

81R1617 BEF-F

By: Corte

H.B. No. 40

A BILL TO BE ENTITLED

AN ACT

relating to regulations on certain complementary and alternative health care services.

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

SECTION 1. Subtitle M, Title 3, Occupations Code, is amended by adding Chapter 703 to read as follows:

CHAPTER 703. COMPLEMENTARY AND ALTERNATIVE HEALTH CARE SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 703.001. COMPLEMENTARY AND ALTERNATIVE HEALTH CARE SERVICES. (a) In this chapter, "complementary and alternative health care services" means the broad domain of complementary and alternative methods, therapies, treatments, and services that:

(1) are provided by persons who are not licensed, certified, or registered as health care practitioners or health care professionals by an occupational regulatory agency of this state; and

(2) are not prohibited by Section 703.051.

(b) Complementary and alternative health care services include, but are not limited to:

(1) acupressure;

(2) anthroposophy;

- (3) aromatherapy;
- (4) Ayurveda;
- (5) cranial sacral therapy;
- (6) culturally traditional practices;
- (7) detoxification practices and therapies;
- (8) energetic therapies
- (9) polarity therapy;
- (10) folk practices;
- (11) practices using food, food supplements, nutrients, and the physical forces of heat, cold, water, touch, and light;
- (12) Gerson therapy;
- (13) colostrum therapy;
- (14) touch therapy;
- (15) herbology or herbalism;
- (16) homeopathy;
- (17) nondiagnostic iridology;
- (18) bodywork;
- (19) meditation;
- (20) mind-body therapeutic practices;
- (21) naturopathy;
- (22) noninvasive instrumentalities; and
- (23) traditional Oriental practices, such as qigong energy therapy.

Sec. 703.002. GENERAL APPLICABILITY. (a) This chapter applies to a person who provides a complementary and alternative

health care service.

(b) This chapter does not:

(1) limit the right of a person to obtain a civil remedy, including a remedy for negligence, against a person who provides a complementary and alternative health care service; or

(2) control, prevent, or restrict a person from marketing or distributing a lawful food product, including a dietary supplement.

Sec. 703.003. APPLICABILITY OF OTHER LAW. A person who provides complementary and alternative health care services in compliance with Sections 703.051 and 703.052 is not practicing medicine under Subtitle B and does not violate Subtitle B or another law of this state that requires a person to obtain an occupational license, registration, or certificate as a health care practitioner or health care professional.

[Sections 703.004-703.050 reserved for expansion]

SUBCHAPTER B. REGULATION OF COMPLEMENTARY AND ALTERNATIVE HEALTH CARE SERVICES

Sec. 703.051. PROHIBITED ACTS. A person may not in connection with providing a complementary and alternative health care service:

(1) conduct surgery or any other procedure that punctures the skin or that harmfully invades the body, other than pricking a finger to obtain a small amount of blood for screening purposes;

(2) administer to or prescribe for another person a source of radiation;

(3) administer to or prescribe for another person legend drugs, dangerous drugs, or controlled substances;

(4) recommend that a person discontinue medical care or a medical treatment prescribed by a licensed health care practitioner;

(5) provide a conventional medical disease diagnosis;

(6) perform a chiropractic adjustment of an articulation of the spine; or

(7) represent, state, indicate, advertise, or imply that the person is licensed, certified, or registered by this state as a health care practitioner or health care professional.

Sec. 703.052. REQUIRED DISCLOSURE. (a) Before providing a complementary and alternative health care service, a person must:

(1) provide to the client a written statement in plain language:

(A) stating that the person is not licensed certified, or registered by this state as a health care practitioner or health care professional.

(B) describing the nature of the services to be provided and the theory of treatment on which the services are based;

(C) detailing the education, training, experience, or other qualifications of the person with regard to the service being provided and stating whether any degree disclosed by the person is recognized by this state; and

(D) containing the following statement in bold print:

"THE STATE OF TEXAS HAS NOT ADOPTED ANY EDUCATIONAL OR TRAINING STANDARDS FOR COMPLEMENTARY AND ALTERNATIVE HEALTH CARE SERVICE PROVIDERS. THIS DISCLOSURE IS FOR INFORMATIONAL PURPOSES ONLY.

Under Texas law, a complementary and alternative health care service provider who is not licensed, certified or registered as a health care practitioner or health care professional by an occupational or regulatory agency of this state may not provide a medical diagnosis or recommend that a person discontinue a medically prescribed treatment. A client may seek at any time a diagnosis from a licensed physician, chiropractor, or acupuncture practitioner or a service from a physician, chiropractor, dentist, nurse, osteopath, physical therapist, occupational therapist, massage therapist, dietitian, midwife, acupuncture practitioner, athletic trainer, or any other type of licensed ,certified, or registered health care practitioner.";

(2) obtain a signed acknowledgment from the client that

the client has been provided a copy of the statement required by Subdivision (1); and

(3) provide a copy of the statement and signed acknowledgment to the client.

(b) The complementary and alternative health care service provider shall retain a copy of the signed acknowledgment under Subsection (a)(2) until the second anniversary of the date the statement is signed.

Sec. 703.053. REBUTTABLE PRESUMPTION. It is a rebuttable presumption that a person who provides the statement required by Section 703.052(a)(1) is not practicing medicine under Subtitle B.

Sec. 703.054. DEFENSE. It is a defense to prosecution under Section 32.52, Penal Code, that the person:

(1) disclosed information to a client about a degree lawfully obtained by the person from a school inside or outside the United States; and

(2) stated whether the degree is recognized by this state as required by Section 703.052(a)(1)(C).

SECTION 2. This Act takes effect June 1, 2009, if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect on that date, this Act takes effect September 1, 2009.