

Alternative Medicine: Non-Traditional Healers Are Subject To Regulation By The State, Court Says.

Nutritional therapists are permitted to practice in New York under the Alternative Medical Practice Act. But like all other healthcare professionals, alternative practitioners can be called to answer to charges of gross negligence, gross incompetence, failure to obtain informed consent to treatment, failure to keep adequate patient records, and excessive charges, the New York Supreme Court, Appellate Division, has ruled.

Alternative medicine involves different treatment regimens than those used by traditional doctors.

However, a non-traditional healer must still possess a basic scientific knowledge of the nature of disease and the disease process.

Standards for obtaining patients' informed consent and for maintaining patients' records do not vary based on the treatment regimen a particular physician chooses to employ in his or her practice.

NEW YORK SUPREME COURT,
APPELLATE DIVISION, 1996.

The court ruled the state board for professional medical conduct's decisions are not to be overruled for bias just because the board is made up of a mixture of advocates for alternative practice, members of the general public, and medical doctors practicing in certain recognized specialties within traditional medicine. Gonzalez vs. New York State Department of Health, 648 N.Y.S. 2d 827 (N.Y. App., 1996).

Nursing Home Admissions: Court Says Requiring Family To Guarantee Payment Unfair, Deceptive Trade Practice.

The Nursing Home Reform Act of 1987 applies to nursing homes which participate either in Medicaid or Medicare.

As it applies to nursing-home admission practices, the Nursing Home Reform Act says that nursing homes must not require a third party to guarantee payment to the facility as a condition of admission, expedited admission or continued stay in the facility.

The above is true not just for Medicaid and Medicare recipients. It also applies to private-pay nursing home residents, those who will pay with their own private funds.

A family member who voluntarily agrees to co-sign as a financially-responsible party is entitled to advance written notice before a nursing home can legally discharge the resident.

It is unfair and deceptive to get a family member to co-sign without advising that a co-signer is not required for admission, but only gives the co-signer the right to notice if the resident is to be discharged.

CALIFORNIA COURT OF APPEAL, 1996.

According to the California Court of Appeal, it is an unfair and deceptive trade practice for a nursing home to obtain the signature of a family member or other person on a resident's nursing home admission documents, guaranteeing payment of charges to the nursing home, if the signer has not been truthfully advised of his or her rights with respect to signing and not signing the documents.

Under Federal law, a nursing home which participates in Medicaid or Medicare cannot require a co-signature of a financially-responsible party guaranteeing payment to the nursing home as a mandatory condition for a resident's admission, expedited admission or continuing stay in the facility. This applies to Medicaid- and Medicare-eligible residents, and private-pay individuals. It includes basic charges that would be covered by government payments and amenities not covered.

Unfair and deceptive practices are outlawed by state nursing home codes and by more general state business-practice statutes. According to the court in this case, it is unfair and deceptive for a nursing home to assert outright or even to give the impression that it has the right to require a third-party co-signer for a nursing home resident's charges, since that is clearly not true under Federal law.

It is still true that someone can voluntarily agree to co-sign as a financially-responsible party for a nursing home resident. The co-signature would be valid and binding if the co-signer was correctly notified that not co-signing cannot and will not affect the resident's admission status.

A voluntary co-signer, as a financially-responsible party, is entitled to advance written notice before the resident can legally be discharged, which the court said could serve as a valid incentive for a properly-informed party to opt to co-sign. Podolsky vs. First Healthcare Corporation, 58 Cal. Rptr. 2d 89 (Cal. App., 1996).