

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

## September 2012

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As required by Minnesota Statute 3.197: This report cost approximately \$435 to prepare, including staff time, printing and mailing expenses.  
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## **Minnesota Office of Unlicensed Complementary and Alternative Health Care Practice**

The Office of Unlicensed Complementary and Alternative Health Care Practice (OCAP) is located within the Minnesota Department of Health (MDH). The purpose of OCAP is twofold: first, to protect consumers of alternative and complementary health care services and, second, to provide information about these services to the public. Complementary and alternative health care practices include, but are not limited to, massage therapy, bodywork, acupuncture, homeopathy, traditional naturopathy, herbal medicine, healing practices utilizing food, food supplements and nutrients, healing touch, aroma therapy, culturally traditional healing practices, and traditional Oriental practices.

OCAP was created specifically to provide oversight of unlicensed health care practitioners. Because OCAP does not perform any licensing or registration functions, OCAP action in fulfillment of its protective purpose is limited to receiving and investigating complaints against unlicensed complementary and alternative health care practitioners. Prohibited conduct is set forth in statute (Minnesota Statutes section 146A.08). Disciplinary action may include civil penalties, revocation or suspension of the right to practice, censure, and imposition of costs incurred in an investigation leading to discipline.

The 2007 National Health Interview Survey (NHIS), released by the National Center for Complementary and Alternative Medicine (NCCAM) and the National Center for Health Statistics (part of the Centers for Disease Control and Prevention), found that approximately 38.3 percent of adults use complementary or alternative medicine. This is a 2.3 percent increase over the rate of use found five years earlier in the 2002 iteration of the NHIS. While no more recent survey is available, there is no reason to believe that rates of use have declined. Quantifying use is complicated by the fact that the boundaries between complementary and alternative medicine and mainstream medicine are not always well-defined and are in flux. Increasingly, conventional health care settings are incorporating modalities typically considered “alternative care” into their systems.

Regulation and oversight of these alternative and complementary health care is difficult because of the broad range of practices encompassed, the spiritual and bio psychosocial component of many of these practices, and the severe limitation of scientific evidence supporting many of these practices, and the wide variation in training between practitioners even within the same area of practice. Because of the potential for physical, psychological, and financial harm attendant to any healthcare practices, as well as variation in training there is need for continuing or even increased regulatory oversight of these practices. Consumers, practitioners, and the public, generally, also need an objective source of accurate information, including reviews of emerging research and studies of alternative and complementary modalities.

When fully staffed, the office coordinates 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.

OCAP continues to 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.

Additional items of interest:

- The office responded to 386 calls from consumers, complainants, practitioners, regulators and other interested persons during the biennium. Of these calls, 324 were requests for information, 59 were allegations of misconduct, and three could not be classified.
- The office continued to revise and update its website to include better consumer and practitioner information.
- OCAP had one .75 FTE investigator from 7/1/2010 through 4/2/2012, when the investigator retired. Prior to retirement, the OCAP investigator completed investigatory work for and closed most open cases. From 4/3/2012 through the end of the biennium, calls were handled by staff in the Health Occupations Program. Investigation and enforcement duties were reassigned to existing staff in August of 2012, pending realignment of duties within the Program.

| Biennium Ending | Number of Complaints       |                 |        | Cases Open as of June 30 |                    |
|-----------------|----------------------------|-----------------|--------|--------------------------|--------------------|
|                 | Received (opened), by type | Received online | Closed | Less than one year       | More than one year |
| June 30, 2012   | Sexual Misconduct          | 8               | 61*    | 3                        | 9                  |
|                 | Harm to Public/Client      | 9               |        |                          |                    |
|                 | Misrepresentation          | 1               |        |                          |                    |
|                 | False Advertising          | 1               |        |                          |                    |
|                 | Failure to follow Order    | 0               |        |                          |                    |
|                 | Criminal conviction        | 0               |        |                          |                    |
|                 | Failure to furnish records | 0               |        |                          |                    |
|                 | Failure to use client BOR  | 1               |        |                          |                    |
|                 | <u>Other</u>               | <u>3</u>        |        |                          |                    |
|                 | Total                      | 23              |        |                          |                    |
| June 30, 2010   | Sexual Misconduct          | 12              | 10     | 3                        | 46**               |
|                 | Harm to Public/Client      | 13              |        |                          |                    |
|                 | Misrepresentation          | 3               |        |                          |                    |
|                 | False Advertising          | 1               |        |                          |                    |
|                 | Failure to follow Order    | 2               |        |                          |                    |
|                 | Criminal conviction        | 0               |        |                          |                    |
|                 | Failure to furnish records | 0               |        |                          |                    |
|                 | Failure to use client BOR  | 0               |        |                          |                    |
|                 | <u>Other</u>               | <u>2</u>        |        |                          |                    |
|                 | Total                      | 33              |        |                          |                    |
| June 30, 2008   | Sexual Misconduct          | 9               | 22     | 8                        | 20                 |
|                 | Harm to Public/Client      | 7               |        |                          |                    |
|                 | Misrepresentation          | 2               |        |                          |                    |
|                 | False Advertising          | 0               |        |                          |                    |
|                 | Failure to follow Order    | 0               |        |                          |                    |
|                 | Criminal conviction        | 0               |        |                          |                    |
|                 | Failure to furnish records | 0               |        |                          |                    |
|                 | Failure to use client BOR  | 0               |        |                          |                    |
|                 | <u>Other</u>               | <u>0</u>        |        |                          |                    |
|                 | Total                      | 18              |        |                          |                    |

|               |                            |          |  |    |    |    |
|---------------|----------------------------|----------|--|----|----|----|
| June 30, 2006 | Sexual Misconduct          | 5        |  | 32 | 14 | 20 |
|               | Harm to Public/Client      | 13       |  |    |    |    |
|               | Misrepresentation          | 3        |  |    |    |    |
|               | False Advertising          | 1        |  |    |    |    |
|               | Failure to follow Order    | 1        |  |    |    |    |
|               | Criminal conviction        | 2        |  |    |    |    |
|               | Failure to furnish records | 1        |  |    |    |    |
|               | Failure to use client BOR  | 1        |  |    |    |    |
|               | <u>Other</u>               | <u>1</u> |  |    |    |    |
|               | Total                      | 28       |  |    |    |    |
| June 30, 2004 | Sexual Misconduct          | 16       |  | 13 | 18 | 19 |
|               | Harm to Public/Client      | 14       |  |    |    |    |
|               | Misrepresentation          | 4        |  |    |    |    |
|               | False Advertising          | 1        |  |    |    |    |
|               | Failure to follow Order    | 0        |  |    |    |    |
|               | Criminal conviction        | 0        |  |    |    |    |
|               | Failure to furnish records | 0        |  |    |    |    |
|               | Failure to use client BOR  | 0        |  |    |    |    |
|               | <u>Other</u>               | <u>5</u> |  |    |    |    |
|               | Total                      | 40       |  |    |    |    |
| June 30, 2002 | Sexual Misconduct          | 3        |  | 6  | 8  | 1  |
|               | Harm to Public/Client      | 7        |  |    |    |    |
|               | Misrepresentation          | 2        |  |    |    |    |
|               | False Advertising          | 1        |  |    |    |    |
|               | Failure to follow Order    | 0        |  |    |    |    |
|               | Criminal conviction        | 0        |  |    |    |    |
|               | Failure to furnish records | 0        |  |    |    |    |
|               | Failure to use client BOR  | 0        |  |    |    |    |
|               | <u>Other</u>               | <u>4</u> |  |    |    |    |
|               | Total                      | 17       |  |    |    |    |

\* The investigator assigned to the Office of Unlicensed Complementary and Alternative Care retired effective April 3, 2012. Prior to retirement, the investigator concluded investigation and closed most cases.

\* \*The Office of Unlicensed Complementary and Alternative Health Care Practice operations were suspended September 1, 2009 through June 30, 2010, due to unallotment, therefore, no investigative activity occurred on pending complaints during the remaining 10 months of FY 2010.

**Receipts, Disbursements and Major Fees**

| <b>Biennium Ending</b> | <b>Civil Penalties</b>                 | <b>Disbursements</b> | <b>Notes</b>   |
|------------------------|--|----------------------|--|
| June 30, 2012          | \$0                                    | \$116, 080           | Investigator position vacant due 4/3/2012 – 6/30/2012.                     |
| June 30, 2010          | \$628 in FY 2009*                      | \$77,802*            | Operations suspended due to unallotment 09/01/09 - 06/30/2010.             |
| June 30, 2008          | \$805 in FY 2007                       | \$156,785            | Disbursement includes \$22,845 in costs for the Attorney General’s office. |
| June 30, 2006          | \$4,425 in FY 2005<br>\$705 in FY 2006 | \$114,834            |  |
| June 30, 2004          | \$0                                    | \$33,332             | Investigator position vacant due to limited funding, FY 2004.              |
| June 30, 2002          | \$0                                    | \$50,164             |  |

**Board Members**

The Minnesota Office of Unlicensed Complementary and Alternative Health Care Practice does not have Board Membership.

**Executive Director**

The Minnesota Office of Unlicensed Complementary and Alternative Health Care Practice does not have an Executive Director.