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EDITOR
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An ethical protocol for complementary and alternative medicine practitioners in an orthodox medicine regime

Michael Weir

Concern that has been expressed about the provision of complementary and alternative medicine (CAM) in an orthodox medicine context with regard to the possibility of a client not being referred to the latter when the condition is readily dealt with by it. There have been some negative outcomes for clients when orthodox medicine has not been used when it was clearly indicated. Complementary and alternative medicine has many strengths for clients but it behoves a CAM practitioner to consider circumstances when it is appropriate to refer a client to orthodox medicine or to work in a complementary manner with orthodox medicine. This article suggests some guidelines that CAM practitioners should consider when assessing the circumstances when referral to orthodox medicine is indicated to support ethical practice for the benefit of the client.

INTRODUCTION

Most complementary and alternative medicine (CAM) practitioners are not routinely involved in life-and-death decisions but the practice of complementary and alternative medicine does raise significant ethical considerations as “all health care encounters give rise to ethical considerations”.¹ This article proposes an ethical protocol for a CAM practitioner practising independently in a health system where orthodox medicine is available but a client has chosen to seek the services of a CAM practitioner. The protocol is primarily focused upon the circumstances of a patient with a serious health condition or who is suspected of suffering from a serious health condition, although it could be applied more broadly. In health systems where complementary and alternative medicine is integrated into the health system (as in China),² somewhat different parameters may apply. This protocol will be most relevant to health systems where the regulatory structure is tolerant of complementary and alternative medicine, as is the case in a majority of jurisdictions.³ This article does not relate to the rare situation where a CAM practitioner is practising under the direction of an orthodox medicine practitioner.

WHAT IS A PROTOCOL?

Health practitioners from many disciplines rely upon practice protocols that systemise procedures that ought to apply when specified factual circumstances arise.⁴ A protocol can provide professionally

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⁴ For example, in the United States of America, England, Australia, Africa and Asia, although orthodox medicine is the primary and state-sponsored form of health care, complementary and alternative medicine is not illegal and some forms of it have statutory registered status, eg chiropractors, osteopaths, traditional Chinese medicine practitioners and acupuncturists: see WHO, n 2.

⁵ “A medical protocol is a series of steps followed by one or more medical professionals in a medical setting. In each medical specialty, experts can recommend the steps to be followed for a certain procedure or process, such as providing a clinical medical treatment. Other practitioners can duplicate those steps as effective practice of medicine. One type of medical protocol is a treatment protocol, or a series of steps that experts recommend for treating a particular ailment. For example, to treat a certain type of cancer, a treatment protocol would specify what combination of drugs, radiation and other therapies should be used”;

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acknowledged and endorsed wisdom about how specified situations are best handled. This article suggests a protocol for CAM practitioners in dealing with medical conditions that may require referral to orthodox medicine.

THE NEED FOR A PROTOCOL?

Complementary and alternative medicine is generally useful and safe for clients and has a much lower rate of reported adverse events than for orthodox medicine. One concern that has been expressed by orthodox medicine is the possibility that advice given or therapy provided by CAM practitioners may delay or rule out referral to orthodox medicine when the latter may have proven efficacy and the possibility of a cure or a positive therapeutic outcome is thereby lost. This concern is supported by evidence to suggest that, based upon the difficult relationship between orthodox medicine and complementary and alternative medicine, 90% of persons using the latter are self-referred. Delays in obtaining orthodox medicine may cause damage to a patient who is acting on information from one therapeutic perspective.

The common law would appear to align itself with the orthodox medicine perspective on this point. Liability may accrue to a CAM practitioner if:

- the content of the duty of care of a CAM practitioner incorporates diagnosing medical illness or requires some understanding of possible underlying medical causes of disease; or
- that duty includes an obligation to refer to a medical practitioner when the client does not respond to treatment; and
- a medical doctor would have correctly diagnosed the condition and provided successful treatment; and
- if referred for orthodox medicine treatment, the patient would have not suffered the injury or sickness that occurred.

Concerns about the delay in obtaining orthodox medicine should not be overstated for a number of reasons:

- often complementary and alternative medicine is sought after orthodox medicine has proven unsuccessful;
- surveys indicate that most CAM patients are well educated and more likely to be sufficiently well informed to make decisions on such health matters;
- there are clear risks associated with orthodox medicine. Many techniques used by orthodox medicine are not scientifically proven to be effective and are associated with harmful side effects. In this sense, delay in obtaining orthodox medicine may in some cases be in the public interest;
- many CAM modalities can be applied in a complementary manner while orthodox medicine options are explored;


7 Studdert et al, n 5 at 1610.


12 Hodgson, n 6 at 666.
complementary and alternative medicine is more often employed with chronic complaints that do not raise a risk of injury if orthodox medicine is delayed;\textsuperscript{13} 

- despite their estrangement from orthodox medicine, most CAM practitioners are aware of this obligation as it is reflected in their training, education, codes of ethics or practice standards.

There is evidence to suggest that practitioner-based unconventional therapies serve more as a complement or add on than as an alternative to conventional medicine. Use of unconventional therapies was consistently associated with an increased likelihood and number of physician visits.\textsuperscript{14}

The following are some recent practical examples of this concern being realised:

- There was in Australia a disturbing report of an 18-day-old baby with a serious heart defect which was apparently curable with a surgical procedure that had a high success rate. A naturopath advised the parents that, after giving homeopathic and herbal treatment, the baby was cured of the complaint. On the basis of this advice, the parents chose not to proceed with surgery. The baby died shortly after. The practitioner was convicted of manslaughter.\textsuperscript{15}

- A naturopath in Melbourne advised the parents of a boy to stop chemotherapy that had a 60\% chance of success. The boy died six months later, three days after the parents had requested that chemotherapy be restarted.\textsuperscript{16}

- A father and mother of a child were convicted of manslaughter after the death of their infant child who had suffered from complications associated with serious eczema. The parents (the father was an Indian-trained homeopath) relied on homeopathy with limited use of orthodox medicine. Although there was adequate access to orthodox medicine to deal with this condition and the parents received advice that orthodox medicine was required for treatment, this medical warning was not heeded. The child eventually died from infection and malnutrition although it was likely this result would have been avoided by appropriate orthodox medicine intervention.\textsuperscript{17}

Some CAM practitioners will raise issue with some of the concepts in this protocol on the basis it may seem to suggest the authority of orthodox medicine over complementary and alternative medicine practice. That is not the intention of this protocol. The protocol does not incorporate a requirement that a CAM practitioner practise only after referral by an orthodox medicine practitioner or only after a diagnosis by an orthodox medicine practitioner.

The undertaking of treatment by complementary and alternative medicine for serious conditions could result in preventing or delaying potentially beneficial orthodox medicine.\textsuperscript{18} Of course, from the CAM perspective, the use of complementary and alternative medicine rather than orthodox medicine will avoid some of the negative outcomes that may attend the application of orthodox medicine. The literature is replete with examples of statistics about the level of adverse outcomes attendant upon the use of orthodox medicine and in hospital settings. To contextualise the risks of complementary and alternative medicine, it should be understood that orthodox medicine has a well-documented and lengthy history of risks and adverse events. Properly delivered, orthodox medicine is the sixth leading cause of death in Western countries.\textsuperscript{19} Information is readily available on the risks and frequency of

\textsuperscript{13} Studdert et al, n 5 at 1612.

\textsuperscript{14} Druss BG and Rosenheck RA, “Association Between Use of Unconventional Therapies and Conventional Medical Services” (1999) 282 JAMA 651.


\textsuperscript{17} R v Sam (No 18) [2009] NSWSC 1003.


most normal orthodox medicine procedures. There is considerable evidence that iatrogenic injury is disturbingly common for orthodox medicine treatment.\textsuperscript{20}

In one American study it was found that 20\% of patients admitted to hospitals suffered iatrogenic injury and 20\% of these injuries were serious or fatal.\textsuperscript{21} Another study has indicated in a review of 30,195 hospital records that in 3.7\% of hospitalisations there were adverse events, of which 27.6 \% were by medical negligence and 69\% by human error.\textsuperscript{22} This suggests that approximately 1\% of hospital patients suffered an adverse event caused by negligence. The study then suggested that, if these figures were applied to the United States population, medical injury caused more deaths than all other forms of accident combined.\textsuperscript{23}

One significant Australian study involved a review of 14,000 admissions in 28 hospitals in New South Wales and South Australia. The study found that 16.6\% of these admissions were associated with an adverse event, resulting in disability or a longer hospital stay. More than half of the adverse events were deemed to have been preventable. In 77.1\% of the cases the disability was resolved in 12 months, in 13.7\% of the cases the disability was permanent and in 4.9 \% of the cases the patient died.\textsuperscript{24}

This wide reporting and focus on iatrogenic injury by orthodox medicine derives partially from its emphasis on self-scrutiny. This has revealed the failures of orthodox medicine while complementary and alternative medicine, less focused on self-scrutiny and scientific evaluation, will more easily be portrayed as a gentler and safer form of therapy.\textsuperscript{25}

**ORTHODOX MEDICINE AUTHORITY OVER COMPLEMENTARY AND ALTERNATIVE MEDICINE**

There are some jurisdictions where referral by an orthodox medicine practitioner or other registered health practitioner is by legislative provision required for aspects of CAM practice. For example, in British Columbia, reg 6 of the *Traditional Chinese Medicine Practitioners and Acupuncturists Regulation* provides:

- Limit or conditions on services
  - (1) No acupuncturist or herbalist may treat an active serious medical condition unless the client has consulted with a medical practitioner, naturopath, dentist or doctor of traditional Chinese medicine, as appropriate.
  
  - ...
  
  - (3) An acupuncturist or herbalist must advise the client to consult a medical practitioner, naturopath, dentist or doctor of traditional Chinese medicine if there is no improvement in the condition for which the client is being treated within 2 months of receiving treatment.
  
  - (4) In the event a client does not consult with a medical practitioner, naturopath, dentist or doctor of traditional Chinese medicine, an acupuncturist or herbalist must discontinue treatment if
    - (a) there is no improvement in the condition for which the client is being treated after 4 months from the date treatment commenced,
    - (b) the condition for which the client is being treated worsens, or


\textsuperscript{21}Schimmel EM, “The Hazards of Hospitalization” (1964) 60 Annals of Internal Medicine 100 at 101.


(c) new symptoms develop.

"active serious medical condition" is defined to mean a disease, disorder or dysfunction which has disabling or life-threatening effects and which will not improve without immediate or surgical intervention.

The term "active serious medical condition" would presumably include conditions such as cancer, heart disease and diabetes. The concern for an acupuncturist or herbalist is the vagueness of this provision which raises many questions about how to comply with it.

Does this regulation require the client to consult first with a medical doctor who then provides a medical diagnosis of a specific malady about which they then consult the acupuncturist? Is this required in all cases? This regulation would also require the acupuncturist or herbalist to identify or "diagnose" a serious medical condition so as to understand the need to have a prior consultation with a medical doctor, naturopath, dentist or TCM doctor. Presumably an acupuncturist will need to be cognisant of the obligation to refer to a medical practitioner a patient who may possibly have an active serious medical condition based on the view of a reasonably competent acupuncturist.

A protocol such as outlined here is an opportunity to ensure the best possible result for a client or patient who is open to both orthodox medicine and CAM options. This protocol draws on some of the fundamental ethical concepts derived from medical ethics. These are sometimes referred to as principle-based ethics:26

- **The principle of beneficence** (the principle of healing): The principle of beneficence may apply somewhat differently in relation to complementary and alternative medicine. For orthodox medicine, derived from the Hippocratic tradition, the relief of suffering is a primary concern. This goal involves curing those who can be cured and caring for those who cannot.27 It is suggested this principle should be a fundamental underpinning of all activities of a health practitioner, whether complementary and alternative medicine or orthodox medicine.

- **The principle of non-maleficence** (restrain from causing harm, including physical, financial and emotional exploitation): The principle of non-maleficence requires a practitioner to avoid behaviour that negatively affects a client’s interests. It is said that in orthodox medicine “safety is sacred”.28 This raises the ethical issue of when it is appropriate to refer a client to orthodox medicine: is it when the client is not improving or it appears that they may require assistance beyond the training and expertise of the CAM practitioner?

- **The principle of respect for autonomy** (which emphasises informed consent for procedures and allowing patients to be active in the healing process):29 This principle provides a balance to medical paternalism where autonomy and beneficence may conflict.30 Respect for autonomy is maintained by protecting a person’s entitlement to make decisions affecting their health. One useful definition of the ethical principle is: "personal rule of the self that is free from both controlling influences by others and from personal limitations that prevent meaningful choice, such as inadequate understanding."31 The emphasis on this aspect of ethics is based on its relevance to the primary given to personal values and individual autonomy in Western culture.32 This becomes particularly relevant for a CAM practitioner in relation to first accepting a client and that client’s ability to choose complementary and alternative medicine over orthodox medicine. This principle suggests the need for a CAM practitioner to provide an information-rich

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26 Stone and Matthews, n 9, pp 9-10, Ch 13.
29 Ernst E, "The Ethics of Complementary Medicine" (1996) 22 *Journal of Medical Ethics* 197.
environment where a client can make a decision to undertake complementary and alternative medicine and to continue its application when orthodox medicine is also available. On occasion, a CAM practitioner may be obliged to advise a client to consult an orthodox medicine practitioner for the purpose of satisfying some of the other ethical concepts discussed above.

• **The principle of justice**: The concept of justice applies in two ways. One perspective is as “distributive justice” in the sense of the just and equitable distribution of benefits in society. The other perspective is the ability to obtain compensation for wrongs done. The distributive aspect is reflected in the *United Nations Declaration of Human Rights* which declares that “everyone has the right to a standard of living adequate for the health and well being of himself and his family ... including medical care”.

**LEGAL BACKGROUND TO PROTOCOL**

Many clients actively choose to use complementary and alternative medicine after orthodox medicine has proven ineffective or because they are more comfortable with the approach to health issues provided by complementary and alternative medicine or for cultural reasons. The fact that a client may make a conscious decision to consult a CAM practitioner and not an orthodox medicine practitioner was a significant reason why an English court in *Shakoor v Situ* [2000] 4 All ER 181 rejected an argument presented to it that the standard of care applied to a TCM practitioner should be that of a medical doctor. The decision involved an action in negligence against a TCM practitioner by the widow of a client who had suffered liver failure after ingesting Chinese herbs prescribed for him. The court concluded (at 188-189) that it was significant in that case that the deceased person chose to consult a TCM practitioner rather than an orthodox medicine practitioner and the standard of care should reflect that choice.

Nevertheless, in *Shakoor v Situ* the court confirmed (at 188-189) that CAM practitioners must understand that they practise within an orthodox medicine context and they should not ignore orthodox medicine knowledge that may apply to a given situation and should avoid dissuading a client from seeking orthodox medicine assistance. This suggests that, in a legal sense and ethically, CAM practitioners are obliged to understand the limitation of their competence and to refer patients to another CAM practitioner or to an orthodox medicine practitioner if required. This may be problematic for CAM practitioners for a number of reasons:

• orthodox medicine has a strong tradition and a legal obligation to refer patients to a specialist for matters outside the expertise of the general practitioner. The tradition of referring to specialist colleagues is not as well established for CAM practitioners though it is supported by some professional associations’ codes of ethics. For example, the Australian Natural Therapists Association (ANTA) requires its members to refer patients to other health care providers as appropriate. There are other examples of complementary and alternative medicine professional associations that acknowledge the importance of this issue.

33 Stone and Matthews, n 9, p 235; Beauchamp and Childress, n 31, p 309.
36 See also Johnstone, n 34, p 203.
41 The New Zealand Council of Homeopathists, *Rules of Practice*, r 15, provides: “Where treatment is beyond the capacity or skill of the Homeopath, the patient must be advised and referred to another Homeopath or appropriate person or service. Homeopaths treating beyond the scope of their registration category must refer to, or take supervision from, a suitably registered practitioner.” Rule 16 provides that, in cases of referral to other non-homeopathic therapists while under homeopathic care, close rapport through email, letter or telephone with the respective medical providers is paramount for the client’s optimal
The hostility that applies between orthodox medicine and complementary and alternative medicine makes referral between CAM and orthodox medicine professionals less likely to occur although orthodox medicine is now becoming more receptive to closer ties with CAM practitioners.  

Complementary and alternative medicine practitioners trained within a very different healing paradigm may simply apply their modality without considering the possibility of orthodox medicine treatment options or referral to an orthodox medicine practitioner. The exclusion of complementary and alternative medicine from the orthodox health sector only encourages this isolationist stance.

As CAM practitioners may not be trained in biomedical physiology or are trained to a lower standard than medical doctors, they may not recognise a situation requiring medical intervention.

THE PROTOCOL

The following ethical precepts are suggested for CAM practitioners in dealing with any condition but especially one that is a serious condition, such as cancer, heart disease, diabetes or other life-threatening conditions.

The practitioner should ascertain the nature of the condition being treated. It is also the opportunity for the practitioner to educate the client about what their role might be; what services they will not be able to provide; and to identify those maladies they will not be dealing with. At this stage an acknowledgment of whether it is possible for the treatment to be complementary in nature can be considered. This might involve a cooperative relationship with an orthodox medicine practitioner (not always possible) but the CAM practitioner can take into account the orthodox medicine also being provided. It would be incumbent upon most CAM practitioners to obtain details of all current medical conditions that might impact upon the way in which they will practise. For some practitioners following a holistic approach to health care they may not be concerned about current conditions as they will seek to simply provide holistic harmony, allowing the body to heal itself without an allopathic approach favoured by orthodox medicine. It is suggested that a practitioner may still be obliged to consider the current health condition of any client to ensure that nothing they do will cause injury or require referral to another practitioner.

The practitioner should ascertain if the client has received a medical diagnosis or treatment for any current condition that impacts upon what is being treated by the CAM practitioner and the result of that diagnosis or treatment. The issue of diagnosis is important as the role of a CAM practitioner when not relying on an orthodox medicine diagnosis raises significant issues. Even those who are critical of orthodox medicine will acknowledge that orthodox medicine has a strength in relation to diagnosis, whether reliant upon sophisticated diagnostic equipment, drawing upon an in-depth anatomical knowledge or long experience in differential diagnosis. An objective assessment of the relative strengths and weaknesses inherent in orthodox medicine and complementary and alternative medicine would suggest that orthodox medicine is good at diagnosis. Of course, that diagnosis will be from an orthodox medicine perspective and the unique approach favoured by that form of medicine.

A client may have a long-running and well-identified condition that is chronic where there is no satisfactory orthodox medicine treatment or the treatment has significant negative outcomes (a common area of orthodox medicine failure and accordingly an area often treated by

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complementary and alternative medicine). In this circumstance a client may be exercising their autonomous choice to approach a CAM practitioner about a malady with which both the client and the practitioner may have a great deal of familiarity. In that context the ethical issues are less pronounced and it is easier for a CAM practitioner to provide an assessment of the client’s condition without necessarily the full burden of undertaking the diagnostic responsibilities that apply for a primary health practitioner. It is not absent of ethical issues. Even in this context the necessity to refer to orthodox medicine should always be borne in mind and in no case should a client be convinced to stop orthodox medicine and an understanding of the impact of complementary and alternative medicine on any pharmaceutical treatments needs to be considered and, if necessary, advice obtained.

- If no orthodox medicine diagnosis is available (which may in any event be of variable quality), the CAM practitioner may be undertaking the sole ethical responsibility to provide the client with the necessary information to make therapeutic decisions as a primary health practitioner. This emphasises the responsibility to refer to orthodox medicine if the treatment does not appear to provide benefits or there is suspicion of another condition that the practitioner is not trained to treat or legally entitled to treat. If orthodox medicine has proven ineffective or its side-effects are problematic and the patient is seeking an alternative therapy, this should be discussed and noted.
- The practitioner should communicate what he or she thinks can be done for the patient. The practitioner should give the likely therapeutic result of treatment, indicating the strengths and weaknesses of the therapy. The likely costs and length of treatment should be canvassed. The options available to the practitioners within their modality should be discussed. The evidence supporting the therapy (whether traditional, anecdotal, scientific or empirical) or the basis of the intervention should be discussed (if any).
- The patient should be encouraged not to abandon orthodox medicine unless they themselves determine this course of action. Any problems with combining orthodox medicine with the CAM therapy should be canvassed and addressed, such as problematic drug/herb interactions.
- If the malady does not respond or it is clear it requires therapy beyond the scope of the practitioner, a referral to orthodox medicine should be made and the treatment stopped unless, with all the information available, the client wishes to continue and this would not be harmful. This point is especially important when a therapy derives its proof of efficacy and safety from empirical or non-scientific data. If the patient does not respond as expected, the treatment should be reviewed. If practicable, contact or cooperation with the patient’s medical doctor would be preferable to avoid misunderstanding and to maximise the possibility of complementary treatment.

These criteria could be incorporated into an express contract between the practitioner and client. This protocol acknowledges the importance of communication with the patient that is at the heart of ethical conduct. A patient is entitled to be given sufficient information to understand what is being agreed to and the limits and nature of the evidence for a particular therapy. It suggests that it is not ethical to provide a treatment for which there is no evidence of safety or efficacy. To withhold treatment in that circumstance respects a client’s autonomy and complies with the ethical precepts of beneficence and non-maleficence.

A patient provided with the information to make an informed choice to use complementary and alternative medicine (which may not have scientific proof of efficacy) over what may be scientifically


45 As knowledge of these potentially problematic interactions increases, this will be part of the duty of care of both CAM and orthodox medicine practitioners.


48 Crellin and Ania, n 43, p 27.
proven orthodox medicine treatment is a patient choosing their autonomous path. Any attempt to dissuade a person from this course may interfere with any possible placebo effects that may be available to them in that treatment, in addition to any substantive improvement.

Patient autonomy requires a balancing of the beneficence/non-maleficence principle when a patient requests a treatment. From an orthodox medicine perspective, provision of treatment not scientifically proven is the provision of useless treatment. But clients are entitled to choose another way based on their viewpoint of what healing is and what healing should be like.49 This principle sits best in an information-rich environment when a patient appreciates the factors that should be considered in making that decision. This ethical dilemma for a CAM practitioner reflects the tension that exists between being consistent with scientific method and respecting the decision of a patient to use a treatment that may not be backed by scientific evidence.50

Potentially significant ethical problems can arise where a client has determined not to commence or continue orthodox medicine where those treatments have scientifically proven benefits. If a CAM practitioner seeks to dissuade a client from taking advantage of those options, then the ethics of the approach could be questioned as potentially in breach of the non-maleficence precept.

Where the CAM treatment does not rely on scientific evidence, if promoted as being an alternative therapy not simply a complementary therapy, an ethical dilemma arises for a CAM practitioner. Is this course of action in the best interests of the client? The client may, armed with the knowledge of orthodox medicine options, determine to take that course based upon their autonomous choice for many valid reasons such as spiritual beliefs, lifestyle, age, and concerns about orthodox medicine side-effects. A CAM practitioner in that case has an ethical obligation to indicate the cost/benefit analysis of their therapy and the evidence of its efficacy and safety. Only then can the autonomy of the client and the ethical concepts of beneficence and non-maleficence be reconciled. The more cautious ethical procedure is to attempt complementary treatment (if possible).

CONCLUSION

It is suggested that this protocol acknowledges the role of complementary and alternative medicine in the health sector rather than following a policy of exclusion that has been the historical background to the relationship between orthodox medicine and complementary and alternative medicine. Complementary and alternative medicine deserves to be acknowledged as an alternative to orthodox medicine and for the positive outcomes that it provides based upon a variety of scientific, traditional and empirical evidence. The legal framework in many jurisdictions either acknowledges, tolerates or integrates complementary and alternative medicine into the health structure. One of the primary concerns is the ethics of providing complementary and alternative medicine when orthodox medicine options are available, especially where the condition is potentially life-threatening. This protocol deals with this concern without unduly burdening CAM practitioners or making them subordinate to orthodox medicine.

49 Lynoe, n 46 at 218.
50 Crellin and Ania, n 43, p 27.