Assessing The Legal Risk Of Unregulated Yoga Therapy

Law360, New York (January 5, 2016, 11:10 AM ET) -- With the rise in integrative and holistic medicine, a new branch of yoga has emerged — yoga therapy. While the yoga community can agree that yoga has general therapeutic benefits, some yoga teachers have sought to apply yoga training to the treatment of particular conditions. Health care in the United States is heavily regulated, and medical professions have established discrete scopes of practice. As yoga therapy emerges as a specialized discipline within the yoga and health care communities, the scope of yoga therapy practice must be defined to distinguish the specialization from the practice of yoga and also from other health care disciplines. Without an appropriately defined scope of practice and necessary state authorizations, the teaching and practice of yoga therapy invites enforcement actions for the unlicensed practice of medicine, and further, threatens the entire yoga community with being swept under a regulatory scheme.

Assessing Legal Risk

The practice of yoga has long touted its therapeutic benefits in achieving and maintaining an optimum state of general health and well-being. As yoga has increased in popularity in the U.S., complementary and integrative medicine[1] have also gained increased acceptance over the past decade. “Yoga therapy” — the integration of yogic techniques and a holistic approach to wellness with the concepts of Western medicine — has recently gained recognition as one form of complementary medicine and emerged as a specialization within the yoga community.[2] Many practitioners of traditional medicine now generally believe in the therapeutic benefits of combining nontraditional health approaches with Western medicine.[3] Further, with the Affordable Care Act's focus on preventive medicine and coordinated care, traditional health care practitioners have become more accepting of alternative therapies. Yoga therapy has the opportunity to flourish in this new environment. It must do so, however, within health care regulatory structures or risk potential state action.

The goal of a yoga therapist is to address particular health conditions using yogic techniques that combine physical movements and poses, breathing exercises, relaxation and meditation. As yet, no generally accepted definition of yoga therapy has been developed, and no clearly defined scope of practice currently exists. While it is commonly accepted that the practice of yoga can contribute to improved health and well-being when performed appropriately, a lack of training in and understanding of human anatomy, physiology and the pathology of particular physical or mental health conditions could cause a well-meaning yoga therapist to do more harm than good. Individuals seeking treatment for health conditions may also make mistaken assumptions about the extent of the qualifications and expertise of yoga therapists, to the individual’s detriment. For these reasons, state governments have an interest in investigating and regulating this emerging discipline to protect their citizens from potential harm.

Unlicensed Practice of Medicine and Other Health Disciplines

In 1889, the U.S. Supreme Court held that “[T]he State, in the exercise of its power to provide for the general welfare of its people, may exact from parties before they can practice medicine a degree of skill and learning in that profession upon which the community employing their services may confidently rely, and, to ascertain whether they have such qualifications, require them to obtain a certificate or license from a board or other authority competent to judge in that respect.”[4]

The unauthorized practice of medicine is a criminal statute in most, if not all states, following from the principle that states have an interest in protecting their citizens from harm resulting from medical care provided by laypersons or individuals with substandard training. The “practice of medicine” is defined differently in various states; however, all such definitions incorporate words such as diagnose, treat, prevent and prescribe in connection with a condition, injury, illness, disease or affliction of a human being.[5] Infringing upon these state definitions without explicit authority to practice within a narrowly defined subset of this definition is a criminal act subject to prosecution under the applicable state’s law.[6]

Physicians generally hold unlimited licensure with broad authority to treat health conditions, while other health professionals hold more limited licenses to treat conditions falling within their narrowed scopes of practice.[7] Yoga therapists, therefore, will need to define a narrow scope of practice that is distinct from the practice of medicine and from the practice of other allied health professions. Otherwise, a yoga therapist who holds herself out to the public as using yogic techniques to prevent or treat the practice of medicine or risk charges of unauthorized practice. One unauthorized practice case in 2000, for example, involved a California-licensed physical therapist who had his license suspended for aiding and abetting the unauthorized practice of physical therapy by a yoga trainer.[8] An undercover operation by the California Board of Physical Therapy found that William Robbins, the physical therapist, had improperly referred a patient with low back pain to an unlicensed, certified athletic trainer for treatment of the patient through yoga. Robbins did not actively participate in the patient’s treatment but cosigned documentation relating to the therapeutic yoga sessions and submitted invoices to the patient's insurance for physical therapy sessions.

As this case illustrates, professional sanctions could, in certain cases, extend beyond the unlicensed yoga therapist to reach other licensed professionals. Therefore, not only could the yoga therapist be found to have violated the state's unauthorized practice statute(s), but a licensed professional who refers a patient to the yoga therapist could potentially be found to have aided and abetted the unauthorized practice. Moreover, because yoga therapy does not currently enjoy a licensure exemption and is not recognized by any state licensing regulations, practicing yoga therapists risk direct prosecution under the majority of states’ unauthorized practice of medicine laws.

State Regulatory Frameworks

Certain states will permit unlicensed individuals to provide services without risk of prosecution under licensure statutes so long as certain criteria are met.[9] In these states, a yoga therapist's practice may be protected from unlicensed practice allegations if they meet the designated criteria. In the remaining states, health care licensure regulations generally adopt one of several approaches:[10]

i. Registration

Registration involves providing identifying information and a designated area of practice to a state agency and may require reporting of the professional's education and training, but does not set minimum requirements.

ii. Title Licensure

Title licensure requires satisfaction of minimum education and training standards before using a professional title in that state. Typically, the applicant must graduate from an accredited institution and pay a licensure fee to a designated state agency. Once the state agency verifies that the applicant meets the minimum criteria, it issues a license number.

iii. Licensure
Mandatory licensure requires the attainment of a license prior to providing designated services in that state. Licensure may require graduation from a certified program, certification by a national organization, completion of specified education and training, passing an exam, and more. The licensing board receives complaints from the public regarding licensed practitioners, investigates those complaints and takes disciplinary actions against its licensees.

The level of state regulation sought by yoga therapists will depend upon the desired benefits and acceptable obstacles to the emerging profession. Unless yoga therapy is sufficiently defined as distinct from the practice of or instruction in yoga techniques, however, the entire yoga community could be subjected to state regulatory schemes aimed at yoga therapy. Moreover, if states decide that the practice is widespread enough to warrant taking independent action to regulate it, the yoga therapy community will lose the opportunity to define itself and choose its optimal path of regulation.

**Standardization Efforts by IAYT Fall Short**

The International Association of Yoga Therapists (IAYT) defines “yoga therapy” as “the process of empowering individuals to progress toward improved health and well-being through the application of the philosophy and practice of yoga.”[11] While this definition appears crafted to avoid a disease treatment model that might implicate the unauthorized practice of medicine statutes,[12] it remains too vague to make any distinction between the practice of yoga and yoga therapy. It also does not provide any protection for a yoga therapist who exceeds this definition by offering individualized treatment plans, even if yoga therapy as defined by the IAYT achieves some level of state recognition.

The IAYT asserts that differentiation between yoga and yoga therapy “is achieved in the development of the profession’s scope of practice.”[13] IAYT’s proposed scope of practice is even broader in scope, however. According to IAYT, yoga therapy practices:

- may include, but are not limited to, āsana, prānāyāma, meditation, sound and chanting, personal ritual, and prayer.
- Teaching may also include, but is not limited to, directed study, discussion and lifestyle counseling. Yoga therapy may address any of the dimensions of life. In the classical tradition, these are the panca kosha or the five sheaths of the human being. In contemporary terms, these may be approximated as the anatomical, physiological, emotional, intellectual, and spiritual dimensions.[14]

This proposed scope of practice makes no distinction between yoga therapy and the practice of yoga and does not clearly define the methodologies and practices that may be employed by a yoga therapist. Indeed, the IAYT states that the scope of practice is “not limited to” the practices identified. If yoga therapy is to become a regulated profession, the scope of practice will need to clearly articulate the practices and approved modalities yoga therapists may utilize.

Current efforts at defining yoga therapy have been insufficient to distinguish the profession from the practice of yoga and have resulted in misunderstandings even among its practitioners and the communities which they serve. Requiring yoga therapists to narrow their scopes of practice to particular conditions, therapeutic focus, or areas of the body may help to ensure that the yoga therapist is sufficiently trained, knowledgeable and capable of providing safe and effective treatment.

**Importance of Distinguishing Yoga Therapy from Yoga**

Many yoga teachers eschew governmental oversight and standardized competencies, finding such restrictions contradictory to traditional yogic practice. Yoga is a diverse practice with more than a dozen different styles, and many believe that standardizing competencies will diminish this diverse practice. Currently, yoga instruction is not subject to government oversight targeted at yoga teachers. Yoga teachers have the option — though not the requirement — of registering with Yoga Alliance Registry, a voluntary nonprofit organization that maintains a directory of yoga teachers who have completed training meeting the organization’s minimum curricular standards. However, as yoga bleeds into the regulated world of health care and as yoga teachers hold themselves out to the public as capable of treating health conditions, the freedom of choice that yogis currently enjoy may become obsolete.

Governmental regulation brings with it many onerous requirements such as licensure fees, standardized competencies, continuing education requirements, threat of disciplinary action, etc. Regulated professionals thus have a higher cost of practice than unregulated practitioners. For most yoga teachers, government regulation should be unnecessary. Only where a yoga teacher makes claims about her ability to prevent, treat or prescribe therapies for a health condition would her practice intrude upon the practice of medicine or of another health care discipline.

Yoga therapists therefore should be cautious about the claims they make with respect to their practice and inform themselves of the unauthorized practice laws in their state. Yoga therapists should also consider defining a narrow scope of practice and pursuing a state regulatory path for their discipline. In pursuing that path, yoga therapy should be careful to clearly distinguish itself from the practice of yoga. Preserving the unauthorized practice of yoga is as important a goal to the yoga community as creating a legally accepted path for the practice of yoga therapy — both for those yoga instructors who choose to remain unregulated and those yoga therapists who may decide in the future that licensure is not worth the costs. Only where yoga teachers choose to extend their yoga training to individualized treatment and avail themselves of the benefits of heightened professional standards should the burdensome realities of health care licensure be applied.

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[1] ‘Complementary medicine’ is a term used to describe the combination of conventional medicine with nontraditional health care while ‘alternative medicine’ is a term used to describe the use of nontraditional health care as a substitute for conventional medicine. ‘Integrative Medicine’ is a term used to describe the coordinated, structured approach to complementary medicine, or in other words, the integration of nontraditional and conventional medicine within and across care settings. United States Department of Health and Human Services – National Institutes of Health – National Center for Complementary and Integrative Health, “What is CAM?”, available at: https://nccih.nih.gov/health/integrative-health.


[9] For example, California, Rhode Island and Minnesota permit certain unlicensed individuals to practice so long as their services do not constitute the practice of medicine, they practice only within the parameters of their education and training, and they provide certain disclosures. Mandatory disclosure may include the requirement to inform clients of the practitioner’s education and training, that the practitioner is not licensed, and that the services are not licensed by the state.


