

**Amendment to HB73:**

Proposed by the Montana Health Freedom Coalition and the Business League for Massage Therapy & Bodywork.

With regard to the specific language proposed, here are the salient points:

1. The exemption ensures that ethically practicing professionals who are practicing an alternative and complementary health care profession not licensed by the state of Montana can continue to practice, and not be subject to rulings by a board that does not represent them.
2. Subsection (1) is included to make sure that the boards maintain jurisdiction over their own licensees and persons who should actually hold a license to practice – we’re not trying to take any of that from a board.
3. The amendment won’t affect engineers and surveyors – only those who practice health care.
4. The amendment is narrowly drawn to only include alternative and complementary health care practitioners whose scope technically overlaps with the scope of medicine. Those practices are named, so that it clarifies who is included.
5. Subsection (2) outlines that an overlap of scope is not enough of a reason to shut someone down as it is evidence that such an action is intended to squelch competition, not necessarily protect the public.
6. Subsections 3 & 4 provides markers of what ethical practitioners of unlicensed alternative and complementary healthcare do and don’t do. Also included are certain activities not even an ethical practitioner should do unless they hold a license issued by the state.

**New Section: Section 3. Exemptions, Application of Unlicensed Practice.** [ Renumber succeeding sections ]

(1) A person is subject to the provisions of [Sections 1 through 5] if the person

- (a) holds a comparable occupational license from another jurisdiction and is substantially practicing that profession in Montana without first obtaining a license;
- (b) uses occupational titles that are protected or reserved under Title 37 for the exclusive use of licensed individuals without first obtaining a license;
- (c) has had an occupational license suspended or revoked in this state and is practicing in violation of the disciplinary action taken by the department or occupational licensing board; or
- (d) has had a comparable occupational license from another jurisdiction suspended or revoked by the governing occupational body in that jurisdiction and is substantially practicing that occupation in this state without first obtaining a license.

(2) A person is not subject to the provisions of [Sections 1 through 5] for practicing or performing alternative or complementary health care practices that are not licensed by the state of Montana solely on the basis of an overlap of scope of practice. Such an action conflicts with MCA 2-8-101(d) that “The state may not regulate a profession, occupation, industry, business, or other endeavor in a manner which will unreasonably adversely affect the competitive market.” Mitigating circumstances outlined in subsections (3) and (4) must also be present. Such unlicensed alternative and complementary health care practices include but are not limited to acupressure, aromatherapy, anthroposophy, Asian and other bodywork therapies, ayurveda, biofield therapy, colostrums therapy, cranialsacral therapy, creative arts therapies, culturally traditional healing practices, detoxification practices and therapies, energetic healing, flower essences, folk practices, Gerson therapy, healing touch, herbology or herbalism, homeopathy, meditation, mind-body healing practices, nondiagnostic iridology, noninvasive instrumentalities, polarity therapy, reflexology or zone therapy, therapeutic touch, traditional Tibetan practices, individual biological therapies and those that include the use of the physical forces of heat, cold, water, touch, sound, and light, healing practices that use food, food supplements, and nutrients, and somatic practices including movement therapies and educationally based healing practices.

(3) A valid complaint under [sections 1 through 5] against a person practicing an alternative or complementary health care practice not licensed in Montana must include any one of the following acts:

- (a) Performing surgery or any other procedure that punctures the skin;
- (b) Setting fractures;
- (c) Administering x-ray radiation;
- (d) Prescribing, administering, or dispensing a prescription drug, a device that requires a prescription for use, or a controlled substance;
- (e) Providing a conventional medical disease diagnosis;
- (f) Directing or instructing a person to discontinue medical care or a medical treatment prescribed by a licensed health care provider;
- (g) Performing a high-velocity, low-amplitude thrust to a joint;
- (h) Knowingly or purposely diagnosing and treating a physical or mental health condition of a client under circumstances or conditions that cause or create an imminent or discernible risk of significant bodily harm, serious physical or mental illness, or death;
- (i) Indicating or implying in any way that the individual is licensed, certified, or registered under title 37, including use of professional titles as prescribed in [subsection (3)(1)(b)]
- (j) Performing physical examinations that invade the body in ways that cause an imminent and discernible risk of significant harm, including gynecological exams;
- (k) Performing the practice of dental hygiene; or
- (l) Performing the practice of dentistry except for cranial sacral therapies and therapies with the intention of manipulating the soft tissues of the head and jaw with the hands only;

(4) (a) Unlicensed alternative and complementary health care practitioners must also disclose in writing to the client the following:

- (i) The individual's name, business address, and telephone number;
- (ii) The fact that the individual is not licensed, certified, or registered by the state of Montana as a health care provider;
- (iii) The nature of the unlicensed health care services to be provided;
- (iv) The degrees, training, experience, credentials, or other qualifications that the individual has obtained with regard to the unlicensed health care services being provided; and
- (v) The following statement in capital letters: "THE STATE OF MONTANA HAS NOT ADOPTED ANY EDUCATIONAL OR TRAINING STANDARDS FOR INDIVIDUALS WHO PROVIDE UNLICENSED ALTERNATIVE OR COMPLEMENTARY HEALTH CARE SERVICES. THIS DISCLOSURE IS FOR INFORMATIONAL PURPOSES ONLY. UNDER MONTANA LAW, AN INDIVIDUAL WHO PROVIDES UNLICENSED ALTERNATIVE OR COMPLEMENTARY HEALTH CARE SERVICES MAY NOT PROVIDE A MEDICAL DIAGNOSIS OR INSTRUCT OR DIRECT A PERSON TO DISCONTINUE A MEDICALLY PRESCRIBED TREATMENT. A CLIENT MAY SEEK AT ANY TIME A MEDICAL DIAGNOSIS FROM A LICENSED HEALTH CARE PROVIDER QUALIFIED TO MAKE A DIAGNOSIS."

(b) A copy of the disclosure must be given to the client, and a declaration must be signed by the client verifying receipt of the disclosure. The declaration is kept in the practitioners' files for a minimum of 3 years. If the disclosure information changes, a new copy must be provided to the client and a new declaration must be signed prior to the next treatment obtained by the client. Failure to comply with this subsection will result in a warning to the practitioner, and a reasonable amount of time will be allowed for the practitioner to comply with this subsection. If the practitioner continues to violate this subsection, the person may be enjoined from practice. Practitioners who are recognized within their community as traditional and cultural healers are exempt from the disclosure and acknowledgment requirements of subsection (4).

(5) Complaints against a person practicing alternative or complementary health care not licensed in Montana may not be board generated or anonymous.

(6) The fact that an individual is providing alternative or complementary health care services not licensed in Montana is not evidence of an imminent or discernible risk of harm for the purposes of subsection (3).