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Introduction to the book "Complementary Medicine : ethics and law"

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Complementary Medicine: Ethics and Law

by

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Foreword

First Edition

Although Australians spend many millions of dollars on complementary medicine, the legal and ethical role of complementary medicine practitioners to some extent remains clouded. Very little has been written about the topic in Australia. I often felt like a pioneer when researching the intricate statutory provisions and precedents that affect this sector of the health industry.

This book aims to provide students and practitioners with a good coverage of the important ethical and legal issues across all jurisdictions in a way they will find easy to access. I've suggested cautious practices with the primary aim being protecting the practitioner from legal liability and charges of professional misconduct. Practitioners will be better placed if they know the potential for liability and it is for them to decide whether to take a cautious or bolder course of action.

This book reflects the law as at 30 April 2000. I have incorporated at the last minute a discussion of the very recently passed *Chinese Medicine Registration Act 2000* (Vic), and new regulations on GST requirements for acupuncturists, traditional Chinese medicine practitioners and naturopaths. The progress of law reform on professional registration statutes is well underway throughout Australia. I am unable to await the often slow progress of law reform to take into account these potentially important changes. Hopefully, a second edition will permit this discussion to be incorporated.

I know you will find the contents of this book helpful and interesting.

Foreword

Second Edition

Since the first edition there have been some important developments in the common law and statute. The English case of *Shakoor v Situ* has provided some greater certainty in the appropriate test that should be applied to the actions of a complementary and medicine practitioner. As anticipated in the first edition we have witnessed some liberalization of the statutory provisions for registered health practitioners that may apply to unregistered health practitioners. In line with the review of health practitioner legislation as part of the Competition Code Review some restrictive provisions have been removed on some treatments in some states. These changes are reflected in the discussion of Scope of Practice in chapter 3. This new edition will include a more in depth of discussion of ethical issues in chapter 2. Recent amendments to *The Privacy Amendment (Private Sector) Act 2000* (Cth) now subjects the private health sector (including complementary medicine practitioners) to the provisions of the *Privacy Act 1988* (Cth). This reform will also be canvassed in chapter 2. Very recently legislation has been passed by a number of states pursuant to the Review of the Law of Negligence Report (the Ipp Report) that limit the liability of professionals in various ways. I have been able to incorporate these provisions in this edition although the full implications of these statutes await judicial consideration. I have included references where possible to internet sites and other sources should the reader wish to obtain more detail.

I trust this edition will be a significant improvement on the first edition. This book provides some important new information in a number of areas. Readers should always seek competent professional advice before taking steps that may have legal or ethical consequences. This book cannot provide the detailed advice that a professional lawyer, accountant or other professional may provide drawing on your particular circumstances.

Foreword

Third Edition

It is with pleasure that the third edition of this book is produced. Since the second edition the process of liberalization of the scope of practice provisions in relation to physiotherapy, chiropractic and osteopathy has been substantially completed. This has been for the benefit for therapeutic massage therapists and other practitioners that

provide manual therapies. For that reason Chapter 3 Scope of Practice required very substantial amendment and adjustment. Despite these changes the best protection for a practitioner is to ensure they stay within the standard scope of practice of their modality.

Another important process of change relates to the civil liability legislation passed in all jurisdictions. This process of law reform had just begun at the time of the second edition. If a complementary medicine practitioner is deemed a professional (this is a matter still to be determined – though not an issue for registered professionals) then the issue of negligence will be firmly based on peer opinion of what is appropriate professional practice. In addition, under the civil liability acts some protection for apologies or expressions of regret is provided though care is still required to ensure these statements are not admissible in any subsequent legal action.

In this edition additional mention has been made in relation to endangered species concerning the import and export of therapeutic goods; child abuse reporting; and prepayment plans and clinical justification of care for chiropractors.

I trust this edition provides further elucidation of this ever changing area of law and practice. Readers should always seek competent professional advice before taking steps that may have legal or ethical consequences. This book cannot provide the detailed advice that a professional lawyer, accountant or other professional may provide drawing on your particular circumstances.

I acknowledge the input in research, editing and writing made by my research assistant Julien Duvergier and the editing skills of Jane Hobler in the completion of this edition.

To my darling Elana and Matthew

Chapter 1:

Introduction

Successful professional practice requires technical, business and personal skills and an ability to deal with a rapidly changing profession, society and economy. Understanding where your modality fits into the health sector can help with these challenging requirements. This chapter offers a short overview of what complementary medicine is and how it is regulated.

The Ten Commandments of Professional Practice in this chapter summarises the most important themes of the book. By reading, understanding and integrating these principles into your day-to-day practice, you will earn the respect of your clients and colleagues and ensure more successful and enjoyable practice.

Action Plan

Investigate and appreciate your role and that of your modality in complementary medicine.

Read and understand the Ten Commandments of Professional Practice.

Understand that you are a professional.

1.1 What Is Complementary Medicine?

Looking at different approaches to the healing process can clarify how a practitioner fits into the health care industry and how he or she relates to other health professionals.

Terminology

Complementary medicine is that part of the health sector that relies primarily upon holistic, homoeopathic, traditional or natural therapies rather than an allopathic approach to medicine which characterises western or orthodox medicine.

This book is useful for all complementary medicine practitioners but will deal specifically with:

acupuncture	naturopathy
chiropractic	osteopathy
herbal medicine	therapeutic massage

homoeopathy traditional Chinese medicine

This book deals with a broad spectrum of modalities, and we need to refer to all of them. It is difficult to find a term that adequately covers all modalities, techniques or systems because they often exhibit contrasting philosophies and approaches. The term 'complementary medicine' will be used. This appears to provoke the least philosophical objection for the majority of modalities. Some may bridle at the suggestion that their modality is complementary to anything. Some will perceive their modality as all encompassing and complete in itself. Others will be relaxed with this terminology.

The term 'natural therapies' is accepted by some and is understood by many lay people, but some therapies are not particularly natural. The term 'alternative medicine' was considered, but this may unnecessarily differentiate it from orthodox medicine. Many modalities grew out of traditional medicine, so some reference to traditional medicine may be suggested. These modalities may have little in common with modalities of more recent birth.

The term 'complementary and alternative medicine' or COMPLEMENTARY MEDICINE is a term of common parlance but is somewhat clumsy to use in the title and throughout the book.

The term 'complementary medicine' is chosen in the hope that it can be accepted as a useful and inclusive description of the modalities discussed in this book. The use of this term is not intended to exclude or sideline any particular approach or philosophy.

Approaches to Healing

The various philosophies and approaches to treatment used in complementary medicine are hard to categorise, but a helpful starting point is to compare allopathic and homoeopathic approaches. Western medicine is based on an allopathic approach to healing. The practitioner introduces into the body substances designed to correct the effect of disease or injury, and may use invasive procedures that break the skin. An allopath regards the human body as a machine made of many parts, and the doctor as an expert who 'fixes the body'.

In contrast, a homoeopath's aim is not to counteract disease but to stimulate a healing response. Homoeopathy is based on the principles of similars, that is, a homoeopath introduces into the body tiny amounts of substance to produce an effect similar to the disease symptoms, aiming to stimulate the healing response. Other modalities share a 'holistic' approach to healing that sees the body as a system. Rather than focusing on the disease state itself, the practitioner assesses how imbalance in the body may be contributing to ill health. The task of the practitioner is to restore balance and equilibrium to the body.

Complementary medicine practitioners may on occasion use a symptomatic approach influenced by allopathy. A practitioner may apply different modalities such as kinesiology, acupuncture, therapeutic massage and naturopathy, each different in approach but directed towards the goal of bringing harmony and balance in the body. The less authoritarian therapeutic relationship preferred by complementary medicine practitioners is reflected in the use of the term 'client' in this book as distinct for the term 'patient'.

Categories of Complementary Medicine

One way to understand how the various modalities relate to each other is to divide them into four general types:¹

Complete systems of healing such as acupuncture, traditional Chinese medicine, herbal medicine, osteopathy, chiropractic, homoeopathy and naturopathy. These disciplines provide complete explanations of the cause of disease, but most practitioners do acknowledge the boundaries of the discipline and the role to be played by orthodox medicine. This book will explore in some detail where these boundaries should be drawn for the benefit of clients and practitioners.

Diagnostic methods such as iridology, kinesiology and aura analysis. Some practitioners may rely heavily on these methods, while practitioners of complete healing systems will often

use them to detect disease, abnormality or imbalance. For example, a chiropractor may use kinesiography to help diagnose a misaligned spine or a naturopath may use iridology to diagnose imbalances in the body or organs.

Therapeutic modalities such as massage, reflexology, aromatherapy, spiritual healing and shiatsu. These modalities emphasise therapeutic effect rather than diagnosis. For example, a practitioner of therapeutic massage may aim to heighten the recipient's sense of wellbeing rather than to alleviate any particular diagnosed illness.

Self-help measures such as relaxation, yoga, qi dong, tai chi, meditation, guided visualisation or fasting.

1.2 Regulation of Health Professionals

Regulation of health professionals defines appropriate roles for complementary medicine practitioners in the health care sector.

Models of Regulation

Regulators tend to focus on the role of complete systems of healing because they provide the greater risk of harm. For example, traditional Chinese medicine involves the ingestion of herbs, acupuncture pierces the skin and chiropractic involves manipulation of the spine.

Western medicine has had a profound effect on the regulation of complementary medicine. In the United Kingdom, western medicine rose to pre-eminence over other traditional forms of healing over the course of the fifteenth century. The process culminated in the *Medical Act 1858* (UK) which gave state endorsement and protection for western medicine.² This history has to a great extent been mirrored in Australia.

Today, medical practitioners are primary health practitioners and are registered by medical acts in all states and territories. In many states, only registered medical practitioners can 'practice medicine' or provide 'medical treatment'. Other registered health practitioners, including physiotherapists, optometrists and podiatrists, within specified statutory scope of practice provisions, work within subsets of medical practice. For example, the statutory scope of practice of chiropractors and osteopaths does not restrict medical practitioners in the manipulation of the spine, even though most doctors are not trained in such procedures.

All complementary medicine practitioners, other than osteopaths, chiropractors and, in Victoria, practitioners of traditional Chinese medicine, acupuncturists and Chinese medicine dispensers, without the status of registration, inhabit a twilight zone between the scope of practice of the registered professions and other common law and statutory limitations. This undefined scope has both limitations and advantages.

As a result of the review of professional regulatory frameworks associated with the Competition Policy Review, the role of the state in regulating professions was questioned. This process of review has meant that registered health professions now operate under a less restrictive model, allowing more scope for complementary medicine to operate. This process has resulted in many restrictive legislative provisions being reformed.

The regulation of the health sector follows one of these two models:

***Statutory regulation.* Statutory regulation is established by a statute for one profession or sometimes an omnibus statute for a number of professions that incorporates a register of individuals with prescribed educational standards. This statute will normally include a protection of title provision and sometimes a scope of practice provision.**

Protection of title provisions permit only registrants to use particular titles such as 'physiotherapist' or 'acupuncturist' relevant to the registered profession. The statute penalises the use of those titles by non registrants. Scope of practice provisions permit only registrants to become involved in broad areas of practice such as 'the practice of physiotherapy' or 'chiropractic' (which is defined) usually with exemptions for medical

doctors and other practitioners. This form of regulation restricts many procedures unlikely to be harmful to clients and is potentially anti-competitive. This form of regulation is now used sparingly in relation to health professionals. More common today is the description of a narrow set of potentially dangerous procedures, that only specified health professions can apply. An example is the provision in a number of jurisdictions that ‘high velocity spinal manipulation’ can only be performed by osteopaths; chiropractors, medical doctors and physiotherapists.

Statutory regulation is currently used to administer a large number of health professions including medical doctors, physiotherapy, podiatry, chiropractic and osteopathy. It provides the legal basis to enforce standards of practice and penalties such as de-registration or suspension, backed up with criminal sanctions.³ Registration is based on standardised qualifications, professional ethics and continuing education.⁴

Voluntary self-regulation. This model envisages each a modality policing its own professional ethical standards through a code of ethics or code of practice. The specific provisions contained in these codes attempt to define, promote and enforce ethical practice. The codes provide a reference point for the practitioner but cannot be legally enforced as they lack statutory backing. The most serious disciplinary measure (suspension or exclusion from the association) does not normally prevent a practitioner from continuing to practice without the advantages of membership. Currently most complementary medicine practitioners are regulated in this way.

Even if practitioners are subject to specific statutory regulation and/or voluntary self-regulation, all practitioners are also subject to criminal and civil law sanctions. This includes being subject to an action in negligence or being charged with a criminal offence. Practitioners may also be subject to consumer legislation such as the various state *Fair Trading Acts* and the federal *Trade Practices Act*.

1.3 Commandments of Professional Practice

The main message of this book is that *you are a professional*. All practitioners should place these words on their desk to remind them of what they are doing in their clinical practice on a day-to-day basis. If practitioners integrate the intention and meaning of this term into the way they deal with clients, colleagues and professional organisations, then many of the principles and suggestions contained within these pages will automatically follow.

The statement ‘you are a professional’ provides a goal. The Ten Commandments of Better Practice provide the stepping stones in reaching that goal. These commandments summarise the main themes of this book, naming actions that promote better, more professional and successful practice.

Ten Commandments of Professional Practice

Commandment	Relevant section of the book
1. I shall practice in a competent, caring and responsible manner.	Chapters 2 and 4
2. I shall keep up to date with developments in clinical techniques and professional and social issues	Sections 2.3 and 4.2 Chapter 6

3. I shall practice within the scope of my expertise and understand and respect by limitations.	Chapter 3
4. I shall practice from premises and use substances that are safe, legally compliant and conducive to the healing process.	Sections 7.3 to 7.5 Chapter 5
5. I shall practice in accordance with the ethical precepts of my profession.	Chapter 2
6. I shall compile and maintain thorough and legible client records.	Section 2.3
7. I shall maintain professional indemnity insurance for the protection of my client and myself.	Section 7.8
8. I shall respect the confidence of the therapeutic relationship to promote trust and confidence in my profession and myself.	Section 2.3
9. I shall provide accurate information to my client to allow proper decision making and consent to treatment.	Sections 4.3 to 4.4
10. I shall place my client's interest above my own.	Section 2.1

I am a professional

1 J. Stone & J. Matthews, *Complementary Medicine and the Law*, Oxford University Press, Oxford, 1996, pp. 88–89.

2 *ibid.*, chapter 1.

3 *ibid.*, p. 157.

4 *ibid.*, p. 158.