AN ACT Relating to complementary and alternative health care practitioners; amending RCW 18.130.190; adding a new section to chapter 18.130 RCW; creating a new section; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. (1) Based upon a comprehensive report by the national institute of medicine and other studies, including a study published by the New England Journal of Medicine, it is evident that millions of Americans are presently receiving a substantial volume of health care services from complementary and alternative health care practitioners. Those studies further indicate that individuals utilizing complementary and alternative health care services cut across a wide variety of age, ethnic, socioeconomic, and other demographic categories.

(2) Notwithstanding the widespread utilization of complementary and alternative medical services by Washingtonians, the provision of many of these services may be in technical violation of the uniform disciplinary act, chapter 18.130 RCW. Complementary and alternative health care practitioners could therefore be subject to fines,
penalties, and the restriction of their practice under the uniform
disciplinary act even though there is no demonstration that their
practices are harmful to the public.

(3) The legislature intends, by enactment of this act, to allow
access by Washington residents to complementary and alternative health
care practitioners who are not providing services that require medical
training and credentials. The legislature further finds that, with
proper disclosure, these nonmedical complementary and alternative
services do not pose a known risk to the health and safety of
Washington residents, and that restricting access to those services is
not warranted.

Sec. 2. RCW 18.130.190 and 2003 c 53 s 141 are each amended to
read as follows:

(1) Except as provided in section 3 of this act, the secretary
shall investigate complaints concerning practice by unlicensed persons
of a profession or business for which a license is required by the
chapters specified in RCW 18.130.040. In the investigation of the
complaints, the secretary shall have the same authority as provided the
secretary under RCW 18.130.050.

(2) The secretary may issue a notice of intention to issue a cease
and desist order to any person whom the secretary has reason to believe
is engaged in the unlicensed practice of a profession or business for
which a license is required by the chapters specified in RCW
18.130.040. The person to whom such notice is issued may request an
adjudicative proceeding to contest the charges. The request for
hearing must be filed within twenty days after service of the notice of
intention to issue a cease and desist order. The failure to request a
hearing constitutes a default, whereupon the secretary may enter a
permanent cease and desist order, which may include a civil fine. All
proceedings shall be conducted in accordance with chapter 34.05 RCW.

(3) If the secretary makes a final determination that a person has
engaged or is engaging in unlicensed practice, the secretary may issue
a cease and desist order. In addition, the secretary may impose a
civil fine in an amount not exceeding one thousand dollars for each day
upon which the person engaged in unlicensed practice of a business or
profession for which a license is required by one or more of the
chapters specified in RCW 18.130.040. The proceeds of such fines shall be deposited to the health professions account.

(4) If the secretary makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the secretary may issue a temporary cease and desist order. The person receiving a temporary cease and desist order shall be provided an opportunity for a prompt hearing. The temporary cease and desist order shall remain in effect until further order of the secretary. The failure to request a prompt or regularly scheduled hearing constitutes a default, whereupon the secretary may enter a permanent cease and desist order, which may include a civil fine.

(5) Neither the issuance of a cease and desist order nor payment of a civil fine shall relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy of a cease and desist order or civil fine shall be in addition to any criminal liability. The cease and desist order is conclusive proof of unlicensed practice and may be enforced under RCW 7.21.060. This method of enforcement of the cease and desist order or civil fine may be used in addition to, or as an alternative to, any provisions for enforcement of agency orders set out in chapter 34.05 RCW.

(6) The attorney general, a county prosecuting attorney, the secretary, a board, or any person may in accordance with the laws of this state governing injunctions, maintain an action in the name of this state to enjoin any person practicing a profession or business for which a license is required by the chapters specified in RCW 18.130.040 without a license from engaging in such practice or operating such business until the required license is secured. However, the injunction shall not relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy by injunction shall be in addition to any criminal liability.

(7)(a) Unlicensed practice of a profession or operating a business for which a license is required by the chapters specified in RCW 18.130.040, unless otherwise exempted by law, constitutes a gross misdemeanor for a single violation.

(b) Each subsequent violation, whether alleged in the same or in subsequent prosecutions, is a class C felony punishable according to chapter 9A.20 RCW.
(8) All fees, fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be remitted to the health professions account.

NEW SECTION. Sec. 3. A new section is added to chapter 18.130 RCW to read as follows:

(1) A person who provides health services and complies with the requirements of subsection (3) of this section is not in violation of any provision of this chapter relating to the unlicensed practice of a health profession unless the person engages in any of the following activities without a proper license:

(a) Conducts surgery or any other procedure on another person that severs or penetrates the tissues of human beings;

(b) Administers or prescribes x-ray radiation to another person;

(c) Prescribes or administers legend drugs or controlled substances to another person;

(d) Recommends the discontinuance of legend drugs or controlled substances prescribed by an appropriately licensed practitioner;

(e) Willfully diagnoses and treats a physical or mental condition of any person under circumstances or conditions that cause or create a risk of great bodily harm, serious physical or mental illness, or death;

(f) Sets fractures;

(g) Treats lacerations or abrasions through electrotherapy; or

(h) Holds out, states, indicates, advertises, or implies to a client or prospective client that he or she holds a license to practice any health care profession that he or she does not have.

(2) A person who advertises any services that are not prohibited by subsection (1) of this section shall disclose in the advertisement that he or she is not licensed by the state as a health care provider.

(3) A person who provides services under subsection (1) of this section shall, prior to providing those services, do the following:

(a) Disclose to the client in a written statement using plain language the following:

(i) That he or she is not a licensed physician;

(ii) That the treatment is alternative or complementary to health care services requiring a license by the state;
(iii) That the services to be provided do not require a license by the state;

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

(v) The theory of treatment upon which the services are based; and

(vi) His or her education, training, experience, and other qualifications regarding the services to be provided; and

(b) Obtain a written acknowledgment from the client stating that he or she has been provided with the information described in this subsection (3). The client must be provided with a copy of the written acknowledgment. The person providing the service must retain a copy of the signed written acknowledgment for a period of three years.

(4) The information required by subsection (3) of this section must be provided in a language that the client understands.

(5) Nothing in this section may be construed to:

(a) Affect the scope of practice of licensed physicians and surgeons; or

(b) Limit the right of any person to seek relief for negligence or any other civil remedy against a person providing services subject to the requirements of this section.

NEW SECTION. Sec. 4. This act takes effect July 1, 2004.

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