

HOUSE No. 2125

The Commonwealth of Massachusetts

PRESENTED BY:

Charles A. Murphy

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act providing for consumer access to healing arts.

PETITION OF:

NAME:

Charles A. Murphy

DISTRICT/ADDRESS:

21st Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and 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 (1) Popular Name.-

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

7 (2) Findings and Intent.-

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

13 (3) Definition.-

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

19 (4) Prohibited Acts.-

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

- 25 i. Performs surgery or any other procedure that harmfully punctures the
26 skin of a person;
- 27 ii. Prescribes or administers X-ray radiation to any person;
- 28 iii. Prescribes or administers a legend drug or controlled substance or a
29 legend medical device or anesthesia that is prescription only to any
30 person;
- 31 iv. Recommends to any person the discontinuance of a legend drug or
32 controlled substance prescribed by a licensed health care practitioner;
- 33 v. Performs a chiropractic adjustment of the articulations of joints or the
34 spine;
- 35 vi. Represents that the practice is massage therapy;
- 36 vii. Willfully provides a diagnosis and treatment to a person with a
37 physical or mental health condition which directly causes that person
38 to have significant bodily harm, serious physical, mental illness, or
39 death; or
- 40 viii. Holds out, states, indicates, advertises, or implies to any person that he
41 or she is a health care practitioner licensed, certified, or registered, by
42 this state.

43 (5) A person who violates any provision of this subsection is subject to the
44 administrative, civil, and criminal penalties specified in Chapter 93A, including,
45 but not limited to, court costs, reasonable attorney's fees, and the reasonable costs
46 of investigation and prosecution.

47 (6) This act does not apply to, control, or prevent any health care practice from being
48 practiced if it is already exempt from professional practice acts or state law, nor
49 does this act apply to, control, or prevent a person from providing health care

50 services who is already exempt from professional practice acts, as defined in, or
51 under state law.

52 (7) Disclosure and Consent.-

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

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

59 ii. The nature of the health care services to be performed.

60 iii. The degrees, training, experience, credentials, or other qualifications
61 of the practitioner regarding the health care services being provided,
62 including a statement of the provision and limits of liability insurance
63 held by the practitioner.

64 b. Before providing health care services to a client such practitioner must obtain
65 a written acknowledgment from the client stating that he or she has been
66 provided with the information described in this subsection. The client shall be
67 provided with a copy of this written acknowledgment and it must be
68 maintained for 2 years by the person providing the services.

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

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

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

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

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