the manipulation or adjustment of articulations of joints, or the spine, also known as chiropractic medicine as defined in chapter 5-30, the healing art of acupuncture as defined in Chapter 5-37.2, or practices that are permitted under chapter 5-37-15 or chapter 5-34-31(6).

(c) This chapter does not apply to, control, prevent, or restrict the practice, service, or activity of lawfully marketing or distributing food products, including dietary supplements as defined in the federal dietary supplement health and education act, educating customers about such products, or explaining the uses of such products. Under Rhode Island law, an unlicensed health care practitioner may not provide a medical diagnosis or recommend discontinuance of medically prescribed treatments.

(4) "Office of unlicensed health care practice" or "office" means the office of unlicensed health care practice established in this chapter.

(5) "Unlicensed health care practitioner" means a person who:

(a) either:

(i) is not licensed by a health-related licensing board or the director of health; or

(ii) holds a license issued by a health-related licensing board or the department of health in this state, but does not hold oneself out to the public as being licensed or registered by the director or a health-related licensing board when engaging in unlicensed health care;

(b) has not had a license issued by a health-related licensing board or the director of health revoked or has not been disciplined in any manner at any time in the past, unless the right to engage in unlicensed health care practices has been established by order of the director of health;

(c) is engaging in unlicensed health care practices; and

(d) is providing unlicensed health care services for remuneration or is holding oneself out to the public as a practitioner of unlicensed health care practices.

(b) A health care practitioner, licensed or registered by the director or a health-related licensing board, who engages in unlicensed health care while practicing under the practitioner's license or registration, shall be regulated by and be under the jurisdiction of the applicable health-related licensing board with regard to the unlicensed health care practices.

(c) Subject to the provisions of this chapter, persons in Rhode Island are authorized to practice as unlicensed health care practitioners and receive remuneration for their services.

23-72-2. Office of unlicensed health care practice established. -- (a) Creation. -- The office of unlicensed health care practice is created in the department of health to investigate complaints and take and enforce disciplinary actions against all unlicensed health care practitioners for violations of prohibited conduct, as set forth in this chapter.

(b) Rulemaking. - The director shall adopt rules and regulations necessary to implement, administer, or enforce the provisions of this chapter.

23-72-3. Maltreatment of minors prohibited. - Nothing in this chapter shall restrict the ability of a local law enforcement agency, the director of the department of children, youth and families, to take action regarding the maltreatment of minors. A parent who obtains unlicensed health care for the parent's minor child is not relieved of the duty to seek necessary medical care consistent with the requirements of the general laws. A complementary or alternative health care practitioner who is providing services to a child who is not receiving necessary medical care must make a report and is otherwise subject to the reporting provisions of chapter 40-11, entitled "Abused and Neglected Children."

23-72-4. Professional accountability. -- The office shall maintain and keep current a file containing the reports and complaints filed against unlicensed health care practitioners within the director's jurisdiction. Each complaint filed with the office must be investigated.

23-72-5. Prohibited conduct. -- (A) The director may impose disciplinary action as described in this chapter against any unlicensed health care practitioner. The following conduct is prohibited and is grounds for disciplinary action:

(1) Conviction of a crime, including a finding or verdict of guilt, and admission of guilt, or a no contest plea, in any court in Rhode Island or any other jurisdiction in the United States, reasonably related to engaging in health care practices. Conviction, as used in this subdivision, includes a conviction of an offense which, if committed in this state, would be deemed a felony, gross misdemeanor, or misdemeanor, without regard to its designation elsewhere, or a criminal proceeding where a finding or verdict of guilty is made or returned, but the adjudication of guilt is either withheld or not entered.

(2) Engaging in sexual contact with an unlicensed health care client, engaging in contact that may be reasonably interpreted by a client as sexual, engaging in any verbal behavior that is seductive or sexually demeaning to the client, or engaging in sexual exploitation of a client.

(3) Advertising that is false, fraudulent, deceptive, or misleading.

(4) Conduct likely to deceive, defraud, or harm the public or demonstrating a willful or careless disregard for the health, welfare, or safety of a unlicensed health care 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.

(5) Adjudication as mentally incompetent or as a person who is dangerous to self or adjudicated as chemically dependent, mentally ill, mentally retarded, mentally ill and dangerous to the public, or as a sexual psychopathic personality or sexually dangerous person.

(6) Inability to engage in unlicensed health care practices with reasonable safety to unlicensed health care clients.

(7) The habitual overindulgence in the use of or the dependence on intoxicating liquors.

(8) Improper or unauthorized personal or other use of any drugs, chemicals, or any controlled substance.

(9) Revealing a communication from, or relating to, an unlicensed health care client except when otherwise required or permitted by law.

(10) Failure to comply with a unlicensed health care client's request to furnish a unlicensed health care client record or report required by law.

(11) Splitting fees or promising to pay a portion of a fee to any other professional other than for services rendered by the other professional to the unlicensed health care client.

(12) Engaging in abusive or fraudulent billing practices, including violations of the federal Medicare and Medicaid laws or state medical assistance laws.

(13) Obtaining money, property, or services from a unlicensed health care client, other than reasonable fees for services provided to the client, through the use of undue influence, harassment, duress, deception, or fraud.

(14) Undertaking or continuing a professional relationship with a unlicensed health care client in which the objectivity of the unlicensed health care practitioner would be impaired.

(15) Failure to provide an unlicensed health care client with a copy of the client bill of rights or violation of any provision of the client bill of rights.

(16) Violating any order issued by the director.

(17) Failure to comply with any provision of any rules adopted by the director.

(18) Failure to comply with any additional disciplinary grounds established by the director by rule.

(19) Revocation, suspension, restriction, limitation, or other disciplinary action against any health care license, certificate, registration, or right to practice of the unlicensed health care practitioner in this or another state or jurisdiction for offenses that would be subject to disciplinary action in this state or failure to report to the office that charges regarding the practitioner's license, certificate, registration, or right of practice have been brought in this or another state or jurisdiction.

(20) Use of the title "doctor," "Dr.," or "physician" alone or in combination with any other words, letters, or insignia to describe the unlicensed health care practices the practitioner provides.

(21) Failure to provide a unlicensed health care 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 director of health, if there is a reasonable likelihood that the client needs to be seen by a licensed or registered health care provider.

23-72-6. Less customary approach. -- The fact that a health care practice may be a less customary approach to health care shall not constitute the basis of a disciplinary action per se.

23-72-7. Evidence in actions. -- In any disciplinary action alleging a professional violation of the provisions of this chapter, a copy of the judgment or proceeding under the seal of the court administrator or clerk of the administrative agency that entered the same is admissible into evidence without further authentication and constitutes prima facie evidence of its contents.

23-72-8. Examination; access of medical data. -- (A) If the director has probable cause to believe that an unlicensed health care practitioner has engaged in professional misconduct as set forth in this chapter, the director may issue an order directing the practitioner to submit to a mental or physical examination or chemical dependency evaluation. For the purpose of this section, every unlicensed health care practitioner is deemed to have consented to submit to a mental or physical examination or chemical dependency evaluation when ordered to do so in writing by the commissioner and further to have waived all objections to the admissibility of the testimony or examination reports of the health care provider performing the examination or evaluation on the grounds that the same constitute a privileged communication. Failure of an unlicensed health care practitioner to submit to an examination or evaluation when ordered, unless the failure was due to circumstances beyond the practitioner's control, constitutes an admission that the unlicensed health care practitioner engaged in professional misconduct, based on the factual specifications in the examination or evaluation order and may result in a default and final disciplinary order being entered after a contested case hearing. An unlicensed health care practitioner affected under this section shall at reasonable intervals be given an opportunity to demonstrate that the practitioner can resume the provision of health care practices with reasonable safety to clients. In any proceeding under this section, neither the record of proceedings nor the orders entered by the director shall be used against an unlicensed health care practitioner in any other proceeding.

(B) In addition to ordering a physical or mental examination or chemical dependency evaluation, the director may, notwithstanding any other law limiting access to medical or other health data, obtain medical data and health records relating to an unlicensed health care practitioner without the practitioner's consent if the director has probable cause to believe that a practitioner has engaged in professional misconduct. The medical data may be requested from a medical services provider, an insurance company, or a government agency, including the department of human services. A medical services provider, insurance company, or government agency shall comply with any written request of the director under this section and is not liable in any action for damages for releasing the data requested by the director if the data released pursuant to a written request under this section, unless the information is false and the person or organization giving the

information knew or had reason to believe the information was false. Information obtained under this section is private data.

23-72-9. Disciplinary actions. -- (A) Forms of disciplinary action. When the director finds that an unlicensed health care practitioner has violated any provision of this chapter, the director may take one or more of the following actions, only against the individual practitioner:

(1) revoke the right to practice;

(2) suspend the right to practice;

(3) impose limitations or conditions on the practitioner's provision of unlicensed health care practices, impose rehabilitation requirements, or require practice under supervision;

(4) impose a civil penalty not exceeding ten thousand dollars (\$10,000) for each separate violation, the amount of the civil penalty to be fixed so as to deprive the practitioner of any economic advantage gained by reason of the violation charged or to reimburse the office for all costs of the investigation and proceeding;

(5) censure or reprimand the practitioner;

(6) impose a fee on the practitioner to reimburse the office for all or part of the cost of the proceedings resulting in disciplinary action including, but not limited to, the amount paid by the office for services from the office of administrative hearings, attorney fees, court reports, witnesses, reproduction of records, staff time, and expense incurred by the staff of the office of unlicensed health care practice; or

(7) any other action justified by the case.

23-72-10. Discovery -- Subpoenas. -- In all matters relating to the lawful activities of the office, the director may issue subpoenas and compel the attendance of witnesses and the production of all necessary papers, books, records, documents, and other evidentiary material. Any person failing or refusing to appear or testify regarding any matter about which the person may be lawfully questioned or failing to produce any papers, books, records, documents or other evidentiary materials in the matter to be heard, after having been required by order of the director or by a subpoena of the director to do so may, upon application to the district court in any district, be ordered to comply with the order or subpoena. The director may administer oaths to witnesses or take their affirmation. Depositions may be taken within or without the state in the manner provided by law for the taking of depositions in civil actions. A subpoena or other process may be served upon a person it names anywhere within the state by any officer authorized to serve subpoenas or other process in civil actions in the same manner as prescribed by law for service of process issued out of the district court of this state.

23-72-11. Hearings. -- If the director proposes to take action against the practitioner as described in this chapter and pursuant to section 23-1-22, the director must first notify the practitioner against whom the action is proposed to be taken and provide the practitioner with an opportunity to request a hearing. If the practitioner does not request a hearing by notifying the director within thirty (30) days after service of the notice of the proposed action, the director may proceed with the action without a hearing.

The director may at the director's discretion reinstate the right to practice and may impose any disciplinary measure listed under this chapter. Provided, the time limits set forth herein shall control over any inconsistent or contrary provisions in section 23-1-22.

23-72-12. Suspension. -- (A) Penalties in suspension. In addition to any other remedy provided by law, the director may, acting through a person to whom the director has delegated this authority and without a hearing, suspend the right of an unlicensed health care practitioner to practice if the director's delegate finds that the practitioner has violated a statute or rule that the director is empowered to enforce and continued practice by the practitioner would create a serious risk of harm to others. The suspension is in effect upon

service of a written order on the practitioner specifying the statute or rule violated. The order remains in effect until the director issues a final order in the matter after a hearing or upon agreement between the director and the practitioner. Service of the order is effective if the order is served on the practitioner or counsel of record personally or by first class mail. Within ten (10) days of service of the order, the director shall hold a hearing on the sole issue of whether there is a reasonable basis to continue, modify, or lift the suspension. Evidence presented by the office or practitioner shall be in affidavit form only. The practitioner or the counsel of record may appear for oral argument. Within five (5) working days after the hearing, the director shall issue the director's order.

All findings in such hearings shall be made by clear and convincing evidence.

Any practitioner aggrieved by an order of the director may appeal such order pursuant to the provisions of chapter 42-35, the administrative procedures act.

(B) Automatic suspension. The right of an unlicensed health care practitioner to practice is automatically suspended if: (1) a guardian of an unlicensed health care practitioner is appointed by order of a court of competent jurisdiction; or (2) the practitioner is committed by order of a court. The right to practice remains suspended until the practitioner is restored to capacity by a court and, upon petition by the practitioner; the director terminates the suspension after a hearing or upon agreement between the director and the practitioner.

23-72-13. Licensed or regulated practitioners. -- If a practitioner investigated under this chapter is licensed or registered by the director of health or a health-related licensing board, is subject to the jurisdiction of the director, and the director determines that the practitioner has violated any provision of this chapter, the director in addition to taking disciplinary action under this section:

(1) may, if the practitioner is licensed or regulated in another capacity by the director, take further disciplinary action against the practitioner in that capacity; or

(2) shall, if the practitioner is licensed or registered in another capacity by a health-related licensing board, report the director's findings under this section, and may make a nonbinding recommendation that the board take further action against the practitioner in that capacity.

23-72-14. Additional remedies. -- (A) Cease and desist. (1) The director may issue a cease and desist order to stop a person from violating or threatening to violate a statute, rule or order which the office has issued or is empowered to enforce. The cease and desist order must state the reason for its issuance and give notice of the person's right to request a hearing under the provisions of both this chapter and chapter 23-1. If, within fifteen (15) days of service of the order, the subject of the order fails to request a hearing in writing, the order is the final order of the director and is not reviewable by a court or agency.

(2) A hearing must be initiated by the office not later than thirty (30) days from the date of the office's receipt of a written hearing request. Within thirty (30) days of receipt of the administrative law judge's report, the director shall issue a final order modifying, vacating, or making permanent the cease and desist order, as the facts require. The final order remains in effect until modified or vacated by the director.

(3) When a request for a stay accompanies a timely hearing request, the director may, in the director's discretion, grant the stay. If the director does not grant a requested stay, the director shall refer the request to the superior court within three (3) working days of receipt of the request. Within ten (10) days after receiving the request from the director, a superior court judge shall issue an order to grant or deny the stay.

(4) In the event of noncompliance with a cease and desist order, the director may institute a proceeding in superior court to obtain injunctive relief or other appropriate relief, including a civil penalty payable to the department not exceeding ten thousand dollars (\$10,000) for each separate violation.

(B) Injunctive relief. In addition to any other remedy provided by law, including the issuance of a cease and desist order under subdivision (A). The director may in the director's own name bring an action in superior

court for injunctive relief to restrain an unlicensed health care practitioner from a violation or threatened violation of any statute, rule, or order which the director is empowered to regulate, enforce, or issue. A temporary restraining order must be granted in the proceeding if continued activity by a practitioner would create a serious risk of harm to others. The director need not show irreparable harm.

(C) Additional powers. The issuance of a cease and desist order or injunctive relief granted under this section does not relieve a practitioner from criminal prosecution by a competent authority or from disciplinary action by the director.

23-72-15. Unlicensed health care client bill of rights. -- (A) Scope. All unlicensed health care practitioners shall provide to each unlicensed health care client prior to providing treatment a written copy of the unlicensed health care client bill of rights. A copy must also be posted in a prominent location in the office of the unlicensed health care practitioner. Reasonable accommodations shall be made for those clients who cannot read or who have communication impairments and those who do not read or speak English. The unlicensed health care client bill of rights shall include the following:

(1) the name, unlicensed health care title, business address, and telephone number of the unlicensed health care practitioner;

(2) the degrees, training, experience, or other qualifications of the practitioner regarding the unlicensed health care being provided, followed by the following statement in bold print:

"The state of Rhode Island has not adopted any educational and training standards for unlicensed health care practitioners. This statement of credentials is for information purposes only.

Under Rhode Island law, an unlicensed health care practitioner may not provide a medical diagnosis or recommend discontinuance of medically prescribed treatments. If a client desires a diagnosis from a licensed physician, chiropractor, or acupuncture practitioner, or services from a physician, chiropractor, nurse, osteopath, physical therapist, dietician, nutritionist, acupuncture practitioner, athletic trainer, or any other type of health care provider, the client may seek such services at any time;"

(3) the name, business address, and telephone number of the practitioner's supervisor, if any;

(4) notice that an unlicensed health care client has the right to file a complaint with the practitioner's supervisor, if any, and the procedure for filing complaints;

(5) the name, address, and telephone number of the office of unlicensed health care practice and notice that a client may file complaints with the office;

(6) the practitioner's fees per unit of service, the practitioner's method of billing for such fees, the names of any insurance companies that agreed to reimburse the practitioner, or health maintenance organizations with whom the practitioner contracts to provide service, whether the practitioner accepts Medicare, medical assistance, or general assistance medical care, and whether the practitioner is willing to accept partial payment, or to waive payment, and in what circumstances;

(7) a statement that the client has a right to reasonable notice of changes in services or charges;

(8) a brief summary, in plain language, of the theoretical approach used by the practitioner in providing services to clients;

(9) notice that the client has a right to complete and current information concerning the practitioner's assessment and recommended service that is to be provided, including the expected duration of the service to be provided;

(10) a statement that clients may expect courteous treatment and to be free from verbal, physical, or sexual abuse by the practitioner;

(11) a statement that client records and transactions with the practitioner are confidential, unless release of these records is authorized in writing by the client, or otherwise provided by law;

(12) a statement of the client's right to be allowed access to records and written information from records in accordance with the provisions of this chapter;

(13) a statement that other services may be available in the community, including where information concerning services is available;

(14) a statement that the client has 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;

(15) a statement that the client has a right to a coordinated transfer when there will be a change in the provider of services;

(16) a statement that the client may refuse services or treatment, unless otherwise provided by law; and

(17) a statement that the client may assert the client's rights without retaliation.

(B) Acknowledgement by client. Prior to the provision of any service, an unlicensed health care client must sign a written statement attesting that the client has received the unlicensed health care client bill of rights.

SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO HEALTH AND SAFETY -- UNLICENSED HEALTH CARE
PRACTICES

This act would define and allow for the regulation of so-called "unlicensed health care practices" including acupressure, aromatherapy, and folk practices. The regulation of such practices along with the monitoring of these practices and the enforcement of rules and regulations would be within the jurisdiction of the department of health.

This act would take effect upon passage.

As always, your comments concerning this page are welcomed and appreciated.

Thank you for stopping by!