



British Crystal Healers

Code of Conduct & Guidance to Practitioners

Revised May 2008

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INTRODUCTION

Throughout this Document, the abbreviation BCH will be used for the British Crystal Healers

1. References in this document to the singular shall include the plural and vice versa. References to the masculine gender shall be construed so as to refer to the female gender for the sake of ease.
2. "Registered Medical Practitioner" is the description recognised in law for the individual usually called "Doctor". For the purpose of this Code the titles are interchangeable.
3. Practitioner training by BCH members must be regarded as a guarantee to patients/clients, the medical profession and the Government of the practitioner's integrity, sincerity and ability.
4. The role of the BCH, its member organisations, and their individual members is to ensure that their therapy is understood, to help practitioners to achieve the highest standards of competence and performance and to help establish their therapy as a standard available to the NHS and/or private medicine.
5. Alternative and complementary medicine is legal in Great Britain. It is at present unregulated by law.
6. Government policy permits a doctor registered with the General Medical Council (GMC) to use or prescribe therapies (BHSS letter UNP/13 of 2.9.1985).
7. The Government's statement of 3rd December 1991 confirmed a Registered Medical Practitioner's right to delegate treatment of patients to specialists, including complementary therapists. Such treatment can be paid for by either the Health Authorities or fund holding GP's.
8. The Registered Medical Practitioner must remain in charge of the patient's treatment and clinically accountable for the care offered by the complementary therapist. The GMC's rules for doctors published in Professional Conduct and Discipline: Fitness to Practice dated February 1991 (paragraphs 42 and 43) allow a doctor to delegate to persons trained to perform specialist functions, treatment or procedures provided that he (doctor) retains ultimate responsibility for the management of the patient.
9. Although Government and orthodox medical policy often use the words alternative and complementary medicine it is clear that under their rules any practitioner who abides by the BCH Code of Conduct and accepts delegation from a Registered Medical Practitioner is "complementary". The term "complementary medicine" makes no pretensions of replacing conventional medicine and taking its place. The term "alternative medicine" is misleading. Contrary to this, the term "complementary medicine" informs the public that these therapies cannot and do not ever exclude conventional medicine and the Registered Medical Doctor from patient care treatment.
10. "Patients' Rights", the National Consumer Council Guide for BHS patients and Doctors (published by HMSO) states under "Alternative treatment within the BHS page 17", that "Patients in some NHS hospitals can request a particular therapy or practitioner - providing the Doctor treating the patient is told." At the present time such right applies only to healing.

SECTION 1: CODE OF CONDUCT

This Code of Conduct is obligatory for practitioners belonging to member organisations of the BCH. The latter is required to accept responsibility for compliance and for applying the Disciplinary Procedure. It is, however, open to constituent bodies to have additional provisions without in any way detracting from the clarity, force or intent of this Code. Practitioners in breach of the code of conduct are liable to expulsion

- 1.1 Practitioners shall have respect for the religious, spiritual, political and social views of any individual irrespective of race, colour, creed or sex.
- 1.2 Practitioners shall at all times conduct themselves in an honourable and courteous manner and with due diligence in their relations with their patients/clients and the public. They should seek a good relationship and shall work in a co-operative manner with other healthcare professionals and recognise and respect their particular contribution within the healthcare team, irrespective of whether they perform from an allopathic or alternative/complementary base.
- 1.3 The relationship between a practitioner and his patient/client is that of a professional with a patient/client. The patient/client places trust in a practitioner's care, skill and integrity and it is the practitioner's duty to act with due diligence at all times and not so abuse this trust in any way.
- 1.4 Proper moral conduct must always be paramount in practitioners' relations with patients/clients. They must behave with courtesy, respect, dignity, discretion and tact. Their attitude must be competent and sympathetic, and positive.
- 1.5 All practitioners visiting hospitals will comply with the guidelines laid down by the BCH and appended to this Code.
- 1.6 Practitioners should ensure that they themselves are medically, physically and psychologically fit to practice.
- 1.7 When a practitioner is giving crystal healing privately to a person of the opposite sex it is advisable for the healer to request the presence of a third party whose bona fides the healer and patient can accept.
- 1.8 Discretion must be used for the protection of the practitioner when carrying out private treatment with patients/clients who are mentally unstable, addicted to drugs, alcohol, severely depressed, suicidal or suffering from hallucinations. Such patients/clients must be treated only by a practitioner with relevant competency. A practitioner must not treat a patient/client in any case which exceeds their capacity, training and competence. Where appropriate, the practitioner must advise referral to a more qualified person.
- 1.9 Registered medical practitioners and members of other health care professions remain subject to the general ethical codes and disciplinary procedures of their respective professions.
- 1.10 The aim of the BCH practitioner is to offer a service to patients/clients as well as a service and therapeutic modalities to, and with, the medical profession. Practitioners must recognise that where a patient is delegated to them by a Registered Medical Practitioner, the GP remains clinically accountable for the patient and for the care offered by the practitioner.
- 1.11 Practitioners must guard against the danger that a patient/client without previously consulting a doctor may come for therapy for a known disorder and subsequently be found, too late, to be suffering from another serious disorder. To this end all patients/clients must be asked what medical advice they have received. If they have not seen a doctor, they must be advised to do so. Since it is legal to refuse medical treatment, no patient/client can be forced to consult a doctor. The advice must be recorded for the practitioner's protection.
- 1.12 Practitioners must not countermand instructions or prescriptions given by a doctor.

- 1.13 Practitioners must not advise a particular course of medical treatment, such as to undergo an operation or to take specific drugs. It must be left to the patient/client to make his own decision in the light of medical advice.
- 1.14 Practitioners must never give a medical diagnosis to a patient/client in any circumstances; this is the responsibility of a registered medical practitioner.
- 1.15 Practitioners must not use titles or descriptions to give the impression of medical, or other qualifications unless they possess them and must make it clear to their patients/clients that they are not doctors and do not purport to have their knowledge or skills.
- 1.16 Working with Veterinary Surgeons

The law in regard to animal treatment is substantially more restrictive than for the treatment of human clients. In particular, The Veterinary Surgeons Act 1966 (Section 19) provides, subject to a number of exceptions, that only registered members of The Royal College of Veterinary Surgeons may practise veterinary surgery. The latter is defined as encompassing ‘the the art and science of veterinary surgery and medicine and, without prejudice to the generality of the foregoing, shall be taken to include-

- (a) the diagnosis of diseases in, and injuries to, animals including tests performed on animals for diagnostic purposes;
- (b) the giving of advice based upon such diagnosis;
- (c) the medical or surgical treatment of animals; and
- (d) the performance of surgical operations on animals.’

The people who may legally administer *minor medical treatment* to an animal are

- its owner
- another member of the household of which the owner is a member
- a person in the employment of the owner.

Additionally, any person may render emergency first aid to an animal ‘for the purpose of saving life or relieving pain or suffering’.

Veterinary surgery involving acupuncture, homoeopathy and other complementary therapy may only be administered by a veterinary surgeon who should have undergone training in these procedures.

b. It is legal for crystal therapy practitioners to work with animals as long as they do not practise veterinary surgery or give medical treatment. They may, for example, provide animal owners or carers with crystal treatments to support an animal’s emotional and psychological well being. They may also provide owners and carers with suggestions for applying or using crystal therapy. Such practices remain legal as long as the crystal therapy practitioner:

- does not give a diagnosis of disease or injury in animals.
- does not perform tests for the purpose of diagnosing disease or injury.
- does not give medical advice based upon a medical diagnosis.
- does not perform surgical operations.
- does not supply anything which counts as a veterinary medicine for the purpose of Veterinary Medicines Regulations.

c. However, it is always wise for crystal therapy practitioners to ensure that animal owners have sought professional help from a veterinary surgeon for any problems the animal is experiencing. Practitioners are, therefore, advised to secure the signature of the owner or keeper of such an animal to the following statement:-

I confirm that I have been notified by.....(name of practitioner) that I should consult a veterinary surgeon regarding the health of my animal.....(name of breed).

Signed.....(Owner/keeper of animal).

Signed by witness.....(Signature of person witnessing)

- 1.17 Practitioners must not attend women in childbirth or treat them for ten days thereafter unless they hold an appropriate qualification in midwifery.
- 1.18 Practitioners must not practice dentistry unless they hold an appropriate qualification.
- 1.19 Practitioners must not treat venereal disease as defined in the 1917 Act.
- 1.20 All patients may be treated at the discretion of the practitioner.
- 1.21 **Notifiable Diseases** It is a statutory requirement that certain infectious diseases are notified to the Medical Officer of Health of the district in which the patient/client resides or in which he is living when the disease is diagnosed. The person responsible for notifying the MOH is the GP in charge of the case. If, therefore, a practitioner were to discover a notifiable disease which was clinically identifiable as such he should insist that a doctor is called in. Each local authority decides which diseases shall be notifiable in its area. There may therefore be local variations, but it is assumed that the following diseases are notifiable everywhere:
- | | | |
|---------------------|-----------------------|-----------------|
| Acute encephalitis | Leprosy | Relapsing Fever |
| Acute meningitis | Infective jaundice | Scarlet Fever |
| Anthrax | Malaria | Tetanus |
| Acute poliomyelitis | Leptospirosis | Tuberculosis |
| Cholera | Measles | Typhoid Fever |
| Diphtheria | Ophthalmia neonatorum | Typhus |
| Dysentery | Paratyphoid Fever | Whooping Cough |
| Food poisoning | Plague | Yellow Fever |
| Rubella | Mumps | |
- 1.22 Practitioners must not use manipulation or vigorous massage unless they possess an appropriate professional qualification.
- 1.23 Practitioners must not prescribe remedies, herbs, supplements, oils, etc, unless their training and qualifications entitle them to do so.
- 1.24 Practitioners may not offer counselling unless suitably qualified.
- 1.25 Practitioners must remain in a conscious state of attunement at all times and not work in a trance.
- 1.26 Practitioners are not permitted to offer clairvoyant readings during a crystal healing session.
- 1.27 **Healing Young persons** It is illegal to give healing to persons under the age of 18 without obtaining permission, preferably in writing from a parent or guardian prior to the treatment. A person over the age of 16 years and under 18 years may request medical attention. A crystal therapist is not yet recognised as a qualified medical practitioner. If it is known that medical attention for the child is not being received, therapists are advised to secure the signature of parent or guardian to the following statement:-

I have been notified by _____ that according to law I should consult a doctor concerning the health of my child _____ (name of child) Signed _____ (parent or guardian)
Signed by witness _____ (signature of person witnessing).

- 1.28 Advertising must be dignified in tone and shall not contain testimonials or claim a cure or mention any disease. It shall be confined to drawing attention to the therapy available, the qualifications of the practitioner and offer a general service together with necessary details.
- 1.29 All professionally practising therapists of the organisations of the BCH should ensure that they abide by the BCH Code of Conduct and Disciplinary Procedure.
- 1.30 Before treatment, practitioners must explain fully either in writing or verbally all the procedures involved in the treatment including such matters as questionnaires, likely content and length of consultation, probable number of consultations, fees, etc.
- 1.31 Practitioners must act with consideration concerning fees and justification for treatment. Practitioners must not be judgmental and they must recognise the patient's/client's right to refuse treatment or ignore advice. It is the patient's/client's prerogative to make their own choices with regard to their health, lifestyle and finances.
- 1.32 Practitioners must ensure they keep clear and comprehensive records of their treatments including the dates and advice given. This is especially important for the defence of any negligence actions as well as for efficient and careful practice.
- 1.33 In determining whether or not any record of the nature of any treatment administered is reasonable, it shall be for the practitioner compiling the record to show that on the basis of his notes he can demonstrate what treatment was undertaken and whether that treatment was competently and reasonably undertaken.
- 1.34 With regard to confidentiality, practitioners, their assistants and receptionists have an implicit duty to keep attendances, all information, records and views formed about patients/clients entirely confidential. No disclosure may be made to any third party, including any member of the patient's/client's own family, without the patient's/client's consent unless it is required by due process of the law, whether that be by Statute, statutory instrument, order of any court of competent jurisdiction or howsoever otherwise.
- 1.35 Practitioners must ensure that they comply with the Data Protection Act.
- 1.36 No third party, including assistants and members of the patient's/client's family, may be present during the course of a consultation with an adult without the patient's/client's express consent.
- 1.37 Insurance and Premises. All practitioners must be adequately insured to practice. Private insurance is permitted and if adopted, practitioners must provide evidence of this to their Association. The insurance policy must state provision for public and employee (if personnel are employed) liability and indemnity as well as the provision for professional treatments.
- 1.38 All practitioners shall ensure that their working conditions are suitable for the practice of their therapy.
- 1.39 **Discipline:** Practitioners will follow and abide by decisions made under the disciplinary procedures appended to this Code.

Section 2: GUIDANCE FOR PRACTITIONERS VISITING HOSPITALS TO PROVIDE TREATMENTS

- 2.1 The hospital is responsible for the patient.
- 2.2 Practitioners may only treat patients in hospital with permission from the hospital authority including the ward charge nurse.
- 2.3 Practitioners should not wear clothing (eg. white coats) which give the impression that they are a staff member of the hospital. They may have some form of identification such as a lapel badge.
- 2.4 Where permission is given to provide treatment on the ward, this must be carried out without fuss or interruption to other patients and ward staff.
- 2.5 If other patients request treatment, the permission of the ward charge nurse, nursing officer (and if relevant, the patient's doctor) must first be obtained.
- 2.6 Practitioners must never undermine the patients faith in hospital treatment or regime.

- 2.7 "Where credentials are requested, practitioners should produce a copy of the current BCH Practitioner Register which lists their name together with some form of identification or other proof of membership of an BCH organisation and permission to visit."

Section 3: DISCIPLINARY AND COMPLAINTS PROCEDURES

- 3.1 BCH shall have a Committee to deal with complaints against a member organisation.
- 3.2 The Chairman and members of the disciplinary committee will be appointed by BCH each year at the AGM.
- 3.3 The Committee will consist of at least two members, not including the chairman. A balance of the sexes should be considered.
- 3.4 Any complaint will be immediately acknowledged by the person receiving the complaint and will be passed to the Chairman of the Disciplinary Committee.
- 3.5 The Chairman of the Disciplinary Committee will be responsible for obtaining fully itemised details in writing from the person or organisation lodging the complaint. At the same time he will propose the option of a conciliation process.
- 3.6 At the same time, the Chairman will obtain the complainants written permission for a copy of the allegations to be sent to the organisation or individual who is subject of the complaint. If permission is not given the matter will not be pursued.
- 3.7 Immediately the formal complaint is lodged in sufficient detail, a copy of the complaint will be sent to the organisation or individual who is the subject of the complaint requesting agreement or rebuttal within 28 days. The Complainant will be informed of this at the same time.
- 3.8 Within 28 days of receipt of the written submission from the organisation or individual who is the subject of the complaint, the Disciplinary Committee will consider the complaint. They may request the attendance of either party to provide further information.
- 3.9 Having considered the complaint and the rebuttal, the Disciplinary Committee will submit a written report and recommendation to BCH.
- 3.10 If BCH considers that an individual or organisation should be disciplined in any way, it will state this in writing and provide the option of an appeal to the BCH decision within 28 days.
- 3.11 BCH will deal with any written appeal and may request further written or spoken submission from either party.
- 3.12 They will then confirm if their findings have been upheld amended or reviewed.
- 3.13 Any fully qualified practitioner expelled from a member organisation of the BCH will be ineligible for membership of any other member organisation.
- 3.14 Practitioners in breach of the Code of Conduct are liable to expulsion by BCH.
- 3.15 Any member organisation in breach of the Constitution, Code of Conduct, and Disciplinary Procedure will be liable to expulsion.

Section 4: EXPLANATORY NOTES ON THE LAW AND ETHICS

- 4.1 The fields of law and ethics to some extent overlap, although the standards which each imposes are not always the same in Criminal Law and Civil Law.
- 4.2 In order to make the ensuing paragraphs comprehensible, it is necessary to explain that the law of England is divided into two main categories known as the Criminal Law and Civil Law respectively. The Criminal Law governs the conduct of members of the community vis-a-vis the State: the Civil Law governs the rights and liabilities of citizens vis-a-vis one another. If a person contravenes the Criminal Law he is prosecuted by the authorities and, if found guilty, fined or imprisoned for the offence. If a person contravenes the Civil Law he is sued by the injured party and, if the claim against him succeeds, he is ordered to pay damages as monetary redress for the injury sustained by the plaintiff.
- 4.3 The Criminal Law is for the most part contained in Acts of Parliament whereas the Civil Law is largely case law, that is to say, it consists of the corpus of decisions taken by the courts in cases that have come before them. Exceeding the speed limit in a motor car is an example of a criminal offence. Inflicting injuries on another person through negligent driving is an example of a civil offence (though it may at the same time constitute the criminal offence of careless driving).
- 4.4 The principal statutory restrictions (the infringement of which would constitute a criminal offence) to which practitioners are subject are contained in Acts of Parliament which have, from time to time, been passed with the object of protecting the public against the unscrupulous activities of quacks and charlatans in the field of human and veterinary medicine. These are discussed individually in the Paragraphs below.
- 4.5 So far as the Civil Law is concerned, the only risk, apart from that which arises under the Apothecaries Act, to which practitioners are subject, is the one incurred by all professional people alike, namely, an action for damages for professional negligence. This is discussed below.
- 4.6 Prohibited Appellation in order to enable the public to distinguish between those who are professionally qualified and those who are not, the law makes it a criminal offence for anyone who does not hold the relevant qualification to use any of the titles specified hereunder or to use any other title or description which suggests or implies that he is on the statutory register of the persons who hold those qualifications. The titles are: Chemist; Chiropodist; Dental Practitioner; Dental Surgeon; Dentist; Dietitian; Doctor, Druggist; General Practitioner; Medical Laboratory Technician; Midwife; Nurse; Occupational Therapist; Optician; Orthoptist; Pharmacist; Physiotherapist; Radiographer; Remedial Gymnast; Surgeon; Veterinary Practitioner; Veterinary Surgeon. It need hardly be said that a practitioner must scrupulously avoid the foregoing titles unless of course he is additionally qualified in any of the fields concerned when he is entitled to use the appropriate description.

- 4.7 This is a case where law and ethics coincide to a large extent for it would not only be illegal but also clearly unethical for an unqualified person to use a title such as doctor which in the medical context is well known as in denoting a registered medical practitioner.
- 4.8 **Prohibited Functions:** In addition to prohibiting unqualified persons from using the titles and descriptions specified above, the law also precludes them from performing certain specified functions in the field of medicine. These are: The practice of Dentistry; The practice of Midwifery; The treatment of Venereal Disease; The practice of Veterinary Surgery.
- 4.9 **Dentistry:** The relevant Act of Parliament defined dentistry as including the giving of any treatment, advice or attendance or the performance of any operation usually performed by dentists. Clearly, a practitioner who has not also qualified as a dentist would not seek to give or hold himself out as being prepared to give dental treatment such as fillings, extractions, scaling and the like. He might, however, want to treat a patient for toothache until such time as the patient could visit his dentist or to treat a dental patient for eg. pain or haemorrhage during or after a dental operation. It is impossible to say with any certainty whether such treatment would be held to constitute an infringement of the Act; but it can be said with some confidence that it would be most unlikely to attract a prosecution.
- 4.10 **Midwifery:** Except in cases of sudden or urgent necessity, it is an offence for anyone other than a certified midwife to attend a woman in childbirth without medical supervision or for anyone other than a registered nurse to attend for reward as nurse on a woman in childbirth or during a period of 10 days thereafter. Here again, a person who did not possess the necessary qualification could clearly not purport to practise midwifery as such.
- 4.11 **Venereal Disease:**
- a) it is an offence for anyone except a registered medical practitioner for direct or indirect reward to do any of the following: Treat for venereal disease; prescribe any remedy for venereal disease; whether such advice is given to the patient or to any other person.
 - b) Venereal disease is defined in the relevant Act of Parliament of 1917 as meaning "Syphilis" "Gonorrhoea" and "Soft Chancre".
 - c) The Foregoing prohibitions are strict. Where, therefore, a patient informs a practitioner that he is suffering from VD or where a patient has physical symptoms which are clinically identifiable as VD, as described above, the practitioner must categorically refuse to treat him for that disease.
- 4.12 **AIDS:** Aids is not covered by the Act. It is for the individual practitioner to decide whether to give treatment to an AIDS patient. (Note: The BMA say that provided cuts and sores are covered the risk from hand healing is minimal. The DHSS say that in this situation the risk is nil).
- 4.13 **Veterinary**
- a) In addition to providing that, as has already been previously noted, an unregistered person may not use the title "Veterinary Surgeon or Veterinary Practitioner", the law also makes it an offence for such a person to practise veterinary surgery.

- b) The relevant Act of Parliament (the Veterinary Surgeons Act 1966) defined veterinary surgery as "the art and science of veterinary surgery and medicine" and states that, without prejudice to the generality of that definition, it shall be taken to include the diagnosis of disease in, and injuries to, animals, including tests performed on animals for diagnostic purposes; the giving of advice based upon such diagnosis; the medical or surgical treatment of animals; the performance of surgical operations on animals.
- c) The rendering in an emergency of first aid to animals for the purpose of saving life or relieving pain is permissible. What constitutes an emergency must be a question for the judgement of the individual practitioner. Where there is doubt, the advice of the RCVS or the relevant Member Organisation should be sought by the practitioner. (NB. Crystal Healing, Homeopathy, Healing and Radionic Treatment are acceptable to the RCVS as both legal and ethical).

4.14 **Fraudulent Mediumship**

The Fraudulent Mediums Act 1951 was repealed in April 2008 by the Consumer Protection from Unfair Trading 2007 (CPR's) which implement the Unfair Commercial Practices Directive (UCPD). The CPR's include rules prohibiting conduct which misleads the average consumer and thereby causes, or is like to cause him, to take a transactional decision he would not have taken otherwise'. Conduct could be deemed unfair if it deceives the average member of (i) the group to which it is directed or (ii) a clearly identifiable group of consumers who are particularly vulnerable to this type of practice.

The original Act required proof that the medium or healer was fraudulent. The changes will mean that a complainant can say they believe the medium or healer was fraudulent and it will be up to the medium or healer to prove they weren't.

(The government leaflet on BERR is available on the ACHO website: www.acho.co.uk)

4.15 **Advertising:** Here also there is an overlap between law and ethics. The law makes it an offence to take part in the publication of any advertisement referring to any article of any description in terms which are calculated to lead to the use of that article for the purpose of treating human beings for any of the following diseases: Bright's Disease; Glaucoma; Cataract; Locomotor Ataxy; Diabetes Paralysis; Epilepsy or fits; Tuberculosis.

4.16 It is also an offence to publish any advertisement which:

- a) offers to treat or prescribe a remedy or advice for cancer, or
- b) refers to any article in terms calculated to lead to its use in the treatment of cancer.

4.17 It is worth noting in passing that there is no prohibition on treating a patient for the foregoing diseases and that in each case the offence is in advertising treatment. It is not possible to give a comprehensive definition of what the word "advertisement" would be held to include in these contexts. The question would turn on the circumstances of each particular case; but it is not exclusively confined to advertisements published in the press, for a circular letter (issued in response to a request prompted by a press advertisement offering details on application) which

stated that a certain product would cure tuberculosis and cancer has been held to constitute an advertisement.

4.18 At all time Advertising should comply with standards laid down by the British Code of Advertising Practice and meet the requirements of the Advertising Standards Authority.

4.19 **Treatment of Children**

i) It is an offence under the law for the parent or guardian of a child under 18 to fail to provide adequate medical aid for the child. Thus a parent or guardian who consults a practitioner in respect of a child for whom he is responsible risks prosecution for failure to discharge his statutory duty;

ii) It should be observed that the law does not prohibit a practitioner of any alternative or complementary technique from treating children. The importance of this matter for practitioners arises by reason of the doctrine of the Criminal Law known as "aiding and abetting." Under this doctrine, if A is guilty of an offence (whether of commission or omission) at which B connives or assists, B is said to have aided and abetted an offence and therefore to be himself also guilty of that offence. If a practitioner clearly explains to the parent or guardian of a child under 16 of the nature of the obligation imposed by the law, then it is most unlikely that a successful prosecution could be brought against the practitioner or aiding and abetting the statutory offence by agreeing to treat the child. See Para 1.23 of the Code of Conduct.

4.20 **Professional Negligence:** The meaning of the doctrine of negligence in English law is, very broadly, that in his contacts with other citizens a person must have certain regard for their interests and that, if through some act of commission or omission committed without sufficient regard for another person's interest, that other person sustains injury, he is liable to pay damages as monetary redress for the injury inflicted. The nature and extent of the regard which one person is required to have for another (or, as it is put in law, the "duty of care" he owes the other) depends upon the nature of the contact or relationship between them.

4.21 The relationship of the practitioner and patient. Like that of advisor and client, automatically imposes on the practitioner a duty to observe a certain standard of care and skill in the treatment of advise he gives. Failure to attain to that standard exposes the practitioner to the risk of an action for damages.

4.22 What, then, is professional negligence? It is not merely being wrong although there are patients who tend to think it is. It may, broadly speaking, take one of two forms: either lack of the requisite knowledge and skill to undertake the case at all, or else, while possessing the necessary knowledge and skill, failure to apply it properly. A "professional" person of any kind is by definition one who professes to have certain special knowledge or skill not possessed by the layman and, in general, a practitioner of any profession is bound to possess and exercises the knowledge, care and skill of an ordinarily competent practitioner of that profession. A person cannot, on the other hand, be held responsible for failing to exercise skill which he does not either express or imply to claim to possess.

- 4.23 Thus, where medical treatment is concerned the standard required of a registered medical practitioner in general practice is that of an ordinarily competent doctor, whereas a more exacting standard is imposed on a specialist; and anyone who, although not a registered practitioner, claimed either expressly or impliedly to have the same skill as a doctor would be judged by reference to the standards which apply to doctors.
- 4.24 It will therefore be seen that the knowledge and skill which practitioners profess to have is of crucial importance in the context of professional negligence. In order that they are not judged by standards that do not properly apply to them, it is essential that practitioners should, whenever the question arises, make it abundantly clear that they are not doctors, that they do not hold a qualification recognised by law, and that they do not claim to possess the same knowledge or purport to exercise the same skill as doctors.
- 4.25 Comment: It may be objected that such a statement is derogatory of alternative and complementary medicine and that it denigrates those who practise it. This is not so. The right and positive way of thinking about the matter is that it is a different art and science from that of orthodox allopathic medicine, that it is founded on different hypotheses, relies on different techniques and has its own skills. Emphasising this distinction helps to serve the dual purpose of promoting a better understanding of alternative and complementary medicine and preventing practitioners being judged by criteria which do not apply to them.
- 4.26 Assuming that the position had been established from the outset in any given case in which an issue of professional negligence arose, it will be seen that it would follow that the standard of knowledge, care and skill by reference to which the practitioner's advice and treatment should properly be tested would be that of an ordinarily competent practitioner. What then, is that standard?
- 4.27 It would be hard to say in the case of some therapies where the line denoting a minimum standard of reasonable competence in dealing with a particular case should be drawn. Proof that the case had been analysed and treated in accordance with the methods and precepts taught to students would be useful evidence in rebutting the charge of negligence. There is, nevertheless, one overriding principle which applies to the practise of any kind of medical or quasi-medical technique. *That principle is that when the circumstances are such that the practitioner knows, or should know, that a case is beyond the scope of his particular skill, it becomes his duty either to call in a more skilful person or to take other steps to ensure that the patient no longer relies implicitly on his skill alone.*
- 4.28 One of the most important attributes for every practitioner to have at each succeeding stage of his career is some awareness of the *limits* of his capacity. When he feels that point has been reached in any particular case he should not hesitate to seek another option.
- 4.29 **Disciplinary and Complaints Procedures.** It is essential that any individual practising as an alternative or complementary therapist should belong to a professional association which has a clearly defined Disciplinary and Complaints Procedure for dealing with allegations of misconduct or otherwise (See - The Disciplinary and Complaints Procedure as part of Code of Conduct).

- 4.30 **Insurance** Any individual wishing to practice as an alternative or complementary therapist must ensure that they are adequately insured to practice. Such Insurance should cover public liability and professional indemnity against malpractice.
- 4.31 **Premises** When carrying on a trade, business or profession from any premises an individual must ensure that their working conditions and facilities to which members of the public have access are suitable and comply with all legislation.
- 4.32 In the case of practitioners using their own homes as a base for their practice, in addition to complying with national legislation for any therapy they practice, they should check on any local authority by laws covering their practice as these vary considerably throughout the country.
- 4.33 If staff are employed on the premises practitioners must pay equal attention in this area.
- 4.34 Practitioners working from home should give special attention to insurance, the terms of their lease or other title deeds and any local government regulations limiting such practice or under which he may be liable to pay business rates.
- 4.35 **The Apothecaries Act** It is necessary to mention briefly the Apothecaries Act of 1815. This Act makes it unlawful for anyone not qualified as such to practice as an Apothecary. An infringement of the Act is not a criminal offence, but it renders the offender liable to civil proceedings brought by The Society of Apothecaries for the recovery of a penalty of £20.
- 4.36 The Act does not define what is meant by practising as an Apothecary, but cases which have in the past been brought under the Act indicate that it means something in the nature of practising medicine (as opposed to surgery) by giving advice or treatment, that it is not confined to the function of dispensing and that a practitioner might be held to be practising as an Apothecary.
- 4.37 On the other hand, the Act has not, so far as is known, been invoked since 1908 and, although it is still on the Statute Book, it seems that the risk of proceedings being brought against practitioners by the Society of Apothecaries is very remote. In any case, if and in so far as the risk exists, there is nothing whatever that can be done to guard against it and it is therefore one that has to be accepted.
- 4.38 **Oral Medicines.** The position as regards the supply of oral medicines depends on the Medicine Act 1968 and regulations made, or to be made, thereunder. Basically this legislation has two main purposes: First, it requires anyone other than doctors, vets, midwives, nurses and pharmacists who sell or supply medicine of any kind to other people to hold a licence. Secondly, it imposes control on the circumstances in which medicines can be supplied to the public. Use of the word 'remedies' is implicit as meaning 'medicine' which is why flower and vibrational essences are not referred to as 'remedies'. However the Bach Flower Remedies have a special dispensation from the Medicines and Health Products Regulatory Agency to continue to be called 'remedies' as it is a historical reference. As long as an essence producer makes no medicinal claims or uses no medicinal words to describe their essences, essences are regarded as 'Foods' and come under the laws governing foods and food production.

- 4.39 Medicines are termed "medicinal products" in the Act and a medicinal product is defined as meaning any substance supplied for use by being administered to a human being for a medicinal purpose, that is, it has a physical or physiological effect. It therefore includes not only allopathic medicines but also all such substances as homeopathic and naturopathic remedies, vitamin, biochemic tissue salts and even unadulterated sac lac when it is administered as a placebo.
- 4.40 Under the current Act any practitioner who supplies oral medicines needs a licence unless he merely passes on to his patients/clients remedies he obtains from his supplier in the unopened containers in which he supplies them. In such cases no licence is required provided the supplier (who may or may not be the manufacturer) holds a "product licence" covering the medicine in question. This may be the case, but where there is doubt the practitioner would be wise to check the point with his supplier.
- 4.41 A practitioner who by contrast wishes to obtain medicines in bulk and distribute small quantities to different patients/clients will need a licence authorising the "assembly" of medicinal products, "assembly" being the technical term used to denote breaking bulk and distributing in small quantities. The present annual fee for such a licence is £100.00 or 0.5% of the turnover of medicinal products sold by retail or in similar circumstances, provided that the turnover figure is less than £20,000.00. Licence fees are reviewed from time to time.
- 4.42 The way to obtain a licence is first to obtain an application form from the Department of Health Medicine Control Agency, Market Towers, 1 Nine Elms Lane, London SW8 5NQ.
- 4.43 Notifiable Diseases It is a statutory requirement that certain infectious diseases are notified to the Medical Officer of Health of the district in which the patient/client resides or in which he is living when the disease is diagnosed. The person responsible for notifying the MOH is the GP in charge of the case. If, therefore, a practitioner were to discover a notifiable disease which was clinically identifiable as such he should insist that a doctor is called in. Each local authority decides which diseases shall be notifiable in its area. There may therefore be local variations, but it is assumed that the following diseases are notifiable everywhere:
- | | | |
|---------------------|-----------------------|-----------------|
| Acute encephalitis | Leprosy | Relapsing Fever |
| Acute meningitis | Infective jaundice | Scarlet Fever |
| Anthrax | Malaria | Tetanus |
| Acute poliomyelitis | Leptospirosis | Tuberculosis |
| Cholera | Measles | Typhoid Fever |
| Diphtheria | Ophthalmia neonatorum | Typhus |
| Dysentery | Paratyphoid Fever | Whooping Cough |
| Food poisoning | Plague | Yellow Fever |
| Rubella | Mumps | |
- 4.44 **Post Mortems.** A post mortem has to be carried out before a Death Certificate can be issued in any case where the deceased has not been seen by a doctor during the four weeks preceding his death. There is always a possibility of post mortem leading to a Coroner's inquest and, where an inquest is held, it is not impossible that in certain circumstances questions might be asked about the treatment the deceased was receiving and the efficacy for relieving the condition from which he was suffering.
- 4.45 It follows that, where a patient/client, suffering from a terminal or potentially fatal condition is not seeing a doctor more than once every four weeks, the practitioner should insist that he sees a

doctor at intervals of no more than four weeks in order that, should the patient/client die, a Death Certificate can be issued and an inquest avoided.

- 4.46 **False and Misleading Statements.** The law on this subject was greatly expanded by the Misrepresentations Act 1967 and the Trade Descriptions Act 1968.
- 4.47 Under the 1967 Act, a patient/client who engages the services of a practitioner and pays fees for treatment which proves unsuccessful could recover these fees (and any other expenses incurred as a result of the unsuccessfulness of the treatment) as damages for breach of contract if he could show that he was induced to engage the practitioner's services by means of a misrepresentation made by the practitioner about the efficacy of the treatment. Similarly, the patient/client who was so induced could, if sued by the practitioner for unpaid fees, successfully resist the practitioner's claim. In as much as the patient/client who was so induced could, if sued by the practitioner for unpaid fees, successfully resist the practitioner's claim. In as much as the patient/client confronted by such a claim might be tempted to raise the defence of misrepresentation and such a defence would be damaging to the reputation of the practitioner and alternative and complementary medicine.
- 4.48 Under the 1968 Act any statement about the properties of goods or the nature of services offered which is false, misleading or inaccurate can give rise to prosecution. a person guilty of an offence under the Act is liable, on summary conviction, to a fine not exceeding £400.00 and, on conviction on indictment, to a fine (of no specified maximum) or to imprisonment for a term not exceeding two years, or both.
- 4.49 As practitioners do not normally sell or supply goods, the main importance of this Act lies in its provisions concerning false statements as to services. Broadly, it is an offence for a person to make a statement which is false to a material degree if he knows it is false, or is reckless as to its truth or falsity, about the nature of any services offers or the time at which the manner in which or the person by whom the services are provided. In that connection it is particularly noteworthy that the Act provides that, in relation to any services consisting of or including the application of any treatment, a false statement about the nature of the service shall be taken to include false statements about the effect of the treatment.
- 4.50 Although these provisions occur in a Statute relating to trade, professional services are not expressly excluded and, unless and until the Courts hold otherwise, it must be assumed that they apply to persons who offer professional services no less than persons who offer commercial services. It would therefore be unwise for a practitioner to make any statement about himself, his qualifications or experience, his ability to diagnose or treat or the beneficial effect of treatment in general unless he knew positively that such statement was true and what is more, could prove it to be true. This only serves to emphasise the importance of the point already made above that practitioners should exercise great restraint in the terms they use to describe their own abilities and the powers of alternative or complementary medicine in general.
- 4.51 **Legal Advice.** Any practitioners who find themselves faced with the possibility of legal proceedings whether criminal or civil and however remote, should immediately notify the Secretary of their association so that its governing body can consider whether they can help, and if so, how. The association concerned should immediately inform BCH.