# ***“The wrong help can hurt”[[1]](#footnote-2): Enforcement and Regulation of unauthorized practice***

**Peter J. Osborne and Dean Benard, with thanks to Rubal Bhadu**

If it looks like someone is providing professional services, then that someone is probably providing professional services - In a recent case of *Law Society of Upper Canada v. Dzelme* [[2]](#footnote-3), the Ontario Superior Court of Justice issued an injunction against a non-lawyer who ran a website called winningcourtstragies.com and argued he was simply providing clients with his own intellectual property. The injunction prohibited him from providing legal services and ordered him to remove his web site, from the internet. [[3]](#footnote-4)

The self-governing professions are permitted to discipline their own members, based on the belief that members of a profession are best equipped to judge whether a practitioner is practising improperly. Part of self-governance involves taking action against people who are not members of the profession, but who are practising that profession illegally.

## **Outline**:

The privilege to self-regulate: Self-regulation recognizes the maturity of a profession. It honours the special skills, knowledge and experience that a profession possesses. Self-regulation means that the government has delegated its regulatory functions to those who have the specialized knowledge necessary to do the job and that the profession’s members are capable of governing themselves. Some of the self-regulated professions include nurses, doctors, chartered accountants, teachers, engineers and lawyers.

A self-regulating organization is the licensing body responsible for setting educational, technical and ethical standards. Generally speaking, the power of self-government has two aspects: the power to license and the power to discipline. Once a person has been admitted to a profession, the self-governing body has an ongoing obligation to the public to ensure that its members remain competent and that must also continue to meet professional and ethical standards.

Legislation governing professions: typically prohibits the practice of profession unless the individual is licensed under the legislation. Legislation also typically restricts the use of professional designations such as “doctor”, “lawyer” by the unlicensed. The purpose of such provisions is to ensure that the public is protected from those who are not qualified to practise the professions. The legislation for various professions typically creates a quasi-criminal offence for the unauthorized practice of the profession. In addition to charges, legislation also often provides for the possibility of seeking injunctive relief to stop unauthorized practice. Legislation typically gives professional organizations jurisdiction over its members with respect to charges of professional misconduct. This type of jurisdiction ought not to be confused with jurisdiction over non-members practising without a licence. Some professional organizations have been expressly delegated additional powers by the Legislature to seek injunctive relief against non-members to stop unauthorized practice[[4]](#footnote-5).

**Examples of unauthorized practice:**

The range of consequences for these actions is determined by the legislation governing the profession in question, the common law and the potential for harm if the practitioner is unqualified. The Royal College of Dental Surgeons of Ontario has a very vigourous process of seeking injunctions against unqualified practitioners: cases are pursued in civil courts to prevent illegal practitioners from continuing to practise and a follow-up process ensures that they do not start practising again. Professional Engineers: the APEO takes active approach to enforce its legislation (even though it has several potential obstacles in its path for instance, the need to prove that the work in question is professional engineering).

Taking on the trappings of a profession without the legal right to do so is a complex range of actions, from simply giving oneself a title (because it may be good for business) through to outright criminal action.

* 1. Use of Occupational titles:

The use of occupational titles such as “doctor”, “lawyer” or “psychologist” may be interpreted by the lay public as indicating a special expertise or qualification. To protect the public, many legislatures have prohibited unqualified people from using such titles, or from holding out to the public that they are qualified of certified to provide professional services.

* 1. Practicing without a licence:

A governing body’s most effective way to ensure that professional services are provided competently, and with professional integrity, is through licensure. Permission to practice is restricted to those who meet the standards, and the right to practice can be withdrawn from those who breach them. Those who have never qualified for a licence, or who have lost their licence to practice because of inactivity, incompetence or misconduct expose themselves to prosecution if they engage in practice.

*Walker v. Prince Edward Island*[[5]](#footnote-6): Two certified general accountants challenged the constitutionality of the *Public Accounting and Auditing Act*, which prohibited anyone other than a chartered accountant from engaging in the practice of public accounting, which was defined as including audit, review engagements and non-review engagements. It was argued that the prohibition violated ss. 2(b), 6(2)(b), 7 and 15 of the *Charter*.

The Supreme Court concluded that the legislation violated the plaintiffs’ freedom of expression (s. 2(b)), noting that every other Canadian permits CGA’s to perform the attest and audit function. It denied mobility rights(s. 6(2)(b)) by substantially restricting their right to practise accountancy in P.E.I. it violated the plaintiff’s. 7 rights, by substantially infringing their right to choose a career. Finally, the legislation could not be justified under s. 1, because it did not infringe the plaintiffs’ *Charter* rights as little as possible. The court was not persuaded that the plaintiffs’ s. 15(1) rights were infringed.

The province’s appeal was allowed. The court ruled that the legislation did not violate s.2(b), as the respondents were free to express themselves on any matters referred to in the *Act*, so long as they did not purport to be doing so with the authority of, or in the capacity of, a public accountant. Section 2(b) guarantees the right to communicate opinions and ideas, but it does not include the right to have them recognized as authoritative and to charge from the public for them. Even if the legislation did violate s. 2(b), it would be saved by s.1 of the *Charter* because it pursued an objective that is sufficiently important to justify limiting a *Charter* right; it was rationally connected to the objective, it impaired the right no more than necessary to accomplish the objective and it did not have a disproportionately severe effect on the person to whom it applies. Further, the legislation did not violate s. 6(2)(b), as it did not discriminate on the basis of place of residence. Finally, it did not violate s. 7, because that section concerned only with restrictions on liberty that occur as a result of an individual’s interaction with the justice system and its administration. The court did not address s.15 of the *Charter*. On further appeal, the Supreme Court of Canada dismissed the appeal, ruling that the *Public Accounting and Auditing Act* did not limit the certified general accountants’ rights guaranteed by ss. 2(b), 6 or 7 of the *Charter*.

*R. v. Kish* [[6]](#footnote-7): The two accused were devout Christians who believed in the ability of God to heal. In addition, they practised phytotherapy, a program which combined spiritualism for the treatment of a variety of conditions. They prescribed a program of vitamins and minerals, to be combined with external and internal treatments of hydrogen peroxide, to a man who had been diagnosed with lung cancer. They were prosecuted for practising medicine contrary to the *Medical Profession Act*. In convicting the accused, the court stated that whatever definition of “treatment” is used, prescribing hydrogen peroxide to be taken internally to kill cancer cells falls squarely within even the narrowest interpretation. While s. 94 of the Act protects those who practise the religious tenets of their church without pretending a knowledge a knowledge of medicine, their practice of phytotherapy is not grounded in any religious belief but rather purports to provide diagnosis and treatment of specific illnesses through prescription of various drugs and/or minerals.

*Van der Meulen v. Manitoba (Veterinary Medical Board*[[7]](#footnote-8)*:* A veterinarian who permitted an animal health technician to suture the surgical wound of a dog, on which the veterinarian had performed a spay procedure, engaged in unprofessional conduct. Suturing the wound was part of a surgical operation, and only a person registered under the *Veterinary Medical Act* was permitted to do so. The section of the *Act* which permits a non-veterinarian to treat a wound must be read as extending only to non-surgical wounds. On appeal, the Manitoba Court of Appeal upheld the trial judge’s decision.

* 1. Practising while under suspension: *R. v. Saxton*[[8]](#footnote-9): a suspended lawyer was not engaging in the unauthorized practice of law by issuing pleading on his own behalf, but he was practising when he issued pleading on behalf of another legal entity without stating that he was filing them as agent or officer of the company.

**Issues specific to the legal profession**:include practice of law by a Notary Public; Practice of law by a Paralegal; Peace Officer Acting as a Prosecutor; Representation of a Business (by a law officer of the corporation, by an employee); Practice of Law by an Insurance Adjuster; Practice of Law by Student-at-Law; Practice of Law by a union Representative; and Provision of Title Insurance.

**Authority to prosecute**: The traditional approach is for the licensing authority itself to prosecute the matter.[[9]](#footnote-10) However, in some provinces, the matter is immediately turned over to the Crown and prosecuted as any other provincial offence[[10]](#footnote-11). An alternate approach has the matter prosecuted on behalf of the Crown, but with College of Physicians and Surgeons legal counsel acting in that capacity[[11]](#footnote-12).

One of the issues considered by the Courts in applications for interim injunctions to restrain unauthorized practice is whether there is proof irreparable harm. As stated in *College of Opticians (Ontario) v. John Doe*[[12]](#footnote-13),

This presumption of harm is particularly strong in the case of legislation regulating health care professions and restricting the practice of the profession to persons lawfully authorized to do so.

Jurisdiction: In *Ontario College of Pharmacists v. 1724665 Ontario Inc*.[[13]](#footnote-14), the Ontario Court of Appeal held that the College was not overreaching by assuming jurisdiction over the appellants. The college had a duty to serve and protect the public interest and its reach was not limited to the Ontario public. There was conduct the college had the power to regulate; i.e., the sale of prescription drugs in Ontario. A regulator may act to protect persons located outside the regulator’s jurisdiction with the conduct targeted by the regulator occurred within the jurisdiction.[[14]](#footnote-15)

**Unauthorized Practices as noted in various regulated professions**:

Pharmacy

These have been found to constitute unauthorized practice of pharmacy: selling veterinary penicillin,[[15]](#footnote-16) and owning a store with a drug department without being a duly-qualified chemist.[[16]](#footnote-17) However, these have been found not to constitute unauthorized practice of pharmacy: having a three-quarter interest in a pharmacy and not being a licensed pharmacist;[[17]](#footnote-18) operating a pharmacy without having a pharmaceutical chemist on premises at all times when the shop was open;[[18]](#footnote-19) selling condoms and contraceptives without being a registered licensee under a pharmacy act;[[19]](#footnote-20) prescribing certain drugs as a chiropodist;[[20]](#footnote-21) and supplying medicines as a licensed physician.[[21]](#footnote-22)

Optometry

Opticians are required to report any incident of unauthorized practice to the College of Opticians of Ontario. Unauthorized practice is defined as dispensing eyeglasses, contact lenses or sub-normal vision devices without being a registered member of the College of Opticians, the College of Optometrists or the College of Physicians and Surgeons.

Other instances which have been found to constitute an unauthorized practice of optometry are: a company prescribing or supplying lenses without a certificate under an *Opticianry Act*;[[22]](#footnote-23) an unlicensed professional prescribing eye wear without a duly-qualified optometrist supervising her during the procedure;[[23]](#footnote-24) soliciting orders for glasses from house to house.[[24]](#footnote-25) However, these have been found not to constitute the unauthorized practice of optometry: duplication of a lens or lenses,[[25]](#footnote-26) using an ophthalmometer for the purpose of fitting contact lenses;[[26]](#footnote-27) and opticians using a computerized system called Eyclogic to take readings.27.1

In one of the cases, a fine of one million dollars was imposed for contempt of Court arising from the establishment of a number of sham corporations to dispense eyewear without the involvement of an ophthalmologist or optician.27.2

Psychology

Treating persons with psychological or psychiatric disorders by “psycho-transformation therapy” constitutes the unauthorized practice of psychology.[[27]](#footnote-28)

Chiropractics

These have been found to constitute the unauthorized practice of chiropractics: running fingers along spinal columns using downwards thrust with quick release along the spine, and rotating the neck with quick jerks;[[28]](#footnote-29) adjustment to the spinal column by applying hands to the neck and the back areas of the body;[[29]](#footnote-30) and engaging in activities which are adjustment treatments by a process of coupled twists and yanks of the head. However, the use of rotary transaction by non-licensed chiropractors has been found not to constitute the unauthorized practice of chiropractics.[[30]](#footnote-31)

Accountancy

Some acts which have been found to constitute the unauthorized practice of accounting are: using the designation certified public accountant without being a registered member within the province in which the individual was practising even though registered in another province;[[31]](#footnote-32) preparing financial statements and attaching a letter directing the letter and statements to the shareholders of a company without being properly licensed as a certified public accountant;[[32]](#footnote-33) and a corporation acting as a public accountant.[[33]](#footnote-34) However, these have been found not to constitute the unauthorized practice of accounting: preparing financial statements and directing letters to shareholders and management advising that the attached financial statements were not audited by the accountant and that the accountant was not certified;[[34]](#footnote-35) and a certified general accountant preparing financial statements, but no evidence statements being used outside of the business.[[35]](#footnote-36)

A certified general accountant who performed auditing work for a candidate in the federal election was acquitted of practicing as a public accountant without a licence. The provincial legislation prohibited the individual from performing the work but the federal legislation provided that a broad range of persons could act as auditor for a candidate. The Court held that the provincial legislation had to read down so as not to prohibit a person qualified under the federal legislation from acting as auditor.40.1

Dentistry

These have been found to constitute the unauthorized practice of dentistry: taking impressions of the bite of a patient;[[36]](#footnote-37) doing work within the mouth of patients for treatment, extraction, or building up or placing crowns;[[37]](#footnote-38) taking impressions of gums and making artificial teeth for and to fit the gums of an individual by a person without a license; fitting of prosthetic dentures to correct a condition in the human oral cavity without a licence;[[38]](#footnote-39) fitting a patient’s mouth with waxed models and completing dentures; carrying on the practice of dentistry and dental surgery and charging a fee for the services without have a license;[[39]](#footnote-40) a dental therapist practising intra-oral therapy; making dental impressions, fitting plates, and providing dental advise; a single act of taking a soft substance impression of a lower jaw for a fee without a licence;[[40]](#footnote-41) advertising on television as being a duly-qualified dentist and entitled to practise as a dentist;[[41]](#footnote-42) a dental assistant rendering services of filling extracting, treating, and bridging teeth and in general, such work as a dentist, without having supervision of a dentist;[[42]](#footnote-43) preparing a set of artificial teeth which required inspection measurement of the mouth, making teeth to fit and necessary adjustments before and after the dentures were fitted in the patient’s mouth;[[43]](#footnote-44) and the insertion of dental implants and performing teeth bleaching.49.1 Operating a dental laboratory was found to constitute the practice of dentistry but was permissible under the *Act*.[[44]](#footnote-45) A “dental therapist” was found guilty for performing dental procedures beyond the prescribed scope of practice for that profession.50.1

However, performing repairs on artificial dentures on a one-time basis without having a licence was found not to constitute the unauthorized practice of dentistry.[[45]](#footnote-46)

Engineering

The unauthorized practice of engineering has been found to be constituted under these circumstances: advertising or holding out in a manner to suggest being registered licensed engineers[[46]](#footnote-47); being employed as a civil and professional engineer in laying out roads for a department of public works without being licensed as an engineer[[47]](#footnote-48); the use of the word “engineering” in a corporate name when the corporation is not licensed to act as such[[48]](#footnote-49); an individual who signed and issued cards indicating that he was engaged in control systems engineering was found to have committed an offense for implying that he was engaged in practice of professional engineering while not a member of the engineers’ association;[[49]](#footnote-50) and an injunction was granted against an individual who used the term “B.Eng.” after his name in correspondence[[50]](#footnote-51).

These have been found not to constitute the unauthorized practice of engineering: drilling two, forty-foot test holes in order to test stability of soil and providing advice as to particular concrete mix to use in the manufacture of a drain[[51]](#footnote-52); an owner carrying out its own work providing that conditions of professional supervision and control were complied with[[52]](#footnote-53); giving analysis and advice on contract documents, negotiations, site assessment and applied design which consist of preparing sketches of how standard product may be utilized in a particular configuration. However, the use of the term “system engineer” by a computer professional was found not to breach the engineering legislation[[53]](#footnote-54).

Architecture

A finding of the unauthorized practice of architecture has been made in the following cases: a person held himself out to be an architect, designed plans, and supervised erection of a house;[[54]](#footnote-55) a corporation held itself out to be an architecture firm but was not licensed;[[55]](#footnote-56) a licenced professional engineer had “architect” appearing on his letterhead and on his business cards, acted as an architect for a third party and held himself out to be an architect;[[56]](#footnote-57) a building contractor preparing plans for the building of a hospital;[[57]](#footnote-58) a registered engineer who engaged in supervision of a building planning in whole or in part and acting mostly as an architect;[[58]](#footnote-59) a construction company holding itself out as an architectural firm and engaging in architectural acts without having an architectural licence;[[59]](#footnote-60) an architect whose name has been removed from the register and is no longer holding a licence continuing to hold himself out as an architect[[60]](#footnote-61); and an engineer supervised the construction of two buildings, affixed his professional engineering seal to drawings and did not engage the services of an architect.[[61]](#footnote-62).

However, these instances have been found not to constitute the unauthorized practice of architecture: a licensed professional engineer performing architectural activities while performing his engineering duties;[[62]](#footnote-63) and a professional engineer preparing plans for steel, concrete, and reinforced concrete structures.[[63]](#footnote-64)

Medicine[[64]](#footnote-65)

Examples which have been found to be unauthorized practice of medicine include: a corporation operating a medical clinic to make profits without having a licence to practise medicine;[[65]](#footnote-66) a chiropractor treating a paralyzed patient by manipulating her spine;[[66]](#footnote-67) a podiatrist using a drill on a client’s foot to manipulate the bone and prescribing an antibiotic drug to be taken orally;[[67]](#footnote-68) a chiropractor who used the prefix Dr. in front of his name in advertisements and phone directories;[[68]](#footnote-69) an optometrist who used the designation of “doctor” or “Dr.” without being a licenced physician;[[69]](#footnote-70) a druggist who inquired into symptoms of a customer and then prescribed a drug for the ailment without being a licenced practitioner of medicine;[[70]](#footnote-71) a homeopath examining a patient and making a diagnosis of her lung congestion, liver, and kidney inflammation;[[71]](#footnote-72) a former licensed medical practitioner no longer licensed, performing menstrual restoration to effect abortions;[[72]](#footnote-73) a person unlicensed to practise medicine held himself out to be a specialist in eye, ear and nose and prescribed treatment for such;[[73]](#footnote-74) a chiropractor who adjusted the vertebrae for a patient suffering from a lung lesion;[[74]](#footnote-75) an individual who obtained a degree of Doctor of Osteopathy and described himself as “Dr. Pocock, Osteopath”,[[75]](#footnote-76) a doctor of optometry who had a secretary answer his phone as “doctor” and failed to indicate that he was an optometrist;[[76]](#footnote-77) and devout Christians who believed in the power of God to heal and who prescribed a program of vitamins and minerals as well as hydrogen peroxide to treat lung cancer.[[77]](#footnote-78)

However, these cases have been found not to constitute the unauthorized practice of medicine: an advertisement that did not say one word about giving advice on medicine or any medical procedure;[[78]](#footnote-79) and an individual who advertised in a newspaper announcing there was no such thing as diphtheria and having a treatment for a disease which was wrongfully called diphtheria;[[79]](#footnote-80)

Physiotherapy

An individual who engaged in remedial exercises and used electrical stimulating equipment in helping patients was been found to have engaged in the unauthorized practice of physiotherapy.[[80]](#footnote-81)

Chiropody

An individual who conducted foot care services in a hospital without being licensed as a chiropodist has been found to have engaged in the unauthorized practice of chiropody.[[81]](#footnote-82)

However, in these instances it was not found to be an unauthorized practice pursuant to Chiropody acts: the removal of live tissue if diseased or unhealthy with the use of a hypodermic needle,[[82]](#footnote-83) and a masseuse who happened to massage feet during the course of work.[[83]](#footnote-84)

**Case Digests**

The case law must be approached with care because the “practice” of a particular profession is typically defined by its legislation. There are important differences amount the provinces among the provinces in the statutory definitions of the practice of various professions. [[84]](#footnote-85)Some of the case law also makes a distinction based on whether there has been only one act or else a series of acts. However, the case law does provide some guidance to the types of acts which may be considered to be within the practice of a particular profession. Practicing a profession without proper registration may statutorily disentitle an individual from enforcing payment.[[85]](#footnote-86)

Accountants

*R. v. Lewis*[[86]](#footnote-87)

The accused, a certified general accountant, was charged with practising as a public accountant contrary to the Ontario *Public Accountancy Act*. He performed auditing work for a candidate in a federal election. Under the *Canada Elections Act*,an auditor is defined as a person who is a member in good standing of any corporation, association or institute of professional accountants. As a CGA in good standing with the CGA Association, he came within this definition. The trial court and the provincial offences appeal court dismissed the charge ruling that the provincial legislation did not apply to his activities. The Ontario Court of Appeal dismissed the Crown’s appeal and held that the provincial legislature could not have intended to legislate with respect to federal election financing, a field exclusively within Parliament’s jurisdiction. Similarly, the provincial legislature could not have intended to delegate to the Ontario Institute of Chartered Accountants the decision as to who of the persons the federal Parliament has held to be qualified as auditors can actually accept the appointment. The court held that the provincial legislation had to be read down so as to not to prohibit a person qualified under the federal legislation from acting as auditor.

Architects

*Pestrak v. Denoon[[87]](#footnote-88)*

Engineer and draftsman provided services for construction of buildings: the engineer prepared plans for buildings and certified compliance with building code and the draftsman drew up plans at request of designer of building. Neither engineer nor draftsman engaged services of architect but the Association of Architects brought information charging engineer and draftsman with unauthorized practice contrary to s. 15(1) of the *Architects Act*. Both the engineer and the draftsman were acquitted. Upon appeal, the engineer’s acquittal was overturned and draftsman’s was upheld. It was held that the engineer’s conduct fell within definition of “architect” under *Architects Act* and that there is no conflict existed between *Architects Act* and *Engineering Professions Act*, as pursuant to each *Act*, architects are intended to plan and supervision erection of buildings while engineers are intended to provide services in conjunction with architects and under their review.

*Silver Falls Construction Inc. v. Wein*[[88]](#footnote-89)

Plaintiff architectural designer entered into contract with defendant to provide defendant with custom home plans. The defendant subsequently brought action claiming that all monies paid by it to plaintiff were paid pursuant to illegal contract and claimed that plaintiff was illegally contracted to provide architectural services for remuneration contrary to *Architects Act*, R.S.B.C. 1996 *(Act)*. The action was dismissed. It was held that the plaintiff never led defendant to believe or infer that he held registration under *Act*. Section 60(h) of *Act* provides that s. 27(2) of the *Act* does not prevent person from advising on, planning, designing or supervising erection or repair of building other than those specified and that the plaintiff’s work fell within s. 60(h) exception of the *Act.*

Engineers

*Assn. of Professional Engineers, Geologists & Geophysicists of Alberta v. Merhej[[89]](#footnote-90),*

M worked in field of information technology (IT) and received certification from Apple Canada as a “system engineer”. Association of Professional Engineers, Geologists and Geophysicists of Alberta regulated practice of engineering alleged that M violated s. 3 of *Engineering, Geological and Geophysical Professions Act* by expressly or by implication representing that he was professional engineer or engaging in practice of engineering. Association applied for injunction restraining M from holding himself out as system engineer and the application was dismissed. The Association appealed but the appeal was dismissed too. It was held that title “system engineer” has been used extensively in IT industry. There is no evidence of injury to public interest. Public was not likely to be deceived, confused or jeopardized by M’s use of title and that use of title “system engineer” or “system engineer representative” did not violate s. 3 of Act;

*Assn. of Professional Engineers, Geologists & Geophysicists (Alberta) v. Interprovincial Pipeline Ltd.[[90]](#footnote-91)*

The Association of Professional Engineers applied for an injunction to prohibit the respondent company from practising engineering in the Province of Alberta since the company refused to obtain a permit on the grounds that it was not legally obligated to do so. The injunction application was dismissed by the Court of Queen’s Bench. The Association appealed and the appeal was dismissed.

**Efforts to control**[[91]](#footnote-92):

Efforts to combat this nuisance in our southern neighbour are listed below. Some of the states are more successful in combating and controlling unauthorized practice than others, amongst them are Florida, California and Nevada.

**Florida**:

* Florida’s Department of Health (DOH) works to protect, promote and improve the health of all people in Florida through integrated state, county and community efforts.
* The DOH’s unit, the Unlicensed Activity (ULA), protects Florida residents and visitors from the potentially serious and dangerous consequences of receiving medical and health care services from an unlicensed person. The ULA unit investigates and refers for prosecution all unlicensed health care activity complaints and allegations. The ULA unit works in conjunction with law enforcement and the state attorney’s offices to prosecute individuals practicing without a license. In many instances, unlicensed activity is a felony level criminal offense.
* Working in conjunction with 22 boards and six councils, Florida’s DOH’s Medical Quality Assurance (MQA) division regulates seven types of facilities and 200-plus license types in more than 40 healthcare professions. MQA evaluates the credentials of all applicants for licensure, issues licenses, analyzes and investigates complaints, inspects facilities, assists in prosecuting practice act violations, combats unlicensed activity and provides credential and discipline history about licensees to the public.
* Florida’s program is funded by a $5 per health licensee initial and renewal fee which funds efforts to combat unlicensed activity.

Recently in news re stories portraying success in arresting unauthorized practice:

* ULA announced that a joint investigation with the Osceola County Investigative Bureau (OCIB) led to the arrest of Gustavo Aranguren Hernan for the alleged unlicensed practice of dentistry, a third degree felony punishable by up to one year in jail.  OCIB confiscated dental equipment and $112,800 in cash.[[92]](#footnote-93)
* The Florida Department of Health’s (DOH) West Palm Beach and Miami Unlicensed Activity Units conducted investigations in partnership with local law enforcement that have resulted in arrests for the unlicensed practice of dentistry. Rosa Maldonado of Miami was arrested on July 3, 2013 and Ubaldo Bittencourt of Boca Raton was arrested July 18, 2013. The unlicensed practice of a health care profession is a third degree felony punishable by up to five years in prison[[93]](#footnote-94).
* Florida’s Board of Dentistry published an article stating, “Over the last four fiscal years, the Unlicensed Activity (ULA) Unit of the Department of Health has received 209 complaints against unlicensed dentists. These complaints have resulted in 42 cease and desist notices, 113 referrals to law enforcement and 41 arrests.” [[94]](#footnote-95)

**California**:

California has also been very active in this regard. There is an Enforcement Unit within their Medical Board.[[95]](#footnote-96) The Medical Board’s Operation Safe Medicine (OSM) Unit within the Enforcement Program addresses the unlicensed practice of medicine. OSM staff is exclusively assigned to the proactive identification, investigation, and prosecution of unlicensed individuals who hold themselves out to the public as licensed qualified medical practitioners; corporate practice of medicine violations; and the enforcement of the law related to the use of lasers for cosmetic procedures.

Recently in news:

* San Diego: Based on a complaint resulting in an undercover investigation by the Medical Board’s OSM Unit, San Diego law enforcement arrested Robert Oldham Young for conspiring to practice medicine without a license and multiple counts for grand theft. The Medical Bard worked in conjunction with the San Diego District Attorney’s Office after an undercover investigator infiltrated Young’s avocado ranch where he was illegally treating patients. “We take these cases very seriously when healthcare consumers are denied proper treatment due to their reliance on unlicensed individuals. Their fraudulent activities put the public at risk and create a life or death situation for those who need the right professional treatment,” said the Medical Board’s interim Executive Director Kimberly Kirchmeyer. “Results, such as those achieved in this case, demonstrate the Board’s commitment to consumer protection.”[[96]](#footnote-97)

**Massachusetts**:

Level of awareness amongst consumers: Currently, Change.org, a website is gathering required support to deliver a petition to Joint Committee on Health Care Financing to: “Stop Unlicensed Mental Health Care Providers in Massachusetts Now! OPPOSE Massachusetts HB 236.”

The petitioners are strongly opposed to Section 65F of House Bill 236, which would allow unlicensed psychotherapists who are members of the Massachusetts Association of Independent Psychotherapists to hold themselves out to the public as psychotherapists and thus be exempt from licensure if House Bill 236 were to pass.[[97]](#footnote-98)

**Nevada**:

* In response to a significant number of illegal surgeries, other unlicensed health care, and incident reports, including death, primarily in Nevada’s Latino community, the Nevada State Health Division initiated a statewide review in 2012. The Latino Research Center at the University of Nevada Reno, was tasked with creating a cultural awareness program to inform the community about this problem and create educational materials to address this issue in Nevada. The task force had other stakeholders like Nevada’s former Attorney General, Frankie Sue Del Papa, representatives of Nevada's Health and Law Enforcement communities, the Mexican Consulate, Congressional delegation staff, the Ombudsman of Consumer Affairs, and a host of other interested individuals to identify challenges, solutions, a timeline and implementation route to better address this issue in Nevada.
* In addition to reporting to law enforcement, Nevada’s 2-1-1 has made its services available to take reports regarding unlicensed health care activity.
* A significant number of entities from Nevada’s Health Care Community are engaged and mindful of the role they can play in responding to the issue of unlicensed care for instance, the Pharmacy Board, Nevada State Board of Dental Examiners, Cosmetology Board, the Nevada State Medical Association.
1. In the USA a coalition dealing with a related issue used the slogan, “The wrong help can hurt.” [↑](#footnote-ref-2)
2. 2014 ONSC 4652 [↑](#footnote-ref-3)
3. Although he charged fee from his clients but he argued “the whole purpose of this was for educational information for my client.” This case is interesting for various reasons including that by using disclaimers you cannot bypass the law. Mr. Dzelme had his clients enter into contracts delineating the services to be provided, but which also acknowledged that Mr. Dzelme is not a lawyer, cannot provide legal advice and is deemed not to be providing legal advice. [↑](#footnote-ref-4)
4. for example *Engineering, Geological and Geophysical Professions Act*, R.S.N.T. 1988,c. E-6, s. 9(4); *Legal Professions Act* S.A. 1990, c. L-9.1, s. 108.

Even without express power to seek an injunction, it has been found that College of Physicians & Surgeons had status to apply for an injunction against Dr. Morgentaler to stop practising while under suspension as part of its power necessary to carry out its mandate to protect the public. (*College of Physicians & Surgeons (Manitoba) v. Morgentaler* (1985), 36 Man. R. (2d) 97 (Q.B.)) [↑](#footnote-ref-5)
5. (1992), 101 Nfld. & P.E.I.R. 303 (P.E.I.S.C.), revd 107 D.L.R. (4th) 69 [↑](#footnote-ref-6)
6. (1993) 12 Alta. L.R. (3d) 185: *Medical Profession Act*, R.S.A. 1980, c. M-12, ss. 76, 76(1) (a), 77, 77(1)(c)(i), 94. [↑](#footnote-ref-7)
7. [1996] 9 W.W.R. 219,111 Man. R. (2d) 59 (Q.B.), affd 151 D.L. R. (4th) 694 [↑](#footnote-ref-8)
8. [1986] 4 W.W.R. 19, 44 Alta. L.R. (2d) 85 (Q.B.) [↑](#footnote-ref-9)
9. *College of Physicians and Surgeons (Ontario) v. Cheung*, [1992] O.J. No. 2421 (Ont. Gen. Div.). Quaere whether prosecution requires the involvement of the Crown: *Campbell v. Sumida*, [1964] M.J. No. 10, 49 D.L.R. (2d) 263 (Man. C.A.). [↑](#footnote-ref-10)
10. *R. v. Losier*, [1992] N.B.J. No. 672, 130 N.B.R. (2d) 53 (N.B.Q.B.) [↑](#footnote-ref-11)
11. *R. v. Palmer*, unreported, January 21, 1998 (Sask. Prov. Ct.) [↑](#footnote-ref-12)
12. 2006 CarswellOnt 8285 (Ont. S.C.J.) at para 52 [↑](#footnote-ref-13)
13. (2013), 363 D.L.R. (4th) 724, 308 O.A.C. 200 (Ont. C.A.) [↑](#footnote-ref-14)
14. The application judge did not make any palpable or overriding errors in her findings of fact that formed the basis of her conclusion that there was a sufficient connection between the appellants and Ontario to find that appellants were subject to the college’s jurisdiction. [↑](#footnote-ref-15)
15. *R. v. McDowell*, [1955] O.W.N. 914 (C.A.). [↑](#footnote-ref-16)
16. *R. v. Simpson* (1896), 27 O.R. 603 (C.A.). [↑](#footnote-ref-17)
17. *Shirley v. Kreutsweiser* (1955), 16 W.W.R. 258 (BCSC). [↑](#footnote-ref-18)
18. *R. v. Comrie* (1959), 124 C.C.C. 107 (Ont. H.C.). [↑](#footnote-ref-19)
19. *R. v. Dunn*, [1949] 1 W.W.R. 286 (B.C.S.C.). [↑](#footnote-ref-20)
20. *Laine v. Caplin* (1970), 9 D.L.R. (3d) 558 (Ont. C.A.). [↑](#footnote-ref-21)
21. L*aporte v. College des pharmaciens* [Que.], [1976] 1 S.C.R. 101 (S.C.C.). [↑](#footnote-ref-22)
22. *R.v. Ritholz Optical Ltd*. [1935] 1 D.L.R. 681 (Ont. S.C.). [↑](#footnote-ref-23)
23. *Board of Ophthalmic Dispensers v. Slaunwhite* (1990), 1 O.R. (3d) 33 (C.A.). [↑](#footnote-ref-24)
24. *R. v. Penchard*, [1936] 1 D.L.R. 546 (N.S.S.C.).

25.1 *Manitoba Assn. of Optometrists v. 3437613 Manitoba Ltd.* (1997), 124 Main R. (2d) 61 (Q.B.); affirmed June 8, 1998, Man. C.A.; see also generally *R. v. Smith* (L.) 1(1997), 165 N.S.R. (2d) 77, 495 A.P.R. 77 (C.A.); and *College of Optometrists (Alberta) v. Eye Contact Inc.* (1998), 68 Alta. L.R. (3d) 290 (Q.B.) affirmed (1999), 237 A.R. 394 (Alta. C.A.); and *College of Optometrists (Alberta) v. Hoeft* (2001), 103 A.C.W. S. (3d) 219 (Alta. Q.B.). [↑](#footnote-ref-25)
25. *McCaw v. Mann* (1961), 28 D.L.R. (2d) 316 (Sask. C.A.). [↑](#footnote-ref-26)
26. *R. v. Bernard* [1964] 1 C.C.C. 204 (Man. C.A.).

27.1 *College of Opticians of (British Columbia) v. Moss* (2001), 103 A.C.W.S. (3d) 856 (B.C.S.C.).

27.2 *College of Optometrists of Ontario v. SHS Optical Ltd (c.o.b. Great Glasses)* [2006] O.J. No. 4708 (S.C.J.) affirmed 2008 ONCA 685 (CanLII) [↑](#footnote-ref-27)
27. *R. v. Baig* (1992) 78 C.C.C. (3d) 260 (B.C.C.A). [↑](#footnote-ref-28)
28. *R. v. Holtum*, [1937] 1 W.W.R. 199 (B.C. Co. Ct.). [↑](#footnote-ref-29)
29. *Steen v. Bramham* (1964), 50 W.W.R. 512 (Sask. Dist. Ct.). [↑](#footnote-ref-30)
30. *R. v. Nomm* (1983), 57 N.S.R. (2d) 66 (NS. Co. Ct.). [↑](#footnote-ref-31)
31. *R. v. Langley* (1959), 23 D.L.R. (2d) 285 (Alta. C.A.). [↑](#footnote-ref-32)
32. *R. v. Rayner* (1982), 136 D.L.R. (3d) 337 (Ont. C.A.). [↑](#footnote-ref-33)
33. P*ublic Accountants Council (Ontario) v. Premier Trust Co.,* [1964] 1 O.R. 386 (H.C.). [↑](#footnote-ref-34)
34. *Ordre des compatables agrees (Quebec) c. Goulet* (1981), 61 C.C.C. (2d) 97 (S.C.C.) [↑](#footnote-ref-35)
35. *R. v. Manuel* (1982), 38 O.R. (2d) 321 (C.A.).

40.1 *R. v. Lewis* (1997) 5 Admin. L.R. (3d) 86, 121 C.C.C. (3d) 156, 155 D.L.R. (4th) 442 (Ont. C.A.). [↑](#footnote-ref-36)
36. *Alberta (Attorney General) v. Lees*, [1932] 3 W.W.R. 533 (Alta. T.D.). [↑](#footnote-ref-37)
37. *Burgess v. Zimmerli* (1914), 16 D.L.R. 708 (B.C.C.A.). [↑](#footnote-ref-38)
38. *R.. v. Cruikshanks* (1914), 16 D.L.R. 536 (Alta. C.A.). [↑](#footnote-ref-39)
39. *R. v. Mason* (1972), 8 C.C.C. (2d) 546 (N.S.C.A.). [↑](#footnote-ref-40)
40. *R.v. Burton*, [1939] 2 D.L.R. 526 (Alta. C.A.). [↑](#footnote-ref-41)
41. *R. v. Norland Denture Clinic Ltd.* (1973), 37 D.L.R. (3d) 477 (Sask. C.A.). [↑](#footnote-ref-42)
42. *R. v.Manning* (1915), 8 Sask. L.R. 333 (C.A.). [↑](#footnote-ref-43)
43. *R. v. Vail* (1959), 30 W.W.R. 101 (Alta. C.A.).

49.1 *Dental Assn. (Alberta) v. Unrau* (2001), 287 A.R. 391 (Q.B.). [↑](#footnote-ref-44)
44. *Dental Technicians Assn. (Nova Scotia) v. Fall River Dental Lab Ltd.* (1994), 383 A.P.R. 149 (N.S.S.C.).

50.1 *R. v. Kure [2006] S.J. No. 540 (Prov. Ct.)* [↑](#footnote-ref-45)
45. *R. v. Kerr*, [1947] 1 W.W.R. 814 (B.C.C.A.). [↑](#footnote-ref-46)
46. *Assn. of Professional Engineers (Ontario) v. Canadian Council of Professional Certification* (1979), 27 O.R. (2d) 259 (H.C.) [↑](#footnote-ref-47)
47. *Re Johnson* (1922), 70 D.L.R. 161 (Man. K. B.) [↑](#footnote-ref-48)
48. *Assn. of Professional Engineers (Manitoba) v. Martin* (1983), 23 Man. R. (2d) 244 (Co. Ct.) [↑](#footnote-ref-49)
49. R. v. Culjak, [2006] 10 W.W.R. 183, 2006 CarswellMan 258 (Q.B.) [↑](#footnote-ref-50)
50. *Assn. of Professional Engineers, Geologists and Geophysicists of Alberta v. Broere Electric Ltd*. [2007] A. J. No. 104(Q.B.) [↑](#footnote-ref-51)
51. *R. v. Warnock Hersey Co.* (1959), 30 W.W.R. 193 (Alta. Dist. Ct.) [↑](#footnote-ref-52)
52. *Ass. of Professional Engineers, Geologists & Geophysicists of Alberta v. Interprovincial Pipeline Ltd.* (1988), 88 A.R. 395 (C.A.) [↑](#footnote-ref-53)
53. *Association of Professional Engineers, Geologists and Geophysicists (Alberta) v. Merhej* (2001), [2001] A.J. No. 1657, 2001 CarswellAlta 1778 (Q.B.), affirmed in 2003 ABCA 360 (C.A.) [↑](#footnote-ref-54)
54. *Abbott v. Blaffer,* [1942] O.W.N. 10 (C.A.) [↑](#footnote-ref-55)
55. *Giffels & Vallet of Canada Ltd. v. R.,* [1952] 2 D.L.R. 720 (Ont. C.A.) [↑](#footnote-ref-56)
56. *R. v. Moll* (1973), 18 C.C.C. (2d) 210 (Ont. Co. Ct.). [↑](#footnote-ref-57)
57. *Munn v. City Lumber Co.,* [1950] 1 W.W.R. 823 (Man. C.A.) (Prosecutor failed to show for hire, gain or hope of reward). [↑](#footnote-ref-58)
58. *R. v. Bentall,* [1939] 3 W.W.R. 39 (B.C. Co. Ct.). [↑](#footnote-ref-59)
59. *R. v. Dominion Construction Co.,* [1939] 1 W.W.R. 653 (B.C. S.C.). [↑](#footnote-ref-60)
60. *R. v. Shewbrooks,* [1931] 3 W.W.R. 97 (B.C. S.C.). [↑](#footnote-ref-61)
61. *Pestrak v. Denoon* (2000), 184 D.L.R. (4th) 543 (Man. Q.B.); leave to appeal refused 2000 MBCA 79 (C.A. [In Chambers]). [↑](#footnote-ref-62)
62. *Architectural Institute (British Columbia) v. Lee’s Design & Engineering Ltd.* (1979), 96 D.L.R. (3d) 385 (B.C.C.) [↑](#footnote-ref-63)
63. *R. v. B.J. Martin Consultants Ltd.,* (1976), 14 O.R. (2d) 399 (Div. Ct.); *R. v. Greer, Galloway & Associates Ltd.* (1975), 28 C.C.C. (2d) 516 (Ont. Prov. Ct.); *R. v. A.D. Margison & Associates Ltd.* (1955), 113 C.C.C. 75 (Ont.Co. Ct.). [↑](#footnote-ref-64)
64. *College of Physicians and Surgeons v. Cheung* (1993), 14 Health L. Can. 46-49 [↑](#footnote-ref-65)
65. *Carruthers Clinic Ltd. v. Herdman* (1956), 5 D.L.R. (2d) 492 (Ont. H.C.). [↑](#footnote-ref-66)
66. *R. v. McSloy* (1917), 31 D.L.R. 725 (Sask. C.A.) [↑](#footnote-ref-67)
67. *College of Physicians & Surgeons (Ontario) v. Larsen* (1987), 62 O.R. (2d) 545 (H.C.). [↑](#footnote-ref-68)
68. *McDiarmid v. Elliott (No. 2),* [1934] 1 W.W.R. 722 (Man. Co. Ct.). [↑](#footnote-ref-69)
69. *R. v. Lowrie,* [1932] 4 D.L.R. 806 (Ont. S.C.). [↑](#footnote-ref-70)
70. *R. v. Howarth* (1894), 24 O.R. 561 (C.A.). [↑](#footnote-ref-71)
71. *R. v. Sandhar* (1988), 86 A.R. 241 (Alta. C.A.). [↑](#footnote-ref-72)
72. *R. v. Ringrose* (1989), 94 A.R. 350 (Alta. Q.B.). [↑](#footnote-ref-73)
73. *R. v. Armstrong* (1911), 18 C.C.C. 72 (Sask. Pol. Court). [↑](#footnote-ref-74)
74. *R. v. Oshanek,* [1935] 4 D.L.R. 632 (Man. C.A.) [↑](#footnote-ref-75)
75. *R. v. Pocock* (1928), 62 O.L.R. 113 (Ont. C.A.). [↑](#footnote-ref-76)
76. *R. v. Naftolin*, [1973] 3 O.R. 843 (Ont. Co. Ct.). [↑](#footnote-ref-77)
77. *R. v. Kish* (1993), 12 Alta. L.R. (3d) 185 (Prov. Ct.). [↑](#footnote-ref-78)
78. *R. v. Raffenberg (No. 1)* (1909), 2 W.L.R. 419 (Sask. Pol. Ct.). [↑](#footnote-ref-79)
79. *R. v. O’Malley*, [1924] 3 D.L.R. 430 (Alta. C.A.). [↑](#footnote-ref-80)
80. *R. v. Jagosh* (1968), 11 Cr. L.Q. 310 (N.S. Mag. Ct.). [↑](#footnote-ref-81)
81. *R. v. Karim* (1980), 51 C.C.C. (2d) 360 (Ont. Div. Ct.). [↑](#footnote-ref-82)
82. *Ladelpha v. Myre* (1974), 53 D.L.R. (3d) 62 (Ont. Div. Ct.). [↑](#footnote-ref-83)
83. *R. v. Fraser,* [1937] 2 W.W.R. 684 (B.C. C.A.). [↑](#footnote-ref-84)
84. Refer Appendix II, it has a table with textual treatment of some of the regulated professions in Alberta, British Columbia and Ontario. [↑](#footnote-ref-85)
85. *Lemmons (Robert) & Associates Ltd. v. Gannon Brothers Energy Ltd*. (1995), 130 Sask. R.51(Q.B.) [↑](#footnote-ref-86)
86. (1997), 155 D.L.R. (4th) 442, 121 C.C.C. (3d) 156 (Ont. C.A.) [↑](#footnote-ref-87)
87. 184 D.L.R. (4th) 543, [2000] 6 W.W.R. 178, 2000 CarswellMan 128, 144 Man. R. (2d) 1 (Man. Q.B.) [↑](#footnote-ref-88)
88. 48 C.L.R. (2d) 41, 1999 CarswellBC 2040 (B.C. S.C.) [↑](#footnote-ref-89)
89. 346 A.R. 84, 2003 CarswellAlta 1728, 320 W.A.C. 84, 2003 ABCA 360, [2004] A.W.L.D. 208 (Alta. C.A.). [↑](#footnote-ref-90)
90. 88 A.R. 395, 1988 CarswellAlta 483, 28 C.L.R. 158, [1988] C.L.D. 282 (Alta. C.A.). [↑](#footnote-ref-91)
91. Appendix I is a list of statutory provisions re Medical Practice in 50 states of the United States of America. [↑](#footnote-ref-92)
92. “Joint Investigation Leads To Unlicensed Activity Arrest In Kissimmee” featuredin Capital Soup, June 16, 2014. Also At Http://Capitalsoup.Com/2014/06/16/Joint-Investigation-Leads-To-Unlicensed-Activity-Arrest-In-Kissimmee/ [↑](#footnote-ref-93)
93. “Unlicensed Activity Investigations Lead To South Florida Arrests” Featured In Fosterfollynews.Com On July 29, 2013**.** http://fosterfollynews.com/2013/07/29/unlicensed-activity-investigations-lead-to-south-florida-arrests/ [↑](#footnote-ref-94)
94. http://floridasdentistry.gov/latest-news/unlicensed-activity-what-you-can-do-to-stop-it/ [↑](#footnote-ref-95)
95. A report to Senate Business, Professions and Economic Development Committee, Sunset Review Report 2012 Volume I, Medical Board of California [↑](#footnote-ref-96)
96. “Medical Board investigation leads to arrest of a Valley Center Man for the unlicensed practice of medicine”, News Release on Friday, January 24, 2014. Also at http://www.mbc.ca.gov/About\_Us/Media\_Room/2014/news\_releases\_20140124\_young.pdf [↑](#footnote-ref-97)
97. https://www.change.org/p/stop-unlicensed-mental-health-care-providers-in-massachusetts-now-oppose-massachusetts-hb-236 866 supporters joined and 134 more required as of 3 pm on August 26, 2014. [↑](#footnote-ref-98)