

HOUSE No. 2125

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act providing for consumer access to healing arts..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 1. Chapter 140, Section 51 of the General Laws is hereby amended by inserting
2 after the first paragraph the following:-

3 “Section 2. Unlicensed Practice of the Healing Arts.-

4 Popular Name.-

5 This section shall be known by the popular name "The Health Freedom of Access Act."

6 Findings and Intent.-

7 Because this state finds that the unlicensed practice of health care services is suitable and
8 desirable under certain circumstances for the public's health and welfare, the Legislature intends
9 to remove barriers to the public's access to unlicensed practitioners providing health care services
10 with appropriate consumer protections, as provided in this section.

11 Definition.-

As used in this section, "health care services provided by unlicensed practitioners" means the broad domain of health care and healing therapies and methods which are not prohibited by subsection (4) of this Act and which are provided by a person who is not licensed, certified, or registered, as a health care practitioner as defined in Chapter 140.

Prohibited Acts.-

Notwithstanding any other provision of law, a person who provides health care services in accordance with this section, but who is not licensed, certified, or registered by this state as a health care practitioner as defined in Chapter 140, shall not be in violation of Chapter 93A or any other health care professional practice act, unless the person:

Performs surgery or any other procedure that harmfully punctures the skin of a person;

Prescribes or administers X-ray radiation to any person;

Prescribes or administers a legend drug or controlled substance or a legend medical device or anesthesia that is prescription only to any person;

Recommends to any person the discontinuance of a legend drug or controlled substance prescribed by a licensed health care practitioner;

Performs a chiropractic adjustment of the articulations of joints or the spine;

Represents that the practice is massage therapy;

Willfully provides a diagnosis and treatment to a person with a physical or mental health condition which directly causes that person to have significant bodily harm, serious physical, mental illness, or death; or

32 Holds out, states, indicates, advertises, or implies to any person that he or she is a health
33 care practitioner licensed, certified, or registered, by this state.

34 A person who violates any provision of this subsection is subject to the administrative,
35 civil, and criminal penalties specified in Chapter 93A, including, but not limited to, court costs,
36 reasonable attorney's fees, and the reasonable costs of investigation and prosecution.

37 This act does not apply to, control, or prevent any health care practice from being
38 practiced if it is already exempt from professional practice acts or state law, nor does this act
39 apply to, control, or prevent a person from providing health care services who is already exempt
40 from professional practice acts, as defined in, or under state law.

41 Disclosure and Consent.-

42 Any person providing health care services who is not licensed, certified, or registered by
43 this state as a health care practitioner as defined in Chapter 112 shall, prior to providing such
44 services, disclose to the client in a plainly worded written statement:

45 The fact that he or she is not licensed, certified, or registered, as a health care practitioner
46 by this state.

47 The nature of the health care services to be performed.

48 The degrees, training, experience, credentials, or other qualifications of the practitioner
49 regarding the health care services being provided, including a statement of the provision and
50 limits of liability insurance held by the practitioner.

51 Before providing health care services to a client such practitioner must obtain a written
52 acknowledgment from the client stating that he or she has been provided with the information

described in this subsection. The client shall be provided with a copy of this written acknowledgment and it must be maintained for 2 years by the person providing the services.

Any advertisement for such health care services must disclose that he or she is not licensed, certified, or registered, as a health care practitioner by this state.

A person who violates any provision of this subsection is subject to the administrative and civil penalties specified in Chapter 93A, Sec. 4, including, but not limited to, court costs, reasonable attorney's fees, and the reasonable costs of investigation and sanctions.

Section 3. Licensed Practitioner Use of Unlicensed Health Arts.-

Nothing in this act shall prohibit any licensed health practitioner in the Commonwealth from performing any health art regulated by this act, providing that such practice is consistent with the scope of practice of that particular licensee and can be shown to be of value to the patient in the judgment of the practitioner.

No licensed health practitioner can be penalized for consulting with or referring to unlicensed health arts practitioners for the benefit of the patient.