Energy balancing services

Number: INFORMAL

Date: December 13, 2006

Representative Rene Garcia
3814 West 12th Avenue
Hialeah, Florida 33012

Dear Representative Garcia:

You have asked for my assistance in determining whether Florida law allows the delivery of energy balancing services for compensation by a person who is not a health care practitioner as defined by section 456.001(4), Florida Statutes. Attorney General Crist has asked me to respond to your letter.

Section 456.41, Florida Statutes, recognizes complementary or alternative health care treatments (CATH care). As expressed in that statute:

"It is the intent of the Legislature that citizens be able to make informed choices for any type of health care they deem to be an effective option for treating human disease, pain, injury, deformity, or other physical or mental condition. It is the intent of the Legislature that citizens be able to choose from all health care options, including the prevailing or conventional treatment methods as well as other treatments designed to complement or substitute for the prevailing or conventional treatment methods. It is the intent of the Legislature that health care practitioners be able to offer complementary or alternative health care treatments with the same requirements, provisions, and liabilities as those associated with the prevailing or conventional treatment methods." (Section 456.41(1), Fla. Stat.)

Thus, the Legislature appears to have expressed its intent that alternative or complementary health care be provided by health care practitioners and be subject to the same "requirements, provisions, and liabilities" as conventional treatment methods.

As used in section 456.41, Florida Statutes, a "health care practitioner" is one within the definition supplied in section 456.001(4). That statute provides:

“'Health care practitioner' means any person licensed under chapter 457 (acupuncture); chapter 458 (medical practice); chapter 459 (osteopathic medicine); chapter 460 (chiropractic medicine): chapter 461 (podiatric medicine); chapter 462 (naturopathy); chapter 463 (optometry); chapter 464 (nursing); chapter 465 (pharmacy); chapter 466 (dentistry, dental hygiene, and dental laboratories); chapter 467 (midwifery); part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468 (speech-language pathology and audiology, nursing home administration, occupational therapy, respiratory therapy, dietetics and nutrition practice, athletic trainers, and orthotics, prosthetics, and pedorthics); chapter 478 (electrolysis); 480 (massage practice); part III or part IV of chapter 483 (clinical laboratory personnel and medical physicists); chapter 484 (dispensing of optical devices and hearing aids); chapter 486 (physical therapy practice);

chapter 490 (psychological services); or chapter 491 (clinical, counseling, and psychotherapy services)."

These health professionals are regulated by the state and subject to the provisions of their practice acts.

In an effort to advise you more fully, this office has contacted the Florida Department of Health to solicit their input on this matter. Ms. Donna Erlich, Assistant General Counsel for the department, has stated that it is the position of the department that "[t]he plain meaning of the statutory section clearly denotes that unlicensed persons, in the State of Florida, cannot offer CATH therapies." Based on the statutory and regulatory authority of the department in this area, the Attorney General's Office will defer to the department on the issue of regulation of health professionals. I am enclosing a copy of Ms. Ehrlich's letter for your consideration.

Thank you for contacting the Florida Attorney General’s Office to express your concerns. In the event the Legislature wishes to revisit this area of the law, the Attorney General's Office will be happy to assist you within the scope of our authority.

Sincerely,

Gerry Hammond
Assistant Attorney General

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Enc. Letter from Ehrlich, dated May 2, 2006.