

Rhode Island

Notes: Law enacted in 2002. Follows Minnesota Model

Rhode Island Unlicensed Health care practices

**CHAPTER 133
2002-H 6719B
Enacted 06/15/2002**

A N A C T

**RELATING TO HEALTH AND SAFETY -- UNLICENSED HEALTH CARE
PRACTICES**

Introduced By: Representative Arthur J. Corvese

Date Introduced: January 09, 2002

It is enacted by the General Assembly as follows:

SECTION 1. Title 23 of the General Laws entitled "Health and Safety" is hereby amended by adding thereto the following chapter:

CHAPTER 74
UNLICENSED HEALTH CARE PRACTICES

23-74-1. Definitions and applicability. - (a) As used in this chapter, the following terms have the following meanings:

(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) "Unlicensed health care practices" means the broad domain of unlicensed healing methods and treatments, including, but not limited to: (i) acupressure; (ii) Alexander technique; (iii) aroma therapy; (iv) ayurveda; (v) cranial sacral therapy; (vi) crystal therapy; (vii) detoxification practices and therapies; (viii) energetic healing; (ix) rolfing; (x) Gerson therapy and colostrum therapy; (xi) therapeutic touch; (xii) herbology or herbalism; (xiii) polarity therapy; (xiv) homeopathy; (xv) nondiagnostic iridology; (xvi) body work; (xvii) reiki; (xviii) mind-body healing practices; (ixx) naturopathy; and (xx) Qi Gong energy healing. "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 section 5-37-15 or section 5-34-31(6).

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

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

(ii) has not had a license issued by a health-related licensing board or the director of health revoked or suspended without reinstatement unless the right to engage in unlicensed health care practices has been established by order of the director of health;

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

(iv) 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) 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.

(c) 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.

(d) 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.

23-74-2. Maltreatment of minors prohibited. - Nothing in this chapter shall restrict the ability of a local law enforcement agency or 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 shall be subject to the reporting provisions of chapter 40-11 entitled "Abused and Neglected Children."

23-74-3. Professional accountability. - The department 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 department must be investigated.

23-74-4. Prohibited conduct. - 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 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 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 or safety of an unlicensed health care client in which case, 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 any of the following: 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) Dependence upon controlled substances, habitual drunkenness or engaging in unlicensed health care practices while intoxicated or incapacitated by the use of drugs.
- (8) Revealing a communication from, or relating to, an unlicensed health care client except when otherwise required or permitted by law.
- (9) Failure to comply with an unlicensed health care client's request to furnish a unlicensed health care client record or report required by law.
- (10) 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.
- (11) Engaging in abusive or fraudulent billing practices, including violations of the federal Medicare and Medicaid laws or state medical assistance laws.
- (12) Obtaining money, property, or services from an 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.
- (13) 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.
- (14) Violating any order issued by the director.
- (15) Failure to comply with any provision of any rules adopted by the director.
- (16) Failure to comply with any additional disciplinary grounds established by the director by rule.
- (17) 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 department that charges regarding the practitioner's license, certificate, registration, or right of practice have been brought in this or another state or jurisdiction.

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

23-74-5. 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.

23-74-6. 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.

23-74-7. Examination access of medical data. - The director may require an unlicensed practitioner to undergo a physical or psychiatric examination by a physician acceptable to the director from a list provided to the practitioner if probable cause exists to believe that allegations of misconduct against him or her are caused by an impairment which has directly affected his or her ability to conduct his or her practice professionally. In such circumstances, the director shall also be entitled to obtain confidential health care information of the practitioner without the practitioner's consent. The director may not discriminate on the basis of disability in the administration of this section, nor subject qualified individuals with disabilities to any discrimination on the basis of a disability. All decisions of the director shall be based on the allegation of unprofessional conduct and not due to probable cause of the conduct being related to the disability of the practitioner. 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.

23-74-8. Disciplinary actions. - 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) assess against the practitioner the administrative costs of the proceedings instituted against him or her under this chapter; provided, that this assessment does not exceed ten thousand dollars (\$10,000);

(5) censure or reprimand the practitioner;

(6) any other action justified by the case.

23-74-9. Discovery -- Subpoenas. - In all matters relating to the lawful activities of the department, 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.

23-74-10. Hearings. - (a) 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. If a hearing is requested, a hearing shall be scheduled by the director as soon as is practicable. The director shall, issue a notice of a hearing of the charges, which shall specify the time and place of the hearing and notify the accused that he or she may file with the director a written response within twenty (20) days of the date of service. The notice shall also notify the accused that a stenographic record of the proceedings will be kept, that he or she will have the opportunity to appear personally and to have counsel present with the right to produce witnesses and evidence in his or her own behalf, to cross examine witnesses, to examine any documentary evidence that may be produced against him or her and to have subpoenas issued by the director.

(b) 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.

23-74-11. 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 an immediate 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. Within five (5) working days after the hearing, the director shall issue an order.

(b) All findings in hearings under this chapter shall be made by clear and convincing evidence.

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

(d) 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.

23-74-12. 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.

23-74-13. 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 department 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 department not later than thirty (30) days from the date of the department's receipt of a written hearing request. Within thirty (30) days of the hearing 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.

(5) Injunctive relief. In addition to any other remedy provided by law, including the issuance of a cease and desist order under subsection (a), the director may in his or her 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.

(b) 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.

23-74-14. 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. 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 department and notice that a client may file complaints with the department;

(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 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 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;

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

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

(16) 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.