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Bill Analysis
Legislative Service Commission

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(As Introduced)

Reps. Kearns, McGregor, Perry, Setzer, Reidelbach, Hagan, Aslanides, Slaby

BILL SUMMARY

- Provides for the regulation and certification of naturopathic physicians by the State Board of Naturopathic Medicine, a licensing board created by the bill.
- Defines the scope of practice of naturopathic physicians, which includes prescriptive authority in accordance with a formulary and rules adopted by the Board.
- Adds naturopathic physicians to the list of health professionals who may administer, furnish, sell, ship, or handle instruments associated with controlled substances.
- Exempts naturopathic physicians from most of the laws governing the practice of medicine and surgery, osteopathic medicine and surgery, and acupuncture.
- Entitles naturopathic physicians to receive payment or reimbursement from workers' compensation and Medicaid for services rendered to eligible patients.
- Establishes requirements that applicants and naturopathic physicians must fulfill to obtain and renew certificates of authority to practice naturopathic medicine.
- Subject to certain exceptions, prohibits persons from practicing naturopathic medicine or holding themselves out as naturopathic physicians without valid certificates of authority.
- Establishes grounds for disciplinary action by the Board against applicants or naturopathic physicians.

- Requires insurers to notify the Board after the final disposition of any malpractice claim exceeding \$35,000.
- Adds naturopathic physicians to the class of persons who are subject to the testimonial privilege under existing law.
- Provides titles that naturopathic physicians may use to identify themselves as practitioners of naturopathic medicine.
- Permits naturopathic physicians to use assistants as long as the assistants satisfy the training requirements and standards established by the Board.

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CONTENT AND OPERATION

Regulation and certification of naturopathic physicians

(R.C. 4780.01)

The bill provides for the regulation and certification of naturopathic physicians by the State Board of Naturopathic Medicine, a licensing board created by the bill. "Naturopathic medicine" is defined as a system of primary health care practiced by naturopathic physicians, including prevention, diagnosis, treatment, and management of human health conditions, injuries, and diseases, that uses education, counseling, biofeedback, acupuncture, natural medicine, topical

medicine, naturopathic physical medicine, therapeutic devices, chelation,¹ minor surgery, immunizations, nutritional assessment and counseling, hypnotherapy, naturopathic joint mobilization and neuromuscular re-education, naprapathy, and dietary therapy to support and stimulate the patient's intrinsic healing processes. The following terms, used in the definition of "naturopathic medicine," are defined in the bill as follows:

- "Acupuncture" means the traditional Chinese therapeutic technique of treating specific areas of the human body, known as acupuncture points or meridians, by puncturing the body with fine needles or applying electricity, heat, or both to the body.
- "Homeopathic preparations" means medicines prepared according to the United States and internationally accepted homeopathic pharmacopoeias.
- "Minor surgery" means the use of operative, electrical, or other methods for the surgical repair and care of superficial lacerations, abrasions, and lesions; the removal of foreign bodies located in the superficial tissues; and the use of antiseptics and local anesthetics in connection with these methods.
- "Natural antibiotics" means antimicrobial, antifungal, antiviral, and antiprotozoal agents that are naturally occurring substances, or manufactured substances that are chemically identical to those naturally occurring substances.
- "Naturopathic joint mobilization and neuromuscular re-education" means the manually administered, mechanical treatment of body structures or tissues, in accordance with naturopathic principles, for the purpose of restoring normal physiological functions of the body by normalizing and balancing the musculoskeletal system of the body.

¹ Not defined in the bill, "chelation" means "to grab" or "to bind." Commonly known as "chelation therapy," patients who undergo this therapy are subject to a chemical process in which an amino acid is injected into the body to remove heavy metals or minerals from the body. Specifically, when the amino acid, ethylenediaminetetraacetic acid (EDTA), is injected into a person's veins, it "grabs" minerals such as lead, mercury, copper, iron, arsenic, aluminum, and calcium and removes them from the body.

WebMDHealth, *Chelation Therapy* (visited Jan. 8, 2004) <<http://my.webmd.com/content/healthwise/69/17274>>.

- "Natural medicine" means food, food extracts, vitamins, minerals, essential oils, enzymes, digestive aids, nutraceuticals, glandular substances, plant substances, herbal preparations, homeopathic preparations, oligotherapeutic preparations, gammotherapeutic preparations, and natural antibiotics.
- "Topical medicine" means topical analgesics, anesthetics, antiseptics, scabicides, antifungals, compounded preparations, antibacterials, and antivirals.
- "Naturopathic physical medicine" means therapeutic use of the physical, chemical, or other properties of air, water, heat, cold, sound, light, and electromagnetic non-ionizing radiation and of the physical modalities of electrotherapy, diathermy, ultraviolet light, infrared light, ultrasound, hydrotherapy, massage, naturopathic mobilization and neuromuscular re-education, reflex therapy, and therapeutic exercise.

Scope of practice and prescriptive authority

(R.C. 3719.06, 3719.81, 4780.34, 4780.35, 4780.38, and 4780.381)

Under the bill, a naturopathic physician may use for preventive and therapeutic purposes naturopathic medicine and any therapeutic and clinical modalities taught at any naturopathic medical college operating legally in the state. Further, for diagnostic purposes, the bill permits a naturopathic physician to use physical and orificial examinations, x-rays, electrocardiograms, EAV testing, ultrasound, phlebotomy, clinical laboratory tests and examinations, physiological function tests, and any diagnostic procedures commonly used by physicians in general practice.

In addition, the bill permits a naturopathic physician trained in accordance with rules adopted by the Board to prescribe or furnish a drug, dangerous drug, homeopathic preparation, natural antibiotic, natural medicine, topical medicine, or therapeutic device, or sample thereof, that is included in the types of drugs, dangerous drugs, homeopathic preparations, natural antibiotics, natural medicines, topical medicines, or therapeutic devices listed on the formulary established by the Board through rules.²

² The bill provides that "drug" and "dangerous drug" have the same meanings as in R.C. 4729.01:

Drug:

However, the bill prohibits a naturopathic physician from doing any of the following:

- Engaging in the practice of parturition.³
- Performing any procedure or practicing any limited modality of naturopathy for which the naturopathic physician has not been trained.
- Exceeding the limitation on the extent, scope, or type of practice imposed on the naturopathic physician, if applicable.
- Referring a patient to a person for a designated health service if the naturopathic physician, or a member of the naturopathic physician's

(1) Any article recognized in the United States pharmacopoeia and national formulary, or any supplement to them, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(2) Any other article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(3) Any article, other than food, intended to affect the structure or any function of the body of humans or animals;

(4) Any article intended for use as a component of any article specified above, but does not include devices or their components, parts, or accessories.

Dangerous drug:

(1) Any drug that under the Federal Food, Drug, and Cosmetic Act is required to bear a label containing the legend "Caution: Federal law prohibits dispensing without prescription," "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian," or any similar restrictive statement or may be dispensed only upon a prescription.

(2) Any drug that under the state pure food and drug law and controlled substances law may be dispensed only upon a prescription.

(3) Any drug that contains a schedule V controlled substance and that is exempt from state controlled substances law or to which that chapter does not apply;

(4) Any drug intended for administration by injection into the human body other than through a natural orifice of the human body.

³ *The bill defines "parturition" to mean childbirth.*

immediate family, has either of the following financial relationships with the person:

- An ownership or investment interest in the person whether through debt, equity, or other means.
- Any compensation arrangement involving any remuneration, directly or indirectly, overtly or covertly, in cash or in kind.

A violation of referral prohibition precludes any person from billing the patient, any third-party payer, any governmental health care program, or any other person or governmental entity for the designated health service rendered pursuant to the referral.

Inapplicability of certain controlled substances laws

(R.C. 2925.02, 2925.03, 2925.11, 2925.12, 2925.14, 2925.23, and 2925.36)

Manufacturers, wholesalers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with state law pertaining to controlled substances or the practice of dentistry, certain nursing specialties, pharmacy, medicine, podiatry, and veterinary medicine are *not* subject to laws that prohibit the following:

- Administering or furnishing a controlled substance by force, threat, deception, or with intent to cause serious physical harm to another.
- Selling, offering to sell, shipping, preparing for shipment, transporting, delivering, or preparing for distribution a controlled substance.
- Obtaining, possessing, or using a controlled substance.
- Making, obtaining, possessing, or using any instrument, article, or thing the customary and primary purpose of which is for the administration or use of a dangerous drug.
- Knowingly using, or possessing with the purpose of using, drug paraphernalia.
- Knowingly furnishing another person with a sample drug.

Because the bill authorizes naturopathic physicians to prescribe drugs, the bill adds persons whose conduct is in accordance with naturopathy law to the list of licensed health professionals authorized to prescribe drugs who are not subject to any of the foregoing laws pertaining to controlled substances.

Pharmacists authorized to fill prescriptions ordered by naturopathic physicians

(R.C. 4729.01)

Current law provides that pharmacists may fill prescriptions ordered by the following health professionals:

- Dentists
- Clinical nurse specialists, certified nurse-midwives, and certified nurse practitioners who hold a certificate to prescribe
- Optometrists who hold a therapeutic pharmaceutical agents certificate
- Physicians
- Veterinarians

The bill provides that pharmacists may also fill prescriptions ordered by naturopathic physicians.

Inapplicability of the law governing physicians

(R.C. 4731.36)

Under current law, most of the statutes governing the practice of medicine and osteopathic medicine do not apply, in connection with specific limitations, to certain persons, including dentists, non-resident physicians, and acupuncturists. The bill adds naturopathic physicians to the persons who are not subject to these statutes.

Inapplicability of the law governing acupuncturists

(R.C. 4762.02)

Current law prohibits any person from engaging in the practice of acupuncture without a valid certificate of registration as an acupuncturist issued by the State Medical Board of Ohio unless the person is a physician or a person performing acupuncture as part of a training program in acupuncture. The bill adds to this exemption all of the following: (1) a naturopathic physician holding a valid certificate of authority to practice naturopathic medicine, (2) a naturopathic medical student performing acupuncture as part of a training program in acupuncture operated by a naturopathic medical college operating in accordance with the law, and (3) a naturopathic physician assistant assisting in the practice of

acupuncture in accordance with rules adopted by the State Board of Naturopathic Medicine.

Reimbursement for purposes of workers' compensation and Medicaid

(R.C. 4780.33)

The bill provides that a naturopathic physician is a "physician" who performs "medical services" for purposes of workers' compensation and the Medicaid program. Thus, a naturopathic physician is entitled to payment or reimbursement as provided by those programs under current law.

Special recognition for volunteers

(R.C. 4731.85)

Under current law, the Department of Health must establish a procedure to provide special recognition annually to one or more physicians or podiatrists who volunteer medical services to medically underserved areas of Ohio or to charitable shelters or clinics. The bill requires the Department to also include naturopathic physicians in this special recognition procedure.

State Board of Naturopathic Medicine

Membership and terms of office

(R.C. 4780.05)

The bill creates the State Board of Naturopathic Medicine consisting of seven members appointed by the Governor with the advice and consent of the Senate. The Governor must make these appointments no later than 60 days after the bill's effective date.

The members of the Board are to have the following qualifications and terms of office:

- Five members must be persons who hold the degree of doctor of naturopathy or doctor of naturopathic medicine from a school or college authorized by a state or federal government to grant those degrees and, except for those members appointed before the Board begins issuing certificates of authority, hold a valid certificate of authority. Of the initial members, two must be appointed to two-year terms, one to a three-year term, one to a four-year term, and one to a five-year term. Thereafter, these members are to be appointed to five-year terms.

- Two members are to represent the interests of consumers and must not be members of, or associated with, any health care provider, profession, school, or regulating agency. These members are appointed to terms of five years.

A member appointed to fill a vacancy occurring before the expiration of a term holds office for the remainder of that term. A member continues in office subsequent to the expiration date of the member's term until the member's successor takes office, or until a period of 60 days has elapsed, whichever occurs first.

Meetings and administrative issues

(R.C. 4780.06)

The bill requires the State Board of Naturopathic Medicine to meet each June and December at times and places as the Board may direct. Four members constitute a quorum and no action of the Board is valid without a concurrence of a quorum. The bill also requires the Board to elect a president, secretary, and supervising member from among its members. The term of office of these positions is three years.

The Board must keep any records and minutes necessary to fulfill the duties established by the bill and the rules adopted pursuant to the bill. The Board is permitted to hire staff as needed and must have a seal.⁴

Compensation

(R.C. 4780.07)

Under the bill, each member of the State Board of Naturopathic Medicine is to receive an amount determined by the Director of Administrative Services pursuant to pay schedules established in existing law for each day employed in the discharge of official duties. The bill also requires that each member be reimbursed for necessary and actual expenses incurred in the performance of official duties as a Board member.

⁴ *The bill accidentally does not include a provision under which the Ohio Department of Administrative Services would provide routine support for the Board as it does for other state agencies and boards. (R.C. 125.22.)*

Freedom to exchange information

(R.C. 4780.42(B)(3)(d))

Although the bill prohibits a naturopathic physician from willfully betraying a professional confidence or intentionally violating a privileged communication except where required by law, it provides that this prohibition does not prevent board members from exchanging information with the agencies of other states, provinces, or countries, or with any professional naturopathic medical association, organization, or society, as determined by the Board.

Liability for acts or omissions related to official duties

(R.C. 4780.08)

The bill provides that, except in instances of fraud or bad faith, neither the State Board of Naturopathic Medicine nor any current or former member, agent, representative, or employee of the Board may be held liable in damages to any person as the result of any act, omission, proceeding, conduct, or decision related to official duties undertaken or performed pursuant to the bill or rules adopted by the Board. The bill also provides that should a current or former member, agent, representative, or employee request that the state defend the person against any claim or action arising out of any act, omission, proceeding, conduct, or decision related to the person's official duties, and the request is in writing at a reasonable time before trial and the person cooperates in good faith, the state must provide and pay for the defense and pay any resulting judgment, compromise, or settlement. However, the bill specifies that the state may at no time pay the part of a claim or judgment that is for punitive or exemplary damages.

Moneys received by the Board

(R.C. 4780.10)

The bill creates the Naturopathic Medicine Fund and, except as noted below with respect to fines, requires all moneys received by the State Board of Naturopathic Medicine to be deposited into this fund. The Secretary of the Board must file a receipt for moneys received by the Board with the Auditor of State and the payment of any fee to the Board must be made in any manner acceptable to the Board.

One-half of any fines collected by the Board must be deposited in the state treasury to the credit of the Naturopathic Medicine Fund and the other half must be deposited in the treasury of the county or municipal corporation in which the offense was committed.

Rules

(R.C. 4780.11)

Under the bill, the State Board of Naturopathic Medicine is required to adopt rules to establish or specify all of the following:

- Additional information to be included in an affidavit presented to the Board to obtain a certificate of authority.
- The certificate of authority issuance fee.
- The examination fee.
- The remedial training an individual must complete to retake the examination if the individual fails to score at least 70% on the examination after three consecutive tries.
- Additional information to be included in the renewal form for a certificate of authority.
- The number of hours of continuing naturopathic medical education a naturopathic physician must complete if the number required is to be reduced due to disability or absence from the country.
- The restoration fee.
- The continuing education requirements for restoring a certificate of authority after the certificate has expired.
- The formulary specifying the drugs, dangerous drugs, homeopathic preparations, natural antibiotics, natural medicines, topical medicines, and therapeutic devices that a naturopathic physician may prescribe or furnish.
- The training requirements to prescribe and furnish drugs, dangerous drugs, homeopathic preparations, natural antibiotics, natural medicines, topical medicines, and therapeutic devices specified on the formulary noted above.
- The training requirements to be, and the practice parameters of, naturopathic physician assistants.
- The extent to which a naturopathic physician may render naturopathic medicine to another naturopathic physician.

Reports of violations of the law

(R.C. 4780.55)

The bill provides that any person may report to the State Board of Naturopathic Medicine in a signed writing any evidence the person has that appears to show any of the following:

- That a person is unlawfully practicing naturopathic medicine.
- That a person is unlawfully holding the person's self out as a doctor of naturopathic medicine.
- Grounds for taking action, including disciplinary action, against an applicant or naturopathic physician.

In addition, the bill provides that, in the absence of bad faith, a person who reports evidence to the Board or testifies before the Board in an administrative adjudication hearing is not liable for civil damages as a result of the report or testimony.

Investigations--process

(R.C. 4780.56 and 4780.57)

The bill requires the State Board of Naturopathic Medicine to conduct an investigation when it receives or otherwise has evidence appearing to show any of the following:

- That a person is unlawfully practicing naturopathic medicine.
- That a person is unlawfully holding the person's self out as a doctor of naturopathic medicine.
- Grounds for taking action, including disciplinary action, against an applicant or naturopathic physician.

The bill requires the Board to assign a case number to and make a record of each investigation. The Board's supervising member must supervise the investigations unless the Board's president designates another Board member to supervise. No member of the Board who supervises an investigation may participate in further adjudication of the case.

The bill provides that in conducting an investigation, the Board may administer oaths, order the taking of depositions, issue subpoenas to compel the

attendance of witnesses, and issue subpoenas duces tecum⁵ to compel the production of books, accounts, papers, records, and documents. Except in limited circumstances, the Board may issue a subpoena duces tecum to compel the production of patient record information only after consulting with the Attorney General's office and receiving the approval of the Board's secretary and supervising member and a member of the Board who is a naturopathic physician. The three Board members may approve the subpoena duces tecum only after determining that there is probable cause to believe the patient record information is material to the investigation and covers a reasonable period of time.

The bill allows the Board to move for an order compelling the production of persons or records if a person does not comply with any subpoena or subpoena duces tecum after reasonable notice to the person.

Investigations--reports made to courts and applications for injunction

(R.C. 4780.58, 4780.59, and 4780.60)

The bill provides that if probable cause exists to believe a person is unlawfully practicing naturopathic medicine or holding the person's self out as a naturopathic physician, the Board must report the violation to the prosecuting attorney of the county in which the violation is occurring. The prosecuting attorney then must cause appropriate proceedings to be instituted in the proper court without delay and be prosecuted in the manner provided by law.

The bill further provides that each year, the Board must prepare a report that documents the disposition of all investigations conducted by the Board during the preceding 12-month period. The bill specifies the items that must be documented in this report. In addition, the bill requires the Board to prepare the reports in a manner that protects the identity of each person involved in each investigation. The reports are to be a public record.

The bill also permits the Board to apply to the court of common pleas of the county in which a person is unlawfully practicing naturopathic medicine or

⁵ A "subpoena duces tecum" is a court process, initiated by a party in litigation, compelling the production of certain documents and other items, material and relevant to facts in issue in a pending judicial proceeding, which documents and items are in custody and control of a person or body served with process. BLACK'S LAW DICTIONARY 995 (6th ed. 1991).

holding the person's self out as a doctor of naturopathic medicine for an injunction restraining the person from continuing that action.⁶

Investigations--confidentiality of records

(R.C. 4780.61 and 4780.62)

The bill requires proceedings and records of the Board regarding an investigation to be held in confidence. They are not subject to discovery or introduction in evidence in any civil action against a naturopathic physician arising out of matters that are the subject of the investigation. Further, the bill provides that the Board may not make identifying information about a patient public unless the patient or patient's representative consents to the Board making the identifying information public or the Board possesses reliable and substantial evidence that no bona fide naturopathic physician-patient relationship exists.

Legal advisor

(R.C. 4780.09)

The bill provides that the Attorney General is the legal advisor of the State Board of Naturopathic Medicine.

Certificates of authority

Requirements for certificate

(R.C. 4780.15)

Under the bill, on the affirmative vote of at least four members, the State Board of Naturopathic Medicine may issue a certificate of authority to practice naturopathic medicine to an individual who meets the following requirements:

- Submits to the Board a properly completed application for a certificate of authority.
- Is at least 18 years old and of good moral character.
- Has not pleaded guilty to or been convicted of unlawfully practicing naturopathic medicine or representing the person's self as a naturopathic physician.

⁶ An "injunction" is a court order prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury. BLACK'S LAW DICTIONARY 540 (6th ed. 1991).

- Presents to the Board a diploma evidencing *either* of the following:
 - That the individual earned the degree of doctor of naturopathic medicine or doctor of naturopathy from (1) an institution that held, at the time the individual earned the degree, an effective certificate of authorization from the Ohio Board of Regents, (2) a program that held, at the time the individual earned the degree, an effective certificate of registration and an appropriate and effective program authorization from the State Board of Career Colleges and Schools⁷ and an effective certificate of authorization from the Ohio Board of Regents, or (3) an institution that is exempt from obtaining a certificate of authorization because it was established on or before October 13, 1967.
 - That the individual earned the degree of doctor of naturopathic medicine, doctor of naturopathy, or an equivalent degree approved by the Board from an institution or program in another state, province, or country that, at the time the individual earned the degree from the institution or program, was authorized to confer the degree by the state, province, or country in which the institution or program was located.
- Presents to the Board an affidavit specifying all of the following:
 - The individual's age and residence.
 - That the individual is the person named in the diploma and the lawful possessor of the diploma.
 - The name and address of the institution or program from which the individual received the diploma.
 - The time spent in the study of naturopathic medicine.
 - Any other information the Board requires pursuant to rules it adopts.
- Except in certain circumstances (see "**Waiver of examination requirement**," below), takes and scores not less than 70% on the examination administered by the Board.

⁷ *The State Board of Career Colleges and Schools was formerly called the State Board of Proprietary School Registration.*

- Pays the certificate of authority issuance fee applicable to the individual as determined in accordance with rules the Board adopts.

Waiver of examination requirement

(R.C. 4780.19 and 4780.20)

Until one year after the bill's effective date and on the affirmative vote of not fewer than four members of the State Board of Naturopathic Medicine, the Board must waive the examination requirement for an individual who meets all of the other requirements listed above and who resides in Ohio on the bill's effective date.

In addition, on the affirmative vote of not fewer than four members of the Board, the Board must waive the examination requirement for an individual who wishes to move to Ohio and is authorized to practice naturopathic medicine in another state, province, or country that the Board determines has authorization standards comparable to the Board's standards.

Expiration of certificate

(R.C. 4780.21)

Under the bill, a certificate of authority expires two years after the date it is issued unless it is renewed in accordance with the standard renewal process (see "**Renewal of certificate**," below). A renewed certificate of authority expires two years after the date it is renewed unless it is renewed again before that date. Nonetheless, the Board may suspend or revoke a certificate of authority before its expiration date.

Renewal of certificate--general procedure

(R.C. 4745.01, 4780.22, and 4780.27)

The bill requires the State Board of Naturopathic Medicine to follow the standard renewal procedure in Revised Code Chapter 4745. in renewing certificates of authority. Subject to the sections of the bill pertaining to actions constituting fraud or misrepresentation, or meriting disciplinary action by the Board, the Board must renew a certificate of authority if the naturopathic physician holding the certificate of authority does all of the following:

- Submits to the Board a properly completed renewal application form.
- Pays the renewal fee adopted by the Board pursuant to rules.

- Satisfies the continuing education requirements (see below).
- If the naturopathic physician has not practiced or taught naturopathic medicine for three years or more at the time of the application for renewal, complete a post graduate training program approved by the Board and pass an oral or written examination, or both, demonstrating the individual's present fitness to practice naturopathic medicine, unless either of the following is true:
 - The Board waives this requirement.
 - The naturopathic physician provides the Board evidence satisfactory to the Board that the reason the naturopathic physician did not practice or teach naturopathic medicine during that period is directly related to the pursuit of education or research in naturopathic medicine.

Moreover, the Board may limit the extent, scope, or type of practice of a naturopathic physician who is required to complete a post-graduate training program.

Renewal of certificate--form

(R.C. 4780.23)

The bill prescribes that the renewal form must contain proper spaces for all of the following:

- The naturopathic physician's full name and principal practice.
- The naturopathic physician's residence address.
- The number of the naturopathic physician's certificate of authority.
- If the naturopathic physician does not currently practice or teach naturopathic medicine, the date that the naturopathic physician last practiced or taught naturopathic medicine.
- A statement that the naturopathic physician has fulfilled the continuing naturopathic medical education requirements.
- A statement that the naturopathic physician has not been found guilty of, or entered a plea of guilty or no contest to, any criminal offense that constitutes grounds for refusing to renew the certificate of authority.

- Any other information the Board specifies in rules.
- The naturopathic physician's signature.

Renewal of certificate--continuing education requirements

(R.C. 4780.24 and 4780.241)

The continuing education requirements a naturopathic physician must complete to renew a certificate of authority are as follows:

- Except as provided in the next bullet point, 30 hours.
- If the naturopathic physician was disabled due to illness or accident or absent from the country during the period beginning after the date the certificate of authority was issued or, if the certificate of authority was previously renewed, the date it was most recently renewed, and ending on the date the naturopathic physician submits the renewal application, the number of hours specified by the Board in rules.

A naturopathic physician must complete the required number of hours of continuing medical education before the date the naturopathic physician submits the renewed application for the certificate of authority. Further, the Board must give each naturopathic physician sufficient choice of continuing naturopathic medical education programs that are relevant to the naturopathic physician's practice.

Restoration of certificate

(R.C. 4780.25)

An individual whose certificate of authority has expired may apply to the State Board of Naturopathic Medicine to have the certificate restored. The Board must restore the certificate if the individual does all of the following:

- Pays the restoration fee established by the Board in rules.
- Satisfies the continuing education requirements that the Board establishes in rules.
- If the individual has not practiced or taught naturopathic medicine for three or more years at the time of application for the restoration, complete a post graduate training program approved by the Board and pass an oral or written examination, or both, demonstrating the

individual's present fitness to practice naturopathic medicine, unless either of the following is true:

- The Board waives this requirement.
- The individual provides the Board evidence satisfactory to the Board that the reason the individual did not practice or teach naturopathic medicine during that period is directly related to the pursuit of education or research in naturopathic medicine.

Examinations

(R.C. 4780.17)

The bill requires the State Board of Naturopathic Medicine to procure, administer, and grade an examination for individuals seeking a certificate of authority from the Board. The examination must cover subjects pertinent to naturopathic medical educational standards that are current at the time the examination is administered and are deemed appropriate by the Board. The Board must administer the first examination not later than six months after the bill's effective date and not less than twice a year thereafter.

Subject to the bill's provision regarding individuals who have failed the examination previously (see "**Re-examination**," below), the bill requires the Board to admit to the examination individuals who meet all of the requirements for issuance of a certificate of authority except the examination and certificate of authority issuance fee requirements (see "**Requirements for certificate**," above).

Re-examination

(R.C. 4780.18)

Under the bill, an individual who fails to score at least 70% on the examination administered by the Board may retake the examination on resubmission of an application for a certificate of authority and repayment of the examination fee established by Board rules. However, the bill provides that an individual who fails to score at least 70% on the examination after three consecutive tries may not retake the examination until the individual also completes 30 hours of remedial training in accordance with rules the Board is to adopt and presents to the Board documentation satisfactory to the Board confirming the completion of the training.

Signatures on certificates

(R.C. 4780.16)

The bill requires the president and secretary of the State Board of Naturopathic Medicine to sign each certificate of authority the Board issues. The Board's seal is also to be on the certificate to serve as the Board's attestation to the validity of the certificate.

Evidence that person does not hold a valid certificate

(R.C. 4780.30)

The bill provides that a certificate of authority signed by the secretary of the State Board of Naturopathic Medicine, under the Board's seal to the effect that it appears from the Board's records that no certificate of authority has been issued or that a certificate has been revoked or suspended or has expired, is prima-facie evidence⁸ of the record in any court or before any officer of the state.

Refusal and revocation of certificates

(R.C. 4780.41)

The bill permits the State Board of Naturopathic Medicine, on the affirmative vote of at least four members, to refuse to issue or to renew a certificate of authority, or to revoke a certificate of authority if the Board determines that the applicant or certificate holder either (1) committed fraud in passing the examination administered by the Board, or (2) committed fraud, misrepresentation, or deception in applying for the certificate of authority.

Registry

(R.C. 4780.28 and 4780.29)

The bill requires the State Board of Naturopathic Medicine to maintain a registry and publish a printed list of each naturopathic physician included on the registry. The list must be published on November 1 of each even-numbered year or as soon as practicable after that date. On request, the Board must mail the list to a naturopathic physician.

⁸ "*Prima-facie evidence*" is evidence that, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense, and which if not rebutted or contradicted, will remain sufficient. *BLACK'S LAW DICTIONARY* 825-826 (6th ed. 1991).

Prohibitions against the unlawful practice of naturopathic medicine

(R.C. 4780.02 and 4780.99)

The bill prohibits, starting one year after the bill's effective date, a person from doing either of the following without a valid certificate of authority issued by the State Board of Naturopathic Medicine:

- Subject to certain exceptions (see "**Exceptions to prohibitions**," below), practice naturopathic medicine.
- Hold the person's self out in any manner as a doctor of naturopathic medicine, including using (1) the terms "doctor of naturopathy," "naturopath," "doctor of naturopathic medicine," "N.M.D.," "N.D.," or other equivalent words or initials in connection with that person's own name,⁹ or (2) any sign, advertisement, card, letterhead, circular, or other writing, document, or design, the evident purpose of which is to induce others to believe that person holds a valid certificate of authority. A person's use of or display of any such terms, initials, signs, advertisements, letterhead, circulars, or other writing document or design, including diplomas or certificates, the evident purpose of which is to induce others to believe that person holds a valid certificate of authority, is prima-facie evidence of the intent of the person to represent the person as engaged in or entitled to engage in the practice of naturopathic medicine.

A person who engages in any of the above activities without a valid certificate of authority is guilty of a felony of the fifth degree on a first offense and a felony of the fourth degree on each subsequent offense.

Exceptions to prohibitions

(R.C. 4780.03)

The bill provides that the prohibitions against unlawful practice listed above do not apply to any of the following:

⁹ *The bill specifically provides that a naturopathic physician may use the title "doctor," "physician," "naturopathic physician," "naturopath," "doctor of naturopathic medicine," or "doctor of naturopathy," or use the terms "N.D." or "N.M.D.," to show that the naturopathic physician is a practitioner of naturopathic medicine.*

- An individual engaging in the scope of practice for which the individual holds a valid license.¹⁰
- An individual performing a task as part of a course of instruction leading to a degree that the individual needs to obtain a license if the course of instruction is provided by an entity operating legally in the state.

Prohibition against self-referral arrangements and schemes

(R.C. 4780.381)

The bill precludes a person from knowingly entering into an arrangement or scheme, including a cross-referral arrangement, that has the principal purpose of assuring self-referrals by a naturopathic physician to a particular person that, if the naturopathic physician directly made referrals to such person, would violate the provision that prohibits a naturopathic physician from referring patients to persons for which the naturopathic physician or family member has a financial or investment interest.

Disciplinary action

Grounds

(R.C. 4780.42 and 4780.43)

The bill permits the State Board of Naturopathic Medicine, on the affirmative vote of at least four of its members, to (1) refuse to issue a certificate of authority, (2) revoke or suspend a certificate of authority, (3) refuse to renew a certificate of authority, (4) limit the extent, scope, or type of practice of a naturopathic physician, or (5) reprimand or place on probation a naturopathic physician if any of the following is true:

- The applicant does not meet the requirements for a certificate of authority.
- The applicant or naturopathic physician has pleaded guilty to, or been found guilty of, a felony.

¹⁰ "License" is defined as a license, certificate, permit, card, or other authority issued or conferred by a licensing agency by authority of which the license holder has the privilege to engage in a profession, occupation, or occupational activity over which state law gives the licensing agency jurisdiction.

- The applicant or naturopathic physician has pleaded guilty to, or been found guilty of, a violation of federal or state law regulating the possession, distribution, or use of a controlled substance.
- The applicant or naturopathic physician has had a health care license or certificate denied, revoked, or suspended in another state, province, or country on grounds for which the Board may deny, revoke, or suspend a certificate of authority.
- The applicant or naturopathic physician is unable to practice naturopathic medicine according to acceptable and prevailing standards of care approved by the Board by reason of mental or physical illness or habitual or excessive use or abuse of drugs, alcohol, or other substances.
- The naturopathic physician violates state naturopathic medical law or any rule adopted by the Board.
- The naturopathic physician pleads guilty to, or is found guilty of, a misdemeanor committed in the course of practice of naturopathic medicine.
- The naturopathic physician permits the use of the naturopathic physician's name or certificate of authority by a person when the naturopathic physician is not actually directing the treatment given.
- The naturopathic physician willfully betrays a professional confidence or intentionally violates a privileged communication, except where required by law.
- The naturopathic physician fails to use universal blood and body fluid precautions.
- The naturopathic physician violates the conditions of limitation placed by the Board upon the naturopathic physician's certificate of authority.
- The naturopathic physician departs from, or fails to conform to, accepted and prevailing standards of naturopathic medicine approved by the Board where actual injury to a patient is established. In approving accepted and prevailing standards of naturopathic medicine, the Board may consider standards of naturopathic examining boards in other jurisdictions or countries, or it may use standards established by any naturopathic medical association, organization, or society. However, the Board may not use standards of medical professions other than naturopathic medicine.

- The naturopathic physician solicits patients.
- The naturopathic physician publishes a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.
- The naturopathic physician waives, or advertises that the naturopathic physician will waive, the payment of all or a part of a deductible or copayment that a patient would otherwise be required to pay. This ground for disciplinary action, however, is not valid where the naturopathic physician waives deductibles or copayments (1) in compliance with a health insurance or health care policy, contract, or plan that expressly allows the waiver and with full knowledge and consent of the policy, contract, or plan purchaser, payer, and third-party administrator and (2) for naturopathic medicine rendered to another naturopathic physician to the extent allowed by rules adopted by the Board.

Automatic suspensions--guilty plea or finding of guilt

(R.C. 4780.47)

The bill provides that a naturopathic physician's certificate of authority is automatically suspended if the naturopathic physician pleads guilty to, or is found guilty of, any of the following offenses in this state (or a substantially equivalent offense in another jurisdiction): aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary.

The bill provides that if a naturopathic physician practices naturopathic medicine after the naturopathic physician's certificate of authority is suspended for any of the reasons above, the naturopathic physician is guilty of practicing naturopathic medicine without a valid certificate of authority. After determining that a naturopathic physician's certificate has been suspended, the Board is required to commence the process of revoking the certificate of authority.

Automatic suspensions--finding of danger of immediate and serious harm

(R.C. 4780.48)

The secretary and supervising member of the State Board of Naturopathic Medicine may recommend that the Board suspend a naturopathic physician's certificate of authority without a prior hearing if the secretary and supervising member determine that there is clear and convincing evidence that (1) the naturopathic physician's continued practice presents a danger of immediate and serious harm to the public and (2) grounds exist to take disciplinary action against the naturopathic physician because the naturopathic physician pleaded guilty to, or has been found guilty of, a misdemeanor committed in the course of practice, a felony, or a violation of a federal or state controlled substance law.

In order to suspend the naturopathic physician without a prior hearing, the bill requires the Board to review the allegations and obtain the votes of at least four members in favor of the suspension. If the Board suspends the naturopathic physician's certificate of authority without a prior hearing, the Board must send notice of the suspension to the naturopathic physician. The suspension remains in effect until the Board's final adjudicative order becomes effective unless the Board fails to issue its final adjudicative order within 60 days after completion of the adjudication. In the latter circumstance, the suspension will dissolve but will not invalidate any subsequent, final adjudicative order.

When disciplinary action precluded

(R.C. 4780.50)

The bill provides that the Board may not take disciplinary action against an applicant for a certificate of authority or a naturopathic physician on grounds that the individual pleaded guilty to, or has been found guilty of, a felony, a violation of federal or state controlled substances law, or a misdemeanor committed in the course of practice, if a trial court renders a final judgment in the applicant's or naturopathic physician's favor and that judgment is based on an adjudication on the merits. The Board may take such action if the trial court issues an order of dismissal on technical or procedural grounds.

When finding of guilt or plea of guilty or no contest is overturned on appeal

(R.C. 4780.51)

If the State Board of Naturopathic Medicine takes action against an applicant for a certificate of authority or a naturopathic physician on any of the grounds listed above, and the finding or plea of guilt is overturned on appeal, the

applicant or naturopathic physician may petition the Board for reconsideration of the Board's action against the applicant or naturopathic physician on exhaustion of the criminal appeal. After receiving this petition and the relevant court documents from a naturopathic physician, the Board must terminate the action against the naturopathic physician, including reinstating the certificate of authority if it was suspended or revoked. If the individual is an applicant, the Board must resume the determination of whether the applicant meets the requirements for the certificate of authority.

Sealing of conviction records

(R.C. 4780.46)

The bill provides that the sealing of an applicant's or naturopathic physician's conviction records is not to have an effect on a prior disciplinary action taken by the Board or on the Board's authority to complete disciplinary action initiated before the records are sealed.

Suspected substance abuse or mental or physical illness

(R.C. 4780.52(A))

If the State Board of Naturopathic Medicine has reason to believe that an applicant for a certificate of authority or a naturopathic physician is unable to practice naturopathic medicine according to acceptable and prevailing standards of care by reason of mental or physical illness or habitual or excessive use or abuse of substances that impair the ability to practice, the bill permits the Board to compel the applicant or naturopathic physician to submit to a mental or physical examination, or both. The examination must be at the applicant's or naturopathic physician's expense and conducted by a physician or, in the case of suspected substance abuse, by a physician or a treatment provider. The physician or treatment provider must be qualified to conduct the examination and must be chosen by the Board. Failure to submit to the examination constitutes an admission of the allegations against the applicant or naturopathic physician, unless the failure is due to circumstances beyond the applicant's or naturopathic physician's control, and a default and final order may be entered without the taking of testimony or presentation of evidence.

Determination of mental or physical illness

(R.C. 4780.52(B))

If the State Board of Naturopathic Medicine determines that an applicant's or naturopathic physician's ability to practice is impaired by reason of mental or physical illness, the bill permits the Board to require the applicant or naturopathic

physician to submit to care, counseling, or treatment as a condition of the Board issuing, continuing, or reinstating a certificate of authority. The care, counseling, or treatment must be provided by a physician qualified to provide it who is approved by the Board. If the Board denies or suspends the certificate of authority and the applicant or naturopathic physician submits to the care, counseling, or treatment, the Board must afford the applicant or naturopathic physician an opportunity to demonstrate the ability to practice naturopathic medicine according to acceptable and prevailing standards of care approved by the Board. Upon demonstration of such ability, the Board may issue or reinstate the certificate of authority.

Determination of habitual or excessive use or abuse of substances

(R.C. 4780.52(C))

If the State Board of Naturopathic Medicine determines that an applicant's or naturopathic physician's ability to practice is impaired by reason of habitual or excessive use or abuse of substances that impair the ability to practice, the bill permits the Board to deny or suspend the applicant's or naturopathic physician's certificate of authority and to require the applicant or naturopathic physician to submit to treatment as a condition of issuance or reinstatement of the certificate of authority. The bill requires the Board to afford the applicant or naturopathic physician who submits to treatment an opportunity to demonstrate the ability to practice naturopathic medicine according to acceptable and prevailing standards of care approved by the Board. The demonstration must include all of the following:

- Certification from a treatment provider approved by the Board that the applicant or naturopathic physician has successfully completed the treatment.
- Evidence of continuing full compliance with an aftercare contract or consent agreement.
- Two written reports indicating that the applicant's or naturopathic physician's ability to practice has been assessed and that the applicant or naturopathic physician has been found able to practice naturopathic medicine according to acceptable and prevailing standards of care approved by the Board. The reports must be made by individuals approved by the Board for making such assessments and must describe the basis for the determination.

The bill permits the Board to issue or reinstate the certificate of authority if the applicant or naturopathic physician successfully demonstrates that the applicant or naturopathic physician is able to practice according to acceptable and

prevailing standards of care approved by the Board and enters into a written consent agreement. If the Board issues or reinstates the certificate, the bill allows the Board to require the applicant or naturopathic physician to do all of the following in accordance with the Board's continued monitoring:

- Comply with the written consent agreement.
- Comply with any conditions the Board imposes after a hearing.
- For two years following termination of the consent agreement, submit to the Board written progress reports made under penalty of perjury stating whether the applicant or naturopathic physician has maintained sobriety.

Reports to Board regarding criminal offenses

(R.C. 4780.45)

If a naturopathic physician pleads guilty or no contest to, or is found guilty of, any criminal offense that constitutes grounds for action against the naturopathic physician under state naturopathy law, the naturopathic physician must inform the Board of the plea or the finding of guilt.

Standards of other professions not to be used

(R.C. 4780.44)

The bill prohibits the Board from judging an applicant for a certificate of authority or a naturopathic physician by the standards of any other medical profession when appearing before the Board in the context of an administrative hearing.

Notification of certain malpractice claims

(R.C. 4780.65)

The bill requires any insurer providing professional liability insurance to any person holding a valid certificate of authority to practice naturopathic medicine, or any other entity that seeks to indemnify the professional liability of any person holding a valid certificate of authority, to notify the State Board of Naturopathic Medicine within 30 days after the final disposition of any written claim for damages where the disposition results in a payment exceeding \$35,000. The notice must contain all of the following:

- The name and address of the person submitting the notification.



- The name and address of the insured who is the subject of the claim.
- The name of the person filing the claim.
- The date of final disposition.
- If applicable, the identity of the court in which the final disposition of the claim took place.

On the basis of the foregoing, the Board may investigate possible violations of naturopathy law or rules adopted by the Board. The Board may also investigate repeated malpractice, which is defined in the bill as three or more claims for naturopathic medical malpractice within the previous five-year period, each resulting in a judgment or settlement in excess of \$35,000 in favor of the claimant, and each involving negligent conduct by the naturopathic physician. However, the Board must hold all summaries, reports, and records it receives under this provision of the bill in confidence; such items are not subject to discovery or introduction in evidence in any state civil action involving a health care professional or facility arising out of matters which are the subject of such reporting to the Board. The Board may only use the information obtained as the basis for an investigation, as evidence in a disciplinary hearing against the certificate holder, or in any subsequent trial or appeal of a Board action or order.

Furthermore, the bill provides that a copy of any reports or summaries received by the Board must be sent to the certificate holder or to the certificate holder's legal counsel by the Board. The certificate holder has the right to file a statement with the Board concerning the correctness or relevance of the information and the statement must at all times accompany that part of the record in contention.

In addition, in the absence of fraud or bad faith, no professional association of individuals authorized to practice naturopathic medicine that sponsors a committee or program to provide peer assistance to practitioners with substance abuse problems, no representative or agent of such a committee or program, and no member of the Board may be held liable in damages to any person by reason of actions taken to refer a practitioner to a treatment provider for examination or treatment.

Child support defaults

(R.C. 4780.40)

The bill requires the State Board of Naturopathic Medicine to comply with state law pertaining to child support defaults (R.C. 3123.41 to 3123.50) by

individuals who apply for or seek renewal of a professional license issued by the state.

Testimonial privilege

(R.C. 2317.02)

Under current law, physicians, dentists, psychologists, and chiropractors, among others, are prohibited from testifying with respect to specific communications made by their patients and clients. This prohibition, called the "testimonial privilege," may be waived, however, if the patient, client, or guardian of the patient or client consents to the testimony.

The bill applies the testimonial privilege to naturopathic physicians. However, the bill does *not* include the waiver, applicable to the professions discussed above, that would allow a naturopathic physician to testify if the naturopathic physician's patient or patient's guardian consents to the testimony. Instead, the bill only provides that a naturopathic physician is prohibited from testifying with respect to the following:

- A communication a patient makes to the naturopathic physician.
- Advice the naturopathic physician gives to a patient.
- A communication a licensed health professional makes to the naturopathic physician regarding a patient.

Titles and display of certificates

(R.C. 4780.32)

The bill permits a naturopathic physician to use the title "doctor," "physician," "naturopathic physician," "naturopathic doctor," "naturopath," "doctor of naturopathic medicine," or "doctor of naturopathy," or use the terms "N.D." or "N.M.D.," to show that the naturopathic physician is a practitioner of naturopathic medicine. The bill also requires each naturopathic physician to prominently display the naturopathic physician's certificate of authority in the naturopathic physician's office or the place where the major portion of the naturopathic physician's practice is conducted.

Naturopathic physician assistants

(R.C. 4780.36)

The bill permits a naturopathic physician to use an assistant in the naturopathic physician's practice if the assistant meets the training requirements for, and complies with the practice parameters of, naturopathic physician assistants as adopted by the State Board of Naturopathic Medicine pursuant to rules.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-01-04	p. 1750

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