

# **Office of Unlicensed Complementary and Alternative Health Care Practice Biennial Report**

## **September 2008**

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**Office of Unlicensed Complementary and Alternative Health Care Practice  
Minnesota Department of Health  
Biennial Report  
July 1, 2006 to June 30, 2008**

**I. General Information**

**A. Office of Unlicensed Complementary and Alternative Health Care Practice**

**Mission and Major Functions:**

**Mission:**

To protect consumers who receive complementary and/or alternative health care services from practitioners who fall outside of state licensing authorities, including, but not limited to, persons who provide: massage therapy, body work, homeopathy, naturopathy, herbology, healing practices utilizing food, food supplements and nutrients, healing touch, culturally traditional healing practices, and traditional Oriental practices. The Office of Unlicensed Complementary and Alternative Health Care Practice (hereinafter “OCAP”) was created within the Minnesota Department of Health (hereinafter “Department”) to receive and investigate complaints against unlicensed complementary and alternative health care practitioners, to take enforcement action for violations of prohibited conduct, monitor practitioner conduct after discipline, and act as an information clearinghouse by providing the public with information about regulation of unlicensed complementary and alternative health care practitioners in the state of Minnesota.

**Major Functions:**

**Investigating complaints**

- Accepting complaints and reports from the public, health care service providers, and other health care regulators regarding the conduct of unlicensed complementary and alternative health care practitioners.
- Determining whether a complaint or inquiry is jurisdictional and, if so, obtaining sufficient evidence to determine if a violation of Minnesota Statutes, Chapter 146A occurred.
- Engaging in fact-finding by interviewing complainants, witnesses, and the practitioners, and obtaining relevant documentation about the allegation(s) including a completed complaint form from the complainant.
- Coordinating investigations involving matters within the jurisdiction of more than one regulatory agency by making appropriate referrals to other state boards, agencies, departments responsible for licensing health-related occupations, facilities and programs, and law enforcement personnel in this and other states.

- Informing complainants of action taken to resolve their complaints as allowed by the provisions of the Minnesota Government Data Practices Act.

**Taking and enforcing disciplinary actions against all unlicensed complementary and alternative health care practitioners for violations of prohibited conduct**

- Evaluating the case against a practitioner while balancing the constitutional due process rights of the practitioner against the Department's obligation to protect the public from harm in a cost effective way.
- Holding investigative interviews and conferences with practitioners to clarify information received during an investigation, identify the practitioner's role and responsibility in a matter under investigation, and allow the practitioner an opportunity to make a meaningful response.
- Obtaining voluntary and negotiated agreements with practitioners for discipline whenever possible.
- Protecting the identity of clients and complainants.
- Subsequent to disciplinary action, setting up a system to continue monitoring practitioner's conduct to ensure it complies with the disciplinary Order.
- Taking further enforcement actions if there is evidence to conclude that practitioner violated terms of the Order of the Department.

**Acting as informational clearinghouse on complementary and alternative health care services provided by unlicensed practitioners through information about practitioner responsibilities, consumer legal rights, types of alternative and complementary practices, and information about other relevant state and federal regulatory agencies**

- Being available by telephone, e-mail or in writing to answer questions about regulations pertaining to unlicensed complementary and/or alternative health care service providers in Minnesota and consumer rights.
- Being available on-line via the website, which provides information about regulation of unlicensed complementary and alternative health care practitioners in the state of Minnesota, consumer rights, how to file complaints against practitioners, and the requirements of the Client Bill of Rights.

- Preparing and distributing brochures and other printed materials to both consumers and practitioners to describe consumer rights and options. Educating the public and practitioners about the OCAP and informing practitioners about their legal responsibilities.
- Collecting and recording data about both investigations and enforcement actions for distribution to the public and legislative authorities about OCAP's activities.

## **B. Major Activities during the Biennium**

- OCAP completed seven enforcement actions against seven different practitioners. Five of these enforcement actions were against massage therapists for sexual misconduct or other boundary violations.
- OCAP continued to develop and maintain a collaborative relationship with the local office of the Federal Food and Drug Administration (FDA). The FDA has continued to assist OCAP in understanding medical device regulation. OCAP and the FDA do not have overlapping jurisdictions, and such collaboration is necessary in order to be efficient and effective.
- OCAP was one of five occupational groups regulated by the Health Occupations Program (HOP) in the Department included in a project to develop a comprehensive database. The database is now fully operational.
- OCAP continued to revise and update its website to include better consumer and practitioner information. Recent information added includes the type of OCAP practices in which the subjects of disciplinary action were engaging. OCAP enforcement actions and other documents are being scanned so this information will be available by links on the website. This process will allow enforcement actions to be easily accessible to consumers and other interested persons.
- OCAP responded to 573 inquiries from practitioners, consumers, complainants, regulators and other interested persons. OCAP mailed out over 380 brochures/information and complaint packets/copies of disciplinary actions. Inquiries increased 90% since the last biennium; however, mailings were reduced by 40%. This may indicate increased access and use of the internet and Department website.
- During the 2007-2008 legislative session, the legislature passed a proposal for the future registration of naturopathic doctors that have postgraduate degrees in naturopathic medicine.

The legislature also directed the Commissioner of Health to convene a work group which will make recommendations about the following issues: (1) the appropriate level of regulation for naturopathic medicine practitioners with a postgraduate degree in naturopathic medicine; (2) definitions to be used in the regulatory scheme to ensure the distinction between the practice of naturopathic medicine and the practice of traditional naturopathy; (3) the level of education and training, including appropriate credentialing of educational programs for the postgraduate degree level of practice; (4) the exclusive scope of practice for naturopathic practitioners with a postgraduate degree in naturopathic medicine while ensuring that practitioners without a postgraduate degree may continue to practice naturopathy under OCAP; (5) identify the appropriate regulatory authority, including the possibility of a new regulatory board; and (6) other regulatory requirements for naturopathic medicine recommended by the work group. This new regulation will have little impact on the operations of OCAP as less than one percent of OCAP practitioners will meet the requirements for registration as naturopathic doctors with postgraduate degrees.

- The legislature passed changes to 146A deleting language that prohibited a practitioner from engaging in sexual contact with a former client and language that prohibited a practitioner from undertaking or continuing a professional relationship with a client when the practitioner's objectivity was impaired. These changes were effective August 1, 2008.
- The legislature also passed changes removing the requirement for a practitioner to use a Client Bill of Rights when they are employed by or a volunteer in a hospital or hospice.

**C. Emerging Issues Regarding Regulation of Unlicensed Complementary and Alternative Health Care Practitioners and Practices**

- Complementary and alternative health care modalities continue to be a widely accepted and accessed option for health care consumers in Minnesota and across the nation. There is need for continuing regulatory oversight and personnel to disseminate information to practitioners, consumers and interested persons, along with reviewing research and studies of alternative and complementary modalities.
- The passage of the naturopathy doctors' registration statute has caused concern among traditional naturopaths that their right to practice under OCAP jurisdiction may be eroded or restricted in the future. These concerns will be heard in the work group, which has an OCAP representative appointed by the Commissioner's Office.

Traditional naturopaths are those practicing that may not hold accredited doctorate level training.

- Of the complaint forms mailed out, approximately 50% of complainants fail to complete and return details of the complaint. In some cases, the complainant is a family member of the OCAP client and the client does not wish to cooperate with an investigation. In other situations, unrelated legal action (child custody, divorce) is pending and there is a concern that filing a complaint may cause the disputed matter to escalate.

## **II. OCAP's Staff and Budget**

### **A. Employees**

July 1, 2006 to June 30, 2008, 1 FTE investigator.

### **B. Receipts and Disbursements and Major Fees Assessed By Office**

The OCAP is part of the Health Occupations Program within the Compliance Monitoring Division in the Minnesota Department of Health. The program is funded by the General Fund. There are no credentialing components to the OCAP, therefore no fee-based revenue exists.

<b>Civil Penalties Received</b>		<b>Civil Penalties Assessed (but not yet received)</b>	
FY 2007	\$ 805	FY 2007	\$ 1,000
FY 2008	\$ <u>0</u>	FY 2008	\$ <u>628</u>
<b>TOTAL</b>	<b>\$ 805</b>	<b>TOTAL</b>	<b>\$ 1,628</b>

<b>Reimbursement to Consumers</b>		<b>Expenditures</b>	
FY 2007	\$ 0	FY 2007	\$ 93,538*
FY 2008	\$ <u>585</u>	FY 2008	\$ <u>63,247</u> **
<b>TOTAL</b>	<b>\$ 585</b>	<b>TOTAL</b>	<b>\$156,785</b>

\* includes \$17,000 in costs for the Attorney General's office.

\*\* includes \$5,845 in costs for the Attorney General's office.

## **III. Licensing and Registration**

There are no licensing or registration activities in OCAP.

## IV. Complaints

### A. Complaints Received

	<u>FY 2007</u>	<u>FY 2008</u>
<b>Complaints Received</b>	10	8
Complaints Per 1,000 Regulated Persons (Estimated 2,700 practitioners)	3.70	2.96

### Complaints by Type of Complaint

	<u>FY 2007</u>	<u>FY 2008</u>
Sexual Misconduct	5	4
Impaired Objectivity	0	0
Harm to Public/Client <sup>1</sup>	5	2
Misrepresentation of Credentials	0	2
False Advertising	0	0
Other Disciplinary Action Taken	0	0
Criminal-personal or OCAP related	0	0
Failure to furnish records	0	0
Failure to provide bill of rights	0	0
Failure to follow Commissioner's order	0	0
Failure to refer <sup>2</sup>	0	0

### B. Open Complaints on June 30

	<u>FY 2007</u>	<u>FY 2008</u>
Total Number of Open Complaints	33	28
Open Less than three months	3	5
Open 3 to 6 months	3	1
Open 6 to 12 months	4	2
Open more than 1 Year (explain) <sup>3</sup>	23	20

### C. Closed Complaints on June 30

	<u>FY 2007</u>	<u>FY 2008</u>
Number Closed	9	13
<u>Disposition by Type</u>		
A. Dismissed	2	4
B. Revoked	2	2
C. Suspended/Restricted Practice	2	0
D. Advisement/Warning Letter	2	5
E. Referred to other Board/Agency	1	2

<sup>1</sup>"Harm to the Public" constitutes conduct by a practitioner likely to deceive, defraud, or harm the public; or demonstrating a willful or careless disregard for the health, welfare, or safety of a 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. This would include unsafe services and puncture of the skin.

<sup>2</sup>“Failure to Provide Referral” is defined as failure by the unlicensed complementary and alternative practitioner to provide a 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 commissioner of health, if there is a reasonable likelihood that the client needs to be seen by a licensed or registered health care provider.

<sup>3</sup>Explanation of cases open for more than one year: There are multiple factors contributing to a case being open more than one year. During the biennium, there was only one FTE investigator position funded and no support staff, so the investigator position also handled the support work, including all intake calls and communications.

OCAP investigations are very time consuming because legal jurisdiction must be established and many of the legal issues presented are novel and allege serious misconduct.

### **V. Trend Data as Of June 30**

<b><u>Fiscal year</u></b>	<b><u>Complaints Rec'd</u></b>	<b><u>Complaints Per 1,000</u></b>	<b><u>Open Complaint Files</u></b>
FY 2008	8	2.96	28
FY 2007	10	3.70	33
FY 2006	14	5.18	34
FY 2005	14	5.18	37
FY 2004	18	5.94	37
FY 2003	22	7.26	25
FY 2002	16	5.28	8
FY 2001	1	.33	1
FY 2000	0	0	0