



Saturday, January 24, 2004

**Bill Text - S01907**

[Back](#) | [New York State Bill Search](#) | [Assembly Home](#)

[See Bill Summary](#)

S T A T E O F N E W Y O R K

1907

2003-2004 Regular Sessions

I N S E N A T E

February 13, 2003

Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law and the social services law, in relation to enacting the "complementary and alternative health freedom of access act"

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Short title. This act shall be known and may be cited as  
 2 the "complementary and alternative health freedom of access act".  
 3 S 2. Title 9, article 170, and sections 9001, 9002 and 9003 of the  
 4 education law are renumbered title 10, article 180, and sections 10001,  
 5 10002 and 10003.  
 6 S 3. The education law is amended by adding a new title 9 to read as  
 7 follows:  
 8 TITLE 9  
 9 COMPLEMENTARY AND ALTERNATIVE CARE  
 10 ARTICLE 170. COMPLEMENTARY AND ALTERNATIVE CARE (SECS. 9001-9010).  
 11 ARTICLE 170  
 12 COMPLEMENTARY AND ALTERNATIVE  
 13 CARE  
 14 SECTION 9001. INTRODUCTION.  
 15 9002. DEFINITIONS.  
 16 9003. TREATMENT OF MINORS.  
 17 9004. STATE OFFICE OF UNLICENSED COMPLEMENTARY AND ALTERNATIVE  
 18 HEALTH CARE PRACTICE.  
 19 9005. DATA.  
 20 9006. EXCHANGE OF INFORMATION.  
 21 9007. PROHIBITED CONDUCT.  
 22 9008. DISCIPLINARY ACTIONS.  
 23 9009. ADDITIONAL REMEDIES.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets { } is old law to be omitted.

LBD05384-01-3

S. 1907

2

1 9010. COMPLEMENTARY AND ALTERNATIVE HEALTH CARE CLIENT BILL OF  
 2 RIGHTS.  
 3 S 9001. INTRODUCTION. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF

4 THE LAW, THIS TITLE PROTECTS INDIVIDUALS` FREEDOM OF ACCESS TO COMPLE-  
5 MENTARY AND ALTERNATIVE HEALTH CARE INFORMATION AND TREATMENTS, AND  
6 ACCESS TO UNLICENSED COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTI-  
7 TIONERS OF THEIR CHOICE. THE LEGISLATURE INTENDS FOR THE CONSUMER OF  
8 HEALTH CARE SERVICES TO HAVE FREEDOM OF CHOICE OF HEALTH CARE MODALITY  
9 AND HEALTH CARE PRACTITIONER; IT INTENDS A LIBERAL CONSTRUCTION OF THE  
10 TYPES OF HEALTH CARE PRACTICES COVERED; IT INTENDS DISCLOSURE BY THE  
11 PRACTITIONER TO THE CLIENT TO BE THE MAIN FORM OF CONSUMER PROTECTION;  
12 AND IT INTENDS THAT WITH RESPECT TO PRACTITIONERS THERE NOT BE SCOPE OF  
13 PRACTICE DEFINITIONS OR RESTRICTIONS, STANDARDS OR PRACTICE OR EDUCA-  
14 TIONAL CREDENTIALS IMPOSED OR ENFORCED BY THE STATE. IT INTENDS THAT  
15 THIS ARTICLE SHALL PROVIDE EXCLUSIVE JURISDICTION OVER UNLICENSED  
16 COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONERS.

17 S 9002. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE:

18 1. "COMMISSIONER" MEANS THE COMMISSIONER OF HEALTH OR HIS OR HER  
19 DESIGNEE.

20 2. "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH.

21 3. "COMPLEMENTARY AND ALTERNATIVE HEALTH CARE CLIENT" MEANS AN INDI-  
22 VIDUAL WHO RECEIVES SERVICES FROM AN UNLICENSED COMPLEMENTARY AND ALTER-  
23 NATIVE HEALTH CARE PRACTITIONER.

24 4. "COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTICES" MEANS THE  
25 BROAD DOMAIN OF COMPLEMENTARY AND ALTERNATIVE HEALING METHODS AND TREAT-  
26 MENT INCLUDING, BUT NOT LIMITED TO: ACUPRESSURE; ASIAN HEALING PRACTI-  
27 TICES; ANTHROPOLOGY; AROMA THERAPY; AYURVEDA; BODY-MIND CENTERING;  
28 CRANIAL SACRAL THERAPY; CULTURALLY TRADITIONAL HEALING PRACTICES;  
29 DETOXIFICATION PRACTICES AND THERAPIES; ENERGETIC HEALING; FLOWER  
30 ESSENCES; FOLK PRACTICES; GERSON THERAPY; HEALING PRACTICES UTILIZING  
31 FOOD, FOOD SUPPLEMENTS, NUTRIENTS AND PHYSICAL FORCES OF HEAT, COLD,  
32 WATER, COLOR, TOUCH AND LIGHT; HEALING-RELATED KINESIOLOGY; HEALING  
33 TOUCH; HELLERWORK; HERBOLOGY OR HERBALISM; HOMEOPATHY; IRIDOLOGY; JIN  
34 SHIN THERAPY; MIND-BODY HEALING PRACTICES; NATUROPATHY; POLARITY THERA-  
35 PY; QI GONG; REFLEXOLOGY; REIKI; ROLFING; SHIATSU; TRAGER APPROACH;  
36 SOMATIC PRACTICES OF MOVEMENT THERAPY; STRUCTURAL INTEGRATION; TOUCH FOR  
37 HEALTH; TUINA; YOGA; OR ANY COMBINATION OF SUCH PRACTICES.

38 (A) COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTICES SHALL NOT  
39 INCLUDE: SURGERY; X-RAY RADIATION; ADMINISTERING OR DISPENSING LEGEND  
40 DRUGS AND CONTROLLED SUBSTANCES; PRACTICES THAT INVADE THE HUMAN BODY BY  
41 PUNCTURE OF THE SKIN; SETTING FRACTURES; STROKING, KNEADING, TAPPING, OR  
42 VIBRATING WITH HANDS OR VIBRATOR THE MUSCULAR STRUCTURE OF THE BODY FOR  
43 THE PURPOSE OF IMPROVING MUSCLE TONE OR CIRCULATION; OR THE MANIPULATION  
44 OR ADJUSTMENT OF THE SPINE.

45 (B) COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTICES SHALL NOT  
46 INCLUDE PROVIDING A MEDICAL DIAGNOSIS OR RECOMMENDING THE DISCONTINUANCE  
47 OF LEGEND DRUGS PRESCRIBED BY A LICENSED HEALTH CARE PRACTITIONER.  
48 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN UNLICENSED COMPLEMENTARY  
49 AND ALTERNATIVE HEALTH CARE PRACTITIONER MAY PROVIDE PERSONAL CONSULTA-  
50 TIONS AND SCREENINGS BASED UPON THE PRACTITIONER`S METHOD OF COMPLEMEN-  
51 TARY AND ALTERNATIVE CARE; MAY MAKE ASSESSMENTS OF THE CLIENT`S HEALTH  
52 PROBLEMS AND CONCERNS AS THEY RELATE TO THE UNLICENSED COMPLEMENTARY AND  
53 ALTERNATIVE HEALTH CARE PRACTITIONER`S METHODS OF PRACTICE; AND MAY MAKE  
54 RECOMMENDATIONS FOR THE USE OF THE COMPLEMENTARY OR ALTERNATIVE HEALTH  
55 PRACTICE METHODS OR TREATMENTS IN ACCORDANCE WITH THE CONSULTATION,  
56 SCREENING AND ASSESSMENTS OF THE PRACTITIONER.

S. 1907

3

1 (C) THIS ARTICLE SHALL NOT APPLY TO, CONTROL, PREVENT OR RESTRICT THE  
2 PRACTICE, SERVICE OR ACTIVITY OF LAWFULLY MARKETING OR DISTRIBUTING FOOD  
3 PRODUCTS, INCLUDING DIETARY SUPPLEMENTS AS DEFINED IN THE FEDERAL  
4 DIETARY SUPPLEMENT HEALTH AND EDUCATING ACT, EDUCATING CUSTOMERS ABOUT  
5 SUCH PRODUCTS, OR EXPLAINING THE USES OF SUCH PRODUCTS.

6 (D) THIS ARTICLE SHALL NOT PREVENT OR RESTRICT, EDUCATION ABOUT  
7 COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTICES AND THEIR USES, AND  
8 SHALL NOT PREVENT OR RESTRICT EDUCATION ABOUT COMPLEMENTARY AND ALTERNA-  
9 TIVE HEALTH CARE PRACTICES THROUGH INSTRUCTION OR THROUGH USE OF THE  
10 PRACTICES.

11 5. "STATE OFFICE OF UNLICENSED COMPLEMENTARY AND ALTERNATIVE HEALTH  
12 CARE PRACTICE" OR "STATE OFFICE" MEANS THE STATE OFFICE OF UNLICENSED  
13 COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTICE ESTABLISHED WITHIN

14 THE DEPARTMENT.  
15 6. "UNLICENSED COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONER"  
16 MEANS A PERSON WHO:  
17 (A) EITHER:  
18 (I) IS NOT LICENSED OR REGISTERED BY A HEALTH-RELATED LICENSING BOARD  
19 OR THE COMMISSIONER; OR  
20 (II) IS LICENSED OR REGISTERED BY THE COMMISSIONER OR A HEALTH-RELATED  
21 LICENSING BOARD, BUT DOES NOT HOLD HIMSELF OR HERSELF OUT TO THE PUBLIC  
22 AS BEING LICENSED OR REGISTERED BY THE COMMISSIONER OR A HEALTH-RELATED  
23 LICENSING BOARD WHEN ENGAGING IN COMPLEMENTARY AND ALTERNATIVE HEALTH  
24 CARE; AND  
25 (B) HAS NOT HAD A LICENSE OR REGISTRATION ISSUED BY A HEALTH-RELATED  
26 LICENSING BOARD, THE BOARD OF REGENTS OR THE COMMISSIONER, REVOKED; AND  
27 (C) IS ENGAGED IN COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTICES;  
28 AND  
29 (D) IS PROVIDING COMPLEMENTARY AND ALTERNATIVE HEALTH CARE SERVICES  
30 FOR REMUNERATION, OR IS HOLDING HIMSELF OR HERSELF OUT TO THE PUBLIC AS  
31 A PRACTITIONER OF COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTICES  
32 AND IS PROVIDING SERVICES TO CLIENTS.  
33 7. A HEALTH CARE PRACTITIONER LICENSED OR REGISTERED BY THE COMMIS-  
34 SIONER OF EDUCATION OR A HEALTH-RELATED LICENSING BOARD CREATED UNDER  
35 TITLE EIGHT OF THIS CHAPTER, WHO ENGAGES IN COMPLEMENTARY AND ALTERNA-  
36 TIVE HEALTH CARE AS DEFINED BY THIS SECTION, WHILE NOT HOLDING HIMSELF  
37 OR HERSELF OUT TO THE PUBLIC AS A LICENSED PRACTITIONER, SHALL BE REGU-  
38 LATED BY AND BE UNDER THE JURISDICTION OF THE OFFICE OF UNLICENSED  
39 COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTICE. A HEALTH CARE PRAC-  
40 TITIONER LICENSED OR REGISTERED BY THE COMMISSIONER OF EDUCATION OR A  
41 HEALTH-RELATED LICENSING BOARD CREATED UNDER TITLE EIGHT OF THIS CHAPTER  
42 WHO HOLDS HIMSELF OR HERSELF OUT TO THE PUBLIC AS A LICENSED PRACTITION-  
43 ER WHILE PRACTICING AND PROVIDING COMPLEMENTARY AND ALTERNATIVE HEALTH  
44 CARE SERVICES SHALL FOR ALL PURPOSES BE REGULATED BY AND BE UNDER THE  
45 JURISDICTION OF HIS OR HER APPLICABLE HEALTH-RELATED LICENSING BOARD OR  
46 REGULATORY AGENCY.  
47 S 9003. TREATMENT OF MINORS. NOTHING IN THIS ARTICLE SHALL RESTRICT  
48 THE ABILITY OF A LOCAL PUBLIC ASSISTANCE AGENCY, LOCAL LAW ENFORCEMENT  
49 AGENCY OR THE STATE TO TAKE ACTION REGARDING THE MALTREATMENT OF MINORS  
50 UNDER ARTICLE TWO HUNDRED SIXTY OF THE PENAL LAW, OR OTHERWISE CHANGE OR  
51 AFFECT THE TREATMENT OF MINORS PURSUANT TO STATE LAW.  
52 S 9004. STATE OFFICE OF UNLICENSED COMPLEMENTARY AND ALTERNATIVE  
53 HEALTH CARE PRACTICE. 1. THE STATE OFFICE OF UNLICENSED COMPLEMENTARY  
54 AND ALTERNATIVE HEALTH CARE PRACTICE IS HEREBY CREATED WITHIN THE  
55 DEPARTMENT TO INVESTIGATE COMPLAINTS AND TO TAKE AND ENFORCE DISCIPLI-  
56 NARY ACTIONS AGAINST ALL UNLICENSED COMPLEMENTARY AND ALTERNATIVE HEALTH

S. 1907

4

1 CARE PRACTITIONERS FOR VIOLATIONS OF PROHIBITED CONDUCT, AS DEFINED IN  
2 SECTION NINE THOUSAND SEVEN OF THIS ARTICLE.  
3 2. NO RULE OR REGULATION SHALL BE MADE, PROMULGATED OR ADOPTED BY THE  
4 STATE OFFICE WHICH HAS OR TENDS TO HAVE THE EFFECT OF CREATING CREDEN-  
5 TIALING STANDARDS, STANDARDS OF PRACTICE OR SCOPE OF PRACTICE RULES FOR  
6 UNLICENSED COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTICES OR THE  
7 PRACTITIONERS THEREOF, OR WHICH REQUIRE OR TEND TO REQUIRE REGISTRATION  
8 OF UNLICENSED COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONERS.  
9 3. THE STATE OFFICE SHALL EMPLOY INVESTIGATORS WHO SHALL INVESTIGATE  
10 ANY COMPLAINTS MADE AGAINST AN UNLICENSED COMPLEMENTARY AND ALTERNATIVE  
11 HEALTH CARE PRACTITIONER TO THE EXTENT NECESSARY TO DECIDE WHETHER THERE  
12 ARE REASONABLE GROUNDS TO BELIEVE THAT A PRACTITIONER SUBJECT TO THE  
13 PROVISIONS OF THIS ARTICLE HAS ENGAGED IN PROHIBITED CONDUCT. IF SO, THE  
14 INVESTIGATOR SHALL DETERMINE WHETHER THE COMPLAINT IS SUBSTANTIALLY  
15 FOUNDED OR SUBSTANTIALLY UNFOUNDED. IF SUBSTANTIALLY FOUNDED, THE INVES-  
16 TIGATOR SHALL ATTEMPT A RESOLUTION OF THE CASE BY WORKING WITH THE PRAC-  
17 TITIONER. IF RESOLUTION OF THE CASE BY THE INVESTIGATOR IS NOT POSSIBLE,  
18 THE INVESTIGATOR SHALL RECOMMEND TO THE COMMISSIONER THE DISCIPLINARY  
19 ACTION TO BE TAKEN.  
20 (A) DISCOVERY; SUBPOENAS. IN ALL MATTERS RELATING TO THE LAWFUL ACTIV-  
21 ITIES OF THE STATE BOARD, THE COMMISSIONER MAY ISSUE SUBPOENAS AND  
22 COMPEL THE ATTENDANCE OF WITNESSES AND THE PRODUCTION OF ALL NECESSARY  
23 PAPERS, BOOKS, RECORDS, DOCUMENTS AND OTHER EVIDENTIARY MATERIAL. ANY

24 PERSON FAILING OR REFUSING TO APPEAR TO TESTIFY REGARDING ANY MATTER  
25 ABOUT WHICH THE PERSON MAY BE LAWFULLY QUESTIONED OR FAILING TO PRODUCE  
26 ANY PAPERS, BOOKS, RECORDS, DOCUMENTS OR OTHER EVIDENTIARY MATERIALS IN  
27 THE MATTER TO BE HEARD, AFTER HAVING BEEN REQUIRED BY ORDER OF THE  
28 COMMISSIONER OR BY A SUBPOENA OF THE COMMISSIONER TO DO SO MAY, UPON  
29 APPLICATION TO THE SUPREME COURT, BE ORDERED TO COMPLY WITH THE ORDER OR  
30 SUBPOENA. THE COMMISSIONER MAY ADMINISTER OATHS TO WITNESSES OR TAKE  
31 THEIR AFFIRMATION. DEPOSITIONS MAY BE TAKEN WITHIN OR WITHOUT THE STATE  
32 IN THE MANNER PROVIDED BY LAW FOR THE TAKING OF DEPOSITIONS IN CIVIL  
33 ACTIONS. A SUBPOENA OR OTHER PROCESS MAY BE SERVED UPON A PERSON IT  
34 NAMES ANYWHERE WITHIN THE STATE BY ANY PERSON AUTHORIZED TO SERVE  
35 SUBPOENAS OR OTHER PROCESS IN CIVIL ACTIONS IN THE SAME MANNER AS  
36 PRESCRIBED BY LAW FOR SERVICE OF PROCESS ISSUED OUT OF THE SUPREME  
37 COURT.

38 (B) HEARINGS. IF THE COMMISSIONER PROPOSES TO TAKE ACTION AGAINST A  
39 PRACTITIONER AS DESCRIBED IN SUBDIVISION ONE OF THIS SECTION, THE  
40 COMMISSIONER SHALL NOTIFY THE PRACTITIONER AGAINST WHOM THE ACTION IS  
41 PROPOSED TO BE TAKEN AND PROVIDE THE PRACTITIONER WITH AN OPPORTUNITY TO  
42 REQUEST A HEARING UNDER THE PROVISIONS OF THIS ARTICLE. IF THE PRACTI-  
43 TIONER FAILS TO REQUEST A HEARING BY NOTIFYING THE COMMISSIONER WITHIN  
44 THIRTY DAYS AFTER SERVICE OF THE NOTICE OF THE PROPOSED ACTION, THE  
45 COMMISSIONER MAY PROCEED WITH THE ACTION WITHOUT A HEARING. THE PRACTI-  
46 TIONER'S RIGHT TO PRACTICE SHALL NOT BE SUSPENDED OR ABRIDGED DURING  
47 INVESTIGATION OF A COMPLAINT OR DURING A HEARING HELD PURSUANT TO THIS  
48 SECTION, EXCEPT UPON A SPECIAL ORDER OF THE COMMISSIONER WHICH SHALL BE  
49 SERVED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, UPON THE PRACTITION-  
50 ER AND SHALL STATE WITH PARTICULARITY THE CIRCUMSTANCES WHICH LEAD THE  
51 COMMISSIONER TO BELIEVE THAT THE PRACTITIONER IS A DANGER TO HIMSELF OR  
52 HERSELF OR TO OTHERS. IN CASES WHERE THE PRACTITIONER'S RIGHT TO PRACTICE  
53 IS SUSPENDED PENDING INVESTIGATION, HEARING OR DETERMINATION, THE  
54 ENTIRE PROCESS SHALL BE EXPEDITED SO THAT A DETERMINATION CAN BE  
55 RENDERED, IN WRITING, AS QUICKLY AS REASONABLY POSSIBLE AND IN ANY EVENT  
56 WITHIN NINETY DAYS OF THE DATE OF THE FILING OF THE COMPLAINT.

S. 1907

5

1 4. THE COMMISSIONER, EMPLOYEES OF THE DEPARTMENT AND OTHER PERSONS  
2 ENGAGED IN THE INVESTIGATION OF VIOLATIONS OF THIS ARTICLE SHALL BE  
3 IMMUNE FROM CIVIL LIABILITY AND CRIMINAL PROSECUTION FOR ANY ACTIONS,  
4 TRANSACTIONS OR PUBLICATIONS IN THE EXECUTION OF OR RELATING TO THEIR  
5 DUTIES UNDER THIS ARTICLE, EXCEPT IN CASE OF CLEAR AND CONVINCING  
6 EVIDENCE OF MALICIOUS CONTINUANCE OF INVESTIGATION WHEN REASONABLE  
7 PERSONS WOULD CONCLUDE EITHER THAT NO VIOLATION HAS OCCURRED OR THAT  
8 WHATEVER TECHNICAL VIOLATION MAY HAVE OCCURRED, NO HARM HAS COME TO A  
9 MEMBER OF THE PUBLIC AS A RESULT THEREOF.

10 5. THE STATE OFFICE SHALL MAINTAIN AND KEEP CURRENT FILES CONTAINING  
11 THE REPORTS AND COMPLAINTS FILED AGAINST UNLICENSED COMPLEMENTARY AND  
12 ALTERNATIVE HEALTH CARE PRACTITIONERS WITHIN THE COMMISSIONER'S JURIS-  
13 DICTION. EACH COMPLAINT FILED WITH THE STATE OFFICE SHALL BE INVESTI-  
14 GATED.

15 6. AN UNLICENSED COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITION-  
16 ER WHO IS THE SUBJECT OF AN INVESTIGATION, OR WHO IS QUESTIONED IN  
17 CONNECTION WITH AN INVESTIGATION, BY OR ON BEHALF OF THE STATE OFFICE,  
18 SHALL COOPERATE FULLY WITH SUCH INVESTIGATION. COOPERATION SHALL INCLUDE  
19 RESPONDING FULLY AND PROMPTLY TO ANY QUESTION RAISED BY OR ON BEHALF OF  
20 THE STATE OFFICE RELATING TO THE SUBJECT OF THE INVESTIGATION, WHETHER  
21 TAPE RECORDED OR NOT; PROVIDING COPIES OF CLIENT RECORDS, AS REASONABLY  
22 REQUESTED BY THE STATE OFFICE, TO ASSIST THE STATE OFFICE IN ITS INVE-  
23 STIGATION; AND APPEARING AT CONFERENCES OR HEARINGS SCHEDULED BY THE  
24 COMMISSIONER. IF ACCESS TO THE PRACTITIONER'S CLIENT RECORDS IS NECES-  
25 SARY FOR THE INVESTIGATION, THE STATE OFFICE SHALL PROVIDE TO THE PRACTI-  
26 TIONER A PHOTOCOPY OF THE CLIENT'S WRITTEN CONSENT TO THE ACCESS BY  
27 THE STATE OFFICE AND THE DISCLOSURE BY THE PRACTITIONER. IF THE STATE  
28 OFFICE DOES NOT HAVE A WRITTEN CONSENT FROM A CLIENT PERMITTING ACCESS  
29 TO THE CLIENT'S RECORDS, THE UNLICENSED COMPLEMENTARY AND ALTERNATIVE  
30 HEALTH CARE PRACTITIONER SHALL DELETE IN THE RECORD ANY DATA THAT IDEN-  
31 TIFIES THE CLIENT BEFORE PROVIDING IT TO THE STATE OFFICE. IF AN UNLI-  
32 CENSED COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONER REFUSES TO  
33 GIVE TESTIMONY OR PRODUCE ANY DOCUMENTS, BOOKS, RECORDS OR CORRESPOND-

34 ENCE ON THE BASIS OF THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE  
35 UNITED STATES, THE COMMISSIONER MAY COMPEL THE UNLICENSED COMPLEMENTARY  
36 AND ALTERNATIVE HEALTH CARE PRACTITIONER TO PROVIDE THE TESTIMONY OR  
37 INFORMATION; HOWEVER, THE TESTIMONY OR EVIDENCE SHALL NOT BE USED  
38 AGAINST THE PRACTITIONER IN ANY CRIMINAL PROCEEDING. CHALLENGES TO  
39 REQUESTS OF THE STATE OFFICE MAY BE BROUGHT BEFORE THE APPROPRIATE AGEN-  
40 CY OR COURT.

41 S 9005. DATA. UPON JUDICIAL REVIEW OF ANY DISCIPLINARY ACTION TAKEN BY  
42 THE COMMISSIONER UNDER THIS ARTICLE, THE REVIEWING COURT SHALL SEAL THE  
43 PORTIONS OF THE ADMINISTRATIVE RECORD THAT CONTAIN DATA ON A COMPLEMEN-  
44 TARY AND ALTERNATIVE HEALTH CARE CLIENT OR A COMPLAINANT AND SHALL NOT  
45 MAKE THOSE PORTIONS OF THE ADMINISTRATIVE RECORD AVAILABLE TO THE  
46 PUBLIC.

47 1. DATA RELATING TO INVESTIGATIONS OF COMPLAINTS AND DISCIPLINARY  
48 ACTIONS INVOLVING UNLICENSED COMPLEMENTARY AND ALTERNATIVE HEALTH CARE  
49 PRACTITIONERS SHALL BE GOVERNED BY THIS SUBDIVISION. EXCEPT AS PROVIDED  
50 IN ARTICLE TWENTY-EIGHT OF THE PUBLIC HEALTH LAW, DATA RELATING TO  
51 INVESTIGATIONS OF COMPLAINTS AND DISCIPLINARY ACTIONS INVOLVING UNLI-  
52 CENSED COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONERS SHALL BE  
53 PUBLIC INFORMATION, REGARDLESS OF THE OUTCOME OF ANY INVESTIGATION,  
54 ACTION, OR PROCEEDING.

55 2. THE FOLLOWING DATA IS CONFIDENTIAL INFORMATION ON INDIVIDUALS, AS  
56 DEFINED IN SECTION EIGHTEEN OF THE PUBLIC HEALTH LAW:

S. 1907

6

1 (A) DATA ON A COMPLEMENTARY AND ALTERNATIVE HEALTH CARE CLIENT;  
2 (B) DATA ON A COMPLAINANT, EXCEPT WHEN THE UNLICENSED COMPLEMENTARY  
3 AND ALTERNATIVE HEALTH CARE SERVICE PROVIDER HAS FILED WITH THE STATE  
4 OFFICE A SWORN AFFIDAVIT OR AFFIRMATION UNDER PENALTY OF PERJURY ALLEG-  
5 ING FACTS WHICH, IF SUBSTANTIATED, WOULD TEND TO SHOW THAT THE COMPLAIN-  
6 ANT FILED THE COMPLAINT KNOWING THAT THE COMPLAINT HAD NO SUBSTANTIAL  
7 FOUNDATION IN FACT, OR FILED IT WITH RECKLESS DISREGARD FOR WHETHER OR  
8 NOT IT WAS SUBSTANTIALLY FOUNDED, IN WHICH CASE THE NAME AND ADDRESS OF  
9 THE COMPLAINANT SHALL BE FURNISHED TO THE UNLICENSED COMPLEMENTARY AND  
10 ALTERNATIVE HEALTH CARE PROVIDER FOR THE SOLE PURPOSES OF ALLOWING SUCH  
11 PROVIDER TO COMMENCE LEGAL ACTION IN TORT AGAINST THE COMPLAINANT, AND  
12 TO TERMINATE THE HEALTH CARE RELATIONSHIP, IF ANY, WITH THE COMPLAINANT,  
13 AND SUCH INFORMATION SHALL NOT BE USED FOR ANY OTHER PURPOSES; AND

14 (C) DATA ON THE NATURE OR CONTENT OF UNSUBSTANTIATED COMPLAINTS WHEN  
15 THE INFORMATION IS NOT MAINTAINED IN ANTICIPATION OF LEGAL ACTION.

16 S 9006. EXCHANGE OF INFORMATION. 1. THE STATE OFFICE SHALL ESTABLISH  
17 INTERNAL OPERATING PROCEDURES FOR:

18 (A) EXCHANGING INFORMATION WITH STATE BOARDS, AGENCIES INCLUDING THE  
19 OFFICE OF MENTAL HEALTH, HEALTH RELATED AND LAW ENFORCEMENT FACILITIES,  
20 DEPARTMENTS RESPONSIBLE FOR LICENSING HEALTH RELATED OCCUPATIONS, FACIL-  
21 ITIES AND PROGRAMS; AND LAW ENFORCEMENT PERSONNEL IN THIS AND OTHER  
22 STATES; AND

23 (B) COORDINATING INVESTIGATIONS INVOLVING MATTERS WITHIN THE JURISDIC-  
24 TION OF MORE THAN ONE REGULATORY AGENCY.

25 2. THE PROCEDURES FOR EXCHANGING INFORMATION SHALL PROVIDE FOR THE  
26 FORWARDING TO THE ENTITIES DESCRIBED IN PARAGRAPH (A) OF SUBDIVISION ONE  
27 OF THIS SECTION, OF INFORMATION AND EVIDENCE, INCLUDING THE RESULTS OF  
28 INVESTIGATIONS, THAT ARE RELEVANT TO MATTERS WITHIN THE REGULATORY  
29 JURISDICTION OF THE ORGANIZATIONS IN SUBDIVISION ONE OF THIS SECTION.  
30 THE DATA SHALL HAVE THE SAME CLASSIFICATION IN THE HANDS OF THE AGENCY  
31 RECEIVING THE DATA AS IT HAS IN THE HANDS OF THE AGENCY PROVIDING THE  
32 DATA.

33 3. THE STATE OFFICE SHALL ESTABLISH PROCEDURES FOR EXCHANGING INFORMA-  
34 TION WITH OTHER STATES REGARDING DISCIPLINARY ACTION AGAINST UNLICENSED  
35 COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONERS.

36 4. THE STATE OFFICE SHALL FORWARD TO ANOTHER GOVERNMENTAL AGENCY ANY  
37 COMPLAINTS RECEIVED BY THE STATE OFFICE THAT DO NOT RELATE TO THE STATE  
38 OFFICE'S JURISDICTION BUT THAT RELATE TO MATTERS WITHIN THE JURISDICTION  
39 OF THE OTHER GOVERNMENTAL AGENCY. HOWEVER, REGULATION AND DISCIPLINE OF  
40 PERSONS FALLING WITHIN THE DEFINITION OF UNLICENSED COMPLEMENTARY AND  
41 ALTERNATIVE HEALTH CARE PRACTITIONERS SHALL NOT BE WITHIN THE JURISDIC-  
42 TION OF AGENCIES OR BOARDS ESTABLISHED IN TITLE EIGHT OF THIS CHAPTER,  
43 OR OTHER HEALTH-RELATED AGENCIES IN THIS STATE. THE AGENCY TO WHICH A

44 COMPLAINT IS FORWARDED SHALL ADVISE THE STATE OFFICE OF THE DISPOSITION  
45 OF THE COMPLAINT. A COMPLAINT OR OTHER INFORMATION RECEIVED BY ANOTHER  
46 GOVERNMENTAL AGENCY RELATING TO A STATUTE OR RULE THAT THE STATE OFFICE  
47 IS EMPOWERED TO ENFORCE SHALL BE FORWARDED TO THE STATE OFFICE TO BE  
48 PROCESSED IN ACCORDANCE WITH THIS SECTION.

49 5. THE STATE OFFICE SHALL FURNISH TO A PERSON WHO MADE A COMPLAINT A  
50 DESCRIPTION OF THE ACTIONS OF THE STATE OFFICE RELATING TO THE  
51 COMPLAINT.

52 S 9007. PROHIBITED CONDUCT. 1. THE COMMISSIONER MAY IMPOSE DISCIPLI-  
53 NARY ACTION AS DESCRIBED IN SECTION NINE THOUSAND EIGHT OF THIS ARTICLE  
54 AGAINST ANY UNLICENSED COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTI-  
55 TIONER. THE FOLLOWING CONDUCT SHALL BE PROHIBITED AND SHALL BE GROUNDS  
56 FOR DISCIPLINARY ACTION:

S. 1907

7

1 (A) CONVICTION OF A CRIME IN THIS STATE OR ANY OTHER JURISDICTION IN  
2 THE UNITED STATES, REASONABLY RELATED TO ENGAGING IN COMPLEMENTARY AND  
3 ALTERNATIVE HEALTH CARE PRACTICES. "CONVICTION OF A CRIME", AS USED IN  
4 THIS SUBDIVISION, INCLUDES A CONVICTION OF AN OFFENSE WHICH, IF COMMIT-  
5 TED IN THIS STATE, WOULD BE DEEMED A FELONY OR MISDEMEANOR, WITHOUT  
6 REGARD TO ITS DESIGNATION ELSEWHERE, OR A CRIMINAL PROCEEDING WHERE A  
7 FINDING OR VERDICT OF GUILTY IS MADE OR RETURNED BUT THE ADJUDICATION OF  
8 GUILT IS EITHER WITHHELD OR NOT ENTERED.

9 (B) CONVICTION OF ANY CRIME AGAINST A PERSON. FOR PURPOSES OF THIS  
10 ARTICLE, A "CRIME AGAINST A PERSON" MEANS VIOLATIONS OF ARTICLE ONE  
11 HUNDRED TWENTY, ONE HUNDRED TWENTY-FIVE, ONE HUNDRED THIRTY, ONE HUNDRED  
12 THIRTY-FIVE, TWO HUNDRED SIXTY OR FOUR HUNDRED EIGHTY-FIVE OF THE PENAL  
13 LAW.

14 (C) ENGAGING IN SEXUAL CONTACT, AS DEFINED IN ARTICLE ONE HUNDRED  
15 THIRTY OF THE PENAL LAW, WITH A COMPLEMENTARY AND ALTERNATIVE HEALTH  
16 CARE CLIENT OR FORMER CLIENT, ENGAGING IN CONTACT THAT MAY BE REASONABLY  
17 INTERPRETED BY A CLIENT AS SEXUAL, ENGAGING IN ANY VERBAL BEHAVIOR THAT  
18 IS SEDUCTIVE OR SEXUALLY DemeanING TO THE CLIENT, OR ENGAGING IN SEXUAL  
19 EXPLOITATION OF A CLIENT OR FORMER CLIENT. FOR PURPOSES OF THIS PARA-  
20 GRAPH, "FORMER CLIENT" MEANS A PERSON WHO HAS OBTAINED SERVICES FROM THE  
21 UNLICENSED COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONER WITHIN  
22 THE PAST TWELVE MONTHS.

23 (D) ADVERTISING THAT IS FALSE, FRAUDULENT, DECEPTIVE OR MISLEADING.

24 (E) CONDUCT WHICH POSES A CLEAR AND SUBSTANTIAL RISK OF IMMINENT HARM  
25 TO A COMPLEMENTARY AND ALTERNATIVE HEALTH CARE CLIENT. THE FACT THAT A  
26 COMPLEMENTARY AND ALTERNATIVE HEALTH CARE CLIENT HAS CHOSEN AND USED A  
27 COMPLEMENTARY AND ALTERNATIVE HEALTH CARE TREATMENT OR METHOD AND HAS  
28 FOREGONE STANDARD MEDICAL TREATMENT SHALL NOT BE EVIDENCE OF A CLEAR AND  
29 SUBSTANTIAL RISK OF IMMINENT HARM.

30 (F) ADJUDICATION AS MENTALLY INCOMPETENT OR AS A PERSON WHO IS DANGER-  
31 OUS TO SELF OR ADJUDICATION PURSUANT TO ARTICLE EIGHTY-ONE OF THE MENTAL  
32 HYGIENE LAW AS CHEMICALLY DEPENDENT, MENTALLY ILL, MENTALLY ILL AND  
33 DANGEROUS TO THE PUBLIC, OR AS A SEXUAL PSYCHOPATHIC PERSONALITY OR  
34 SEXUALLY DANGEROUS PERSON.

35 (G) INABILITY TO ENGAGE IN COMPLEMENTARY AND ALTERNATIVE HEALTH CARE  
36 PRACTICES WITH REASONABLE SAFETY TO COMPLEMENTARY AND ALTERNATIVE HEALTH  
37 CARE CLIENTS.

38 (H) THE HABITUAL OVERINDULGENCE IN THE USE OF OR THE DEPENDANCE ON  
39 INTOXICATING LIQUORS, OR BEING DEPENDENT ON OR A HABITUAL USER OF  
40 NARCOTICS, BARBITURATES, AMPHETAMINES, HALLUCINOGENS OR OTHER DRUGS  
41 HAVING SIMILAR EFFECTS.

42 (I) HAVING BEEN FOUND BY THE COMMISSIONER TO BE IN VIOLATION OF ARTI-  
43 CLE THIRTY-THREE OF THE PUBLIC HEALTH LAW, RELATING TO CONTROLLED  
44 SUBSTANCES.

45 (J) REVEALING A COMMUNICATION FROM OR RELATING TO A COMPLEMENTARY AND  
46 ALTERNATIVE HEALTH CARE CLIENT EXCEPT WHEN OTHERWISE REQUIRED OR PERMIT-  
47 TED BY LAW.

48 (K) FAILURE TO COMPLY WITH A COMPLEMENTARY AND ALTERNATIVE HEALTH CARE  
49 CLIENT'S REQUEST MADE UNDER SECTION EIGHTEEN OF THE PUBLIC HEALTH LAW OR  
50 TO FURNISH A COMPLEMENTARY AND ALTERNATIVE HEALTH CARE CLIENT RECORD OR  
51 REPORT REQUIRED BY LAW.

52 (L) SPLITTING FEES OR PROMISING TO PAY A PORTION OF A FEE TO ANY OTHER  
53 PROFESSIONAL OTHER THAN FOR SERVICES RENDERED BY THE OTHER PROFESSIONAL

54 TO THE COMPLEMENTARY AND ALTERNATIVE HEALTH CARE CLIENT.

S. 1907

8

1 (M) ENGAGING IN ABUSIVE OR FRAUDULENT BILLING PRACTICES, INCLUDING  
2 VIOLATIONS OF THE FEDERAL MEDICARE AND MEDICAID LAWS OR STATE MEDICAL  
3 ASSISTANCE LAWS.

4 (N) OBTAINING MONEY, PROPERTY, OR SERVICES FROM A COMPLEMENTARY AND  
5 ALTERNATIVE HEALTH CARE CLIENT, OTHER THAN REASONABLE FEES FOR SERVICES  
6 PROVIDED TO THE CLIENT, THROUGH THE USE OF UNDUE INFLUENCE, HARASSMENT,  
7 DURESS, DECEPTION OR FRAUD.

8 (O) UNDERTAKING OR CONTINUING A PROFESSIONAL RELATIONSHIP WITH A  
9 COMPLEMENTARY AND ALTERNATIVE HEALTH CARE CLIENT IN WHICH THE OBJECTIV-  
10 ITY OF THE UNLICENSED COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTI-  
11 TIONER WOULD BE IMPAIRED.

12 (P) FAILURE TO PROVIDE A COMPLEMENTARY AND ALTERNATIVE HEALTH CARE  
13 CLIENT WITH A COPY OF THE CLIENT BILL OF RIGHTS OR VIOLATION OF ANY  
14 PROVISION OF THE CLIENT BILL OF RIGHTS.

15 (Q) VIOLATING ANY ORDER ISSUED BY THE COMMISSIONER.

16 (R) FAILURE TO COMPLY WITH ANY PROVISION OF THIS ARTICLE.

17 (S) REVOCATION, SUSPENSION, RESTRICTION, LIMITATION OR OTHER DISCIPLI-  
18 NARY ACTION AGAINST ANY HEALTH CARE LICENSE, CERTIFICATE, REGISTRATION  
19 OR RIGHT TO PRACTICE OF THE UNLICENSED COMPLEMENTARY AND ALTERNATIVE  
20 HEALTH CARE PRACTITIONER IN THIS OR ANOTHER STATE OR JURISDICTION FOR  
21 OFFENSES THAT WOULD BE SUBJECT TO DISCIPLINARY ACTION IN THIS STATE OR  
22 FAILURE TO REPORT TO THE STATE BOARD THAT CHARGES REGARDING THE PRACTI-  
23 TIONER'S LICENSE, CERTIFICATE, REGISTRATION OR RIGHT OF PRACTICE HAVE  
24 BEEN BROUGHT IN THIS OR ANOTHER STATE OR JURISDICTION UNLESS OTHERWISE  
25 ORDERED BY THE COMMISSIONER.

26 2. IN DISCIPLINARY ACTIONS ALLEGING A VIOLATION OF PARAGRAPH (A), (B)  
27 OR (F) OF SUBDIVISION ONE OF THIS SECTION A COPY OF THE JUDGMENT OR  
28 PROCEEDING UNDER THE SEAL OF THE COURT ADMINISTRATOR OR OF THE ADMINIS-  
29 TRATIVE AGENCY THAT ENTERED THE SAME IS ADMISSIBLE INTO EVIDENCE WITHOUT  
30 FURTHER AUTHENTICATION AND CONSTITUTES PRIMA FACIE EVIDENCE OF ITS  
31 CONTENTS.

32 3. (A) IF THE COMMISSIONER HAS PROBABLE CAUSE TO BELIEVE THAT AN UNLI-  
33 CENSED COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONER HAS  
34 ENGAGED IN CONDUCT PROHIBITED BY PARAGRAPH (F), (G), (H) OR (I) OF  
35 SUBDIVISION ONE OF THIS SECTION, THE COMMISSIONER MAY ISSUE AN ORDER  
36 DIRECTING THE PRACTITIONER TO SUBMIT TO A MENTAL OR PHYSICAL EXAMINATION  
37 OR CHEMICAL DEPENDENCY EVALUATION. AN UNLICENSED COMPLEMENTARY AND  
38 ALTERNATIVE HEALTH CARE PRACTITIONER AFFECTED UNDER THIS PARAGRAPH SHALL  
39 AT REASONABLE INTERVALS BE GIVEN AN OPPORTUNITY TO DEMONSTRATE THAT THE  
40 PRACTITIONER CAN RESUME THE PROVISION OF COMPLEMENTARY AND ALTERNATIVE  
41 HEALTH CARE PRACTICES WITH REASONABLE SAFETY TO CLIENTS. IN ANY PROCEED-  
42 ING UNDER THIS PARAGRAPH, NEITHER THE RECORD OF PROCEEDINGS NOR THE  
43 ORDERS ENTERED BY THE COMMISSIONER SHALL BE USED AGAINST AN UNLICENSED  
44 COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONER IN ANY OTHER  
45 PROCEEDING.

46 (B) IN ADDITION TO ORDERING A PHYSICAL OR MENTAL EXAMINATION OR CHEMI-  
47 CAL DEPENDENCY EVALUATION, THE COMMISSIONER MAY, NOTWITHSTANDING SECTION  
48 EIGHTEEN OF THE PUBLIC HEALTH LAW OR ANY OTHER LAW LIMITING ACCESS TO  
49 MEDICAL OR OTHER HEALTH DATA, OBTAIN MEDICAL DATA AND HEALTH RECORDS  
50 RELATING TO AN UNLICENSED COMPLEMENTARY AND ALTERNATIVE HEALTH CARE  
51 PRACTITIONER WITHOUT THE PRACTITIONER'S CONSENT IF THE COMMISSIONER HAS  
52 PROBABLE CAUSE TO BELIEVE THAT A PRACTITIONER HAS ENGAGED IN CONDUCT  
53 PROHIBITED BY PARAGRAPH (F), (G), (H) OR (I) OF SUBDIVISION ONE OF THIS  
54 SECTION. THE MEDICAL DATA MAY BE REQUESTED FROM A PROVIDER, AS DEFINED  
55 IN SUBDIVISION TWO OF SECTION EIGHTEEN OF THE PUBLIC HEALTH LAW, AN  
56 INSURANCE COMPANY OR A GOVERNMENT AGENCY. A PROVIDER, INSURANCE COMPANY

S. 1907

9

1 OR GOVERNMENT AGENCY SHALL COMPLY WITH ANY WRITTEN REQUEST OF THE  
2 COMMISSIONER UNDER THIS SUBDIVISION AND SHALL NOT BE LIABLE IN ANY  
3 ACTION FOR DAMAGES FOR RELEASING THE DATA REQUESTED BY THE COMMISSIONER  
4 IF THE DATA IS RELEASED PURSUANT TO A WRITTEN REQUEST UNDER THIS SUBDI-  
5 VISION, UNLESS THE INFORMATION IS FALSE AND THE PERSON OR ORGANIZATION  
6 GIVING THE INFORMATION KNEW OR HAD REASON TO BELIEVE THE INFORMATION WAS

7 FALSE. INFORMATION OBTAINED UNDER THIS SUBDIVISION IS CONFIDENTIAL  
8 INFORMATION UNDER SECTION EIGHTEEN OF THE PUBLIC HEALTH LAW.  
9 S 9008. DISCIPLINARY ACTIONS. 1. FORMS OF DISCIPLINARY ACTION. WHEN  
10 THE COMMISSIONER FINDS THAT AN UNLICENSED COMPLEMENTARY AND ALTERNATIVE  
11 HEALTH CARE PRACTITIONER HAS VIOLATED ANY PROVISION OF THIS ARTICLE, THE  
12 COMMISSIONER MAY TAKE ONE OR MORE OF THE FOLLOWING ACTIONS, ONLY AGAINST  
13 THE INDIVIDUAL PRACTITIONER:  
14 (A) REVOKE THE RIGHT TO PRACTICE;  
15 (B) SUSPEND THE RIGHT TO PRACTICE, FOR A STATED PERIOD OF TIME;  
16 (C) IMPOSE LIMITATIONS OR CONDITIONS ON THE PRACTITIONER'S PROVISION  
17 OF COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTICES, IMPOSE REHABILITATION  
18 REQUIREMENTS, OR REQUIRE PRACTICE UNDER SUPERVISION;  
19 (D) IMPOSE A CIVIL PENALTY NOT EXCEEDING FIVE HUNDRED DOLLARS FOR EACH  
20 SEPARATE VIOLATION; AND  
21 (E) CENSURE OR REPRIMAND THE PRACTITIONER.  
22 2. REINSTATEMENT. THE COMMISSIONER MAY, IN HIS OR HER DISCRETION,  
23 REINSTATE THE RIGHT TO PRACTICE AND MAY IMPOSE ANY DISCIPLINARY MEASURE  
24 LISTED IN SUBDIVISION ONE OF THIS SECTION.  
25 3. AUTOMATIC SUSPENSION. THE RIGHT OF AN UNLICENSED COMPLEMENTARY AND  
26 ALTERNATIVE HEALTH CARE PRACTITIONER TO PRACTICE SHALL BE AUTOMATICALLY  
27 SUSPENDED IF:  
28 (A) A GUARDIAN OF AN UNLICENSED COMPLEMENTARY AND ALTERNATIVE HEALTH  
29 CARE PRACTITIONER IS APPOINTED BY ORDER OF A COURT UNDER ARTICLE NINE OF  
30 THE MENTAL HYGIENE LAW; OR  
31 (B) THE PRACTITIONER IS COMMITTED BY ORDER OF A COURT PURSUANT TO  
32 ARTICLE NINE OF THE MENTAL HYGIENE LAW. THE RIGHT TO PRACTICE SHALL  
33 REMAIN SUSPENDED UNTIL THE PRACTITIONER IS RESTORED TO CAPACITY BY A  
34 COURT AND, UPON PETITION BY THE PRACTITIONER, THE SUSPENSION IS TERMINATED  
35 BY THE COMMISSIONER AFTER A HEARING OR UPON AGREEMENT BETWEEN THE  
36 COMMISSIONER AND THE PRACTITIONER.  
37 4. LICENSED OR REGULATED PRACTITIONERS. IF A PRACTITIONER INVESTIGATED  
38 UNDER THIS SECTION IS LICENSED OR REGISTERED BY THE COMMISSIONER OR A  
39 HEALTH-RELATED LICENSING BOARD OR IS SUBJECT TO THE JURISDICTION OF THE  
40 COMMISSIONER UNDER SUBPARAGRAPH (II) OF PARAGRAPH (A) OF SUBDIVISION SIX  
41 OF SECTION NINE THOUSAND TWO OF THIS ARTICLE, AND THE COMMISSIONER  
42 DETERMINES THAT THE PRACTITIONER HAS VIOLATED ANY PROVISION OF THIS  
43 ARTICLE, THE COMMISSIONER, IN ADDITION TO TAKING DISCIPLINARY ACTION  
44 UNDER THIS SECTION, SHALL, IF THE PRACTITIONER IS LICENSED OR REGISTERED  
45 IN ANOTHER CAPACITY BY A HEALTH-RELATED LICENSING BOARD, REPORT HIS OR  
46 HER FINDINGS UNDER THIS SECTION, AND MAY MAKE A NONBINDING RECOMMENDATION  
47 THAT THE BOARD TAKE FURTHER ACTION AGAINST THE PRACTITIONER IN  
48 THAT CAPACITY.  
49 S 9009. ADDITIONAL REMEDIES. 1. (A) THE COMMISSIONER MAY ISSUE A  
50 CEASE AND DESIST ORDER TO STOP A PERSON FROM VIOLATING OR THREATENING TO  
51 VIOLATE A STATUTE OR RULE, REGULATION OR ORDER WHICH THE COMMISSIONER  
52 HAS ISSUED OR IS EMPOWERED TO ENFORCE. THE CEASE AND DESIST ORDER SHALL  
53 STATE THE REASON FOR ITS ISSUANCE AND GIVE NOTICE OF THE PERSON'S RIGHT  
54 TO REQUEST A HEARING UNDER THIS ARTICLE. IF, WITHIN FIFTEEN DAYS OF  
55 PERSONAL SERVICE OF THE ORDER, THE SUBJECT OF THE ORDER FAILS TO REQUEST

S. 1907

10

1 A HEARING IN WRITING, THE ORDER SHALL BE THE FINAL ORDER OF THE COMMISSIONER  
2 AND SHALL NOT BE SUBJECT TO REVIEW BY A COURT OR AGENCY.  
3 (B) A HEARING SHALL BE INITIATED BY THE STATE OFFICE NO LATER THAN  
4 THIRTY DAYS OF THE DATE OF THE STATE BOARD'S RECEIPT OF A WRITTEN HEARING  
5 REQUEST. WITHIN THIRTY DAYS OF RECEIPT OF THE ADMINISTRATIVE LAW  
6 JUDGE'S REPORT, THE COMMISSIONER SHALL ISSUE A FINAL ORDER MODIFYING,  
7 VACATING OR MAKING PERMANENT THE CEASE AND DESIST ORDER AS THE FACTS  
8 REQUIRE. THE FINAL ORDER SHALL REMAIN IN EFFECT UNTIL MODIFIED OR  
9 VACATED BY THE COMMISSIONER.  
10 (C) WHEN A REQUEST FOR A STAY ACCOMPANIES A TIMELY HEARING REQUEST,  
11 THE COMMISSIONER MAY, IN HIS OR HER DISCRETION, GRANT THE STAY. IF THE  
12 COMMISSIONER DOES NOT GRANT A REQUESTED STAY, HE OR SHE SHALL REFER THE  
13 REQUEST TO THE STATE OFFICE WITHIN THREE WORKING DAYS OF RECEIPT OF THE  
14 REQUEST. WITHIN TEN DAYS AFTER RECEIVING THE REQUEST FROM THE COMMISSIONER,  
15 AN ADMINISTRATIVE LAW JUDGE SHALL ISSUE A RECOMMENDATION TO GRANT OR DENY  
16 THE STAY. THE COMMISSIONER SHALL GRANT OR DENY THE STAY  
17 WITHIN FIVE DAYS OF RECEIVING THE ADMINISTRATIVE LAW JUDGE'S RECOMMENDATION.

18 TION.

19 (D) IN THE EVENT OF NONCOMPLIANCE WITH A CEASE AND DESIST ORDER, THE  
20 COMMISSIONER MAY INSTITUTE A PROCEEDING IN THE SUPREME COURT TO OBTAIN  
21 INJUNCTIVE RELIEF OR OTHER APPROPRIATE RELIEF, INCLUDING A CIVIL PENALTY  
22 PAYABLE TO THE STATE BOARD NOT EXCEEDING ONE THOUSAND DOLLARS FOR EACH  
23 SEPARATE VIOLATION.

24 2. IN ADDITION TO ANY OTHER REMEDY PROVIDED BY LAW, INCLUDING THE  
25 ISSUANCE OF A CEASE AND DESIST ORDER UNDER SUBDIVISION ONE OF THIS  
26 SECTION, THE COMMISSIONER MAY IN HIS OR HER OWN NAME, BRING AN ACTION IN  
27 THE SUPREME COURT FOR INJUNCTIVE RELIEF TO RESTRAIN AN UNLICENSED  
28 COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONER FROM A VIOLATION  
29 OR THREATENED VIOLATION OF ANY LAW, OR RULE, REGULATION OR ORDER WHICH  
30 THE COMMISSIONER IS EMPOWERED TO REGULATE, ENFORCE OR ISSUE. A TEMPORARY  
31 RESTRAINING ORDER SHALL BE GRANTED IN THE PROCEEDING IF CONTINUED ACTIV-  
32 ITY BY THE PRACTITIONER WOULD CREATE A SERIOUS RISK OF IMMINENT HARM TO  
33 COMPLEMENTARY AND ALTERNATIVE HEALTH CARE CLIENTS. THE COMMISSIONER NEED  
34 NOT SHOW IRREPARABLE HARM.

35 3. ENGAGING IN COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTICES  
36 PURSUANT TO THIS ARTICLE SHALL NOT CONSTITUTE A CRIME.

37 4. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, UNLICENSED COMPLEMEN-  
38 TARY AND ALTERNATIVE HEALTH CARE PRACTITIONERS SHALL BE SUBJECT TO THE  
39 EXCLUSIVE CONTROL, JURISDICTION AND REGULATION OF THE PROVISIONS OF THIS  
40 ARTICLE, AND SHALL NOT BE SUBJECT TO THE JURISDICTION OR CONTROL OF, NOR  
41 SUBJECT TO DISCIPLINARY PROCEEDINGS OF ANY OTHER ADMINISTRATIVE AGENCY,  
42 BOARD OR REGULATORY BODY.

43 S 9010. COMPLEMENTARY AND ALTERNATIVE HEALTH CARE CLIENT BILL OF  
44 RIGHTS. 1. ALL UNLICENSED COMPLEMENTARY AND ALTERNATIVE HEALTH CARE  
45 PRACTITIONERS SHALL PROVIDE TO EACH COMPLEMENTARY AND ALTERNATIVE HEALTH  
46 CARE CLIENT, PRIOR TO PROVIDING TREATMENT, A WRITTEN COPY OF THE COMPLE-  
47 MENTARY AND ALTERNATIVE HEALTH CARE CLIENT BILL OF RIGHTS. A COPY THERE-  
48 OF SHALL ALSO BE POSTED IN A PROMINENT LOCATION IN THE OFFICE OF THE  
49 UNLICENSED COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONER.  
50 REASONABLE ACCOMMODATIONS SHALL BE MADE FOR THOSE CLIENTS WHO CANNOT  
51 READ OR WHO HAVE COMMUNICATION IMPAIRMENTS AND THOSE WHO DO NOT READ OR  
52 SPEAK ENGLISH. THE COMPLEMENTARY AND ALTERNATIVE HEALTH CARE CLIENT BILL  
53 OF RIGHTS SHALL INCLUDE THE FOLLOWING:

54 (A) THE NAME, COMPLEMENTARY AND ALTERNATIVE HEALTH CARE TITLE, BUSI-  
55 NESS ADDRESS, AND TELEPHONE NUMBER OF THE UNLICENSED COMPLEMENTARY AND  
56 ALTERNATIVE HEALTH CARE PRACTITIONER;

S. 1907

11

1 (B) THE DEGREES, TRAINING, EXPERIENCE OR OTHER QUALIFICATIONS OF THE  
2 PRACTITIONER REGARDING THE COMPLIMENTARY AND ALTERNATIVE HEALTH CARE  
3 BEING PROVIDED, FOLLOWED BY THE FOLLOWING STATEMENT IN BOLD PRINT:

4 "THE STATE OF NEW YORK HAS NOT ADOPTED ANY EDUCATIONAL AND TRAINING  
5 STANDARDS FOR UNLICENSED COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONERS. THIS STATEMENT OF CREDENTIALS IS FOR INFORMATION PURPOSES ONLY.

8 UNDER THE NEW YORK STATE LAW, AN UNLICENSED COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONER MAY NOT PROVIDE A MEDIAL DIAGNOSIS OR RECOMMEND DISCONTINUANCE OF A LEGEND DRUG PRESCRIBED BY A LICENSED PHYSICIAN OR HEALTH CARE PRACTITIONER. HOWEVER AN UNLICENSED COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONER MAY PROVIDE PERSONAL CONSULTATIONS AND SCREENINGS BASED UPON THE PRACTITIONER'S METHOD OF COMPLEMENTARY AND ALTERNATIVE CARE; MAY MAKE ASSESSMENTS OF THE CLIENT'S HEALTH PROBLEMS AND CONCERNS AS THEY RELATE TO THE UNLICENSED COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONER'S METHODS OF PRACTICE; AND MAY MAKE RECOMMENDATIONS FOR THE USE OF THE COMPLEMENTARY OR ALTERNATIVE HEALTH PRACTICE METHODS OR TREATMENTS IN ACCORDANCE WITH THE CONSULTATION, SCREENING AND ASSESSMENTS OF THE PRACTITIONER.

20 IF A CLIENT DESIRES A DIAGNOSIS FROM A LICENSED PHYSICIAN, DENTIST OR CHIROPRACTOR, OR SERVICES FROM A PHYSICIAN, CHIROPRACTOR, NURSE, PHYSICAL THERAPIST, RESPIRATORY THERAPIST, PODIATRIST, OPTOMETRIST, OCCUPATIONAL THERAPIST, DIETITIAN, NUTRITIONIST, ACUPUNCTURE PRACTITIONER, ATHLETIC TRAINER OR ANY OTHER TYPE OF HEALTH CARE PROVIDER, THE CLIENT MAY SEEK SUCH SERVICES AT ANY TIME.";

26 (C) THE NAME, BUSINESS ADDRESS AND TELEPHONE NUMBER OF THE PRACTITIONER'S SUPERVISOR, IF ANY;

28 (D) NOTICE THAT A COMPLEMENTARY AND ALTERNATIVE HEALTH CARE CLIENT HAS  
 29 THE RIGHT TO FILE A COMPLAINT WITH THE PRACTITIONER`S SUPERVISOR, IF  
 30 ANY, AND THE PROCEDURE FOR FILING COMPLAINTS;

31 (E) THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE STATE OFFICE OF  
 32 UNLICENSED COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTICE AND NOTICE  
 33 THAT A CLIENT MAY FILE COMPLAINTS WITH THE STATE BOARD;

34 (F) THE PRACTITIONER`S FEES PER UNIT OF SERVICE, THE PRACTITIONER`S  
 35 METHOD OF BILLING FOR SUCH FEES, THE NAMES OF ANY INSURANCE COMPANIES  
 36 THAT HAVE AGREED TO REIMBURSE THE PRACTITIONER, OR HEALTH MAINTENANCE  
 37 ORGANIZATIONS WITH WHOM THE PRACTITIONER CONTRACTS TO PROVIDE SERVICE,  
 38 WHETHER THE PRACTITIONER ACCEPTS MEDICARE, MEDICAL ASSISTANCE OR GENERAL  
 39 ASSISTANCE MEDICAL CARE, AND WHETHER THE PRACTITIONER IS WILLING TO  
 40 ACCEPT PARTIAL PAYMENT, OR TO WAIVE PAYMENT, AND IN WHAT CIRCUMSTANCES;

41 (G) A STATEMENT THAT THE CLIENT HAS A RIGHT TO REASONABLE NOTICE OF  
 42 CHANGES IN SERVICES OR CHARGES;

43 (H) A BRIEF SUMMARY, IN PLAIN LANGUAGE, OF THE THEORETICAL APPROACH  
 44 USED BY THE PRACTITIONER IN PROVIDING SERVICES TO CLIENTS;

45 (I) NOTICE THAT THE CLIENT HAS A RIGHT TO COMPLETE AND CURRENT INFOR-  
 46 MATION CONCERNING THE PRACTITIONER`S ASSESSMENT AND RECOMMENDED SERVICE  
 47 THAT IS TO BE PROVIDED, INCLUDING THE EXPECTED DURATION OF THE SERVICE  
 48 TO BE PROVIDED;

49 (J) A STATEMENT THAT CLIENTS MAY EXPECT COURTEOUS TREATMENT AND TO BE  
 50 FREE FROM VERBAL, PHYSICAL, OR SEXUAL ABUSE BY THE PRACTITIONER;

51 (K) A STATEMENT THAT CLIENT RECORDS AND TRANSACTIONS WITH THE PRACTI-  
 52 TIONER ARE CONFIDENTIAL, UNLESS RELEASE OF THESE RECORDS IS AUTHORIZED  
 53 IN WRITING BY THE CLIENT, OR OTHERWISE PROVIDED BY LAW;

54 (L) A STATEMENT OF THE CLIENT`S RIGHT TO BE ALLOWED ACCESS TO RECORDS  
 55 AND WRITTEN INFORMATION FROM RECORDS IN ACCORDANCE WITH SECTION EIGHTEEN  
 56 OF THE PUBLIC HEALTH LAW;

S. 1907

12

1 (M) A STATEMENT THAT OTHER SERVICES MAY BE AVAILABLE IN THE COMMUNITY,  
 2 INCLUDING WHERE INFORMATION CONCERNING SUCH SERVICES IS AVAILABLE;

3 (N) A STATEMENT THAT THE CLIENT HAS THE RIGHT TO CHOOSE FREELY AMONG  
 4 AVAILABLE PRACTITIONERS AND TO CHANGE PRACTITIONERS AFTER SERVICES HAVE  
 5 BEGUN, WITHIN THE LIMITS OF HEALTH INSURANCE, MEDICAL ASSISTANCE OR  
 6 OTHER HEALTH PROGRAMS;

7 (O) A STATEMENT THAT THE CLIENT HAS A RIGHT TO COORDINATED TRANSFER  
 8 WHEN THERE WILL BE A CHANGE IN THE PROVIDER OF SERVICES;

9 (P) A STATEMENT THAT THE CLIENT MAY REFUSE SERVICES OR TREATMENT,  
 10 UNLESS OTHERWISE PROVIDED BY LAW; AND

11 (Q) A STATEMENT THAT THE CLIENT MAY ASSERT THE CLIENT`S RIGHTS WITHOUT  
 12 RETALIATION.

13 2. PRIOR TO THE PROVISION OF ANY SERVICE, A COMPLEMENTARY AND ALTERNA-  
 14 TIVE HEALTH CARE CLIENT MUST SIGN A WRITTEN STATEMENT ATTESTING THAT THE  
 15 CLIENT HAS RECEIVED THE COMPLEMENTARY AND ALTERNATIVE HEALTH CARE CLIENT  
 16 BILL OF RIGHTS.

17 S 4. Subdivision 1 of section 413 of the social services law, as  
 18 amended by chapter 432 of the laws of 2001, is amended to read as  
 19 follows:

20 1. The following persons and officials are required to report or cause  
 21 a report to be made in accordance with this title when they have reason-  
 22 able cause to suspect that a child coming before them in their profes-  
 23 sional or official capacity is an abused or maltreated child, or when  
 24 they have reasonable cause to suspect that a child is an abused or  
 25 maltreated child where the parent, guardian, custodian or other person  
 26 legally responsible for such child comes before them in their profes-  
 27 sional or official capacity and states from personal knowledge facts,  
 28 conditions or circumstances which, if correct, would render the child an  
 29 abused or maltreated child: any physician; registered physician assist-  
 30 ant; surgeon; medical examiner; coroner; dentist; dental hygienist;  
 31 osteopath; optometrist; chiropractor; podiatrist; resident; intern;  
 32 psychologist; registered nurse; emergency medical technician; hospital  
 33 personnel engaged in the admission, examination, care or treatment of  
 34 persons; a Christian Science practitioner; UNLICENSED COMPLEMENTARY AND  
 35 ALTERNATIVE HEALTH CARE PRACTITIONER; school official; social services  
 36 worker; day care center worker; provider of family or group family day  
 37 care; employee or volunteer in a residential care facility defined in

38 subdivision seven of section four hundred twelve of this chapter or any  
39 other child care or foster care worker; mental health professional;  
40 substance abuse counselor; alcoholism counselor; peace officer; police  
41 officer; district attorney or assistant district attorney; investigator  
42 employed in the office of a district attorney; or other law enforcement  
43 official. Whenever such person is required to report under this title  
44 in his or her capacity as a member of the staff of a medical or other  
45 public or private institution, school, facility or agency, he or she  
46 shall immediately notify the person in charge of such institution,  
47 school, facility or agency, or his or her designated agent, who then  
48 also shall become responsible to report or cause reports to be made.  
49 However, nothing in this section or title is intended to require more  
50 than one report from any such institution, school or agency. At the time  
51 of the making of a report, or at any time thereafter, such person or  
52 official may exercise the right to request, pursuant to paragraph (A) of  
53 subdivision four of section four hundred twenty-two of this article, the  
54 findings of an investigation made pursuant to this title or section  
55 45.07 of the mental hygiene law.

S. 1907

13

1 S 5. Subdivision 1 of section 413 of the social services law, as  
2 amended by chapter 420 of the laws of 2002, is amended to read as  
3 follows:

4 1. The following persons and officials are required to report or cause  
5 a report to be made in accordance with this title when they have reason-  
6 able cause to suspect that a child coming before them in their profes-  
7 sional or official capacity is an abused or maltreated child, or when  
8 they have reasonable cause to suspect that a child is an abused or  
9 maltreated child where the parent, guardian, custodian or other person  
10 legally responsible for such child comes before them in their profes-  
11 sional or official capacity and states from personal knowledge facts,  
12 conditions or circumstances which, if correct, would render the child an  
13 abused or maltreated child: any physician; registered physician assist-  
14 ant; surgeon; medical examiner; coroner; dentist; dental hygienist;  
15 osteopath; optometrist; chiropractor; podiatrist; resident; intern;  
16 psychologist; registered nurse; social worker; emergency medical techni-  
17 cian; hospital personnel engaged in the admission, examination, care or  
18 treatment of persons; a Christian Science practitioner; UNLICENSED  
19 COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONER; school official;  
20 social services worker; day care center worker; provider of family or  
21 group family day care; employee or volunteer in a residential care  
22 facility defined in subdivision seven of section four hundred twelve of  
23 this chapter or any other child care or foster care worker; mental  
24 health professional; substance abuse counselor; alcoholism counselor;  
25 peace officer; police officer; district attorney or assistant district  
26 attorney; investigator employed in the office of a district attorney; or  
27 other law enforcement official. Whenever such person is required to  
28 report under this title in his or her capacity as a member of the staff  
29 of a medical or other public or private institution, school, facility or  
30 agency, he or she shall immediately notify the person in charge of such  
31 institution, school, facility or agency, or his or her designated agent,  
32 who then also shall become responsible to report or cause reports to be  
33 made. However, nothing in this section or title is intended to require  
34 more than one report from any such institution, school or agency. At the  
35 time of the making of a report, or at any time thereafter, such person  
36 or official may exercise the right to request, pursuant to paragraph (A)  
37 of subdivision four of section four hundred twenty-two of this article,  
38 the findings of an investigation made pursuant to this title or section  
39 45.07 of the mental hygiene law.

40 S 6. Subdivision 1 of section 413 of the social services law, as sepa-  
41 rately amended by chapters 420 and 676 of the laws of 2002, is amended  
42 to read as follows:

43 1. The following persons and officials are required to report or cause  
44 a report to be made in accordance with this title when they have reason-  
45 able cause to suspect that a child coming before them in their profes-  
46 sional or official capacity is an abused or maltreated child, or when  
47 they have reasonable cause to suspect that a child is an abused or  
48 maltreated child where the parent, guardian, custodian or other person

49 legally responsible for such child comes before them in their profes-  
50 sional or official capacity and states from personal knowledge facts,  
51 conditions or circumstances which, if correct, would render the child an  
52 abused or maltreated child: any physician; registered physician assist-  
53 ant; surgeon; medical examiner; coroner; dentist; dental hygienist;  
54 osteopath; optometrist; chiropractor; podiatrist; resident; intern;  
55 psychologist; registered nurse; social worker; emergency medical techni-  
56 cian; licensed creative arts therapist; licensed marriage and family

S. 1907

14

1 therapist; licensed mental health counselor; licensed psychoanalyst;  
2 hospital personnel engaged in the admission, examination, care or treat-  
3 ment of persons; a Christian Science practitioner; UNLICENSED COMPLEMEN-  
4 TARY AND ALTERNATIVE HEALTH CARE PRACTITIONER; school official; social  
5 services worker; day care center worker; provider of family or group  
6 family day care; employee or volunteer in a residential care facility  
7 defined in subdivision seven of section four hundred twelve of this  
8 title or any other child care or foster care worker; mental health  
9 professional; substance abuse counselor; alcoholism counselor; peace  
10 officer; police officer; district attorney or assistant district attor-  
11 ney; investigator employed in the office of a district attorney; or  
12 other law enforcement official. Whenever such person is required to  
13 report under this title in his or her capacity as a member of the staff  
14 of a medical or other public or private institution, school, facility or  
15 agency, he or she shall immediately notify the person in charge of such  
16 institution, school, facility or agency, or his or her designated agent,  
17 who then also shall become responsible to report or cause reports to be  
18 made. However, nothing in this section or title is intended to require  
19 more than one report from any such institution, school or agency. At the  
20 time of the making of a report, or at any time thereafter, such person  
21 or official may exercise the right to request, pursuant to paragraph (A)  
22 of subdivision four of section four hundred twenty-two of this title,  
23 the findings of an investigation made pursuant to this title or section  
24 45.07 of the mental hygiene law.

25 S 7. This act shall take effect on the one hundred eightieth day after  
26 it shall have become a law, provided that:

27 (a) section five of this act shall take effect upon the effective date  
28 of section 8 of chapter 420 of the laws of 2002, as amended, where upon  
29 such date section four of this act shall be deemed repealed;

30 (b) section six of this act shall take effect upon the effective date  
31 of section 11 of chapter 676 of the laws of 2002, as amended, where upon  
32 such date section five of this act shall be deemed repealed; and

33 (c) any rules and regulations necessary for the timely implementation  
34 of the provisions of this act on its effective date are authorized and  
35 directed to be completed on or before such date.

.SO DOC S 1907

\*END\*

BTXT

2003

Contact Webmaster