

A8733 Benedetto,,,,,,,,, No Same as

Education Law

TITLE....Enacts the "complementary and alternative health freedom of access act"

05/29/07 referred to education

01/09/08 referred to education

BENEDETTO

Ren Title 9 Art 170 SS9001 - 9003 to be Title 10 Art 180 SS80001 - 10003, add Title 9 Art 170 SS9001 - 9010, Ed L; amd S413, Soc Serv L

Enacts the "complimentary and alternative health freedom of access act"; relates to complementary and alternative health care.

STATE OF NEW YORK

8733

2007-2008 Regular Sessions

IN ASSEMBLY

May 29, 2007

Introduced by M. of A. BENEDETTO -- read once and referred to the
Committee on Education

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

The People of the State of New York, represented in Senate and Assem-
bly, 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 § 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 § 3. The education law is amended by adding a new title 9 to read as
7 follows:

TITLE 9

COMPLEMENTARY AND ALTERNATIVE CARE

10 Article 170. Complementary and alternative care

ARTICLE 170

COMPLEMENTARY AND ALTERNATIVE CARE

13 Section 9001. Introduction.

14 9002. Definitions.

15 9003. Treatment of minors.

16 9004. State office of nonlicensed complementary and alternative
17 health care practice.

18 9005. Data.

19 9006. Exchange of information.

20 9007. Prohibited conduct.

21 9008. Disciplinary actions.

22 9009. Additional remedies.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD13301-01-7

9010. Complementary and alternative health care client bill of rights.

§ 9001. Introduction. Notwithstanding any inconsistent provision of law, this article protects individuals' freedom of access to complementary and alternative health care information and treatments, and access to nonlicensed complementary and alternative health care practitioners of their choice. The legislature intends for the consumer of health care services to have freedom of choice of health care modality and health care practitioner; it intends to protect consumers by requiring disclosure by the practitioner to the client; and it intends that with respect to practitioners there not be scope of practice definitions or restrictions, standards or practice or educational credentials imposed or enforced by the state. It intends that this article shall provide exclusive jurisdiction over nonlicensed complementary and alternative health care practitioners.

§ 9002. Definitions. For the purposes of this article:

1. "Commissioner" means the commissioner of health or his or her designee.

2. "Department" means the department of health.

3. "Complementary and alternative health care client" means an individual who receives services from a nonlicensed complementary and alternative health care practitioner.

4. "Complementary and alternative health care practices" means the broad domain of complementary and alternative healing methods and treatment including: acupressure; Asian healing practices; anthroposophy; aroma therapy; ayurveda; body-mind centering; cranial sacral therapy; culturally traditional healing practices; detoxification practices and therapies; energetic healing; flower essences; folk practices; gerson therapy; healing practices utilizing food, food supplements, nutrients and physical forces of heat, cold, water, color, touch and light; healing-related kinesiology; healing touch; hellerwork; herbology or herbalism; homeopathy; iridology; jin shin therapy; mind-body healing practices; naturopathy; polarity therapy; qi gong; reflexology; reiki; rolfing; shiatsu; trager approach; somatic practices of movement therapy; structural integration; touch for health; tuina; **yoga**; or any combination of such practices.

(a) Complementary and alternative health care practices shall not include: surgery; x-ray radiation; administering or dispensing legend drugs and controlled substances; practices that invade the human body by puncture of the skin; setting fractures; stroking, kneading, tapping, or vibrating with hands or vibrator the muscular structure of the body for the purpose of improving muscle tone or circulation; or the manipulation or adjustment of the spine.

(b) Complementary and alternative health care practices shall not include providing a medical diagnosis or recommending the discontinuance of legend drugs prescribed by a licensed health care practitioner. Notwithstanding any other provision of law, a nonlicensed 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 nonlicensed 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.

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 nonlicensed complementary and alternative health
12 care practice" or "state office" means the state office of nonlicensed
13 complementary and alternative health care practice established within
14 the department.

15 6. "Nonlicensed complementary and alternative health care practition-
16 er" 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 state office of nonli-
39 censed complementary and alternative health care practice. A health care
40 practitioner licensed or registered by the commissioner of education or
41 a health-related licensing board created under title eight of this chap-
42 ter who holds himself or herself out to the public as a licensed practi-
43 tioner while practicing and providing complementary and alternative
44 health care services shall for all purposes be regulated by and be under
45 the jurisdiction of his or her applicable health-related licensing board
46 or regulatory agency.

47 § 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 law.

52 § 9004. State office of nonlicensed complementary and alternative
53 health care practice. 1. The state office of nonlicensed 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 nonlicensed complementary and alternative

1 health care practitioners for violations of prohibited conduct, as
2 defined in 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 nonlicensed complementary and alternative health care practices or the
7 practitioners thereof, or which require or tend to require registration
8 of nonlicensed complementary and alternative health care practitioners.

9 3. The state office shall employ investigators who shall investigate
10 any complaints made against a nonlicensed 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 a resolution of the case by the investigator is not possi-
18 ble, the investigator shall recommend to the commissioner the
19 disciplinary 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 prac-
53 tice 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.

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 nonlicensed complementary and
12 alternative health care practitioners within the commissioner's jurisdic-
13 tion. Each complaint filed with the state office shall be investi-
14 gated.

15 6. A nonlicensed 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 investi-
23 gation; 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 prac-
26 titioner 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 nonlicensed 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 a nonli-
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 nonlicensed 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 § 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 nonlicensed 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 nonli-
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:

1 (a) data on a complementary and alternative health care client;
2 (b) data on a complainant, except when the nonlicensed 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 nonlicensed 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, and
13 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 § 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 nonlicensed
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 nonlicensed 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 § 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 nonlicensed complementary and alternative health care prac-
55 titioner. The following conduct shall be prohibited and shall be grounds
56 for disciplinary action:

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 patient, 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 nonlicensed complementary and alternative health care practitioner with-
22 in 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 dependence 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) Engaging in abusive or fraudulent billing practices, including
53 violations of the federal medicare and medicaid laws or state medical
54 assistance laws.

55 (m) Obtaining money, property, or services from a complementary and
56 alternative health care client, other than reasonable fees for services

1 provided to the client, through the use of undue influence, harassment,
2 duress, deception, or fraud.

3 (n) Undertaking or continuing a professional relationship with a
4 complementary and alternative health care client in which the objectiv-
5 ity of the nonlicensed complementary and alternative health care practi-
6 tioner would be impaired.

7 (o) Failure to provide a complementary and alternative health care
8 client with a copy of the client bill of rights or violation of any
9 provision of the client bill of rights.

10 (p) Violating any order issued by the commissioner.

11 (q) Failure to comply with any provision of this article.

12 (r) Revocation, suspension, restriction, limitation or other discipli-
13 nary action against any health care license, certificate, registration
14 or right to practice of the nonlicensed complementary and alternative
15 health care practitioner in this or another state or jurisdiction for
16 offenses that would be subject to disciplinary action in this state or
17 failure to report to the state board that charges regarding the practi-
18 tioner's license, certificate, registration or right of practice have
19 been brought in this or another state or jurisdiction unless otherwise
20 ordered by the commissioner.

21 2. In disciplinary actions alleging a violation of paragraph (a), (b)
22 or (f) of subdivision one of this section a copy of the judgment or
23 proceeding under the seal of the court administrator or of the adminis-
24 trative agency that entered the same is admissible into evidence without
25 further authentication and constitutes prima facie evidence of its
26 contents.

27 3. (a) If the commissioner has probable cause to believe that a nonli-
28 censed complementary and alternative health care practitioner has
29 engaged in conduct prohibited by paragraph (f), (g), (h) or (i) of
30 subdivision one of this section, the commissioner may issue an order
31 directing the practitioner to submit to a mental or physical examination
32 or chemical dependency evaluation. A nonlicensed complementary and
33 alternative health care practitioner affected under this paragraph shall
34 at reasonable intervals be given an opportunity to demonstrate that the
35 practitioner can resume the provision of complementary and alternative
36 health care practices with reasonable safety to clients. In any proceed-
37 ing under this paragraph, neither the record of proceedings nor the
38 orders entered by the commissioner shall be used against a nonlicensed
39 complementary and alternative health care practitioner in any other
40 proceeding.

41 (b) In addition to ordering a physical or mental examination or chemi-
42 cal dependency evaluation, the commissioner may, notwithstanding section
43 eighteen of the public health law or any other law limiting access to
44 medical or other health data, obtain medical data and health records
45 relating to a nonlicensed complementary and alternative health care
46 practitioner without the practitioner's consent if the commissioner has
47 probable cause to believe that a practitioner has engaged in conduct
48 prohibited by paragraph (f), (g), (h) or (i) of subdivision one of this
49 section. The medical data may be requested from a provider, as defined
50 in subdivision two of section eighteen of the public health law, an
51 insurance company or a governmental agency. A provider, insurance compa-
52 ny or governmental agency shall comply with any written request of the
53 commissioner under this subdivision and shall not be liable in any
54 action for damages for releasing the data requested by the commissioner
55 if the data is released pursuant to a written request under this subdivi-
56 vision, unless the information is false and the person or organization

1 giving the information knew or had reason to believe the information was
2 false. Information obtained under this subdivision is confidential
3 information under section eighteen of the public health law.

4 § 9008. Disciplinary actions. 1. Forms of disciplinary action. When
5 the commissioner finds that a nonlicensed complementary and alternative
6 health care practitioner has violated any provision of this article, the
7 commissioner may take one or more of the following actions, only against
8 the individual practitioner:

9 (a) revoke the right to practice;

10 (b) suspend the right to practice, for a stated period of time;

11 (c) impose limitations or conditions on the practitioner's provision
12 of complementary and alternative health care practices, impose rehabili-
13 tation requirements, or require practice under supervision;

14 (d) impose a civil penalty not exceeding five hundred dollars for each
15 separate violation; and

16 (e) censure or reprimand the practitioner.

17 2. Reinstatement. The commissioner may, in his or her discretion,
18 reinstate the right to practice and may impose any disciplinary measure
19 listed in subdivision one of this section.

20 3. Automatic suspension. The right of a nonlicensed complementary and
21 alternative health care practitioner to practice shall be automatically
22 suspended if:

23 (a) a guardian of a nonlicensed complementary and alternative health
24 care practitioner is appointed by order of a court under article nine of
25 the mental hygiene law; or

26 (b) the practitioner is committed by order of a court pursuant to
27 article nine of the mental hygiene law. The right to practice shall
28 remain suspended until the practitioner is restored to capacity by a
29 court and, upon petition by the practitioner, the suspension is termi-
30 nated by the commissioner after a hearing or upon agreement between the
31 commissioner and the practitioner.

32 4. Licensed or regulated practitioners. If a practitioner investigated
33 under this section is licensed or registered by the commissioner or a
34 health-related licensing board or is subject to the jurisdiction of the
35 commissioner under subparagraph (ii) of paragraph (a) of subdivision six
36 of section nine thousand two of this article, and the commissioner
37 determines that the practitioner has violated any provision of this
38 article, the commissioner, in addition to taking disciplinary action
39 under this section, shall, if the practitioner is licensed or registered
40 in another capacity by a health-related licensing board, report his or
41 her findings under this section, and may make a nonbinding recommenda-
42 tion that the board take further action against the practitioner in that
43 capacity.

44 § 9009. Additional remedies. 1. (a) The commissioner may issue a cease
45 and desist order to stop a person from violating or threatening to
46 violate a statute or rule, regulation or order which the commissioner
47 has issued or is empowered to enforce. The cease and desist order shall
48 state the reason for its issuance and give notice of the person's right
49 to request a hearing under this article. If, within fifteen days of
50 personal service of the order, the subject of the order fails to request
51 a hearing in writing, the order shall be the final order of the commis-
52 sioner and shall not be subject to review by a court or agency.

53 (b) A hearing shall be initiated by the state office no later than
54 thirty days of the date of the state board's receipt of a written hear-
55 ing request. Within thirty days of receipt of the administrative law
56 judge's report, the commissioner shall issue a final order modifying,

1 vacating or making permanent the cease and desist order as the facts
2 require. The final order shall remain in effect until modified or
3 vacated by the commissioner.

4 (c) When a request for a stay accompanies a timely hearing request,
5 the commissioner may, in his or her discretion, grant the stay. If the
6 commissioner does not grant a requested stay, he or she shall refer the
7 request to the state office within three working days of receipt of the
8 request. Within ten days after receiving the request from the commis-
9 sioner, an administrative law judge shall issue a recommendation to
10 grant or deny the stay. The commissioner shall grant or deny the stay
11 within five days of receiving the administrative law judge's recommenda-
12 tion.

13 (d) In the event of noncompliance with a cease and desist order, the
14 commissioner may institute a proceeding in the supreme court to obtain
15 injunctive relief or other appropriate relief, including a civil penalty
16 payable to the state board not exceeding one thousand dollars for each
17 separate violation.

18 2. In addition to any other remedy provided by law, including the
19 issuance of a cease and desist order under subdivision one of this
20 section, the commissioner may in his or her own name, bring an action in
21 the supreme court for injunctive relief to restrain a nonlicensed
22 complementary and alternative health care practitioner from a violation
23 or threatened violation of any law, or rule, regulation or order which
24 the commissioner is empowered to regulate, enforce or issue. A temporary
25 restraining order shall be granted in the proceeding if continued activ-
26 ity by the practitioner would create a serious risk of imminent harm to
27 complementary and alternative health care clients. The commissioner need
28 not show irreparable harm.

29 3. Engaging in complementary and alternative health care practices
30 pursuant to this article shall not constitute a crime.

31 4. Notwithstanding any other provision of law, nonlicensed complemen-
32 tary and alternative health care practitioners shall be subject to the
33 exclusive control, jurisdiction and regulation of the provisions of this
34 article, and shall not be subject to the jurisdiction or control of, nor
35 subject to disciplinary proceedings of any other administrative agency,
36 board or regulatory body.

37 § 9010. Complementary and alternative health care client bill of
38 rights. 1. All nonlicensed complementary and alternative health care
39 practitioners shall provide to each complementary and alternative health
40 care client, prior to providing treatment, a written copy of the comple-
41 mentary and alternative health care client bill of rights. Reasonable
42 accommodations shall be made for those clients who cannot read or who
43 have communication impairments and those who do not read or speak
44 English. The complementary and alternative health care client bill of
45 rights shall include the following:

46 (a) the name, complementary and alternative health care title, busi-
47 ness address, and telephone number of the nonlicensed complementary and
48 alternative health care practitioner;

49 (b) the degrees, training, experience or other qualifications of the
50 practitioner regarding the complementary and alternative health care
51 being provided, followed by the following statement in bold print: "THE
52 STATE OF NEW YORK HAS NOT ADOPTED ANY EDUCATIONAL AND TRAINING STANDARDS
53 FOR NONLICENSED COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONERS.
54 THIS STATEMENT OF CREDENTIALS IS FOR INFORMATION PURPOSES ONLY.

55 UNDER THE NEW YORK STATE LAW, A NONLICENSED COMPLEMENTARY AND ALTERNA-
56 TIVE HEALTH CARE PRACTITIONER MAY NOT PROVIDE A MEDICAL DIAGNOSIS OR

1 RECOMMEND DISCONTINUANCE OF A LEGEND DRUG PRESCRIBED BY A LICENSED
2 PHYSICIAN OR HEALTH CARE PRACTITIONER. HOWEVER A NONLICENSED COMPLEMEN-
3 TARY AND ALTERNATIVE HEALTH CARE PRACTITIONER MAY PROVIDE PERSONAL
4 CONSULTATIONS AND SCREENINGS BASED UPON THE PRACTITIONER'S METHOD OF
5 COMPLEMENTARY AND ALTERNATIVE CARE; MAY MAKE ASSESSMENTS OF THE CLIENT'S
6 HEALTH PROBLEMS AND CONCERNS AS THEY RELATE TO THE NONLICENSED COMPLE-
7 MENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONER'S METHODS OF PRACTICE;
8 AND MAY MAKE RECOMMENDATIONS FOR THE USE OF THE COMPLEMENTARY AND ALTER-
9 NATIVE HEALTH CARE PRACTICE METHODS OR TREATMENTS IN ACCORDANCE WITH THE
10 CONSULTATION, SCREENING AND ASSESSMENTS OF THE PRACTITIONER.

11 IF A CLIENT DESIRES A DIAGNOSIS FROM A LICENSED PHYSICIAN, DENTIST OR
12 CHIROPRACTOR, OR SERVICES FROM A PHYSICIAN, CHIROPRACTOR, NURSE, PHYS-
13 ICAL THERAPIST, RESPIRATORY THERAPIST, PODIATRIST, OPTOMETRIST, OCCUPA-
14 TIONAL THERAPIST, DIETITIAN, NUTRITIONIST, ACUPUNCTURE PRACTITIONER,
15 ATHLETIC TRAINER OR ANY OTHER TYPE OF HEALTH CARE PROVIDER, THE CLIENT
16 MAY SEEK SUCH SERVICES AT ANY TIME.";

17 (c) the name, business address and telephone number of the practition-
18 er's supervisor, if any;

19 (d) notice that a complementary and alternative health care client has
20 the right to file a complaint with the practitioner's supervisor, if
21 any, and the procedure for filing complaints;

22 (e) the name, address and telephone number of the state office of
23 nonlicensed complementary and alternative health care practice and
24 notice that a client may file complaints with the state board;

25 (f) the practitioner's fees per unit of service, the practitioner's
26 method of billing for such fees, the names of any insurance companies
27 that have agreed to reimburse the practitioner, or health maintenance
28 organizations with whom the practitioner contracts to provide service,
29 whether the practitioner accepts medicare, medical assistance or general
30 assistance medical care, and whether the practitioner is willing to
31 accept partial payment, or to waive payment, and in what circumstances;

32 (g) a statement that the client has a right to reasonable notice of
33 changes in services or charges;

34 (h) a brief summary, in plain language, of the theoretical approach
35 used by the practitioner in providing services to clients;

36 (i) notice that the client has a right to complete and current infor-
37 mation concerning the practitioner's assessment and recommended service
38 that is to be provided, including the expected duration of the service
39 to be provided;

40 (j) a statement that clients may expect courteous treatment and to be
41 free from verbal, physical, or sexual abuse by the practitioner;

42 (k) a statement that client records and transactions with the practi-
43 tioner are confidential, unless release of these records is authorized
44 in writing by the client, or otherwise provided by law;

45 (l) a statement of the client's right to be allowed access to records
46 and written information from records in accordance with section eighteen
47 of the public health law;

48 (m) a statement that other services may be available in the community,
49 including where information concerning such services is available;

50 (n) a statement that the client has the right to choose freely among
51 available practitioners and to change practitioners after services have
52 begun, within the limits of health insurance, medical assistance or
53 other health programs;

54 (o) a statement that the client has a right to coordinated transfer
55 when there will be a change in the provider of services;

1 (p) a statement that the client may refuse services or treatment,
2 unless otherwise provided by law; and

3 (q) a statement that the client may assert the client's rights without
4 retaliation.

5 2. Prior to the provision of any service, a complementary and alterna-
6 tive health care client must sign a written statement attesting that the
7 client has received the complementary and alternative health care client
8 bill of rights.

9 § 4. Subdivision 1 of section 413 of the social services law, as sepa-
10 rately amended by chapters 402 and 676 of the laws of 2002, is amended
11 to read as follows:

12 1. The following persons and officials are required to report or cause
13 a report to be made in accordance with this title when they have reason-
14 able cause to suspect that a child coming before them in their profes-
15 sional or official capacity is an abused or maltreated child, or when
16 they have reasonable cause to suspect that a child is an abused or
17 maltreated child where the parent, guardian, custodian or other person
18 legally responsible for such child comes before them in their profes-
19 sional or official capacity and states from personal knowledge facts,
20 conditions or circumstances which, if correct, would render the child an
21 abused or maltreated child: any physician; registered physician assist-
22 ant; surgeon; medical examiner; coroner; dentist; dental hygienist;
23 osteopath; optometrist; chiropractor; podiatrist; resident; intern;
24 psychologist; registered nurse; social worker; emergency medical techni-
25 cian; licensed creative arts therapist; licensed marriage and family
26 therapist; licensed mental health counselor; licensed psychoanalyst;
27 hospital personnel engaged in the admission, examination, care or treat-
28 ment of persons; a Christian Science practitioner; nonlicensed comple-
29 mentary and alternative health care practitioner; school official;
30 social services worker; day care center worker; provider of family or
31 group family day care; employee or volunteer in a residential care
32 facility defined in subdivision seven of section four hundred twelve of
33 this title or any other child care or foster care worker; mental health
34 professional; substance abuse counselor; alcoholism counselor; peace
35 officer; police officer; district attorney or assistant district attor-
36 ney; investigator employed in the office of a district attorney; or
37 other law enforcement official. Whenever such person is required to
38 report under this title in his or her capacity as a member of the staff
39 of a medical or other public or private institution, school, facility or
40 agency, he or she shall immediately notify the person in charge of such
41 institution, school, facility or agency, or his or her designated agent,
42 who then also shall become responsible to report or cause reports to be
43 made. However, nothing in this section or title is intended to require
44 more than one report from any such institution, school or agency. At the
45 time of the making of a report, or at any time thereafter, such person
46 or official may exercise the right to request, pursuant to paragraph (A)
47 of subdivision four of section four hundred twenty-two of this title,
48 the findings of an investigation made pursuant to this title or section
49 45.07 of the mental hygiene law.

50 § 5. This act shall take effect on the one hundred eightieth day after
51 it shall have become a law; provided, however, that any rules or regu-
52 lations necessary for the timely implementation of the provisions of
53 this act shall be promulgated on or before such effective date.

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)**

BILL NUMBER: A8733

SPONSOR: Benedetto| | | | | | | | | |

TITLE OF BILL: An act to amend the education law and the social services law, in relation to the "complementary and alternative health freedom of access act"

PURPOSE OR GENERAL IDEA OF BILL: This bill allows New York State residents access to low-risk alternative therapies and practitioners such as acupuncture, aroma therapy, homeopathy, naturopathy, polarity therapy, and culturally traditional healing. This legislation also provides consumers of such therapies with necessary protection and information.

These therapies are "complementary" to licensed medical care, and its practitioners do not diagnose, prescribe, or engage in practices which are either dangerous or are otherwise licensed, such as chiropractic, acupuncture, or massage. Such practitioners will not be licensed, or subject to educational standards, or to scope of practice restrictions. This bill requires practitioners to let prospective clients know what their training, is, how their therapy works, what it will cost, and what can be expected from it.

SUMMARY OF SPECIFIC PROVISIONS: Title 9 and article 170 of the education law are renumbered title 10 and article 180, and a new title 9 is added:

Section 9001 Introduction.

9002 defines key terms.

9003 relates to the treatment and protection of minors.

9004 establishes the State Office of Non licensed Complementary and Alternative Health Care Practice.

9005 protects the privacy of alternative and complementary health care clients.

9006 establishes procedures for the exchange of information relating to complaints.

9007 outlines prohibited conduct.

9008 outlines disciplinary actions in cases of prohibited conduct, as outlined in section 9007. 9009 outlines additional remedies.

9010 establishes the "client bill of rights."

JUSTIFICATION: Studies organized by the National Institute of Health have shown that a large percentage of citizens utilize one or more forms of alternative and complementary therapy. There exist a plethora of alternative and complementary therapies currently practiced in New York State, with new forms being regularly added. Regulation is needed to ensure individuals are provided with informed therapy choices free of practitioner abuse.

Licensing such a diverse collection of low-risk therapies is neither practical, nor necessary. Suppression of these therapies is also not a viable solution. Many citizens feel that use of alternative and complementary therapies, along with the support of their licensed health care, allows them to maintain good health and take responsibility for their own well-being. These therapies are low-risk, and do not involve diagnosis, prescribing drugs, piercing the skin, or spinal manipulation. They are complementary to and not a replacement for standard western medicine. Denying access to alternative and complementary therapy would have a negative impact on choice of health care in the state of New York.

PRIOR LEGISLATIVE HISTORY: New bill

FISCAL IMPLICATIONS: Creation of a State Office of Non licensed Complementary and Alternative Health Care Practice within the NY State Dept. of Health to investigate complaints and enforce disciplinary actions against practitioners for violations of prohibited conduct, as defined in the bill.

EFFECTIVE DATE: 180 days after becoming law.

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