

BACKGROUND PAPER FOR THE NATUROPATHIC MEDICINE COMMITTEE

Joint Oversight Hearing, March 11, 2013

**Senate Committee on Business, Professions and Economic Development
and
Assembly Committee on Business, Professions and Consumer Protection**

**IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS
FOR THE NATUROPATHIC MEDICINE COMMITTEE**

BRIEF OVERVIEW OF THE NATUROPATHIC MEDICINE COMMITTEE

Function of the Naturopathic Medicine Committee

The Naturopathic Medicine Committee (NMC) is one of the regulatory entities within the Department of Consumers Affairs (DCA) and is charged with the licensing and regulation of Licensed Naturopathic Doctors (NDs). The NMC's statutes and regulations set forth the requirements for licensure and provide the NMC the authority to discipline a licensee.

The current NMC mission statement, as stated in its 2010 Strategic Plan, is as follows:

The NMC's mission is to serve the public and licensed NDs through the promotion and enforcement of laws and regulations which protect the health and safety of Californians, thus ensuring access to high quality naturopathic medical care.

The current NMC vision statement, as stated in its 2010 Strategic Plan, is as follows:

The vision of the NMC is to create an inviting, thriving environment for naturopathic doctors and the public by educating and informing consumers, and supporting the safe and effective practice of naturopathic medicine.

California is the 13th state to recognize naturopathic medicine and provide licensure to NDs. Presently, the majority of NDs in California provide family centered, primary care medicine through office-based private practice. Some NDs also make house calls, work in health and aesthetics spas, treat seniors in retirement and convalescent facilities or conduct research. California NDs often work in collaboration with physicians and surgeons, osteopathic physicians and surgeons, chiropractors and acupuncturists. A number of NDs work with these health care professionals in integrative practices. Several licensed naturopathic doctors also teach at public and private medical schools. Many NDs are also licensed in other states and maintain practices in more than one state.

Several NDs with established practices in California offer residency programs to graduates of approved naturopathic medical schools; residency programs are approved by the Council of Naturopathic Medical Education (CNME). Many NDs are also licensed acupuncturists, more than a dozen are licensed chiropractors, one is an osteopathic physician and surgeon (as well as a naturopathic medical school professor), several are licensed midwives (under the Medical Board of California MBC), one is a licensed psychologist, one is a registered nurse and two were physician assistants prior to becoming NDs. Two NDs licensed in California are also completing allopathic medical school and residency programs in order to fully practice naturopathic medicine in California as primary care physicians.

History of the NMC

Senate President Pro Tempore John Burton introduced Senate Bill (SB) 907 (Burton, Chapter 485, Statutes of 2003) which established the Naturopathic Doctors Act (Act) and created the Bureau of Naturopathic Medicine (Bureau) within the DCA to administer the Act. The Act contained requirements for the licensure and regulation of NDs and established a scope of practice for the profession.

Business and Professions Code §3621 established the Bureau of Naturopathic Medicine Advisory Council. The Advisory Council was responsible for providing information and, upon request, made recommendations to the Bureau Chief. The Advisory Council consisted of three NDs, three medical doctors, and three public members. The Advisory Council reviewed legal opinions, discussed regulations, made recommendations regarding enforcement, reviewed continuing education standards and reviewed the Formulary, Childbirth and Minor Offices Procedures Reports to Legislature. However, as an advisory council, they lacked authority to direct the Bureau to act on any of their recommendations.

In 2009, Governor Arnold Schwarzenegger proposed the consolidation of several healing arts bureaus and boards in order to reduce the size of government. Assembly Bill 20 4th Extraordinary Session (AB X420) (Schwarzenegger, Chapter 18, Statutes of 2009) abolished the Bureau of Naturopathic Medicine and created the NMC and placed it under the Osteopathic Medical Board of California (OMBC).

AB X420 was a budget bill and lacked sufficient language to fully define the role of the OMBC as it related to the Act, the NMC and its staff. It also failed to secure additional staffing required by the addition of an executive officer in that bill. Upon request by the Director of the DCA, a legal opinion was created regarding the relationship of the OMBC to the NMC. It was determined that the OMBC was in no way responsible for the actions of the NMC thus the NMC was deemed solely responsible for the regulation of the practice of naturopathic medicine in California.

The first NMC members were appointed in February 2010 consisting of three NDs, three medical doctors and three public members. Legislation in 2010, SB 1050 (Yee, Chapter 143, Statues of 2010), codified the autonomy of the Committee with respect to administration of the Act and changed the composition of the NMC to five NDs, two medical doctors and two public members. Revising the composition of the NMC made it consistent with other healing arts boards in California in that the majority of the NMC members are representatives of the profession. All appointments to the NMC are made by the Governor.

The following table lists all members of the Board including background on each member, appointment date, term expiration date and appointing authority.

Board Members	Appointment Date	Term Expiration Date	Appointing Authority
<p>David Field, ND, LAc (professional member) received his Bachelor of Arts degree in Biology from Colorado College. He earned his Naturopathic Doctor degree at the National College of Naturopathic Medicine in Portland, Oregon. Dr. Field co-founded the California Association of Naturopathic Physicians (now California Naturopathic Doctors Association). In 2005, Dr. Field became the first licensed Naturopathic Doctor (ND-1) in California.</p>	February 11, 2010	January 1, 2014	Governor
<p>Tara Levy, ND (professional member) received her B.A. from Vassar College and her doctorate in naturopathic medicine from Bastyr University in Seattle, WA. While at Bastyr, Dr. Levy also pursued her certificate in midwifery. She is currently the medical director of Tara Natural Medicine. In addition to her practice, Dr. Levy is the past-president of the California Naturopathic Doctors Association and a member of the advisory board for the Teleosis Institute.</p>	February 11, 2010	January 1, 2014	Governor
<p>Beverly Yates, ND (professional member) is a graduate of the National College of Natural Medicine. She is also a graduate of the Massachusetts Institute of Technology where she earned her undergraduate degree in electrical engineering and minored in bio-electrical engineering. Dr. Yates is also serving as a National Media Representative for the American Association of Naturopathic Physicians (AANP). She is on the Scientific Advisory Board for BSP Pharma, Inc. and is a past member of the Scientific Advisory Board for Enzymatic Therapy, Inc. and Integrative Therapeutics, Inc. Dr. Yates is the author of <i>Heart Health for Black Women: A Natural Approach to Healing and Preventing Heart Disease</i>, and contributing author of <i>Maternal, Newborn and Child Nursing: A Family Centered Approach</i>, which is used in nursing and medical schools.</p>	February 11, 2010	January 1, 2014	Governor
<p>Koren Barrett, ND (professional member) attended the National College of Naturopathic Medicine in Portland Oregon where she also completed her residency in Naturopathic Family medicine. Dr. Barrett received her pre-medical education from the Robert D Clark Honors College at the University of Oregon. Dr. Barrett previously served as a member of the California Osteopathic Medical Board. Dr. Barrett has served as the Vice Chair for an independent review board (IRB). Dr. Barrett is also on the medical advisory board for a lab/natural product company. Dr. Barrett has been in practice in the Orange County area since 2003 offering integrative naturopathic medical care.</p>	December 22, 2010	January 1, 2015	Governor
<p>Gregory Weisswasser, ND (professional member) earned a Bachelor of Science in Psychology with a specialization in Health and Humanities from Michigan State University. He earned his Naturopathic Doctorate from Bastyr University in 2004. He practices in Grass Valley providing primary care and physical medicine. He is a member of the American Association of Naturopathic Physicians and the California Naturopathic Doctors Association. Dr. Weisswasser was appointed by Governor Schwarzenegger to the Osteopathic</p>	December 22, 2010	January 1, 2015	Governor

Medical Board of California prior to his appointment to the Naturopathic Medicine Committee.			
Michael Hirt, MD (professional member) obtained his medical degree from Harvard Medical School and completed his Internal Medicine training while conducting medical research at UCLA. Dr. Hirt pursued specialty training in Nutrition at UCLA's Center for Human Nutrition, and he is board certified in both Internal Medicine and Nutrition. While at UCLA, Dr. Hirt also studied acupuncture and herbal medicine. Dr. Hirt's medical practice is The Center for Integrative Medicine, located in the suburbs of Los Angeles, California. As an active member of the UCLA Clinical Faculty, Dr. Hirt teaches Nutrition and Internal Medicine to medical students.	February 11, 2010	January 1, 2014	Governor
Caleb Zia, Ed.D. (public member) has served as president of China International University and as provost at SIAS International University of Business and Management in Henan, China. He served as the director of recruitment and special project coordinator for the University of Southern California, director for the Center of International Trade Development at Coastline Community College, and president of Maui Airlines. He was the director and secretary for Grand National Bank Board of Directors. Since 1970, he has been a registered professional engineer in Control System Engineering for the State of California.	February 11, 2010	January 1, 2014	Governor
Kitak Leung, CPA (public member) After graduating from the University of California Mr. Leung began his career as an accountant and has been serving the Southern California community ever since. He is the principal at Leung Accountancy Corporation, is a member of the American Institute of Certified Public Accountants (AICPA), and the California Society of Certified Public Accountants (CSCPA). He has published numerous articles in various newspapers and is also authoring a book entitled "US Business Taxation."	February 11, 2010	January 1, 2014	Governor
Vacant, MD (professional member)			Governor

(For more detailed information regarding the responsibilities, operation, and functions of the NMC please refer to the NMC's *2012 Oversight Report*)

PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

This is the first sunset review the NMC has participated in. As such, the following section includes important programmatic and operational changes and enhancements which have occurred throughout the tenure of the NMC as well as other important policy and regulatory changes the NMC has adopted.

- **Reorganization, Relocation and Leadership**

The Bureau has undergone various changes in its location and its leadership. The Bureau was originally housed with the Hearing Aid Dispensers Bureau and Telephone Medical Advice Bureau at the DCA headquarters building in downtown Sacramento in 2004. In January 2006, the Bureaus moved with DCA to its new headquarters building in the Natomas area of Sacramento. Dubbed the “Tri-Bureaus,” the three bureaus were administered under one bureau chief. Between the years of 2004 to 2007, there were two permanent bureau chiefs and three acting bureau chiefs. The Tri-Bureaus relocated again in late 2007 to another suite in the Natomas building and were placed under another permanent bureau chief who also administered the Professional Fiduciaries Bureau. The four bureaus came to be known as the “Quad-Bureaus.” When that bureau chief left in early 2009, the Quad-Bureaus were placed under temporary supervision of two different acting bureau chiefs.

The Bureau of Naturopathic Medicine Advisory Council was established in 2004 with the appointment of a nine-person council. The council was made up of appointees from the Governor’s Office, the Senate Pro Tem, and the Speaker of the Assembly. The advisory council was composed of three naturopathic doctors, three physicians and surgeons and three public members. Dr. Carl Hangee-Bauer, ND, LAc was elected chair of the council and Alexandra Cock, JD was elected vice-chair. Upon her departure in 2006, Ms. Cock was replaced by Dr. Trevor Cates, ND as vice-chair. Dr. Hangee-Bauer left the advisory council in 2008 to assume the role as president of the American Association of Naturopathic Physicians, the national professional organization. Dr. Cates maintained leadership until the Bureau was replaced by the NMC in October 2009, although no meetings were held after the departure of the last permanent bureau chief in February 2009.

Following the formation of the NMC in October 2009, the Bureau’s only analyst and all working files were moved to the OMBC offices in the Natomas area of Sacramento. Personnel files and some historical files were boxed by unknown persons and are in an unknown location. The new law abolished the Bureau and bureau chief, and established an executive officer (EO) for the NMC. The law also placed the NMC under the OMBC, but the statutory language was unclear and created confusion for the OMBC, the NMC and the DCA Executive Office. During the brief period of time it took to create a legal opinion that would define the relationship between the OMBC and the NMC, the executive director of the OMBC assumed the role of administrator for the NMC. Once the legal opinion was rendered, the NMC was declared autonomous and the OMBC was absolved of any responsibility for the administration or actions of the NMC.

- **Strategic Plan**

As a Bureau, a strategic plan was developed in 2006 by the bureau chief with comments from the advisory council. It was patterned after the DCA strategic plan to bring the goals of the bureau into alignment with the Department’s mission statement.

In 2010, the newly formed NMC created its own strategic plan that would reflect its primary goal of protecting the public through licensing qualified doctors and enforcing the laws that define the practice of naturopathic medicine in California. With the assistance of DCA Training Unit staff, the NMC was able to establish clear goals for its functioning.

- **Legislation Sponsored by or Affecting the NMC**

Neither the Bureau of Naturopathic Medicine nor the Naturopathic Medicine Committee has sponsored legislation.

In 2005, AB 302 was created by the Committee on Business and Professions to clarify the naturopathic scope of practice by defining “prescription drug” as any drug required to bear the statement “RX only”. (The language did not have its intended effect and the issue of non-prescription items becoming dangerous drugs because of their route of administration continued to confuse the Bureau, Committee, licensees, other health care providers and pharmacists.)

In 2009, budget bill AB X420 abolished the Bureau of Naturopathic Medicine and created the Naturopathic Medicine Committee under the Osteopathic Medical Board of California. The bill:

- a) Abolished the Advisory Council, created the Committee, and all Committee members are Governor Appointees.
- b) Created an executive officer to carry out the duties of the Committee.
- c) Required a minimum of two Committee meetings per year.

In 2010, the Osteopathic Physicians and Surgeons Association of California, with support from the California Naturopathic Doctors Association (CNDA), sponsored SB 1050 (Yee, Chapter 143, Statutes of 2010). This accomplished the following:

- a) Made the Naturopathic Medicine Committee (Committee) solely responsible for implementation of the Naturopathic Doctor’s Act. (Business & Professions Code (BPC § 3620)
- b) Changed the composition of the Committee to include 5 licensed naturopathic doctors (NDs), 2 licensed MDs and 2 public members. (BPC § 3621)
- c) Authorized the Committee to appoint an executive officer and other officers and employees as necessary. (BPC § 3621 (e) and 3626)
- d) Removed the two ND positions from the Osteopathic Medical Board.

Also in 2010, the CNDA sponsored SB 1246 (Negrete McLeod, Chapter 523, Statutes of 2010) which:

- a) Added licensed naturopathic doctors (NDs) to the category of persons who may act as laboratory director and perform clinical laboratory tests or exams that are classified as waived (CLIA waived tests). (BPC § 1206.5).
- b) Authorized a naturopathic assistant (NA) to perform certain medical procedures and technical support services under the supervision of a licensed naturopathic doctor. (BPC § 1209).

In 2011, the Committee consulted with the Senate Business, Professions, and Economic Development Committee consultants to determine how to proceed in order to clarify certain aspects of the existing scope of practice regarding non-prescription IV nutrients. The Legislative Counsel’s Office determined that a statutory change would be most appropriate to clarify the law.

The Committee, with the assistance of the California Naturopathic Doctors Association (CNDA), secured an author for a bill SB 667(Runner) to remove that clarifying language added in AB 302. The bill turned into a two-year bill and, due to the ill health of the sponsor, the bill was dropped.

In 2012, the CNDA secured Senator Negrete McLeod to become the new author of the Runner bill which defined non-prescription foods, vitamins, minerals, homeopathics, nutraceuticals, and supplements, their routes of administration and training requirements (SB 1446, Negrete McLeod, Chapter 333, Statutes of 2012).

- **Adopted and Pending Regulations**

In 2004, emergency regulations were created to implement the Naturopathic Doctors Act. The new regulations included the following categories:

- a) General Provisions: BPC § 4200 - § 4208
- b) Applications: BPC § 4210 - § 4218
- c) Examinations: BPC § 4220
- d) Licenses: BPC § 4222 - § 4228
- e) Schools: BPC § 4230
- f) Practice of Naturopathic Medicine: BPC § 4232 - § 4236
- g) Fees: BPC § 4240
- h) Citations: BPC § 4242 - § 4254
- i) Enforcement: BPC § 4256 - § 4260
- j) Advertising: BPC § 4262
- k) Naturopathic Corporations: BPC § 4264 - § 4268

In 2010, non-substantive changes were made to the existing regulations due to the implementation of AB X420 which abolished the Bureau of Naturopathic Medicine and created the Naturopathic Medicine Committee. The regulations deleted all references to the Bureau of Naturopathic Medicine, Bureau, Bureau chief and chief, and replaced them with Naturopathic Medicine Committee, Committee, or Executive Officer.

In 2010, 2011, and 2012 the Committee approved regulatory language pertaining to the following:

- a) BPC §4214, §4232 Faculty Certification of Registration to practice naturopathic medicine incidental to instruction at a naturopathic medical school.
- b) BPC §4261 Adoption of Disciplinary Guidelines
- c) BPC §4222, §4229 Continuing Education
- d) BPC §4207, §4213, §4216, §4260, §4261 Consumer Protection Enforcement Initiative (SB 1111)
- e) BPC § 4276 - §4279 Sponsored Free Health Care Events (AB 2699)
- f) BPC §4240 Purchase of Naturopathic Brochures
- g) BPC § 4234 Administration of Intravenous Solutions

The above regulatory language will be processed in late 2012/early 2013, after the completion of Breeze conversion and completion of this report.

CURRENT SUNSET REVIEW ISSUES

The following are areas of concern for the NMC to consider along with background information regarding the particular issue. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. The Board and other interested parties, including the professions, have been provided with this Background Paper and are asked to respond to both the issues identified and the recommendations of the Committee staff.

STRATEGIC PLAN

ISSUE # 1: Is the NMC able to meet the goals and objectives of its 2010 Strategic Plan?

Background: In its 2010-2012 Strategic Plan, the NMC outlined its mission, vision, values and goals. The goals encompassed the following five areas: 1) Licensing, 2) Enforcement, 3) Legislation, 4) Administration and 5) Outreach and Education.

Throughout the NMC's recent report to the Committee, the NMC reported significant difficulty achieving its goals in the area of Licensing, Enforcement, Legislation and Administration. Specifically, the NMC has had difficulty with adhering to the following tasks in these four goal categories

- Licensing:
 - 1.1 Ensure applicant integrity by validating all information supplied by the applicant through appropriate sources.
 - 1.3 Implement processes and procedures to audit Continuing Education.
- Enforcement:
 - 2.6 Train staff to manage enforcement processes
 - 2.7 Create a fair adjudication process for regulatory compliance.
- Legislation:
 - 3.5 Monitor laws of naturopathic medicine in other states.
 - 3.6 Develop parity with other state naturopathic medical laws.
- Administration:
 - 4.1 Ensure the NMC has the staffing and resources necessary to carry out its mission.

The Committee is concerned that the NMC has had difficulty operationalizing the majority of its goals and tasks outlined in its 2010-2012 Strategic Plan.

Staff Recommendation: *The NMC should review the goals outlined in its 2010-2012 Strategic Plan, draft a new Strategic Plan for 2013-2015 and report to the Committee by January 1, 2014 its progress in meeting the goals and objectives outlined in the new plan.*

ENFORCEMENT

ISSUE # 2: Are there steps the NMC should take in order to make enforcement data available to the public?

Background: In order to ensure a transparent system of performance measurement that stakeholders can review, the NMC reported that it "...plans to begin posting the NMC's performance measures publicly on a quarterly basis."

Considering the growth of the profession and importance of enforcement, the Committee is concerned that the quarterly performance measures have not been publicly posted thus far. As such, it is important that the NMC begin to utilize technology to post its quarterly performance measures.

Staff Recommendation: *The NMC should detail their plan for ensuring that the quarterly enforcement data is posted publicly.*

ISSUE # 3: Should the NMC use a national data bank to check the background of applicants for licensure?

Background: The NMC requires both Federal Bureau of Investigation (FBI) and California Department of Justice (DOJ) fingerprint results prior to licensing. The NMC also requires license verification from all healing arts boards that issued a license or certificate to the applicant as one of the verification requirements is to identify prior disciplinary actions. The applicant is also compelled to disclose prior convictions and pending convictions on the application for licensure.

Though other states utilize the National Practitioner Databank, which includes information about an applicant or licensees disciplinary actions, the NMC does not check the national databank. The NMC indicates that its executive officer did not learn of the National Practitioner Databank until 2011. After learning of the Databank, the executive officer applied for a CalCard credit card in order to complete the registration process. Unfortunately, the NMC was unable to secure a CalCard, due to "a lack of follow-up by the DCA Administrative Unit staff in processing the CalCard request." Thus, registration with the National Practitioner Databank was not pursued.

The Committee is concerned with the protection of the public and the effective operation of the profession. As such, it is imperative that methods, such as utilizing the National Practitioner Databank, be employed to thoroughly examine a potential licensee's professional background and criminal history.

Staff Recommendation: *The NMC should work with DCA to ensure that they receive a CalCard in order to apply for the National Practitioner Databank and conduct other critical business. The NMC should also provide an alternative plan for registering for the National Practitioner Databank should the CalCard process continue to be delayed.*

ISSUE # 4: Should the NMC utilize the Franchise Tax Board's Interagency Intercept Collections program (IIC)?

Background: The Franchise Tax Board is responsible for administering the IIC program. The IIC intercepts (offsets) refunds when individuals have delinquent debts owed to government agencies and

California colleges. The types of intercepted payments include personal income tax refunds, lottery winnings and unclaimed property disbursements.

In its recent report to the Committee, the NMC indicates that it "...has not yet utilized the Franchise Tax Board's program to collect outstanding fines."

The Committee is concerned that the NMC is not using the Franchise Tax Board's intercepts to collect outstanding fines.

Staff Recommendation: *The NMC should provide an explanation why the NMC is not using the Franchise Tax Board's intercepts.*

ISSUE # 5: What is the status of the NMC's implementation of the Uniform Standards for Substance Abusing Licensees?

Background: In response to licensees who, despite substantiated substance abuse problems, continued to practice medicine, SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008) was passed. The intent of the law was to protect the public by ensuring that, at a minimum, a set of best practices or standards are adopted by health care related boards to deal with practitioners with alcohol or drug problems. One such remedy was to provide diversion programs for these practitioners.

In the NMC's recent report to the Committee, the NMC reported they "...have attempted for over four years to be added to an existing diversion contract or to be included in a new or re-negotiated diversion contract" and that the NMC plans to continue to pursue inclusion.

The Committee is concerned that the NMC has not identified a diversion program for its licensees and is in violation of the law.

Staff Recommendation: *The NMC should inform the committee of their attempts to acquire a diversion contract. What are the specific impediments that have made this task difficult to accomplish? The Committee suggests that the NMC proceed with securing a contract immediately.*

ISSUE #6: How does the NMC regulate online practice?

Background: In its recent report to the Committee, the NMC indicated that it fines unlicensed individuals who advertise their services while unlicensed. However, the NMC also recognizes that some licensed NDs utilize the internet in their practice and the NMC "...should develop policies associated with the practice."

The Committee is interested in learning about the dynamics of a NDs online practice. Specifically, how are NDs utilizing the Internet to treat patients?

Staff Recommendations: *The NMC should advise the Committee of the dynamics of online practice. The NMC should consider developing a committee to create policies to govern the practice of naturopathic medicine via the Internet.*

DATA COLLECTION

ISSUE # 7: Why are there discrepancies in the NMC's cite and fine statistics?

Background: In its recent report to the Committee, the NMC stated that it has issued 41 citations and fines to first time and repeat offenders. However, in a table included in the same report, only 31 of the citations and fines are documented. Additionally, it is unclear if the statistics reported in the table reflect citations and fines administered to both licensed and unlicensed practitioners.

Enforcement Statistics			
	FY 2009/10	FY 2010/11	FY 2011/12
INVESTIGATION			
All Investigations (Use CAS Report EM 10)			
First Assigned			
Closed			
Average days to close	-		
Pending (close of FY)			
Desk Investigations (Use CAS Report EM 10)			
Closed	-		
Average days to close	-		
Pending (close of FY)	-		
Non-Sworn Investigation (Use CAS Report EM 10)			
Closed	NA	NA	NA
Average days to close	NA	NA	NA
Pending (close of FY)	NA	NA	NA
Sworn Investigation			
Closed (Use CAS Report EM 10)	NA	1	0
Average days to close	NA	235	NA
Pending (close of FY)	NA	0	1
COMPLIANCE ACTION (Use CAS Report 096)			
ISO & TRO Issued	0	0	0
PC 23 Orders Requested	0	0	0
Other Suspension Orders	0	0	0
Public Letter of Reprimand	0	0	0
Cease & Desist/Warning	0	0	0
Referred for Diversion	0	0	0
Compel Examination	0	0	0
CITATION AND FINE (Use CAS Report EM 10 and 095)			
Citations Issued	1	11	29
Average Days to Complete	-		
Amount of Fines Assessed	\$1,000.00	\$15,000.00	\$29,750.00
Reduced, Withdrawn, Dismissed	0	4	
Amount Collected	\$1,000.00	\$5,000.00	\$3,500.00
CRIMINAL ACTION			
Referred for Criminal Prosecution	0	0	0

The NMC also documented the average fine before and after an appeal:

Pre-appeal= \$1700.00

Post-appeal= \$510.00

Further, in the DCA 2010-2011 Annual Report, the DCA indicates that the NMC assessed individuals \$27,500.00 in fines. However, the NMC has only collected \$2500.00 of this amount.

The Committee recognizes the importance of citing and fining unlicensed and licensed practitioners and is concerned about the NMCs ability to track, cite and fine data due to the discrepancies in cite and fine statistics they provided in their report. The Committee also desires to understand why there was more than 50% decrease in fines post-appeal and what the status of outstanding fines is.

Staff Recommendation: *The NMC should clarify the discrepancy in the report. The NMC should also provide a rationale for the more than 50% decrease in fines post-appeal. The NMC should provide an update on the status of outstanding fines.*

ISSUE # 8: Why is there so much missing licensing data?

Background: As the licensing authority for NDs, the NMC is charged with collecting and reporting data regarding its various operations. For example, the NMC is asked to track the number of licenses and renewal licenses issued each year. However, in the following chart submitted by the NMC to the Committee, there is a significant amount of “unknown” or missing data.

Licensing Data by Type											
Application Type		Received	Approved	Closed	Issued	Pending Applications			Cycle Times		
						Total (Close of FY)	Outside Board control*	Within Board control*	Complete Apps	Incomplete Apps	combined, IF unable to separate out
FY 2009/10	(Exam)	Na	Na	Na	Na	Na	Na	Na	Na	Na	na
	(License)	47	43	0	55	12-	12-	0-	unk	unk	unk
	(Renewal)	unk	unk	n/a	137	unk	unk	unk	unk	unk	unk
FY 2010/11	(Exam)	Na	Na	Na	Na	Na	Na	Na	Na	Na	na
	(License)	56	53	0	62	11	11	0	23	unk	unk
	(Renewal)	unk	unk	n/a	168	unk	unk	unk	unk	unk	unk
FY 2011/12	(Exam)	Na	Na	Na	Na	Na	Na	Na	Na	Na	Na
	(License)	65	59	1	64	5	5	0	19	unk	unk
	(Renewal)	unk	unk	n/a		unk	unk	unk	unk	unk	unk

* Optional. List if tracked by the board.

The Committee is concerned about the significant amount of missing renewal application data. The Committee is also concerned about the NMCs ability to track data effectively.

Staff Recommendation: *The NMC should report to the Committee the reason why there is such an excessive amount of missing licensing data. The NMC should take immediate steps to ensure that licensing data is collected.*

ISSUE 9: Should the NMC collect customer satisfaction data?

Background: The NMC reported that it plans to begin collecting customer satisfaction data on a quarterly basis in order to report this data in future Sunset Review reports. The NMC indicated that from 2005-2010, the bureau had numerous chiefs with no enforcement expertise resulting in "...scant attention paid to departmental-wide enforcement processes." Further, the NMC was unaware that they should post a customer satisfaction survey link on their website until mid-2011. Since posting the link on their website, the NMC has not received any surveys.

It appears that the NMC has only recently begun collecting customer satisfaction data. The Committee considers this type of data collection to be of great importance and encourages the NMC to continue its data collection efforts.

Staff Recommendation: *The NMC should detail its plan for collecting consumer satisfaction data and reporting it to the Committee.*

PUBLIC ACCESS

ISSUE # 10: Webcasting meetings.

Background: The NMC reported that it attempted to webcast two meetings in 2011 and did not attempt to webcast any meetings in 2012.

The Committee is concerned about the NMC's lack of use of technology in order to make the content of the NMC meetings more available to the public. Webcasting is an important tool that can allow for remote members of the public to stay apprised of the activities of the NMC as well as trends in the professions.

Staff Recommendation: *The NMC should inform the Committee of the reason that they have been unsuccessful in webcasting meetings. The Committee recommends that the NMC utilize webcasting at future meetings in order to allow the public the best access to meeting content, activities of the NMC and trends in the professions.*

BUDGET

ISSUE # 11: Why have the NMC's budget change proposals (BCPs) been denied?

Background: The Naturopathic Doctors Act provides authority for the NMC to regulate the profession of naturopathic medicine. The NMC is charged with protecting its licensees and the consumers of naturopathic medicine. Included in the NMC's basic authority is the ability for the NMC approve or deny licenses, take enforcement actions, pursue legislation, conduct administrative duties and oversee the continuing education (CE) process for NDs.

In its recent report to the Committee, the NMC indicated that there have been various constraints that have affected its ability to carry out the mandates of the Naturopathic Doctors Act. Specifically, the following deficiencies were noted:

- a) Significant lag time in processing enforcement cases.
- b) Regulations have not been processed.
- c) The NMC has not sponsored legislation.
- d) Little to no auditing of continuing education (CE) has taken place
- e) No statistics for CE audits have been tracked
- f) There is no process for certifying CE providers or classes in place

The NMC reported that these deficiencies are directly related to a lack of staff that would be responsible for completing these salient tasks. Currently, the NMC has an Executive Officer and no other support staff. Additionally, the NMC reported that their BCPs for additional staff have been denied for several years.

The Committee is extremely concerned about the NMC's ability to regulate the profession as they have no staff other than their EO which prevents them from performing essential tasks.

Staff Recommendation: *The NMC should inform the Committee of the specific reasons their BCPs were denied by DCA. The NMC should apprise the Committee of its plan to continue carrying out its various duties if the BCPs continue to be denied. The NMC may want to explore the possibility of hiring temporary or part-time staff to assist with completing critical tasks.*

LICENSE PORTABILITY

ISSUE #12: License portability for military personnel and their spouses.

Background: First Lady Michelle Obama and Dr. Jill Biden launched the Joining Forces campaign in order to assist military veterans and their spouses in accessing the workforce. In response to this campaign, Governors in over 20 states signed pro-military spouse license portability laws. Additionally, on January 24, 2011, U.S. President Barack Obama presented "Strengthening Our Military Families: Meeting America's Commitment," a document urging agencies to support and improve the lives of military families.

As a result of the Joining Forces campaign and the President's directive, the Department of Transportation and the Department of Defense issued a joint report to highlight the impact of state occupational licensing requirements on the careers of military spouses, who frequently move across state lines. Released in February 2012, the report, "Supporting our Military Families: Best Practices for Streamlining Occupational Licensing Across State Lines," revealed that approximately 35% of military spouses work in professions that require state licenses or certification and that military spouses are ten times more likely to have moved to another state in the last year compared to their civilian counterparts.

In a 2008 Defense Manpower Data Center survey of active duty military spouses, participants were asked what would have helped them with their employment search after their last military move. Nearly 40% of those respondents who have moved indicated that ‘easier state-to-state transfer of certification’ would have helped them.” As a result of the survey, the Department of Transportation and the Department of Defense issued several recommendations, including the authorization of temporary licenses for military spouses if the applicant met state requirements. The report’s *Temporary licenses allow applicants to be employed while they fulfill all of the requirements for a permanent license, including examinations or endorsement, applications and additional fees. In developing expedited approaches that save military spouses time and money, DOD does not want to make licensure easier for military spouses to achieve at the expense of degrading their perceived value in their profession.*

Several bills have been presented to the Legislature across the past few years that deal with providing expedited licenses to military veterans and spouses, exempting active duty military personnel from continuing education requirements and licensing fees. In 2012, AB 1904 (Block, Chapter 399, Statutes of 2012) was signed and requires a Board under the DCA to expedite the licensure process for military spouses and domestic partners of a military member who is on active duty in California.

As part of the 2012-2013 Budget Package, the California Legislature directed the DCA to prepare a report on the implementation of BPC § 35 relating to military experience and licensure. The law indicates:

It is the policy of this state that, consistent with the provision of high-quality services, persons with skills, knowledge, and experience obtained in the armed services of the United States should be permitted to apply this learning and contribute to the employment needs of the state at the maximum level of responsibility and skill for which they are qualified. To this end, rules and regulations of boards provided for in their code shall provide for methods of evaluation education, training and experience obtained in the armed services, if applicable to the requirements of the business, occupation or profession regulated... Each board shall consult with the Department of Veterans Affairs and the Military Department before adopting these rules and regulations. (BPC §35)

The DCA provided a list of boards that accept military experience and those who do not. Naturopathic Doctors were included in the list of boards that do not have specific statutes or regulations authorizing the acceptance of military experience towards licensure. This is because the military does not provide training or education in the naturopathic field or have any classified positions for naturopathic doctors.

The Naturopathic Doctors Act does not include specific standards for addressing military personnel who are licensed NDs. However, the Act includes information on inactive license status (BPC § 3636). According to the act, upon written request, the NMC may grant inactive status to a ND who is in good standing. During inactive status, the licensee is exempt from CE requirements, but not from licensing fees. Upon restoration of active status, the licensee must complete all CE requirements.

The Committee is supportive of the Federal and State efforts to assist licensed military personnel and their family members enjoy better license portability. The Committee encourages licensing boards to examine their ability to exempt licensees from CE and licensing fee requirements during duty as well as reinstating their licenses without penalty upon the end of their duty term. The Committee is also supportive of standards for granting temporary licenses for military spouses.

Staff Recommendation: *The Committee should make every attempt to comply with BPC § 115.5 in order to expedite licensure for military spouses. The Board should also consider waiving the licensure fees while the licensee is on military duty and when they return to the workforce and reinstate their license.*

PRACTICE ISSUES

ISSUE #13: Impact of the Patient Protections and Affordable Care Act (ACA).

Background: **Coverage of naturopathic services under insurance plans.** Until the 2014 implementation of the ACA, health insurance providers are not required to cover or reimburse naturopathic care. Currently, a California consumer who chooses a ND as their primary care provider must pay out of pocket to see the ND. This severely limits the number of consumers who can afford naturopathic care and restricts the population of patients that NDs may treat. The ACA addresses the issue of insurance equality by including licensed or certified NDs as providers. With Americans spending over \$34 billion dollars annually on alternative medicine, the inclusion of licensed NDs would offer patients the option of seeking alternative medicine care covered by insurance and provide access for those currently unable to afford care from NDs. These provisions take effect in 2014 but the qualifying regulations have yet to be written. When these regulations are created, California law will need to be made consistent with this mandate.

The Committee recognizes the importance of all health professions weighing in on how their profession will be impacted once the ACA is implemented. As such, the Committee is curious about the NMCs research on the potential of naturopathic services being covered under insurance plans. Who have the NMC been in contact with to monitor the implementation of the ACA in California? Does the NMC have a plan to create any type of committee or task force responsible for exploring how NDs will function once the ACA is implemented?

Supervision and billing issues. In its recent report to the Committee, the NMC highlighted the issue of NDs being supervised by MDs. The NMC explained that many MDs may hire an ND to perform duties of a “mid-level” practitioner such as physician assistants. The MD is then able to bill a patient’s insurance for the services. However, the NMC cites concerns that NDs may be providing services that cannot legally be reimbursed and can be construed as insurance fraud. The NMC notes that this issue will likely “resolve itself” once the ACA is implemented.

The Committee is interested in hearing additional details from the NMC regarding how this issue will be resolved once the ACA is implemented.

Staff Recommendation: *The Committee recommends that the NMC report their plan for researching the inclusion of NDs as providers under insurance companies. The NMC may want to create a task force or committee to explore how NDs will function once the ACA is implemented. The Committee also requires the NMC to explain how the supervision and billing issues will be resolved once the ACA is implemented.*

ISSUE #14: Use of the title “physician.”

Background: In its recent report to the Committee, the NMC identified the inability of NDs to use the title physician as a hindrance to NDs practice. Specifically, they highlighted that NDs are unable to sign health forms required by schools and state agencies. As a result, the NDs refer their patients to a primary care physician in order to have the forms signed. The NMC believes that this places a burden upon the patient.

The NMC cites BPC § 3641 in its argument regarding a NDs ability to refer to themselves as a physician. This code section states that a ND shall have the same authority and responsibility as a licensed physician and surgeon with regard to public health laws, including laws governing reportable diseases and conditions, communicable disease control and prevention, recording vital statistics and performing health and physical examinations consistent with his or her education and training. The NMC believes that BPC § 3641 should be interpreted to designate a ND as a medical professional who is able to sign forms that a patient may bring to them.

The Medical Practice Act (BPC § 2054) includes specific provisions regarding the use of the title physician. Specifically, the title can only be used by a graduate of a medical school approved by the Medical Board. Additionally, any person who represents themselves as a physician without having a valid, unrevoked and unsuspended certificate as a physician and surgeon is guilty of a misdemeanor.

The NMC requests that legislation be drafted allowing NDs to use the title physician. The NMC also desires that the “Naturopathic Doctors Act” be renamed the “Naturopathic Physicians Act.”

The Committee is concerned about NDs utilizing the title physician. Though the NMC states that NDs desire to use this title in order to sign physical evaluation forms required for employment, the use of this title carries with it an unwarranted expansion of scope.

Staff Recommendation: *As the process of expanding scope of practice for NDs is one that must be considered in a very careful fashion, the Committee has concerns about NDs utilizing the title of “physician” and thus recommends that the NMC reconsider their efforts to move forward with pursuing legislation that would allow NDs to utilize this title.*

ISSUE #15: Clarifying scope of practice in the Naturopathic Doctors Act.

Background: Each board under the DCA has a practice act that governs their operation. Within each act, the scope of practice for the particular profession is delineated. The Naturopathic Doctors Act (Act) is contained within B&P § 3610. In its recent report to the Committee, the NMC indicated that the Act is “...one of the most restrictive scopes of practice” and it is “...unclear and confusing to consumers, naturopathic doctors, the NMC and other health care professionals.” Specifically, the NMC lists problems that have arisen due to the “high level and compartmentalized” way the Act is written:

- a) The NMC has been unable to establish disciplinary guidelines.
- b) Consumers and health insurance companies cannot decipher which therapies may be performed by NDs.

c) The Act does not allow NDs to practice to the full extent of their education and training.

One of the NMC's proposed solutions is to develop policies regarding certain therapies "...as they [therapies] become necessary." However, the Committee believes that any changes to policies regarding specific therapies should be explored legislatively or through the regulatory process.

Additionally, upon review of the Act and guidelines for the scope of practice contained in the Act, the Committee does not see significant differences between the manner in which the Act is organized in comparison to other healing arts boards practice acts.

Further, the Committee is quite concerned that the NMC has struggled to establish disciplinary guidelines for its licensees for over two years. The lack of disciplinary guidelines threatens the NMC's ability to fully meet its mandate to comply with the enforcement standards required of all DCA boards.

Staff Recommendation: *Considering the NMC is having trouble establishing disciplinary guidelines as well as a number of other enforcement activities, the Committee does not suggest that the NMC seek to expand its scope of practice. However, if the NMC desires that their practice act be written in a clearer fashion, it should take steps to draft legislation that will clarify the language within the Naturopathic Doctors Act.*

ISSUE #16: Changes to the formulary.

Background: Business and Professions Code § 3627 requires the establishment of a naturopathic formulary advisory subcommittee to determine a naturopathic formulary based upon a review of naturopathic medical education and training. The naturopathic formulary advisory subcommittee is required to be composed of an equal number of representatives from the clinical and academic settings of physicians and surgeons, pharmacists and naturopathic doctors. The subcommittee is required to review naturopathic education, training, practice and make specific recommendations regarding the prescribing, ordering and furnishing authority of a naturopathic doctor and the required supervision and protocols for those functions.

Prior to the establishment of the NMC, the Bureau was required to make recommendations to the Legislature no later than January 1, 2007 regarding the prescribing and furnishing authority of NDs and any supervision and protocols, including those for the utilization of intravenous and ocular routes of prescription drug administration. The formulary committee held fifteen meetings in a fifteen-month period. In 2006, the Bureau chief approved the report entitled "Prescribing and Furnishing Authority of a Naturopathic Doctor" that was compiled by Bureau staff from the findings and recommendations of the formulary committee. The report was presented to the Legislature in January of 2007.

The naturopathic formulary advisory subcommittee did not continue to meet after the 2007 report was completed. However, the law requiring a formulary committee is still in statute and the NMC has appointed a subcommittee to update the findings of the formulary report. The NMC indicated in its recent report to the Committee that "It is unclear at this time when those [subcommittee] findings will be completed and how they will be adopted." However, in another area of the report the NMC indicated "The NMC should update the 2007 formulary and adopt the formulary in regulations."

The Committee is curious about the contradicting statements in the report e.g. one place indicates that it is unclear when the findings would be completed and adopted, but another area of the report

indicates that the NMC will be adopting the formulary via the regulatory process. The Committee is interested in hearing from the NMC what statutory authority will allow them to propose changes to its formulary via the regulatory process.

Staff Recommendations: *The NMC should provide a timeline for when the formulary subcommittee will be meeting. The NMC should explain to the Committee where in statute they have been granted the authority to change their formulary via the regulatory process.*

CONTINUED REGULATION OF THE PROFESSION BY THE CURRENT MEMBERS OF THE NMC

ISSUE #17: Should the current NMC continue to license and regulate NDs?

Background: The health and safety of consumers is protected by well-regulated professions. The NMC is charged with protecting the consumer from unprofessional and unsafe licensees. It appears that the NMC has had significant difficulty operating as an effective and efficient regulatory body for the profession that falls under its purview. Many of the issues are related to a lack of staff. Immediate attention should be paid to increasing the staff of the NMC and focusing on salient enforcement tasks.

Staff Recommendation: *The Committee recommends that NDs continue to be regulated by the current NMC in order to protect the interests of consumers and be reviewed once again in four years.*