



# UK HEALERS

## Healing and the Law

Published: July 2014

### (RELATED TO ENGLISH LAW)

#### **Legislation**

It is essential that a Registered Healer understands (and acts within) the law as it relates to healing practice. When a Registered Healer agrees to provide healing to a patient, the Registered Healer is in a position of trust and has a duty of care to the patient. This is the case irrespective of whether the Registered Healer has entered into a contract for payment for the service, or the service is given free of charge.

It is not the function of this document to explain the legislation: it is not a statement of the law. The purpose of this document is to indicate the principal current laws affecting healing on which the Registered Healer might need to consult lawyers. Ignorance of the law is no defence. The contents of this document are thought to be correct at the time of publication.

#### **Laws governing confidentiality**

Statutes which govern confidentiality (and should be considered relevant to the activities of Registered Healers) include: Access to Medical Reports Act 1988, Access to Health Records Act 1990, Data Protection Act 1988 as amended, Data Protection Act Subject Access Modification Order 1987, Police & Criminal Evidence Act 1984.

The Access to Health Records Act 1990 applies to Registered Healers and gives to patients certain rights of access to health records. The provisions in respect of access to medical records may include the records of Registered Healers in some circumstances. It is good practice for Registered Healers to remember that patients may request to see their records and should be allowed to do so, unless a medical practitioner advises otherwise.

In specified circumstances the law requires Registered Healers, medical practitioners, therapists and counsellors to attend court and disclose medical records and case notes and/or answer questions about the content of sessions. Registered Healers cannot therefore offer absolute confidentiality to patients, but need to explain that confidentiality is subject to certain limitations.

Adult patients can give their consent for Registered Healers to disclose information, and may specifically request the Registered Healer to do so. Confidentiality should not be breached without the patient's prior written consent, or unless the law requires it.

If a healing consultation relates to a case before a court of law the court may require the Registered Healer to attend as a witness with any relevant documents. If the Registered Healer refuses, the court may hold the Registered Healer in contempt and impose on the Registered Healer a fine or imprisonment. The documents required by the court may include the Registered Healer's case notes or patient records. The court will require the original notes to be brought even though they may be in manuscript. Typed copies are not acceptable as substitutes for the originals but may be brought in addition to the originals.

If a Registered Healer is called to court as a witness, the court may ask what the patient said or what occurred during a healing session and the Registered Healer must answer truthfully. The court will usually understand and respect the wish of registered Healers to maintain patient confidentiality, and only seek information if the court considers it absolutely necessary and relevant to the issues before the court.



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Registered Healers must ensure that they comply with the Data Protection Act. The Access to Health Records Act 1990 gives certain rights of access to health records, and the provisions of the Act may include the records of Registered Healers in some circumstances. Registered Healers should bear this in mind when recording information about a patient and the healing given.

### **Laws relating to medical treatment**

Treatment of any person without appropriate consent (unless by a doctor in an emergency) may constitute an assault and the person giving healing may be held liable in criminal and/or civil law. Distant Healing is an activity not recognised in the current law, so it is not included in this definition of treatment.

A patient may suddenly require urgent medical help. In such circumstances, call the emergency services.

Registered healers should always obtain appropriate consent before offering contact healing.

Any person over the age of eighteen is in law an adult and can consent to medical treatment unless they are unable to give informed consent.

### **Laws relating to children and child protection Children Act 1989**

An adult is usually defined as a person over 18 years of age. Children over 16, but under 18, may request confidentiality in the same way as adults.

Children under 16 may also be able to request confidentiality depending on their age, maturity and understanding. Confidentiality regarding younger children is always subject to the consent of those with parental responsibility for them, and to the law and guidance in force for professionals relating to child protection (see section on Child Protection below).

Parental responsibility is a legal concept created by the Children Act 1989. It lasts until a child reaches the age of 18, or marries before that age. The mother of a child always has parental responsibility for her child. The biological father of a child automatically has parental responsibility for his child if he is married to the child's mother. If he is not married to the mother, the father can acquire parental responsibility by agreement with the mother or by court order. Others can acquire parental responsibility by court order such as guardianship, or along with a residence order. Local authorities can also acquire parental responsibility when a child is placed under a care order by the court. Parental responsibility (and therefore medical and other decision making) can be shared if held by more than one person.

As well as those who have parental responsibility for a child, children themselves, if over the age of 16, can legally give their own consent for medical treatment, but since parental responsibility for children continues until the age of 18, we consider it best practice for Registered Healers to obtain consent for healing from those with parental responsibility for the child as well as the consent of the child. Care must be exercised if the parent is under 18 years. If in doubt, do not give healing.

Registered Healers are not regarded in law as medical practitioners and certain consequences flow from this. A person with parental responsibility for a child may be neglecting their child's health and welfare (and therefore committing a criminal offence and/or giving rise to grounds for inter agency action or court proceedings for child protection) if they fail to obtain appropriate medical aid for a child under the age of 16. Since healing is



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not regarded as medical aid, a doctor should be consulted in addition to the Registered Healer if a child under 16 is ill. A Registered Healer who treats a sick child under 16 knowing that no doctor has been consulted may run the risk of being accused of complicity in a criminal offence as well as possible liability in civil law if a serious illness is undiagnosed and the child suffers harm as a result.

Where it is known that those with parental responsibility are not providing medical attention for the child, Registered Healers must advise those with parental responsibility for the child to consult a doctor and also secure the signature of the parent or guardian on the following statement:

"I have been advised by (name of Registered Healer) that according to law I must consult a doctor concerning the health of my child (name of child)".

Signed (Parent or Guardian)                      Date

Signature of Witness                              Date

This statement should be kept with the healing records.

The Children Act 1989 makes provision for the protection of children who are suffering or at risk of suffering significant harm. The term 'harm' includes ill treatment or impairment of their health or impairment of their physical, intellectual, emotional, social or behavioural development. Causes of harm to children can be many and varied, including emotional or physical neglect, and direct physical or sexual abuse.

If a Registered Healer suspects that a child brought for healing is suffering harm, or is at risk of harm, the Registered Healer's concern should be reported to the child's doctor, or to the duty officer of the Social Services Department serving the area in which the child lives.

### **Midwifery - Healing Pregnant Clients and the Midwifery Act**

There are no known contraindications from healing with a competent and qualified healer. However, the laws affecting healing on pregnant women are unclear. Therefore it is recommended that all Healers and students ask for acknowledgement and consent when healing pregnant clients. This is a disclaimer stating that they are aware of the law; wish to have healing and that they have been advised to contact their midwives for more information.

The law:

The Nursing and Midwifery Order ("the Order") states at clause 45(1) that "a person other than a registered midwife or a medical practitioner shall not attend a woman in childbirth." The legal definition of 'childbirth' or 'attend' is unclear.

Although it is highly unlikely that any consideration was made toward healers when this law was created, and it is highly unlikely that healers are even part of any consideration for the basis of a single item of UK legislation, it is advisable for all healers to cover themselves by ensuring all pregnant clients sign a consent form.



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An example of the consent form:

I (client's name) have been advised by (healer's name) of The Nursing and Midwifery Order 2001 and that I should inform my midwife of my decision to receive healing.

I acknowledge and accept that Healing is a complementary therapy and does not replace medical diagnosis and prognosis. I would like to go ahead and receive healing in full acceptance of the responsibility of the above.

As a patient I exercise my right to request and receive Healing.

Patient Signature.....

Date.....

Healer Signature.....

Date.....

### **Prescribing remedies, herbs, medicines, etc.**

Registered Healers must not prescribe remedies, herbs, supplements, oils etc unless they hold the necessary qualification.

### **The Treatment of Animals and Giving Healing to Animals**

#### **Advice from the Royal College of Veterinary Surgeons**

**(provided by letter dated 12 May 2004**

**to UK Healers member organisation ISRHA)**

When advising on matters concerning the practice of veterinary surgery within the Veterinary Surgeons Act 1966 the starting point as always is the procedure considered to be the practice of veterinary surgery. Healing has been understood by the College as the laying on of hands and as such is not generally regarded as the practice of veterinary surgery, providing there is no element of diagnosis.

Section 27 of the Veterinary Surgeons Act 1966 covers interpretation. "Veterinary Surgery" means 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 on such diagnosis (c) the medical or surgical treatment of animals (d) the performance of surgical operations on animals.

On the understanding that the laying on of hands does not include the practice of veterinary surgery, the College has no jurisdiction to insist upon the involvement of a veterinary surgeon before the laying on of hands is given. The College would support your Association's view that where there is concern about the health of an animal a veterinary surgeon should be consulted.



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### Action by Healers –

#### Always:

- Ask owners of animals brought for healing if a veterinary surgeon has been consulted, and
- If a veterinary surgeon has not been consulted and there is reason for concern about the health of the animal advise the owner to consult a veterinary surgeon.

#### Never:

- Diagnose disease in, or injuries to, animals
- Give advice based on such diagnosis
- Treat animals surgically or medically
- Perform surgical operations on animals
- Countermand any instructions or medicines given by a veterinary surgeon

#### Healers should also keep in mind that:

- For healing to be given in the knowledge that veterinary advice has not been sought even though there is reason for concern about the health of the animal could lead to prosecution under the Veterinary Surgeons Act.
- The Protection of Animals Act 1911 imposes an obligation on anyone aware that an animal is clearly in need of veterinary treatment to advise the owner to obtain this.
- The administration of first aid in an emergency for the purpose of saving life or relieving pain is permissible (Veterinary Surgeons Act 1966 Schedule 3 refers).
- No breach of the Animals (Scientific Procedures) Act 1986 is permitted.

### Unfair Commercial Practices Directive

This law came into force in 2008 and was principally aimed at consumer protection. As part of its introduction, about 17 pieces of legislation were repealed in part or entirely including the Fraudulent Mediums Act.

Broadly speaking, if consumers are treated fairly, then traders are likely to be complying with the CPRs (Consumer Protection Regulations). This means that fair-dealing businesses should not have to make major changes to their practices. However, if a trader misleads, behaves aggressively, or otherwise acts unfairly towards consumers, then the Trader is likely to be in breach of the CPRs and may face action by enforcement authorities. Details of potential enforcement action (both civil and criminal enforcement is possible under the CPRs).

Generally, if healers work within the standards set and the UK Healers' Code of Conduct they should not have a problem. The most likely difficulty will be a healer making claims that can not be substantiated. In which case the Advertising Standards Authority or Office of Fair Trading may become involved.

For more information about this read the Office of Fair Trading document entitled: "Consumer Protection from Unfair Trading". It can be found on the following web site: <http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.offt.gov.uk/business-advice/treating-customers-fairly/protection>



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### Advertising Standards Authority

The ASA get involved if anyone makes claims in advertising, e.g. on their web sites, that are held to be incorrect. For healing, as with other complementary therapies, the ASA set a very high standard of proof. The requirement is the “gold standard” of Randomised Control Trials.

Adverts should not contain any reference to medical conditions for which suitably qualified medical advice should be sought. Some 90 conditions are banned and a further 120 may be queried if mentioned.

Adverts, web pages, etc. should not encourage readers to self diagnose or to shun qualified medical advice.

As well as health conditions the advert, web page can not use the following terms:

- Help
- Treat
- Treatment
- Cure
- Rejuvenate

Also beware of saying things like:

- "People come to us with..."
- "Our patients have found it useful for..."
- "Our qualified therapists are highly experienced in..."
- "We are consulted for many conditions..."
- "We commonly see patients with..."

Testimonials can be used – with care – as proof may be sought that they are genuine.

For more information about non broadcast publicity material read the CAP Code about the “UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing” It can be found on the following web site: <http://www.cap.org.uk/Advertising-Codes.aspx>