

1995

Consumers and alternative health care

Follow this and additional works at: <http://epublications.bond.edu.au/nle>

Recommended Citation

(1995) "Consumers and alternative health care," *The National Legal Eagle*: Vol. 1: Iss. 1, Article 1.
Available at: <http://epublications.bond.edu.au/nle/vol1/iss1/1>

This Journal Article is brought to you by the Faculty of Law at ePublications@bond. It has been accepted for inclusion in The National Legal Eagle by an authorized administrator of ePublications@bond. For more information, please contact [Bond University's Repository Coordinator](#).

CONSUMERS AND ALTERNATIVE HEALTH CARE

Since ancient times, natural therapies have been practised to prevent and treat health problems. For at least 4,000 years, the Chinese have practised acupuncture. The Chinese and other ancient cultures used herbs for medicinal reasons. Similarly, chiropractors, naturopaths and homeopaths are known to have existed for several thousand years. Such therapies were the social and cultural means by which people cared for their health.

Modern science, however, brought modern medicine. Surgery and manufactured drug therapies achieved such dramatic results that, in much of the Western world, the use of natural therapies declined. Eventually, we began to think of such such therapies as being 'alternative' to the norm. The terms, 'alternative medicine' and 'alternative health care' came into use.

In the last few decades, the practice of natural therapies has again become popular. As a result, people seeking to prevent or treat an illness in Australia today can choose from among medical practitioners and practitioners of a wide range of natural therapies which include:

- acupuncture;
- Botanical herbal medicine;
- Chinese herbal medicine;
- chiropractic;
- naturopathy;
- colour therapy;
- homeopathy;
- iridology;
- osteopathy;
- remedial massage;
- colour therapy.

In the face of such change, the issues of consumer protection and the registration and regulation of natural therapy practices arise.

CONSUMER PROTECTION

To date, there has been little public concern about harm caused

to consumers of natural therapies. This is perhaps because, apart from a few cases sensationalised in the media, few complaints have been made to government bodies such as the New South Wales Health Care Complaints Commission.

One reason for the low level of complaint may be that health complaints bodies do not have jurisdiction over such complaints and can only refer them to the relevant therapy's certifying board, if one exists. Another may be because alternative medicine is less physically intrusive, by and large, than modern medicine.

The main concern expressed about natural therapies is that they will cause consumers to delay seeking 'proper' medical treatment. There is no strong evidence that public health has been placed at risk by the fact that natural therapists are not subject to greater legal control.

As with other goods and services, however, the issue of consumer protection does arise. With alternative health care, as with traditional medicine, the public should be protected from unqualified, poorly qualified or fraudulent practitioners. Information should also be available so that consumers can make informed choices.

EXERCISE

Legal studies students will be aware that there are a range of common law and statutory remedies available to consumers of goods and services who suffer harm as a result of using those goods and services.

IN THE CASE OF JOHN

John experienced 'headache, neck and shoulder pain and general malaise after a massage given by a naturopath. This resulted in him being absent from work for 2 days and several trips to a physio-therapist.

IN THE CASE OF JAN

Jan was prescribed Chinese herbal medicine by a herbalist. She had an allergic reaction to the herbs and was so ill she had to take 4 days off work.

IN THE CASE OF JACK

Jack attended the Jupiter School of Suggestology several nights a week to overcome stress at work. After several weeks he found that he was experiencing nightmares and night sweats which left him tired and unable to perform properly at work. He lost his job due to his poor performance.

Do you feel that John, Jan or Jack may have experienced a harm from their natural therapy?

If you have decided a harm has been caused, how might John, Jan or Jack seek compensation for the harm at law?



REGISTRATION

Compensation for harm, however, is only one side of the story, however. Consumer protection laws are also aimed at preventing harm. One way of ensuring that people who practice a trade or profession are properly qualified and reputable practitioners is to register them. At its simplest, this system involves a board or other body to maintain the register of practitioners and to monitor the qualifications and behaviour of the people on it. Consumers who use the services of registered practitioners can assume that they are at least properly qualified.

There has been a lot of debate about whether or not natural therapies should be registered. There are many practitioners and other people who argue that it is necessary. Others argue that it is not.

Registration can take a number of forms. One example of registration is professional registration, such as the registration of medical practitioners under the Medical Practitioners Act 1938 (NSW). The Act prescribes the profession's educational entry standards, mode of practice and self-discipline through peer review.

Another example is that of occupational licensing, which covers people like travel agents, motor vehicle dealers and general insurers. Legislation controlling these activities consists typically of stringent controls and a registration board made up of members from a variety of associated backgrounds but not exclusively from the industry concerned. The State can set educational or other qualifications to be met before a licence is granted and the government can control the activities of the licensee by the threat of withdrawal of the licence.

ARGUMENTS FOR:

public protection from unqualified, poorly qualified or fraudulent practitioners;

- the guarantee of a more uniform standard of practice;
- a mechanism for dealing with unethical practitioners;
- more public and professional

recognition for the profession and registered practitioners;

ARGUMENTS AGAINST:

- it is unnecessary as natural therapies do not pose any risk to public health or safety;
- government interference would introduce unnecessary and inappropriate restrictions on the practice of natural therapies. One of the strengths of natural therapists is their diversity of approach to individual clients and this would be hampered by registration which would impose government regulations regarding approaches which may be taken;
- * registration would limit the scope of practitioners. Chiropractors, for example, obtained registration at the cost of narrowing their practice. Their registration in New South Wales was on the basis that a medical doctor sit on the Chiro-



practic Board, that they do not call themselves 'doctor' and they do not have visitation rights in hospitals and treatments are not eligible for Medicare.

* registration means subordination by the medical profession. As the medical profession was the first to be registered it has achieved something of a monopoly over the health care field. This has allowed it to practise such strategies as subordination, limitation and exclusion of competitors.

Subordination has happened in midwifery and nursing, where the character and activities of the occupation are delegated by doctors.

Occupational limitation has occurred with dentistry, optometry and pharmacy where treatment has been restricted to specific parts of the body and specific areas of operation.

Exclusion is seen in the fight of the medical profession against the legitimisation of acupuncture.

It is argued that, for the medical profession to accept natural therapies, it would be necessary to water down and re-interpret them so that they lose their very 'alternative' nature.

* registration creates a self-centered and self-protecting interest group. Registration can create a monopoly which enables practitioners to control the supply and therefore prices of their services. Consumers would, therefore, face increasing costs and a reduction in the availability of services.

QUESTIONS

1. Would registration of natural therapies be an advantage or disadvantage for consumers?
2. Should registration be necessary before people are allowed to practise natural therapies?

REGULATION

Regulation can be achieved in a number of ways for example by:

- a government body;
- self-regulation;
- deregulation.

The regulation of an occupational group by a government body



is not uncommon.

There has, however, been an increasing demand and trend towards self-regulation.

The idea of self-regulation is not new. In the older and more traditional professions such as medicine and law, for example, the professional body had, until more recent years, unfettered power to admit members and prohibit non-members from carrying on the profession. With self regulation, the decision to grant or withhold a licence is not made by the government but by an industry body. The body is also responsible for the disciplining of members and the standard of their conduct.

Medicine and law are, however, no longer purely self regulating professions. There has, in recent decades been a move towards more government regulation. In New South Wales, for example, the Medical Board, which is a government instrumentality, controlled entry to the profession. Complaints can be made to the Medical Tribunal (Which has non-legal members) or the Professional Standards Committee.

Similarly, the Legal Profession Admission Board, a government instrumentality, decides who is to be admitted as a legal practitioner

but the Law Society and the Bar Association issue the practising certificates. A new Legal Services Commissioner deals with complaints about legal practitioners.

There has, however, been limited regulation, to date, of alternative therapies.

The Australian Traditional Medicine Society Limited (ATMS) represents thirty-three Australia wide natural therapy colleges, educational and professional groups. It advocates self-regulation with a Standards and Ethics Committee to protect consumers by setting standards for the training and education of practitioners and to deal with breaches of professional conduct.

Deregulation is a possible form of regulation. It refers to a situation where there is no government interference or forms of regulation other than market forces which ideally should ensure the best situation for the consumer.

EXERCISE

Outline what you consider would be the main arguments of practitioners for self-regulation and the advantages and disadvantages of self-regulation in terms of consumers.

Outline what you consider

would be the main problems for consumers with deregulation.

CONCLUSION

There is no question that natural therapies are becoming increasingly popular as an alternative or addition to traditional medicine. They have proven to be useful in the treatment of a range of conditions. The question is how best to protect consumers which means the issues of registration and regulation must be addressed.



Law Week will be commemorated from Sunday, 12 May to Saturday, 18 May.

Law Week's prime aim is to promote greater understanding within the community of the law, the legal system and the legal profession.

An interesting, informative, law-related education program of activities is offered for NSW schools in Law Week.

To obtain more information, please call the Law Week Co-ordinator on (02) 220 0287.