

***State Freedom of Medical Practice Legislation***  
*Currently exist in at least Fourteen States*

*Alaska*

Alaska Statute, Section 08.64.326(a)(8)(A).

Professional incompetence, gross negligence, or repeated negligent conduct; the board may not base a finding of professional incompetence solely on the basis that a licensee's practice is unconventional or experimental in the absence of demonstrable physical harm to a patient.  
[Enacted June 14, 1990]

*California*

§ 2234.1. Circumstances in which physician or surgeon not to be disciplined for alternative or complementary treatment or advice

(a) A physician and surgeon shall not be subject to discipline pursuant to subdivision (b), (c), or (d) of Section 2234 solely on the basis that the treatment or advice he or she rendered to a patient is alternative or complementary medicine, including the treatment of persistent Lyme Disease, if that treatment or advice meets all of the following requirements:

(1) It is provided after informed consent and a good-faith prior examination of the patient, and medical indication exists for the treatment or advice, or it is provided for health or well-being.

(2) It is provided after the physician and surgeon has given the patient information concerning conventional treatment and describing the education, experience, and credentials of the physician and surgeon related to the alternative or complementary medicine that he or she practices.

(3) In the case of alternative or complementary medicine, it does not cause a delay in, or discourage traditional diagnosis of, a condition of the patient.

(4) It does not cause death or serious bodily injury to the patient.

(b) For purposes of this section, "alternative or complementary medicine," means those health care methods of diagnosis, treatment, or healing that are not generally used but that provide a reasonable potential for therapeutic gain in a patient's medical condition that is not outweighed by the risk of the health care method.

(c) Since the National Institute of Medicine has reported that it can take up to 17 years for a new best practice to reach the average physician and surgeon, it is prudent to give attention to new developments not only in general medical care but in the actual treatment of specific diseases, particularly those that are not yet broadly recognized in California.

[Enacted in 2004, amended 2006, effective date January 1, 2006]

Cal. Bus. & Prof. Code § 2500. Responsibilities of boards.

The boards acknowledge the significant interest of physicians and patients alike in integrating preventative approaches and holistic-based alternatives into the practice of medicine, including, but not limited to, biopsychosocial techniques, nutrition, and the use of natural supplements to

enhance health and wellness. The boards shall establish specific policies in this regard and shall review statutes and recommend modifications of law, when appropriate, in order to assure California consumers that the quality of medicine practiced in this state is the most advanced and innovative it can be both in terms of preserving the health of, as well as providing effective diagnosis and treatment of illness for, the residents of this state.

Cal. Bus. & Prof. Code § 2501. Disciplinary processes and procedures

In fulfilling their responsibilities under this article, the boards shall, on or before July 1, 2002, establish disciplinary policies and procedures to reflect emerging and innovative medical practices for licensed physicians and surgeons. The boards shall solicit the participation of interested parties in the development and preparation of these policies and procedures and shall consult technical advisors as necessary to fulfill the purposes of this article. In preparing these policies and procedures, the boards shall consult with professional medical associations and review the need for any changes in the boards' services, procedures, and activities. The boards shall also assess the need for:

(a) Specific standards for informed consent, if any, in order for patients to be able to understand the risks and benefits associated with the range of treatment options available.

(b) Standards for investigations to assure competent review in cases involving the practice of any type of alternative medicine, including, but not limited to, the skills and training of investigators.

[Enacted September 26, 2000]

*Colorado*

Colorado General Statute, Section 12-36-117. Unprofessional Conduct.

a) For purposes of this section, "alternative medicine" means those health care methods of diagnosis, treatment, or healing that are not generally used but that provide a reasonable potential for therapeutic gain in a patient's medical condition that is not outweighed by the risk of such methods. A licensee who practices alternative medicine shall inform each patient in writing, during the initial patient contact, of such licensee's education, experience, and credentials related to the alternative medicine practiced by such licensee. The board shall not take disciplinary action against a licensee solely on the grounds that such licensee practices alternative medicine.

(b) Nothing in paragraph (a) of this subsection (3) prevents disciplinary action against a licensee for practicing medicine, practicing as a physician assistant, or practicing as an anesthesiologist assistant in violation of this article.

[Enacted July, 1989]

*Florida*

Section 1. Section 456.41, Florida Statutes, is created to read: 456.41 Complementary or alternative health care treatments.--

(1) Legislative Intent.--It is the intent of the Legislature that citizens be able to make informed choices for any type of health care they deem to be an effective option for treating human disease, pain, injury, deformity, or other physical or mental condition. It is the intent of the Legislature that citizens be able to choose from all health care options, including the prevailing or conventional treatment methods as well as other treatments designed to complement or substitute for the prevailing or conventional treatment methods. It is the intent of the Legislature that health care practitioners be able to offer complementary or alternative health care treatments with the same requirements, provisions, and liabilities as those associated with the prevailing or conventional treatment methods.

(2) Definitions.--As used in this section, the term:

(a) “Complementary or alternative health care treatment” means any treatment that is designed to provide patients with an effective option to the prevailing or conventional treatment methods associated with the services provided by a health care practitioner. Such a treatment may be provided in addition to or in place of other treatment options.

(b) “Health care practitioner” means any health care practitioner as defined in § 456.001(4).

(3) Communication of Treatment Alternatives.--A health care practitioner who offers to provide a patient with a complementary or alternative health care treatment must inform the patient of the nature of the treatment and must explain the benefits and risks associated with the treatment to the extent necessary for the patient to make an informed and prudent decision regarding such treatment option. In compliance with this subsection:

(a) The health care practitioner must inform the patient of the practitioner's education, experience, and credentials in relation to the complementary or alternative health care treatment option.

(b) The health care practitioner may, in his or her discretion, communicate the information orally or in written form directly to the patient or to the patient's legal representative.

(c) The health care practitioner may, in his or her discretion and without restriction, recommend any mode of treatment that is, in his or her judgment, in the best interests of the patient, including complementary or alternative health care treatments, in accordance with the provisions of his or her license.

(4) RECORDS.--Every health care practitioner providing a patient with a complementary or alternative health care treatment must indicate in the patient's care record the method by which the requirements of subsection (3) were met.

(5) EFFECT.--This section does not modify or change the scope of practice of any licensees of the department, nor does it alter in any way the provisions of the individual practice acts for those licensees, which require licensees to practice within their respective standards of care and

which prohibit fraud and exploitation of patients.  
[Enacted May 31, 2001]

*Illinois*

The Department shall not revoke, suspend, place on probation, reprimand, refuse to issue or renew, or take any other disciplinary or non-disciplinary action against the license or permit issued under this Act to practice medicine to a physician based solely upon the recommendation of the physician to an eligible patient regarding, or prescription for, or treatment with, an investigational drug, biological product, or device.

225 Ill. Comp. Stat. Ann. 60/22 (LexisNexis, Lexis Advance through P.A. 100-575 of the 2017 Regular Legislative Session)

*Massachusetts*

Massachusetts General Law Annotated, Chapter 112, Section 7.

Section two to six, inclusive, and section eight shall not be held to discriminate against any particular school or system of medicine.

[Enacted in 1901]

(Unlike similar old non-discrimination statutes in California and Texas, the Massachusetts law has been and continues to be upheld as a health freedom law.)

*Minnesota*

146A.065 Complementary and Alternative Health Care Practices by Licensed or Registered Health Care Practitioners

(a) A health care practitioner licensed or registered by the commissioner or a health-related licensing board, who engages in complementary and alternative health care while practicing under the practitioner's license or registration, shall be regulated by and be under the jurisdiction of the applicable health-related licensing board with regard to the complementary and alternative health care practices.

(b) A health care practitioner licensed or registered by the commissioner or a health-related licensing board shall not be subject to disciplinary action solely on the basis of utilizing complementary and alternative health care practices as defined in section 146A.01, subdivision 4, paragraph (a), as a component of a patient's treatment, or for referring a patient to a complementary and alternative health care practitioner as defined in section 146A.01, subdivision 6.

(c) A health care practitioner licensed or registered by the commissioner or a health-related

licensing board who utilizes complementary and alternative health care practices must provide patients receiving these services with a written copy of the complementary and alternative health care client bill of rights pursuant to section 146A.11.

(d) Nothing in this section shall be construed to prohibit or restrict the commissioner or a health-related licensing board from imposing disciplinary action for conduct that violates provisions of the applicable licensed or registered health care practitioner's practice act.

[Enacted May 21, 2014]

*New York*

Education Law, Section 6527(4)(e).

(4) This article [Article 131.] shall not be construed to affect or prevent the following:

(e) The physician's use of whatever medical care, conventional or non-conventional, which effectively treats human disease, pain, injury, deformity, or physical condition.

and

Public Health Law, Section 230, Subdivision 1.

A state board for professional medical conduct is hereby created. . . not fewer than 2 of whom shall be physicians who dedicate a significant portion of their practice to the use of non-conventional medical treatments who may be nominated by New York state medical associations dedicated to the advancement of such medical treatments. . .

and

Public Health Law. Section 230, Subdivision 10(a) Investigation. (ii) If the investigation of cases referred to an investigation committee involves issues of clinical practice, medical experts shall be consulted. Experts may be made available by the state medical society of the state of New York, county medical societies and specialty societies, and by New York state medical associations dedicated to the advancement of non-conventional medical treatments.

[Enacted July 26, 1994]

(Note: New York utilizes legislative intent to clarify terms of laws, in this case, effectively treats is clarified to mean “has been shown to be effective but has not yet gained general acceptance in the United States.”)

*North Carolina*

North Carolina General Statute, Section 90-14(a)(6).

Unprofessional conduct. . . The Board shall not revoke the license of or deny a license to a person solely because of that person’s practice of a therapy that is experimental, nontraditional, or that departs from acceptable a prevailing medical practices unless, by competent evidence, the Board can establish that the treatment has a safety risk greater than the prevailing treatment or that the treatment is generally not effective.

[Enacted June 29, 1993]

*Oklahoma*

Oklahoma Statute Title 59, Section 493.1(M).

The Board shall not deny a license to a person otherwise qualified to practice allopathic medicine within the meaning of this act solely because the person’s practice or therapy is experimental or nontraditional.

[Enacted November 1, 2013]

and

Oklahoma Statute Title 59, Section 509.1(D)(2).

The Board may take disciplinary action . . . . The Board shall not revoke the license of a person otherwise qualified to practice allopathic medicine within the meaning of this act solely because the person’s practice is experimental or nontraditional.

[Enacted July 1, 2009]

*Oregon*

Oregon Revised Statutes, Section 677.190, Subsection (1) Unprofessional Conduct. Grounds for suspending, revoking or refusing to grant license, registration or certification; alternative medicine not unprofessional conduct.

(b) For purposes of this subsection, the use of an alternative medical treatment shall not by itself constitute unprofessional conduct. For the purposes of this paragraph:

1. “alternative medical treatment” means:

(i) A treatment that the treating physician, based on the physician’s professional experience, has an objective basis to believe has a reasonable probability for effectiveness in its intended use even if the treatment is outside recognized scientific guidelines, is unproven, is no longer used as

a generally recognized or standard treatment or lack approval of the United States Food and Drug Administration;

(ii) A treatment that is supported for specific usages or outcomes by at least one other physician licensed by the Board of Medical Examiners; and

(iii) A treatment that poses no greater risk to a patient than the generally recognized or standards treatment.

(B) “Alternative medical treatment” does not include use by a physician of controlled substances in the treatment of a person for chemical dependency resulting from the use of controlled substances.

[Enacted May 30, 1995]

### *Texas*

Texas enjoys protection in three forms: A constitutional provision, a law, and as of October 24, 1998, a regulation.

Constitution of the State of Texas. Article 16, §31.

The Legislature may pass laws prescribing the qualifications of practitioners of medicine in this state, and to punish persons for malpractice, but no preference shall ever be given by law to any schools of medicine.

[Enacted in 1846]

(“Schools of medicine” has been settled by the Texas Criminal Court of Appeals to mean “system, means, or method employed or schools of thought accepted by practitioner” Ex parte Halsted, 182 S.W.2d 479, 1944.)

and

Texas Medical Practices Act: TMPA §3.06

Construction. (a): Nothing in this act shall be construed so as to discriminate against a school or system of medical practice. . . [Enacted in 1907]

(This act consolidated multiple state medical boards. Therapeutic distinctions of homeopathy, eclectic and naturopathy were considered to be additions to the basic allopathic “science” required of all licensees.)

and

Texas Administrative Code: 22 TAC §§200.1-200.3

Standards for Physicians Practicing Integrative and Complementary Medicine

§200.1. Purpose. The purpose of this chapter is to recognize that physicians should be allowed a

reasonable and responsible degree of latitude in the kinds of therapies they offer their patients. The Board also recognizes that patients have a right to seek integrative or complementary therapies.

§200.2. Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Integrative and Complementary Medicine- Those health care methods of diagnosis, treatment, or interventions that are not acknowledged to be conventional but that may be offered by some licensed physicians in addition to, or as an alternative to, conventional medicine, and that provide a reasonable potential for therapeutic gain in a patient’s medical condition and that are not reasonably outweighed by the risk of such methods.

(2) Conventional Medicine - Those health care methods of diagnosis, treatment, or interventions that are offered by most licensed physicians as generally accepted methods of routine practice, based upon medical training, experience and review of the peer reviewed scientific literature.

§200.3. Practice Guidelines for the Provision of Integrative and Complementary Medicine. A licensed physician shall not be found guilty of unprofessional conduct or be found to have committed professional failure to practice medicine in an acceptable manner solely on the basis of employing a health care method of integrative or complementary medicine, unless it can be demonstrated that such method has a safety risk for the patient that is unreasonably greater than the conventional treatment for the patient’s medical condition. The Texas State Board of Medical Examiners will use the following guidelines to determine whether a physician’s conduct violates the Medical Practice Act, §§3.08(4), 3.08(4)(E), and 3.08(18) in regard to providing complementary and integrative medical treatment.

(1) Prior to offering advice about complementary health care therapies, the physician shall undertake an assessment of the patient. This assessment should include but not be limited to, conventional methods of diagnosis and may include non-conventional methods of diagnosis and shall be documented in the patient’s chart. Such assessment shall include the following listed in subparagraphs (A)-(E) of this paragraph:

- (A) adequate medical records as defined in §165.1 of this title (relating to Medical Records);
- (B) documentation as to whether conventional medical treatment options have been discussed with the patient and referral input, if necessary;
- (C) documentation as to whether conventional medical options have been tried, and if so, to what effect or a statement as to whether conventional options have been refused by the patient;
- (D) if a treatment is offered which is not considered to be conventional, documentation of at least a verbal informed consent for each treatment plan must be included (including documentation that the risks and benefits of the use of the treatment were discussed with the patient or guardian);
- (E) documentation as to whether the complementary health care therapy could interfere with any other ongoing conventional treatment.



(2) The physician may offer the patient complementary and integrative treatment pursuant to a documented treatment plan tailored for the individual needs of the patient by which treatment progress or success can be evaluated with stated objectives such as pain relief and/or improved physical and/or psychosocial function. Such a documented treatment plan shall consider pertinent medical history, previous medical records and physical examination, as well as the need for further testing, consultations, referrals, or the use of other treatment modalities.

(3) The physician may use the treatment subject to documented periodic review of the patient's care by the physician at reasonable intervals in view of the individual circumstances of the patient in regard to progress toward reaching treatment objectives which takes into consideration the treatment prescribed, ordered or administered, as well as any new information about the etiology of the complaint.

(4) Complete and accurate records of the care provided including the elements addressed in paragraph (1)(A)-(E) of this section should be kept.

(5) If the provisions set out in paragraphs (1)-(4) of this section are met, and if all treatment is properly documented, the board will presume such practices are in conformity with the Medical Practice Act, §§3.08(4), 3.08(4)(E), and 3.08(18).[Adopted October 24, 1998]  
(Board's intent is discussed the Preamble to Agency Rules)

*Washington (State)*

Washington Revised Code Annotated, Section 18.130.180(4).

Incompetence, negligence or malpractice. . . . The use of a nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed.  
[Enacted May 21, 1991]

***Lyme Only Statute***

Iowa Code § 147.56

A person licensed by a board under this subtitle shall not be subject to discipline under this chapter or the board's enabling statute based solely on the licensee's recommendation or provision of a treatment method for Lyme disease or other tick-borne disease if the recommendation or provision of such treatment meets all the following criteria:

1. The treatment is provided after an examination is performed and informed consent is received from the patient.

2. The licensee identifies a medical reason for recommending or providing the treatment.
3. The treatment is provided after the licensee informs the patient about other recognized treatment options and describes to the patient the licensee's education, experience, and credentials regarding the treatment of Lyme disease or other tick-borne disease.
4. The licensee uses the licensee's own medical judgment based on a thorough review of all available clinical information and Lyme disease or other tick-borne disease literature to determine the best course of treatment for the individual patient.
5. The treatment will not, in the opinion of the licensee, result in the direct and proximate death of or serious bodily injury to the patient.