

Proposed Initiative
2007-2008
#85

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APR 04 2008

ELECTIONS

2:33 p.m.

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SECRETARY OF STATE

Please accept the following as our final language to be considered as a ballot initiative in the 2008 election cycle.

Those people submitting this proposed initiative are:

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1 Be it Enacted by the People of the State of Colorado:

Section 1. Article II of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:

SECTION 32. Alternative and complementary practitioner protection act. (1) (a) ACCORDING TO THE COLORADO DEPARTMENT OF REGULATORY AGENCIES HEALTH AND HUMAN SERVICES COMMITTEE TESTIMONY THERE ARE APPROXIMATELY 16,000 ALTERNATIVE AND COMPLEMENTARY HEALTH PRACTITIONERS PROVIDING SERVICES IN THE STATE OF COLORADO. THIS INDICATES THAT THERE IS A HIGH DEMAND FOR ALTERNATIVE AND COMPLEMENTARY HEALTH PRACTITIONERS IN THE STATE OF COLORADO WHICH ENCOMPASS A WIDE VARIETY OF AGE, ETHNIC, SOCIOECONOMIC, AND OTHER DEMOGRAPHIC CATEGORIES.

- (b) MANY ALTERNATIVE AND COMPLEMENTARY HEALTH PRACTITIONERS PROVIDE HEALING SERVICES THAT ARE A NORMAL AND NECESSARY PART OF SOCIAL BEHAVIOR, ARE INHERENT RIGHTS, ARE NOT DANGEROUS, AND SHOULD NOT BE CONSIDERED PRIVILEGES TO BE DOLED OUT BY A GOVERNMENT. THE CONCEPT OF PERFORMING ACTS OF HEALING SHOULD BE PRESERVED. THE PEOPLE OF THE STATE OF COLORADO RECOGNIZE THAT THOSE ALTERNATIVE AND COMPLEMENTARY HEALTH PRACTITIONERS THAT ARE NOT DANGEROUS OR POSE AN IMMINENT AND DISCERNIBLE RISK OF SIGNIFICANT HARM TO THE PUBLIC'S HEALTH AND SAFETY SHALL NOT BE REQUIRED TO BE LICENSED, CERTIFIED OR REGISTERED BY THE STATE IN ORDER TO PROTECT VIABLE HEALING OPTIONS. IN CONSIDERATION OF THE PUBLIC'S HEALTH AND WELFARE, THE CITIZENS OF COLORADO HEREBY CLAIM THIS SECTION TO REMOVE TECHNICAL BARRIERS THAT IMPEDE ALTERNATIVE AND COMPLEMENTARY HEALTH PRACTITIONERS FROM PRACTICING AS LONG AS THOSE PRACTITIONERS ABIDE BY CERTAIN PERAMETERS AS SET FORTH IN THIS SECTION. HEALING AND HEALTH CARE PRACTICES PERFORMED BY ALTERNATIVE AND COMPLEMENTARY HEALTH PRACTITIONERS, INCLUDE BUT ARE NOT LIMITED TO, ENGAGING IN TRADITIONAL, CULTURAL, COMPLEMENTARY, OR ALTERNATIVE HEALTH CARE THAT UTILIZES, BUT IS NOT LIMITED TO, LIFESTYLE COUNSELING, NUTRITION, AND OTHER NATURAL FORMS OF HEALING THAT UTILIZE THE BODIES OWN MECHANISMS TO REACH HOMEOSTASIS.
- (c) NOTWITHSTANDING THE WIDESPREAD UTILIZATION OF SERVICES FROM ALTERNATIVE AND COMPLEMENTARY HEALTH PRACTITIONERS BY RESIDENTS OF COLORADO, THE PROVISION OF SUCH SERVICES IN MANY CIRCUMSTANCES MAY BE INTERPRETED UNDER COLORADO STATE STATUE AS BEING ILLEGAL IN THE STATE OF COLORADO AS A VIOLATION OF THE LAWS REGULATING HEALTH CARE PROFESSIONS AND OCCUPATIONS CONTAINED IN ARTICLES 29 TO 43.9 TO TITLE 12, COLORADO REVISED STATUTES WHICH GOVERN HEALTH CARE PRACTITIONERS. AS A RESULT, A PRACTITIONER OF ALTERNATIVE AND COMPLEMENTARY HEALTH WHO IS NOT LICENSED, CERTIFIED, OR REGISTERED BY THE STATE, AS A HEALTH CARE PRACTITIONER UNDER AN OCCUPATIONAL BOARD OR UNDER THE DIVISION OF REGISTRATION IN THE DEPARTMENT OF REGULATORY AGENCIES COULD BE SUBJECT TO FINES, PENALTIES, AND RESTRICTION OF HIS OR HER PRACTICE. BECAUSE OF THIS, EVEN THOSE ALTERNATIVE AND COMPLEMENTARY HEALTH PRACTITIONERS THAT DO NOT POSE AN IMMINENT AND DISCERNIBLE RISK OF SIGNIFICANT HARM TO THE PUBLIC'S HEALTH AND SAFETY WOULD STILL BE IN VIOLATION OF COLORADO STATUTE TITLE 12-36-106.(b) "SUGGESTING, RECOMMENDING, PRESCRIBING, OR ADMINISTERING ANY FORM OF

TREATMENT... OR HEALING FOR THE INTENDED PALLIATION, (REDUCTION OF) RELIEF, OR CURE OF ANY PHYSICAL OR MENTAL DISEASE, AILMENT, INJURY, CONDITION, OR DEFECT OF ANY PERSON WITH THE INTENTION OF RECEIVING THEREFOR, EITHER DIRECTLY OR INDIRECTLY, ANY FEE, GIFT, OR COMPENSATION WHATSOEVER."

(d) NO BILL, ACT, REGULATION, RESOLUTION OR OTHER GOVERNMENTAL OVERSIGHT MAY BE PASSED INTO LAW OR RULE TO LIMIT THE CONSTITUTIONAL RIGHT TO PERFORM HEALING ACTS OF COMPLEMENTARY AND ALTERNATIVE HEALTH PRACTITIONERS. THIS SECTION PROVIDES AN EXEMPTION FOR ALTERNATIVE AND COMPLEMENTARY HEALTH PRACTITIONERS, BUT DOES NOT INFRINGE ON THE RIGHT OF OTHER OCCUPATIONS GOVERNED UNDER TITLE 12 TO PRACTICE THAT HAVE BEEN PASSED PREVIOUSLY.

(2) AS USED IN THIS SECTION (a)"ALTERNATIVE AND COMPLEMENTARY HEALTH PRACTITIONERS" MEANS THOSE PERSONS PRACTICING NORMAL AND NATURAL HEALING ACTS WHICH SUPPORT AND STIMULATE A PERSON'S INHERENT SELF-HEALING PROCESS AND DOES NOT INCLUDE SURGERIES, PUNCTURING OF THE SKIN, OR PRESCRIBING LEGEND DRUGS, NOR DOES IT INCLUDE CHIROPRACTICE ADJUSTMENTS. ALTERNATIVE AND COMPLEMENTARY HEALTH PRACTITIONERS MAY NOT HOLD OUT, STATE, INDICATE, ADVERTISE, OR IMPLY TO A CLIENT OR PROSPECTIVE CLIENT THAT HE OR SHE IS A PHYSICIAN OR SURGEON OR HOLDS ANY OTHER TITLE OR DESIGNATION PROTECTED UNDER ARTICLES 29 TO 43 OF THE COLORADO STATUTE TITLE 12. NO ALTERNATIVE AND COMPLEMENTARY HEALTH PRACTITIONERS MAY HOLD OUT BY ADVERTISING OR ANY OTHER MEANS TO ANY PERSON THAT HE OR SHE IS A HEALTH CARE PRACTITIONER LICENSED, CERTIFIED, OR REGISTERED BY THE STATE OF COLORADO. NO ALTERNATIVE OR COMPLEMENTARY HEALTH PRACTITIONER MAY TREAT A HEALTH CONDITION OF AN INDIVIDUAL, AND AS A RESULT CAUSE THAT INDIVIDUAL TO BE SUBJECTED TO AN IMMINENT AND SIGNIFICANT RISK OF DISCERNABLE AND SIGNIFICANT PHYSICAL OR MENTAL INJURY, UNDER CIRCUMSTANCES IN WHICH THE PERSON KNEW, OR IN THE EXERCISE OF REASONABLE CARE SHOULD HAVE KNOWN, THAT THE TREATMENT WOULD RESULT IN SUCH RISK.

(b) ALTERNATIVE AND COMPLEMENTARY HEALTH PRACTITIONERS PROVIDING SERVICES IN COLORADO WHO ARE NOT LICENSED, CERTIFIED, OR REGISTERED BY THIS STATE AS A HEALTH CARE PRACTITIONER UNDER THE DIVISION OF REGISTRATION IN THE DEPARTMENT OF REGULATORY AGENCIES, AND WHO IS ADVERTISING OR CHARGING A FEE FOR THOSE SERVICES, SHALL, WITH RESPECT TO EACH CLIENT OR PROSPECTIVE CLIENT, DURING THE INITIAL CLIENT CONTACT:

(1) PROVIDE TO THE CLIENT OR PROSPECTIVE CLIENT THE FOLLOWING INFORMATION IN A PLAINLY WORDED, WRITTEN STATEMENT:

- (I) THE PRACTITIONER'S NAME, BUSINESS ADDRESS, AND TELEPHONE NUMBER;
- (II) AN ACKNOWLEDGEMENT THAT THE PRACTITIONER IS NOT LICENSED, CERTIFIED, OR REGISTERED AS A HEALTH CARE PRACTITIONER BY THE STATE OF COLORADO;
- (III) THE NATURE OF THE SERVICES TO BE PROVIDED;
- (IV) A LISTING OF ANY DEGREES, TRAINING, EXPERIENCE, CREDENTIALS, LICENSES, CERTIFICATIONS, REGISTRATION, OR OTHER QUALIFICATIONS OF THE PRACTITIONER REGARDING THE SERVICES

PROVIDED; AND

- (V) OBTAIN FROM THE CLIENT OR PROSPECTIVE CLIENT A WRITTEN ACKNOWLEDGEMENT STATING THAT HE OR SHE HAS BEEN PROVIDED WITH THE INFORMATION DESCRIBED ABOVE. THE PRACTITIONER SHALL GIVE THE CLIENT OR PROSPECTIVE CLIENT A COPY OF THE ACKNOWLEDGEMENT AND SHALL KEEP THE ORIGINAL FOR AT LEAST TWO YEARS.

- (C) AN ALTERNATIVE OR COMPLEMENTARY HEALTH PRACTITIONER THAT VIOLATES ANY OF THIS SECTION SHALL BE SUBJECT TO LAWS REGARDING THE UNAUTHORIZED PRACTICE OF A PROFESSION AND MAY BE SUBJECT TO PENALTIES SPECIFIED IN THE RELEVANT COLORADO STATUTES UNDER THE DIVISION OF REGISTRATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES WHICH HAS JURISDICTION OVER SUCH PRACTICE. PRIOR TO ANY LEGAL ACTION, AS A PRECONDITION TO THE IMPOSITION OF CIVIL OR ADMINISTRATIVE PENALTIES, A NOTIFICATION, EDUCATIONAL, OR MEDIATION APPROACH REASONABLY CALCULATED TO BRING THE PRACTITIONER INTO COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION SHALL BE ADMINISTERED.

- (D) THIS SECTION SHALL NOT BE CONSTRUED TO PROHIBIT A LICENSED HEALTH CARE PRACTITIONER WHO IS ALREADY PRACTICING IN THE STATE OF COLORADO FROM DOING SO, NOR SHALL IT BE CONSTRUED TO PROHIBIT THOSE PROFESSIONALS OR THOSE PERSONS WHO ARE DEEMED EXEMPT AND ALREADY PRACTICING UNDER THE DIVISION OF REGISTRATION IN THE DEPARTMENT OF REGULATORY AGENCIES. THIS SECTION SHALL NOT BE CONSTRUED TO LIMIT THE RIGHT OF A PERSON TO SEEK RELIEF FOR NEGLIGENCE OR ANY OTHER CIVIL REMEDY AGAINST A PERSON PROVIDING SERVICES GOVERNED BY THIS SECTION.