



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 442

128th General Assembly  
(As Introduced)

**Reps.** Yuko, Slesnick, Wachtmann, Hagan, Letson, Goodwin, J. Adams, Ujvagi

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## BILL SUMMARY

- Permits a complementary or alternative health care practitioner to provide certain services without being in violation of health care professional licensing laws if the practitioner does not engage in activities prohibited by the bill or fail to comply with the bill's disclosure requirements.
- Specifies activities a complementary or alternative health care practitioner cannot engage in unless the practitioner is a licensed health care professional.
- Establishes disclosure requirements for a complementary or alternative health care practitioner.
- Establishes an investigatory process for a complementary or alternative health care practitioner alleged to have violated the bill.
- Eliminates a provision of current law that prohibits a person who is not a licensed health care professional acting within the scope of the professional's practice from using any designation tending to indicate that the person is practicing dietetics.

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## CONTENT AND OPERATION

### Complementary or alternative health care practitioners

Generally, the bill permits a complementary or alternative health care practitioner to provide certain services without being in violation of health care professional licensing laws if the practitioner does not engage in activities prohibited by the bill or fail to comply with the bill's disclosure requirements (R.C. 4783.04(A)). The bill defines a complementary or alternative health care practitioner as an individual who provides complementary or alternative health care services to a client and either (1) is not a licensed health care professional or (2) if a licensed health care professional,

is not holding the individual's self out as a licensed health care professional when providing these services (R.C. 4783.01(B)).

The term "complementary or alternative health care services" is defined by the bill as the broad domain of health care and healing practices that may or may not be provided in addition to, or in place of, prevailing or conventional treatment options, as long as those health care and healing practices do not include any of the activities prohibited under the bill. Complementary or alternative health care services include the following (see "**Definitions**," below):

- (1) Anthroposophy;
- (2) Aromatherapy;
- (3) Ayurveda;
- (4) Culturally traditional healing practices and healing traditions, including such practices and traditions that employ the use of plant medicines and foods, prayer, ceremony, or song;
- (5) Detoxification practices and therapies;
- (6) Energetic healing;
- (7) Folk practices;
- (8) Gerson therapy;
- (9) Colostrum therapy;
- (10) Healing practices utilizing food, dietary supplements, nutrients, and the physical forces of heat, cold, water, touch, and light;
- (11) Healing touch;
- (12) Herbology or herbalism;
- (13) Homeopathy;
- (14) Meditation;
- (15) Mind-body healing practices;
- (16) Naturopathy;

- (17) Iridology;
- (18) Noninvasive instrumentalities;
- (19) Polarity, polarity therapy, or polarity bodywork therapy;
- (20) Holistic kinesiology and other muscle testing techniques;
- (21) Bodywork (R.C. 4783.01(C); see "**Definitions**," below).

### **Prohibited activities**

The bill prohibits a complementary or alternative health care practitioner from doing any of the following:

- (1) Performing surgery or any other procedure that punctures the skin;
- (2) Performing any adjustment of the articulation of the joints or spine of any individual;
- (3) Using or recommending any procedure involving ionizing radiation;
- (4) Providing a medical diagnosis of a disease;
- (5) Providing diagnosis or treatment of a physical or mental health condition of an individual if the diagnosis or treatment poses to that individual a recognizable and imminent risk of significant and discernible direct physical or mental harm;
- (6) Counseling any individual to disregard the instruction or counsel of a licensed health care professional;
- (7) Counseling any individual to discontinue use of any dangerous drug, drug, or therapeutic device prescribed to the individual by a licensed health professional authorized to prescribe drugs (see "**Definitions**," below);
- (8) Administering or prescribing any dangerous drug;
- (9) Holding out, stating, indicating, advertising, or otherwise implying to any person that the practitioner is licensed in Ohio to practice as a licensed health care professional unless the practitioner is licensed;
- (10) Performing or providing enteral or parenteral nutrition;
- (11) Promising a cure;

(12) Setting a fracture of a bone;

(13) Performing bodywork or similar complementary or alternative health care services in a manner that would constitute the practice of massage therapy as regulated by the State Medical Board;

(14) Providing or performing an abortion;

(15) Inserting intrauterine devices (R.C. 4783.02(A) to (O)).

Unless the person is an emancipated minor, the bill also prohibits a complementary or alternative health care practitioner from providing services to a person less than 18 years of age without consent of a parent or legal guardian (R.C. 4783.02(P)).

### **Information disclosure**

Prior to providing complementary or alternative health care services to an individual for the first time, the bill requires a complementary or alternative health care practitioner to provide to the recipient of the services a plainly worded, written document that discloses the following:

(1) The nature of the services to be provided;

(2) The degrees, training, experience, credentials, or other qualifications held by the practitioner with regard to the services to be provided;

(3) A statement that describes any agreement or other arrangement between the practitioner and another complementary or alternative health care practitioner or between the practitioner and a licensed health care professional whereby the practitioner derives a financial or other benefit, and the nature of the benefit;

(4) One of the following statements (as applicable), printed clearly in not less than 11-point font:

(a) If the practitioner is not a licensed health care professional:

"I AM NOT LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED BY THE STATE OF OHIO TO PRACTICE A HEALTH CARE PROFESSION. I AM NOT A MEDICAL DOCTOR, PHYSICIAN, OR ANY OTHER HEALTH CARE PROFESSIONAL LICENSED BY THE STATE. THE STATE HAS NOT ADOPTED ANY EDUCATIONAL OR TRAINING REQUIREMENTS FOR UNLICENSED

COMPLEMENTARY OR ALTERNATIVE HEALTH CARE PRACTITIONERS."

(b) If the practitioner also is a licensed health care professional:

"I HOLD THE FOLLOWING LICENSES AND CERTIFICATIONS ISSUED BY THE STATE OF OHIO: (list of licenses and certificates). HOWEVER, I AM PROVIDING MY SERVICES TO YOU AS A COMPLEMENTARY OR ALTERNATIVE HEALTH CARE PRACTITIONER AND I AM NOT PROVIDING SERVICES AS A LICENSED HEALTH CARE PROFESSIONAL. THE STATE HAS NOT ADOPTED ANY EDUCATION OR TRAINING REQUIREMENTS FOR UNLICENSED COMPLEMENTARY OR ALTERNATIVE HEALTH CARE PRACTITIONERS."

(R.C. 4783.03(A).)

The bill requires the complementary or alternative health care practitioner to obtain from the recipient of the services a written acknowledgment that the recipient has been provided a document disclosing all the information listed above. The practitioner must provide a copy of the acknowledgment to the recipient. The practitioner must maintain each acknowledgment for at least two years after the date the recipient receives services from the practitioner for the final time. (R.C. 4783.03(B) to (D).)

### **Investigations**

Under the bill, an executive agency that receives a complaint against a complementary or alternative health care practitioner and determines that the subject matter of the complaint falls under the jurisdiction of another agency must refer the complaint to the appropriate agency. If the agency determines that the subject matter of the complaint falls under its jurisdiction, the agency must conduct a preliminary investigation to determine whether the practitioner is alleged to have committed an act that is prohibited under the bill or failed to comply with the bill's disclosure requirements. (R.C. 4783.04(B).)

If the preliminary investigation does not reveal that a violation or failure to comply occurred, the bill prohibits the agency from pursuing the matter further. However, if the preliminary investigation reveals that a violation of the disclosure requirements occurred, the agency must notify the practitioner of the finding and request that the practitioner comply with the requirements. If the preliminary investigation reveals that the practitioner has engaged in activities prohibited under the

bill, or the practitioner failed to comply with an agency's request to comply with the disclosure requirements, the agency must address the matter in the manner it addresses a matter involving an individual who engages in an activity for which the individual must have a license or certificate, including referring the matter to the appropriate prosecutorial authority. (R.C. 4783.04(C) to (E).)

### **Exemptions from the bill's requirements**

The bill specifies that it does not do any of the following with respect to a licensed or certified dentist; dental hygienist; nurse; optometrist; dispensing optician; pharmacist; physician assistant; physician; podiatrist; massage therapist; cosmetic therapist; mechanotherapist; napropath; psychologist; chiropractor; occupational therapist; physical therapist; athletic trainer; dietitian; acupuncturist; or practitioner of orthotics, prosthetics, or pedorthics:

- (1) Modify or change the scope of practice of the license or certificate holder;
- (2) Alter in any way the law prohibiting the license or certificate holder from committing fraud or exploiting patients;
- (3) Alter in any way the law requiring license and certificate holders to practice within their respective standards of care;
- (4) Apply to any person who is exempt from being required to obtain such a license or certificate and by that exemption is permitted to engage in the activities in which the person wishes to engage.

The bill also does not apply to (1) a physician authorized by the State Medical Board to provide alternative medical treatments, or (2) the delivery of babies or post-delivery repairs. (R.C. 4783.05.)

### **Dietetics titles**

The bill eliminates a provision of current law that prohibits any person, except a person licensed by the Ohio Board of Dietetics or another state board and acting within the scope of that person's practice, from using any title, designation, words, letters, abbreviations, or insignia or combination of those, tending to indicate that the person is practicing dietetics. It retains the provision prohibiting any person other than a licensed dietitian from using the title "dietitian." (R.C. 4759.02(A) and (B).)

## Definitions

Anthroposophy: a 20th century religious system growing out of theosophy (teaching about God and the world based on mystical insight, p. 1296) and centering on human development (\* 53);

Aromatherapy: the massage of the body and especially of the face with a preparation of fragrant essential oils extracted from herbs, flowers, and fruits (\* 68);

Ayurveda: the form of holistic alternative medicine that is the traditional system of medicine of India (\* 87);

Bodywork: any of the following: (1) the practice of manually massaging only the hands, feet, or ears, (2) reflexology, (3) cranial sacral therapy, (4) ortho-bionomy, (5) the use of touch, words, or directed movement to deepen awareness of existing patterns of body movement, or to suggest new possibilities of movement, including the Feldenkrais method of somatic education, the Rolf Institute's Rolf movement integration, and the Trager approach, or (6) the use of touch to affect the body's energy systems, acupoints, or qi meridians, including Asian bodywork therapy, acupuncture, jin shin do, reiki, qigong, shiatsu, touch for health, and tui na (R.C. 4783.01(A)).

Colostrum: the milk secreted for a few days after parturition (giving birth) and characterized by high protein and antibody content (\* 246);

### Dangerous drugs:

(1) Any drug to which either of the following applies: (a) under the "Federal Food, Drug, and Cosmetic Act," the drug is required to bear a label containing the legend "Caution: Federal law prohibits dispensing without prescription" or "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian" or any similar restrictive statement, or the drug may be dispensed only upon a prescription, or (b) under Ohio's Pure Food and Drug Law (R.C. Chapter 3715.) or Controlled Substances Law (R.C. Chapter 3719.), the drug may be dispensed only upon a prescription.

(2) Any drug that contains a schedule V controlled substance and that is exempt from the Controlled Substances Law or to which that law does not apply.

(3) Any drug intended for administration by injection into the human body other than through a natural orifice of the human body (R.C. 4783.01(D), by reference to R.C. 4729.01, not in the bill).

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\* Not defined in the bill; see Merriam-Webster's Collegiate Dictionary (11 Ed. 2003).

Drug:

(1) Any article recognized in the United States Pharmacopoeia and National Formulary, or any supplement to them, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(2) Any other article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(3) Any article, other than food, intended to affect the structure or any function of the body of humans or animals;

(4) Any article intended for use as a component of any article specified in (1), (2), or (3) above, but does not include devices or their components, parts, or accessories (R.C. 4783.01(D), by reference to R.C. 4729.01, not in the bill).

Enteral nutrition: a way of providing nutrition to a patient via tube feedings into the digestive tract (American Society for Parenteral and Enteral Nutrition, [www.nutritioncare.org](http://www.nutritioncare.org), web site visited March 3, 2010).

Executive agency: a board, commission, agency, department, or similar entity that is part of the executive branch of state government (R.C. 4783.01(F)).

Gerson therapy: uses organic foods, juicing, coffee enemas, detoxification, and natural supplements to activate the body's ability to heal itself (Gerson Institute, [www.gerson.org](http://www.gerson.org), web site visited March 3, 2010).

Homeopathy: a system of medical practice that treats a disease especially by the administration of minute doses of a remedy that would in larger amounts produce symptoms in healthy persons (\* 594);

Ionizing radiation: any electromagnetic or particulate radiation that interacts with atoms to produce ionization in matter, including x-rays, gamma rays, alpha and beta particles, high speed electrons, neutrons, and other nuclear particles (R.C. 4783.02(C), by reference to R.C. 4773.01(C)).

Iridology: the study of the iris of the eye for indications of bodily health and disease (\* 661);

Kinesiology: the study of the principles of mechanics and anatomy in relation to human movement (\* 687);

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\* Not defined in the bill; see Merriam-Webster's Collegiate Dictionary (11 Ed. 2003).



Licensed health care professional: an individual who holds a current, valid license or certificate issued under Ohio law regulating dentists and dental hygienists; nurses; optometrists and dispensing opticians; pharmacists; physician assistants; physicians and limited practitioners; psychologists; chiropractors; occupational therapists, physical therapists, and athletic trainers; dietitians; acupuncturists; and practitioners of orthotics, prosthetics, or pedorthics (R.C. 4783.01(E)). Limited practitioners of medicine are regulated by the State Medical Board and consist of massage therapists, cosmetic therapists, and certain practitioners of mechanotherapy and naprapathy.

Licensed health professional authorized to prescribe drugs: an individual who is authorized by law to prescribe drugs or dangerous drugs or drug therapy related devices in the course of the individual's professional practice, including only the following who are licensed in Ohio: (1) dentists, (2) clinical nurse specialists, certified nurse-midwives, and certified nurse practitioners who hold certificates to prescribe, (3) optometrists who hold therapeutic pharmaceutical agents certificates, (4) physicians authorized to practice medicine and surgery, osteopathic medicine and surgery, or podiatry, (5) physician assistants certified to prescribe, and (6) veterinarians (R.C. 4783.01(D), by reference to R.C. 4729.01, not in the bill).

Naturopathy: a system of treatment of disease that avoids drugs and surgery and emphasizes the use of natural agents (as air, water, and herbs) and physical means (as tissue manipulation and electrotherapy) (\* 827).

Parenteral nutrition: a way of providing nutrition to a patient via an intravenous solution into the veins (American Society for Parenteral and Enteral Nutrition, [www.nutritioncare.org](http://www.nutritioncare.org), web site visited March 3, 2010).

Polarity therapy: is a comprehensive health system involving energy-based bodywork, diet, exercise, and self-awareness, and works with the Human Energy Field (electromagnetic patterns expressed in mental, emotional, and physical experience) (American Polarity Therapy Association, [www.polaritytherapy.org](http://www.polaritytherapy.org), web site visited March 3, 2010).

"Prescription"--a written, electronic, or oral order for drugs or combinations or mixtures of drugs to be used by a particular individual or for treating a particular animal, issued by a licensed health professional authorized to prescribe drugs (R.C. 4729.01, not in the bill).

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\* Not defined in the bill; see Merriam-Webster's Collegiate Dictionary (11 Ed. 2003).

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## HISTORY

ACTION

DATE

Introduced

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