

HB 0801

2004

A bill to be entitled

An act relating to complementary or alternative health care services; creating s. 456.43, F.S.; providing a popular name; providing legislative findings and intent; defining the term "complementary or alternative health care services"; clarifying that persons who are not health care practitioners licensed by this state may provide complementary or alternative health care services under certain circumstances; prohibiting certain acts; requiring certain disclosures; providing civil and criminal penalties; amending s. 456.065, F.S.; providing that the disciplinary provisions of the law prohibiting the unlicensed practice of a health care profession do not prohibit the provision of complementary or alternative health care services as provided under the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 456.43, Florida Statutes, is created to read:

456.43 The practice of complementary or alternative health care services.--

(1) POPULAR NAME.--This section may be cited by the popular name the "Consumer Health Freedom Act."

(2) FINDINGS AND INTENT.--

(a) Based upon studies, research, and public policy declarations by state governments, including a comprehensive report by the National Institutes of Medicine, a study published

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30 by the New England Journal of Medicine, laws enacted by the
31 states of California, Idaho, Minnesota, and Rhode Island, and a
32 Proclamation issued by the Governor of Florida, it is widely
33 recognized that millions of Americans and hundreds of thousands
34 of Floridians are presently receiving a substantial amount of
35 health care from providers of complementary or alternative
36 health care services. Those studies show that complementary or
37 alternative health care services are used by individuals from a
38 wide variety of age, ethnic, socioeconomic, and other
39 demographic categories.

40 (b) Notwithstanding the widespread use of complementary or
41 alternative health care services, the Legislature finds that
42 access to these services for residents of the state has been
43 hampered, and the free flow of information about these services
44 inhibited, by a failure of the state to openly acknowledge the
45 existence of health care therapies and methods that are not
46 suitable for regulation or licensure under the police power of
47 the state. As a result, the providers of these services who are
48 not licensed by the state as health care practitioners, as
49 defined in this chapter, cannot openly offer their services with
50 the comfort and safety of knowing that they will not be exposed
51 to fines, penalties, or the restriction of their practices,
52 based on charges that they are in violation of state
53 professional practice acts governing licensed health care
54 practitioners, notwithstanding the delivery of health care
55 services that have not been shown to pose a recognizable and
56 imminent risk of significant and discernible harm to the
57 public's health, safety, or welfare.

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58 (c) The Legislature further finds that the state's failure
59 to acknowledge such unregulated health care services impedes the
60 beneficial delivery of health care information by clients of
61 complementary or alternative health care providers to those
62 clients' licensed health care providers, and between licensed
63 and unlicensed health care providers with respect to their
64 clients or patients.

65 (d) The Legislature acknowledges the public's desire for
66 broader access to complementary or alternative health care
67 therapies and finds that the health and welfare of this state's
68 residents can be enhanced by restating and clarifying the
69 state's long-standing public policy, enunciated in the Sunrise
70 Act, that a profession or occupation is not subject to
71 regulation under the police power of the state unless, and then
72 only to the extent that, the profession or occupation has been
73 shown to pose a recognizable and imminent risk of significant
74 and discernible harm to the health, safety, or welfare of the
75 public.

76 (e) Based on these findings and the further finding that
77 the unregulated practice of complementary or alternative health
78 care services is suitable and desirable for the public's health
79 and welfare, it is the intent of the Legislature to allow,
80 protect, and encourage public access to and the performance and
81 delivery of complementary or alternative health care services in
82 this state, subject only to the limitations and restrictions
83 provided in this section.

84 (3) DECLARATION OF PUBLIC POLICY.--The Legislature
85 recognizes and acknowledges that the health and welfare of this
86 state's residents has been and will continue to be enhanced by

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87 the practice of complementary or alternative health care
 88 therapies and methods in the state and that no state licensure
 89 or regulation is appropriate or necessary for the delivery of
 90 those services that are not shown to pose a recognizable and
 91 imminent risk of significant and discernible harm to the
 92 public's health, safety, or welfare.

93 (4) DEFINITION.--As used in this section, the term
 94 "complementary or alternative health care services" means the
 95 broad domain of complementary or alternative health care
 96 treatment, as defined in s. 456.41, provided by persons who are
 97 not licensed as health care practitioners as defined in this
 98 chapter and to the extent the services are not prohibited by
 99 subsection (5), or as otherwise excepted by law from state
 100 regulation.

101 (5) PROHIBITED ACTS.--

102 (a) Notwithstanding any other provision of law, a person
 103 who provides complementary or alternative health care services
 104 does not violate s. 456.065 or any other health care
 105 professional practice act, unless the person:

106 1. Performs surgery or any other procedure that punctures
 107 the skin, or a chiropractic adjustment of the articulations of
 108 joints or the spine of any person;

109 2. Prescribes or administers X-ray radiation to any
 110 person;

111 3. Prescribes or administers a legend drug, a legend
 112 medical device, or a controlled substance to any person or
 113 recommends the discontinuance of a legend drug, a legend medical
 114 device, or a controlled substance;

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115 4. Engages in a practice that has as its primary purpose
 116 the deep manipulation of the muscle of the human body with the
 117 hand, foot, arm, or elbow or represents that the practice is
 118 massage therapy;

119 5. Willfully provides an allopathic biomedical disease
 120 diagnosis;

121 6. Willfully provides a diagnosis or treatment of a
 122 physical or mental health condition of any person which directly
 123 poses to that person a recognizable and imminent risk of
 124 significant and discernible physical or mental harm; or

125 7. Holds out, states, indicates, advertises, or implies to
 126 any person that he or she is a health care practitioner licensed
 127 by this state.

128 (6) DISCLOSURE.--

129 (a) Any person providing complementary or alternative
 130 health care services shall, prior to providing the services,
 131 disclose to the client in a plainly worded written statement:

132 1. The nature of the services to be provided and the
 133 theory upon which the services are based; and

134 2. The degrees, training, experience, credentials, or
 135 other qualifications of the person regarding the services being
 136 provided, followed by a statement in at least 11-point font
 137 size:

138
 139 "I AM NOT LICENSED BY THE STATE OF FLORIDA AS A HEALTH
 140 CARE PRACTITIONER. THE STATE HAS NOT ADOPTED ANY
 141 EDUCATIONAL AND TRAINING STANDARDS FOR UNLICENSED
 142 COMPLEMENTARY OR ALTERNATIVE HEALTH CARE
 143 PRACTITIONERS."

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(b) Any person providing complementary or alternative health care services shall:

1. Obtain a written acknowledgment from the client stating that he or she has been provided with the information described in this subsection and provide a copy of this written acknowledgment to the client. The written acknowledgment must be maintained for 2 years by the person providing the service.

2. State in any advertisement for complementary or alternative health care services that he or she is not licensed by this state as a health care practitioner.

(7) PENALTIES FOR VIOLATIONS.--

(a) A person who violates any provision of subsection (5) is subject to the administrative, civil, and criminal penalties specified in s. 456.065(2), including, but not limited to, court costs, reasonable attorney's fees, and the reasonable costs of investigation and prosecution.

(b) A person who violates any provision of subsection (6) is subject to the administrative and civil penalties specified in s. 456.065(2)(a)-(c), including, but not limited to, court costs, reasonable attorney's fees, and the reasonable costs of investigation and prosecution.

Section 2. Subsection (4) of section 456.065, Florida Statutes, is amended to read:

456.065 Unlicensed practice of a health care profession; intent; cease and desist notice; penalties; enforcement; citations; fees; allocation and disposition of moneys collected.--

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172 (4) The provisions of this section apply only to health
173 care professional practice acts administered by the department
174 and do not prohibit the provision of complementary or
175 alternative health care services under s. 456.43 by a person who
176 is not licensed in this state as a health care practitioner.

177 Section 3. This act shall take effect July 1, 2004.