Complementary and alternative medicine

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The 21st century has seen the rapid growth of the Complementary and Alternative Medicine (CAM) sector (Hoffman, 2008). This is matched by an equally enthusiastic reception from the public (Molassiotis et al., 2005; Scott et al., 2005). Although these signal the pressing need to ensure that the users of these therapies are sufficiently protected from unscrupulous and incompetent practitioners, the regulation of CAM in the UK has been in a state of flux for a number of years. This paper provides an overview of how CAM disciplines are categorised and regulated in this country; the laws that practitioners need to abide by; and the legal actions that could be pursued by users for wrongdoings committed in the therapeutic setting.

Overview of Topic

1. **Complementary and Alternative Medicine (CAM):** This is a term used to describe a diverse range of health care practices that fall outside mainstream medicine (NHS, 2014). They can be employed either alongside medical treatments, in which case they are known as complementary medicine; or as a substitute of conventional medicine, in which case they serve as alternative medicine.

2. **Categories:** In 2000, the House of Lords Science and Technology Select Committee conducted an investigation into CAM practices and from this published a report that placed CAM disciplines into 3 categories.

3. The first of these categories was called the "professionally organised alternative therapies". They comprise of the "Big 5" therapies namely acupuncture, chiropractic, herbal medicine, homeopathy and osteopathy. These disciplines were considered as presenting evidence of an "individual diagnostic approach".

4. The second group encompassed those that made no diagnostic claims and were considered to complement mainstream approaches. These were: Alexander Technique, aromatherapy, Bach and other flower remedies, body work therapies including massage, counselling stress therapy, hypnotherapy, meditation, reflexology, Shiatsu, healing, Maharishi ayurvedic medicine, nutritional medicine, and yoga.

5. The final group included what the committee felt were "alternative disciplines". These disciplines were those which "purport to offer diagnostic information as well as treatment and which…favour a philosophical approach and are indifferent to the principles of conventional medicine" (Ch.2). They continued by subdividing this group.

6. Group 3a included "long-established and traditional systems of healthcare" including: anthroposophical medicine, ayurvedic medicine, Chinese herbal medicine, Eastern medicine (Tibb), naturopathy, and traditional Chinese medicine.

7. Group 3b included disciplines which according to the committee lacked any credible evidence. The therapies listed were crystal therapy, iridology, radionics, dowsing and kinesiology.

8. **Statutory Self-Regulation:** Of the "Big 5" therapies, only 2 are statutorily regulated. Osteopaths are regulated by the Osteopaths Act 1993 and chiropractic by the Chiropractors Act 1994. The Acts created the General Osteopathic Council and the General Chiropractic Council respectively. These regulatory bodies are tasked with the duty to, among other things, set the standards relating to training and practice; maintain registers of qualified practitioners; and discipline those who do not conform to the standards set.

9. Herbal medicine has come close to achieving statutory regulation. When Directive 2004/24 as regards traditional herbal medicinal products came into effect in 2011, the Secretary of State for Health gave his approval for the introduction of a statutory regulation scheme for herbal practitioners (Barber, 2014). However, this has now been delayed with the launch of a new working group set up to review legal issues surrounding the provision of third party manufactured and/or supplied herbal medicines to herbal practitioners (European Herbal & Traditional Medicine Practitioners Association, 2015).

10. **Voluntary Self-Regulation:** All other CAM disciplines are overseen by their own voluntary self-regulatory bodies which may hold registers of their members. Their standards are set by the Professional Standards Authority for Health and Social Care (PSA) which awards accreditation to those that meet them. An important feature of note is that the PSA regulates the professional registers rather than individual practitioners who remain accountable to their individual organisations.

11. For the remaining 2 therapies from the "Big 5", the largest regulating and registering body for acupuncturists is the British Acupuncture Council, and this is independently accredited via the PSA. Alternatively, depending on qualification, acupuncturists may also be registered with the British Register of Complementary Practitioners (BRCP) (which is administered by the Institute for Complementary and Natural Medicine), the Acupuncture Association of Chartered Physiotherapists (AACP), the British Medical Acupuncture Society or the British Academy of Western Medical Acupuncture. Homeopathy is regulated by the Faculty of Homeopathy, the Society of Homeopaths, the Alliance of Registered Homeopaths, and the Homeopathic Medical Association, as well as a number of smaller registers. The Faculty of Homeopathy was incorporated by an Act of Parliament in 1950 and regulates statutorily registered healthcare practitioners practising homeopathy. Of the remaining voluntary registers, the Society of Homeopaths which is accredited by the PSA, is the largest. This is followed by the Alliance of Registered Homeopaths and the Homeopathic Medical Association.

12. Many of the therapies included in the Select Committee's second group and some of those in the third group are regulated by the Complementary & Natural Healthcare Council (CNHC). These are: Alexander Technique teaching, aromatherapy, Bowen therapy, craniosacral therapy, healing, hypnotherapy, massage therapy, microsystems acupuncture, naturopathy, nutritional therapy, reflexology, Reiki, Shiatsu, sports therapy, and yoga therapy. The CNHC, supported and funded by the government, was set up in 2008. Its purpose was to enable accountability and set practitioner standards. It maintains a voluntary register of complementary therapists which is accredited by the PSA. However, not all eligible practitioners choose to join this voluntary register. Some practitioners belong only to a membership organisation.

13. Indeed, there is no requirement for any CAM practitioners in the UK to even belong to any professional organisation. With the exception of osteopaths and chiropractors, they do not need to be licensed or registered in order to practise their art. Even for practitioners who are members of voluntary self-regulated organisations, being struck off the organisation's or the CNHC registers does not preclude them from continuing to practise.

14. **Legal Constraints:** All CAM practitioners are nevertheless constrained by the relevant provisions of a number of legislations. These include the following. As per the Cancer Act 1939 for instance, they shall not take part in the publication of any advertisement that contains an offer to treat anyone with cancer or to prescribe any remedy or to provide any advice related to the same. In keeping with the Professions Supplementary to Medicine Act 1960, they are not allowed to use the title of state registered chiropodists, dietitians, medical laboratory technicians, occupational therapists, physiotherapists, radiographers, and remedial gymnasts, unless their names are on the register established by the Act. According to the Abortion Act 1967, they are not allowed to carry out a termination of pregnancy unless they are also registered medical practitioners. Further, they can only, in line with the Medicines Act 1968, sell, supply or export any medicinal product; or procure the sale, supply or export of any medicinal product; or procure the manufacture or assembly of any medicinal product for sale, supply or exportation; unless a product licence or a certificate of registration has been obtained. They likewise cannot, in the course of their business, manufacture or assemble any medicinal product unless a manufacturer's licence has been obtained. They cannot, in accordance with the Medical Act 1983, hold themselves out as registered medical practitioners unless their names are listed in the register of medical practitioners maintained by the General Medical Council (GMC). Consistent with the Female Genital Mutilation Act 2003, they cannot excise, infibulate or otherwise mutilate the whole or any part of a girl's labia majora, labia minora or clitoris.

15. **Criminal Law and Civil Law Actions:** In addition, complaints arising from treatments received from CAM practitioners are subject to ordinary criminal law and civil law actions.

16. In relation to the latter, the courts have clarified that CAM practitioners are not to be judged by the standards of a practitioner of orthodox medicine. As highlighted in Shakoor (Administratrix of the Estate of Shakoor) v Situ (t/a Eternal Health Co) [2001] 1 W.L.R. 410, "the fact that the patient has chosen to reject the orthodox and prefer the alternative practitioner is something important which must be taken into account. Why should he later be able to complain that the alternative practitioner has not provided him with skill and care in accordance with the standards of those orthodox practitioners whom he has rejected?" (per Bernard Livesey QC at 416). For that reason, the skill and care expected of them are those of a reasonably competent practitioner of their particular art who is practising in accordance with the standards required in the UK. However, if the prevailing standards are regarded as deficient in this country having regard to the risks which were not but should have been taken into account, the courts may find a practitioner whose patient has suffered an injury as a consequence of the treatment provided, to be negligent.

17. The stance above demonstrates that CAM practitioners are, like orthodox medical practitioners (see Bolam v Friern Hospital Management Committee [1957] 1 W.L.R. 582 and Bolitho (Deceased) v City and Hackney HA [1998] A.C. 232), allowed to define their own standard of care. However, this comes with an important caveat: they are under a duty to ensure that the remedy prescribed or applied would not cause harm to the patient. Importantly, this duty can be discharged only by keeping abreast of risk information published in orthodox medical journals. This does not imply that they must take a range of publications themselves. All that is required is for them to join an organisation which searches the relevant literature and reports back to its members. Thus notwithstanding the fact that there is currently no legal obligation for a CAM practitioner to be a member of a professional organisation, one who does not do so "will not have discharged his duty to inform himself properly and may act at his peril" (at 417).

Key Acts

Abortion Act 1967

Cancer Act 1939

Chiropractors Act 1994

Female Genital Mutilation Act 2003

Medical Act 1983

Medicines Act 1968

Osteopaths Act 1993

Pharmacy and Poisons Act 1933

Professions Supplementary to Medicine Act 1960

Key Subordinate Legislation

Human Medicines Regulations 2012/1916

Key Quasi-legislation

None.

Key European Union Legislation

Directive 2004/24 as regards traditional herbal medicinal products

Key Cases

Shakoor (Administratrix of the Estate of Shakoor) v Situ (t/a Eternal Health Co) [2001] 1 W.L.R. 410

Bolam v Friern Hospital Management Committee [1957] 1 W.L.R. 582

Bolitho (Deceased) v City and Hackney HA [1998] A.C. 232

Key Texts

None.

Further Reading

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