

# Courts, licensing bodies turning their attention to alternative therapies

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## In brief

THE GROWING INTEREST IN ALTERNATIVE MEDICINE has come to the attention of both Canadian licensing bodies and the courts. Two recent cases, a disciplinary hearing and a medical-malpractice action, illustrate that physicians need to understand the range and complexity of issues surrounding nonconventional therapies and their clinical use.

## En bref

L'INTÉRÊT CROISSANT QUE SUSCITENT LES MÉDECINES PARALLÈLES a attiré l'attention à la fois des ordres et des tribunaux du Canada. Deux cas récents, soit une audience disciplinaire et une poursuite pour faute professionnelle intentée contre un médecin, illustrent que les médecins doivent comprendre l'éventail et la complexité des enjeux où baignent les thérapies non classiques et leur utilisation clinique.

**A**lthough some alternative therapies are viewed with scepticism, others have gained respectability and physicians appear to be gaining an increasing amount of knowledge about them. Today there is growing concern among provincial and territorial medical licensing bodies that physicians may need guidelines to establish acceptable practice standards in alternative medicine.

A 1993 study reported on a telephone survey of 1539 respondents and concluded that 1 in 3 American adults had used at least 1 unconventional therapy for a health problem in 1990.<sup>1</sup> It also concluded that Americans made more visits to alternative practitioners than to primary care physicians that year and spent US\$13.7 billion for those treatments, 75% of which involved out-of-pocket expenses.

The authors defined unconventional therapies as "medical interventions that are not taught widely at US medical schools or generally available at US hospitals," such as acupuncture, chiropractic and massage therapy. Their study focused on 16 interventions, including herbal medicine, commercial weight-loss programs and self-help groups. They found that in the previous year, relaxation techniques were the most frequently used "unconventional" therapy — 13% of respondents reported using them — followed by chiropractic (10%) and massage (7%).

Today several alternative therapies are covered by private insurers in Canada and the US. They range from traditional interventions such as chiropractic and nutrition counselling to less common practices such as aromatherapy, hypnotherapy, yoga, meditation, naturopathy and vitamin therapy.

In Canada the growing interest in alternative medicine has come to the attention of professional licensing bodies and the courts. Two recent cases — a disciplinary hearing and a medical-malpractice action — illustrate that physicians need to understand the range of issues surrounding nonconventional therapies and their clinical use.

In the disciplinary case, an Ontario physician faced charges of professional misconduct for failing to maintain the standard of practice by employing diagnostic and therapeutic methods that had no scientific or medical validity. He was also charged with incompetence for allegedly displaying a lack of knowledge, skill or judgement, or disregard for the welfare of his patients to the extent that he would be found to be unfit to continue in practice.

The physician faced numerous allegations:

- that he had employed histamine injections (or a histamine prick test) for diagnostic purposes;



## Education

## Éducation

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- that no objective measurement was used to record any change in the patient in order to assess results;
- that the injections and/or prick tests for therapeutic purposes were used in circumstances in which the efficacy of the treatment was unproven; and
- before the injections he reduced or withdrew regular medication from some patients who had asthma.

It was also alleged that the physician was guilty of professional misconduct for making misrepresentations to patients that histamine injections could be used for therapeutic purposes for a variety of conditions, even though their efficacy is unproven.

The College of Physicians and Surgeons of Ontario called the head of clinical immunology at a major hospital to testify about the standard of practice concerning the diagnosis and treatment of allergic conditions and asthma. The witness stated that the use of histamine in the way described by the physician was unacceptable and that he was unaware of scientific proof that the administration of histamine had any therapeutic value. He also indicated that it could be dangerous to discontinue a patient's medications before giving histamine therapy if, for example, the patient had severe asthma.

The Discipline Committee ruled that the physician had misrepresented to his patients that histamine injections could be used for diagnostic and therapeutic purposes for a variety of conditions. The college also decided that the physician's use of histamine for therapeutic purposes showed a lack of judgement, although this was considered insufficient to render him unfit to practise. He received a reprimand and a 3-month suspension, and a restriction prohibiting him from using histamine for diagnosis or therapy was placed on his certificate of registration for an unlimited period.

In its published reasons for the decision, the Discipline Committee set out the responsibilities of physicians who decide to employ alternative therapies in their clinical practice: "There are certain obligations that a physician must accept if he or she employs a drug for a new or nontraditional treatment. The drug must be proven safe. The physician must record in considerable detail the clinical state of the patient and the changes in this state, good and bad, that are produced by the medication. The physician should be aware of all the pertinent publications that bear on the clinical problem as well as on the proposed treatment."<sup>2</sup>

The other case involved a civil action resulting from alleged damage to nerve roots in the plaintiff's lower back following a series of ligament-tightening injections known as prolotherapy treatments.<sup>3</sup> A US-certified specialist testified as an expert on the practice of orthopedic medicine, which includes the use of prolotherapy treatment. (In Canada, orthopedic medicine is recognized as a

legitimate discipline but it is not a recognized specialty.)

The court found that the physician's diagnosis of recurrent lumbar disc syndrome was made properly and appropriately and that he was competent in his field. The court also stated that "on the basis of all the evidence, the prolotherapy treatment administered to the plaintiff [patient] was and is a safe and efficacious treatment."

The judge referred to a statement from the Supreme Court of Canada that provides guidance to physicians on the appropriate use of therapies or procedures that may fall outside the range of traditional medical practice: "Given the number of available methods of treatment from which medical professionals must at times choose, and the distinction between error and fault, a doctor will not be found liable if the diagnosis and treatment given to a patient correspond to those recognized by medical science at the time, even in the face of competing theories."<sup>4</sup>

Professional licensing/regulatory colleges and councils are responding in various ways to the continuing controversy over interventions other than traditional medical diagnosis and treatment.

In British Columbia, the college developed a policy regarding "unproven and unconventional treatment." It stated that the college is obliged to maintain or set basic standards of practice for its members, which are "those of conventional medicine in the prevention and diagnosis of disease, the treatment of disease and the assessment of the results of treatment." The BC policy states that "it is unethical to engage or to aid and abet in treatment that has no acceptable scientific basis, may be dangerous, may deceive the patient by giving false hope, or that may cause the patient to delay in seeking proper care until his or her condition becomes irreversible."

In 1996 the Ontario college established a committee "to consider [its] position on alternative, unproven, complementary and unorthodox approaches." It was given a mandate to make recommendations about "core values" concerning complementary medicine. It was also asked to make recommendations on what constitutes acceptable use of additional diagnostic methods that are not generally accepted or validated, and acceptable offers to patients of alternative therapies of unproven value after a conventional diagnostic workup. Finally, it was to outline requirements for physicians when patients request alternative therapies after they have also refused a conventional diagnostic workup.

The committee has yet to present its recommendations.

## References

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