

JAN 19 2007

A BILL FOR AN ACT

RELATING TO HEALTH CARE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Many state residents seek out health care from
2 unlicensed complementary and alternative health care
3 practitioners, such as those who practice herbology, homeopathy,
4 aromatherapy, reiki, and therapeutic touch. These practitioners
5 may unwittingly be violating Hawaii law prohibiting the
6 unlicensed practice of medicine and other licensed health care
7 professionals.

8 For example, section 453-1, Hawaii Revised Statutes,
9 defines the practice of medicine to include "the use of drugs
10 and medicines, water, electricity, hypnotism, or any means or
11 method, or any agent, either tangible or intangible, for the
12 treatment of disease in the human subject[.]" Unless a specific
13 exemption is made by law, no person may practice medicine
14 without a valid license from the board of medical examiners.
15 The language defining the practice of medicine has been in place
16 since 1896, before a number of the healing modalities used today
17 were invented or in widespread use. A number of alternative and



1 complementary healing modalities used today could conceivably
2 fall within the rubric of the practice of medicine, or other
3 licensed practice acts, even though they are not considered by
4 their practitioners or the public to be exclusive practices.

5 The legislature finds that many complementary and
6 alternative healing modalities do not pose a known risk to the
7 health and safety of Hawaii residents and that the potential of
8 restricting access to them for fear of a technical violation of
9 state law is not warranted.

10 The purpose of this Act is to allow access for Hawaii
11 residents to practitioners of these alternatives and
12 complementary healing modalities, as long as they do not provide
13 services that pose and imminent risk of significant harm to the
14 public.

15 SECTION 2. The Hawaii Revised Statutes is amended by
16 adding a new chapter to title 6 to be appropriately designated
17 and to read as follows:

18 "CHAPTER

19 ALTERNATIVE AND COMPLEMENTARY HEALING MODALITIES

20 § -1 Findings. A substantial amount of unlicensed
21 alternative and complementary nonmedical healing practitioners
22 and modalities are being used by state residents. The provision



1 of many of these services may be in technical violation of
2 chapter 453, which contains a broad definition of the practice
3 of medicine. This chapter allows access by Hawaii residents to
4 unlicensed practitioners of these alternative and complementary
5 healing modalities, as long as they do not pose a danger to
6 public health.

7 **§ -2 Definitions.** As used in this chapter:

8 "Alternative or complementary healing modality" includes
9 but is not limited to homeopathy, herbal therapies, traditional
10 naturopathy, vitamins, relaxation methods, lifestyle diet,
11 imagery, energy healing, and biofeedback.

12 "Health care professional" has the same meaning as in
13 section 451D-2.

14 "Practice of medicine" has the same definition as in
15 section 453-1.

16 "Practitioner" means a person offering an alternative or
17 complementary healing modality who is not a licensed health care
18 professional.

19 **§ -3 Alternative or complementary healing modality, when**
20 **in violation of professional practice act.** A practitioner shall
21 not be in violation of any health care professional practice act
22 for unlicensed practice unless the practitioner:



- 1 (1) Conducts surgery or any other procedure on another
2 person that punctures the skin or harmfully invades
3 the body;
- 4 (2) Administers or prescribes x-ray radiation to another
5 person;
- 6 (3) Prescribes or administers legend drugs or controlled
7 substances to another person;
- 8 (4) Recommends the discontinuance of legend drugs or
9 controlled substances prescribed by an appropriately
10 licensed practitioner;
- 11 (5) Diagnoses and treats a physical or mental condition of
12 any person and in doing so intentionally causes that
13 person an imminent and discernable risk of great
14 bodily harm, serious physical or mental illness, or
15 death;
- 16 (6) Sets fractures;
- 17 (7) Treats lacerations or abrasions through
18 electrotherapy; or
- 19 (8) Holds out, states, indicates, advertises, or implies
20 to a client or prospective client that the
21 practitioner is a licensed health professional.



1 **§ -4 Mandatory disclosure.** (a) Prior to providing any
2 treatment, services, or products to any person, a practitioner
3 shall provide, in plain language, a written statement to the
4 person that:

5 (1) The practitioner is not a licensed physician or other
6 licensed health care professional, unless the
7 practitioner has a current valid Hawaii license as
8 such;

9 (2) That the treatment is an alternative or complementary
10 health care service;

11 (3) The nature of the service, product, or treatment to be
12 provided; and

13 (4) The practitioner's education, training, experience, or
14 other relevant qualifications regarding the
15 complementary and alternative health care services
16 being provided.

17 (b) Before starting treatment, the practitioner shall
18 obtain a written acknowledgment from the client that the client
19 received the disclosure as stated in subsection (a). The client
20 shall receive a copy of the disclosure, and the practitioner
21 shall retain the original disclosure on file for two years.

22 **§ -5 Scope of the chapter.** Nothing in this chapter:



- 1 (1) Shall apply to licensed health care professionals;
- 2 (2) Shall apply to, control, or prevent any health care
- 3 practice from being practiced if it is already exempt
- 4 from professional practice acts or state law, or apply
- 5 to, control, or prevent a person from providing health
- 6 care services who is already exempt from professional
- 7 practice acts as defined in or under state law;
- 8 (3) Limits the right of the client receiving service by an
- 9 alternative or complementary healing modality to seek
- 10 relief for negligence or any other civil remedy
- 11 against a practitioner."

12 SECTION 3. This Act shall take effect upon its approval.

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Report Title:

Health; Medical Freedom Act

Description:

Allows unlicensed practitioners of health-related services to provide services to the public without it being considered the practice of medicine under certain circumstances.

