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**STATE OF RHODE ISLAND**

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2002

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A N A C T

**RELATING TO HEALTH AND SAFETY -- UNLICENSED HEALTH CARE PRACTICES**

**Introduced By:** Representative Arthur J. Corvese

**Date Introduced:** January 09, 2002

**Referred To:** House Corporations

It is enacted by the General Assembly as follows:

- 1-1       SECTION 1. Title 23 of the General Laws entitled "Health and Safety" is hereby  
1-2       amended by adding thereto the following chapter:

1-3

## CHAPTER 74

1-4

### UNLICENSED HEALTH CARE PRACTICES

1-5 **23-74-1. Definitions and applicability.** – (a) As used in this chapter, the following

1-6 terms have the following meanings:

1-7 (1) "Director" or "director of health" means the director of the department of health or

1-8 the director's designee;

1-9 (2) "Unlicensed health care client" means an individual who receives services from an

1-10 unlicensed health care practitioner;

1-11 (3) "Unlicensed health care practices" means the broad domain of unlicensed healing

1-12 methods and treatments, including, but not limited to: (i) acupressure; (ii) Alexander technique;

1-13 (iii) aroma therapy; (iv) ayurveda; (v) cranial sacral therapy; (vi) crystal therapy; (vii)

1-14 detoxification practices and therapies; (viii) energetic healing; (ix) rolfing; (x) Gerson therapy and

1-15 colostrum therapy; (xi) therapeutic touch; (xii) herbology or herbalism; (xiii) polarity therapy;

1-16 (xiv) homeopathy; (xv) nondiagnostic iridology; (xvi) body work; (xvii) reiki; (xviii) mind-body

1-17 healing practices; (ixx) naturopathy; and (xx) Qi Gong energy healing. "Unlicensed health care

1-18 practices" do not include surgery, x-ray radiation, prescribing, administering, or dispensing

1-19 legend drugs and controlled substances, practices that invade the human body by puncture of the

2-1 skin, setting fractures, any practice included in the practice of dentistry, the manipulation or

2-2 adjustment of articulations of joints, or the spine, also known as chiropractic medicine as defined

2-3 in chapter 5-30, the healing art of acupuncture as defined in chapter 5-37.2, or practices that are

2-4 permitted under section 5-37-15 or section 5-34-31(6).

2-5 (4) "Unlicensed health care practitioner" means a person who:

2-6 (i) is not licensed by a health-related licensing board or the director of health; or holds a  
2-7 license issued by a health-related licensing board or the department of health in this state, but  
2-8 does not hold oneself out to the public as being licensed or registered by the director or a health-  
2-9 related licensing board when engaging in unlicensed health care;

2-10 (ii) has not had a license issued by a health-related licensing board or the director of  
2-11 health revoked or suspended without reinstatement unless the right to engage in unlicensed health  
2-12 care practices has been established by order of the director of health;

2-13 (iii) is engaging in unlicensed health care practices; and

2-14 (iv) is providing unlicensed health care services for remuneration or is holding oneself  
2-15 out to the public as a practitioner of unlicensed health care practices.

2-16 (b) This chapter does not apply to, control, prevent, or restrict the practice, service, or  
2-17 activity of lawfully marketing or distributing food products, including dietary supplements as  
2-18 defined in the federal dietary supplement health and education act, educating customers about  
2-19 such products, or explaining the uses of such products. Under Rhode Island law, an unlicensed  
2-20 health care practitioner may not provide a medical diagnosis.

2-21 (c) A health care practitioner, licensed or registered by the director or a health-related  
2-22 licensing board, who engages in unlicensed health care while practicing under the practitioner's  
2-23 license or registration, shall be regulated by and be under the jurisdiction of the applicable health-  
2-24 related licensing board with regard to the unlicensed health care practices.

2-25 (d) Subject to the provisions of this chapter, persons in Rhode Island are authorized to  
2-26 practice as unlicensed health care practitioners and receive remuneration for their services.

2-27 **23-74-2. Maltreatment of minors prohibited.** – Nothing in this chapter shall restrict the  
2-28 ability of a local law enforcement agency or the director of the department of children, youth and  
2-29 families, to take action regarding the maltreatment of minors. A parent who obtains unlicensed  
2-30 health care for the parent's minor child is not relieved of the duty to seek necessary medical care

2-31 consistent with the requirements of the general laws. A complementary or alternative health care  
2-32 practitioner who is providing services to a child shall be subject to the reporting provisions of  
2-33 chapter 40-11 entitled "Abused and Neglected Children."

2-34 **23-74-3. Professional accountability.** – The department shall maintain and keep current  
3-1 a file containing the reports and complaints filed against unlicensed health care practitioners  
3-2 within the director's jurisdiction. Each complaint filed with the department must be investigated.

3-3 **23-74-4. Prohibited conduct.** – The director may impose disciplinary action as described  
3-4 in this chapter against any unlicensed health care practitioner. The following conduct is  
3-5 prohibited and is grounds for disciplinary action:

3-6 (1) Conviction of a crime, including a finding or verdict of guilt, and admission of guilt,  
3-7 or a no contest plea, in any court in Rhode Island or any other jurisdiction in the United States,  
3-8 reasonably related to engaging in health care practices. Conviction, as used in this subdivision,  
3-9 includes a conviction of an offense which, if committed in this state, would be deemed a felony  
3-10 or misdemeanor, without regard to its designation elsewhere, or a criminal proceeding where a  
3-11 finding or verdict of guilty is made or returned, but the adjudication of guilt is either withheld or  
3-12 not entered.

3-13 (2) Engaging in sexual contact with an unlicensed health care client, engaging in contact  
3-14 that may be reasonably interpreted by a client as sexual or engaging in sexual exploitation of a  
3-15 client.

3-16 (3) Advertising that is false, fraudulent, deceptive, or misleading.

3-17 (4) Conduct likely to deceive, defraud, or harm the public or demonstrating a willful or  
3-18 careless disregard for the health or safety of an unlicensed health care client in which case, proof  
3-19 of actual injury need not be established.

3-20 (5) Adjudication as mentally incompetent or as a person who is dangerous to self or  
3-21 adjudicated as any of the following: chemically dependent, mentally ill, mentally retarded,

- 3-22 mentally ill and dangerous to the public, or as a sexual psychopathic personality or sexually  
3-23 dangerous person.
- 3-24 (6) Inability to engage in unlicensed health care practices with reasonable safety to  
3-25 unlicensed health care clients.
- 3-26 (7) Dependence upon controlled substances, habitual drunkenness or engaging in  
3-27 unlicensed health care practices while intoxicated or incapacitated by the use of drugs.
- 3-28 (8) Revealing a communication from, or relating to, an unlicensed health care client  
3-29 except when otherwise required or permitted by law.
- 3-30 (9) Failure to comply with an unlicensed health care client's request to furnish a  
3-31 unlicensed health care client record or report required by law.
- 3-32 (10) Splitting fees or promising to pay a portion of a fee to any other professional other  
3-33 than for services rendered by the other professional to the unlicensed health care client.
- 3-34 (11) Engaging in abusive or fraudulent billing practices, including violations of the  
4-1 federal Medicare and Medicaid laws or state medical assistance laws.
- 4-2 (12) Obtaining money, property, or services from an unlicensed health care client, other  
4-3 than reasonable fees for services provided to the client, through the use of undue influence,  
4-4 harassment, duress, deception, or fraud.
- 4-5 (13) Failure to provide an unlicensed health care client with a copy of the client bill of  
4-6 rights or violation of any provision of the client bill of rights.
- 4-7 (14) Violating any order issued by the director.
- 4-8 (15) Failure to comply with any provision of any rules adopted by the director.
- 4-9 (16) Failure to comply with any additional disciplinary grounds established by the  
4-10 director by rule.
- 4-11 (17) Revocation, suspension, restriction, limitation, or other disciplinary action against  
4-12 any health care license, certificate, registration, or right to practice of the unlicensed health care

4-13 practitioner in this or another state or jurisdiction for offenses that would be subject to  
4-14 disciplinary action in this state or failure to report to the department that charges regarding the  
4-15 practitioner's license, certificate, registration, or right of practice have been brought in this or  
4-16 another state or jurisdiction.

4-17 (18) False or misleading use of the title "doctor," "Dr.," "physician" alone or in  
4-18 combination with any other words, letters, or insignia to describe the unlicensed health care  
4-19 practices the practitioner provides.

4-20 **23-74-5. Less customary approach.** – The fact that a health care practice may be a less  
4-21 customary approach to health care shall not constitute the basis of a disciplinary action per se.

4-22 **23-74-6. Evidence in actions.** – In any disciplinary action alleging a professional  
4-23 violation of the provisions of this chapter, a copy of the judgment or proceeding under the seal of  
4-24 the court administrator or clerk of the administrative agency that entered the same is admissible  
4-25 into evidence without further authentication and constitutes prima facie evidence of its contents.

4-26 **23-74-7. Examination access of medical data.** – The director may require an unlicensed  
4-27 practitioner to undergo a physical or psychiatric examination by a physician acceptable to the  
4-28 director from a list provided to the practitioner if probable cause exists to believe that allegations  
4-29 of misconduct against him or her are caused by an impairment which has directly affected his or  
4-30 her ability to conduct his or her practice professionally. In such circumstances, the director shall  
4-31 also be entitled to obtain confidential health care information of the practitioner without the  
4-32 practitioner's consent. The director may not discriminate on the basis of disability in the  
4-33 administration of this section, nor subject qualified individuals with disabilities to any  
4-34 discrimination on the basis of a disability. All decisions of the director shall be based on the  
5-1 allegation of unprofessional conduct and not due to probable cause of the conduct being related to  
5-2 the disability of the practitioner. An unlicensed health care practitioner affected under this section  
5-3 shall at reasonable intervals be given an opportunity to demonstrate that the practitioner can

5-4 resume the provision of health care practices with reasonable safety to clients. In any proceeding  
5-5 under this section, neither the record of proceedings nor the orders entered by the director shall be  
5-6 used against an unlicensed health care practitioner in any other proceeding.

5-7 **23-74-8. Disciplinary actions.** – Forms of disciplinary action. When the director finds  
5-8 that an unlicensed health care practitioner has violated any provision of this chapter, the director  
5-9 may take one or more of the following actions, only against the individual practitioner:

5-10 (1) revoke the right to practice;

5-11 (2) suspend the right to practice;

5-12 (3) impose limitations or conditions on the practitioner's provision of unlicensed health  
5-13 care practices, impose rehabilitation requirements, or require practice under supervision;

5-14 (4) assess against the practitioner the administrative costs of the proceedings instituted  
5-15 against him or her under this chapter; provided, that this assessment does not exceed ten thousand  
5-16 dollars (\$10,000);

5-17 (5) censure or reprimand the practitioner;

5-18 (6) any other action justified by the case.

5-19 **23-74-9. Discovery -- Subpoenas.** – In all matters relating to the lawful activities of the  
5-20 department, the director may issue subpoenas and compel the attendance of witnesses and the  
5-21 production of all necessary papers, books, records, documents, and other evidentiary material.  
5-22 Any person failing or refusing to appear or testify regarding any matter about which the person  
5-23 may be lawfully questioned or failing to produce any papers, books, records, documents or other  
5-24 evidentiary materials in the matter to be heard, after having been required by order of the director  
5-25 or by a subpoena of the director to do so may, upon application to the district court in any district,  
5-26 be ordered to comply with the order or subpoena. The director may administer oaths to witnesses  
5-27 or take their affirmation. Depositions may be taken within or without the state in the manner  
5-28 provided by law for the taking of depositions in civil actions. A subpoena or other process may

5-29 be served upon a person it names anywhere within the state by any officer authorized to serve  
5-30 subpoenas or other process in civil actions in the same manner as prescribed by law for service of  
5-31 process issued out of the district court of this state.

5-32 **23-74-10. Hearings.** – (a) If the director proposes to take action against the practitioner  
5-33 as described in this chapter and pursuant to section 23-1-22, the director must first notify the  
5-34 practitioner against whom the action is proposed to be taken and provide the practitioner with an  
6-1 opportunity to request a hearing. If the practitioner does not request a hearing by notifying the  
6-2 director within thirty (30) days after service of the notice of the proposed action, the director may  
6-3 proceed with the action without a hearing. If a hearing is requested, a hearing shall be scheduled  
6-4 by the director as soon as is practicable. The director shall, issue a notice of a hearing of the  
6-5 charges, which shall specify the time and place of the hearing and notify the accused that he or  
6-6 she may file with the director a written response within twenty (20) days of the date of service.  
6-7 The notice shall also notify the accused that a stenographic record of the proceedings will be kept,  
6-8 that he or she will have the opportunity to appear personally and to have counsel present with the  
6-9 right to produce witnesses and evidence in his or her own behalf, to cross examine witnesses, to  
6-10 examine any documentary evidence that may be produced against him or her and to have  
6-11 subpoenas issued by the director.

6-12 (b) The director may at the director's discretion reinstate the right to practice and may  
6-13 impose any disciplinary measure listed under this chapter. Provided, the time limits set forth  
6-14 herein shall control over any inconsistent or contrary provisions in section 23-1-22.

6-15 **23-74-11. Suspension.** – (a) Penalties in suspension. In addition to any other remedy  
6-16 provided by law, the director may, acting through a person to whom the director has delegated  
6-17 this authority and without a hearing, suspend the right of an unlicensed health care practitioner to  
6-18 practice if the director's delegate finds that the practitioner has violated a statute or rule that the  
6-19 director is empowered to enforce and continued practice by the practitioner would create an

6-20 immediate risk of harm to others. The suspension is in effect upon service of a written order on  
6-21 the practitioner specifying the statute or rule violated. The order remains in effect until the  
6-22 director issues a final order in the matter after a hearing or upon agreement between the director  
6-23 and the practitioner. Service of the order is effective if the order is served on the practitioner or  
6-24 counsel of record personally or by first class mail. Within ten (10) days of service of the order,  
6-25 the director shall hold a hearing. Within five (5) working days after the hearing, the director shall  
6-26 issue an order.

6-27 (b) All findings in hearings under this chapter shall be made by clear and convincing  
6-28 evidence.

6-29 (c) Any practitioner aggrieved by an order of the director may appeal such order pursuant  
6-30 to the provisions of chapter 42-35, of the administrative procedures act.

6-31 (d) Automatic suspension. The right of an unlicensed health care practitioner to practice  
6-32 is automatically suspended if: (1) a guardian of an unlicensed health care practitioner is appointed  
6-33 by order of a court of competent jurisdiction; or (2) the practitioner is committed by order of a  
6-34 court. The right to practice remains suspended until the practitioner is restored to capacity by a  
7-1 court and upon petition by the practitioner; the director terminates the suspension after a hearing  
7-2 or upon agreement between the director and the practitioner.

7-3 **23-74-12. Licensed or regulated practitioners.** – If a practitioner investigated under this  
7-4 chapter is licensed or registered by the director of health or a health-related licensing board, is  
7-5 subject to the jurisdiction of the director, and the director determines that the practitioner has  
7-6 violated any provision of this chapter, the director in addition to taking disciplinary action under  
7-7 this section:

7-8 (1) may, if the practitioner is licensed or regulated in another capacity by the director,  
7-9 take further disciplinary action against the practitioner in that capacity; or

7-10 (2) shall, if the practitioner is licensed or registered in another capacity by a health-

7-11 related licensing board, report the director's findings under this section, and may make a  
7-12 nonbinding recommendation that the board take further action against the practitioner in that  
7-13 capacity.

7-14 **23-74-13. Additional remedies.** – (a) Cease and desist. (1) The director may issue a  
7-15 cease and desist order to stop a person from violating or threatening to violate a statute, rule, or  
7-16 order which the department has issued or is empowered to enforce. The cease and desist order  
7-17 must state the reason for its issuance and give notice of the person's right to request a hearing  
7-18 under the provisions of both this chapter and chapter 23-1. If, within fifteen (15) days of service  
7-19 of the order, the subject of the order fails to request a hearing in writing, the order is the final  
7-20 order of the director and is not reviewable by a court or agency.

7-21 (2) A hearing must be initiated by the department not later than thirty (30) days from the  
7-22 date of the department's receipt of a written hearing request. Within thirty (30) days of the hearing  
7-23 the director shall issue a final order modifying, vacating, or making permanent the cease and  
7-24 desist order, as the facts require. The final order remains in effect until modified or vacated by  
7-25 the director.

7-26 (3) When a request for a stay accompanies a timely hearing request, the director may, in  
7-27 the director's discretion, grant the stay. If the director does not grant a requested stay, the director  
7-28 shall refer the request to the superior court within three (3) working days of receipt of the request.  
7-29 Within ten (10) days after receiving the request from the director, a superior court judge shall  
7-30 issue an order to grant or deny the stay.

7-31 (4) In the event of noncompliance with a cease and desist order, the director may institute  
7-32 a proceeding in superior court to obtain injunctive relief or other appropriate relief, including a  
7-33 civil penalty payable to the department not exceeding ten thousand dollars (\$10,000) for each  
7-34 separate violation.

8-1 (5) Injunctive relief. In addition to any other remedy provided by law, including the

8-2 issuance of a cease and desist order under subsection (a), the director may in his or her own  
8-3 name, bring an action in superior court for injunctive relief to restrain an unlicensed health care  
8-4 practitioner from a violation or threatened violation of any statute, rule, or order which the  
8-5 director is empowered to regulate, enforce, or issue.

8-6 (b) Additional powers. The issuance of a cease and desist order or injunctive relief  
8-7 granted under this section does not relieve a practitioner from criminal prosecution by a  
8-8 competent authority or from disciplinary action by the director.

8-9 **23-74-14. Unlicensed health care client bill of rights.** – (a) Scope. All unlicensed  
8-10 health care practitioners shall provide to each unlicensed health care client prior to providing  
8-11 treatment a written copy of the unlicensed health care client bill of rights. A copy must also be  
8-12 posted in a prominent location in the office of the unlicensed health care practitioner. Reasonable  
8-13 accommodations shall be made for those clients who cannot read or who have communication  
8-14 impairments and those who do not read or speak English. The unlicensed health care client bill of  
8-15 rights shall include the following.

8-16 (1) the name, unlicensed health care title, business address, and telephone number of the  
8-17 unlicensed health care practitioner;

8-18 (2) the degrees, training, experience, or other qualifications of the practitioner regarding  
8-19 the unlicensed health care being provided, followed by the following statement in bold print:

8-20 "The state of Rhode Island has not adopted any educational and training standards for  
8-21 unlicensed health care practitioners. This statement of credentials is for information purposes  
8-22 only.

8-23 Under Rhode Island law, an unlicensed health care practitioner may not provide a  
8-24 medical diagnosis. If a client desires a diagnosis from a licensed physician, chiropractor, or  
8-25 acupuncture practitioner, or services from a physician, chiropractor, nurse, osteopath, physical  
8-26 therapist, dietician, nutritionist, acupuncture practitioner, athletic trainer, or any other type of

8-27 health care provider, the client may seek such services at any time";

8-28 (3) the name, business address, and telephone number of the practitioner's supervisor, if

8-29 any;

8-30 (4) notice that an unlicensed health care client has the right to file a complaint with the

8-31 practitioner's supervisor, if any, and the procedure for filing complaints;

8-32 (5) the name, address, and telephone number of the department and notice that a client

8-33 may file complaints with the department;

8-34 (6) the practitioner's fees per unit of service, the practitioner's method of billing for such

9-1 fees, the names of any insurance companies that agreed to reimburse the practitioner, or health

9-2 maintenance organizations with whom the practitioner contracts to provide service, whether the

9-3 practitioner accepts Medicare, medical assistance, or general assistance medical care, and whether

9-4 the practitioner is willing to accept partial payment, or to waive payment, and in what

9-5 circumstances;

9-6 (7) a statement that the client has a right to reasonable notice of changes in services or

9-7 charges;

9-8 (8) a brief summary, in plain language, of the theoretical approach used by the

9-9 practitioner in providing services to clients;

9-10 (9) notice that the client has a right to complete and current information concerning the

9-11 practitioner's assessment and recommended service that is to be provided, including the expected

9-12 duration of the service to be provided;

9-13 (10) a statement that clients may expect to be free from verbal, physical, or sexual abuse

9-14 by the practitioner;

9-15 (11) a statement that client records and transactions with the practitioner are confidential,

9-16 unless release of these records is authorized in writing by the client, or otherwise provided by

9-17 law;

- 9-18 (12) a statement of the client's right to be allowed access to records and written  
9-19 information from records in accordance with the provisions of this chapter;  
9-20 (13) a statement that the client has the right to choose freely among available  
9-21 practitioners and to change practitioners after services have begun, within the limits of health  
9-22 insurance, medical assistance, or other health programs;  
9-23 (14) a statement that the client has a right to a coordinated transfer when there will be a  
9-24 change in the provider of services;  
9-25 (15) a statement that the client may refuse services or treatment, unless otherwise  
9-26 provided by law; and  
9-27 (16) a statement that the client may assert the client's rights without retaliation.  
9-28 (b) Acknowledgement by client. Prior to the provision of any service, an unlicensed  
9-29 health care client must sign a written statement attesting that the client has received the  
9-30 unlicensed health care client bill of rights.  
9-31 SECTION 2. This act shall take effect upon passage.

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**EXPLANATION**  
**BY THE LEGISLATIVE COUNCIL**  
**OF**  
**A N A C T**  
**RELATING TO HEALTH AND SAFETY -- UNLICENSED HEALTH CARE PRACTICES**

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- 10-1        This act would define and allow for the regulation of so-called "unlicensed health care  
10-2        practices" including acupressure, aromatherapy, and folk practices. The regulation of such  
10-3        practices along with the monitoring of these practices and the enforcement of rules and  
10-4        regulations would be within the jurisdiction of the department of health.  
10-5        This act would take effect upon passage.

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