

Date of Hearing: July 11, 2017

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

SB 796 (Hill) – As Amended July 3, 2017

SENATE VOTE: 40-0

SUBJECT: Uniform Standards: Naturopathic Doctors Act: Respiratory Care Practice Act

SUMMARY: Requires the Department of Consumer Affairs (DCA) to review and update its uniform standards for substance-abusing healing arts licensees; extends the Respiratory Care Board (RCB) until January 1, 2022; extends the Naturopathic Medicine Committee (NMC) until January 1, 2022; updates continuing education (CE) requirements for Naturopathic Doctors (NDs) and CE providers; requires naturopathic medical programs to evaluate an ND applicant's military training for credit; codified the NMC's fees established in regulation; prohibits, on January 1, 2020, the use of the terms "naturopath," "naturopathic practitioner," and "traditional naturopathic practitioner," as specified; and makes technical and clarifying changes.

EXISTING LAW:

- 1) Establishes within the DCA the Substance Abuse Coordination Committee to determine uniform standards that will be used by healing arts boards in dealing with substance-abusing licensees. (BPC § 315)
- 2) Establishes the RCB within the DCA to administer and enforce the Respiratory Care Practice Act. (BPC §§ 3700-3779)
- 3) Repeals the RCB on January 1, 2018. (BPC §§ 3710, 3716)
- 4) Establishes, until January 1, 2018, the Naturopathic Medicine Committee (NMC) within the Osteopathic Medical Board to enforce and administer the Naturopathic Doctors Act. (Business and Professions Code (BPC) §§ 2450.3, 3610-3686)
- 5) Repeals the Naturopathic Doctors Act on January 1, 2018. (BPC § 3686)
- 6) Specifies that the NMC to consist of 9 members appointed by the Governor, including 2 public members. Requires a public member to be a citizen of the state for at least 5 years preceding his or her appointment. (BPC § 3621)
- 7) Requires the NMC to approve a specified naturopathic medical education programs. (BPC § 3623)
- 8) Requires that the NMC require the satisfactory completion of 60 hours of approved continuing education biennially. This requirement is waived for the initial license renewal. (BPC § 3635)
- 9) Permits, and does not restrict the use of, the titles "naturopath," "naturopathic practitioner," and "traditional naturopathic practitioner" by persons who are educated and trained for those positions. Specifies that the Naturopathic Doctors Act permits, and does not restrict, the

education of these persons, and does not require these persons to be licensed under the act. (BPC § 3645)

- 10) Requires that a person be licensed to use the professional abbreviation “N.D.” (BPC § 3660)
- 11) Requires the NMC to establish the amount of the fee assessed to conduct activities of the NMC, including the amount of fees for applicant licensure, licensure renewal, late renewal, and childbirth certification. (BPC § 3680)
- 12) Requires an applicant for a license as an ND to file a written application with the NMC, as specified. (BPC § 3690)

THIS BILL:

- 1) Requires the DCA to review the existing criteria set for Uniform Standard 4 regarding substance testing and determine whether the existing criteria should be updated to reflect recent developments in testing research and technology.
- 2) Extends the RCB’s sunset date from January 1, 2018 to January 1, 2022 and subjects the RCB’s funds to appropriation by the Legislature.
- 3) Amends the Naturopathic Medicine Act as follows:
 - a) Requires that two of the NMC public members be appointed by the Senate Committee on Rules and the Assembly Committee on Rules, aligning the board appointments to mirror other DCA boards.
 - b) Requires, for NMC approval, that a naturopathic medical program evaluate an applicant's education, training, experience obtained in the armed services, and provide course credit where applicable.
 - c) Requires a naturopathic medicine licensee to retain certificates of continuing education course completion for 6 years.
 - d) Authorizes the NMC to audit licensees’ continuing education records to ensure that CE requirements are met.
 - e) Establishes a conflict-of-interest code for CE providers.
 - f) Prohibits the use of the terms “naturopath,” “naturopathic practitioner,” and “traditional naturopathic practitioner” after January 1, 2020, unless licensed by the NMC.
 - g) Provides that an unlicensed person may represent that the person “practices naturopathy” if in compliance with existing written disclosure requirements.
 - h) Codifies existing licensing fees regulations into the Naturopathic Doctors Act.
 - i) Extends the NMC's sunset date from January 1, 2018 until January 1, 2022.

FISCAL EFFECT: According to the Senate Appropriations Committee:

- Ongoing costs of \$400,000 per year for the continued operation of the Naturopathic Medicine Committee (Naturopathic Doctors Fund).
- Likely ongoing fine revenue in the tens of thousands per year from disciplinary action against unlicensed practice (Naturopathic Doctors Fund). Based on historic workload, the Committee anticipates that fine revenues could range from \$50,000 per year (assuming all fines are first time fines) up to \$800,000 per year (assuming all fines are third occurrence fines). In practice, the ability to assess fines for unlicensed practice will likely create a deterrent for unlicensed practice. Therefore, future fine revenues are likely to be closer to the low end estimate.
- No significant costs are anticipated by the Senate Appropriations Committee due to any of the other changes in the bill.
- Ongoing costs of \$3.7 million per year for the continued operation of the Respiratory Care Board (Respiratory Care Fund).

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author, “To best serve the highest interests of Californians, their safety, health, and well-being, it is imperative to continue the regulation of the Naturopathic Medicine and Respiratory Care Board.”

Background. In February and March of this year, the Assembly Business and Professions Committee and the Senate Business, Professions and Economic Development Committee (Committees) conducted joint oversight hearings to review various regulatory entities. During the sunset review hearings, the Committees take testimony from the entities and stakeholders and evaluate entities scheduled to be repealed the following year. The reviewed entities will sunset unless the Legislature enacts a law to extend them. This bill is one of the several sunset bills intended to implement legislative changes recommended in the respective background reports drafted by the Committees for the entities reviewed.

DCA Uniform Standards. The Substance Abuse Coordination Committee is created, within the DCA, for the purpose of determining uniform standards that will be used by healing arts boards in dealing with substance-abusing licensees. According to current law, the committee is required to complete their formulation of uniform and specific standards for testing aspect that every healing arts board will then be required to use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program, by 2010.

Respiratory Care. The RCB is required by statute to enforce and administer laws, as well as implement regulations, pertaining to the protection of the public from respiratory care matters. Existing law only extends the authority of the Respiratory Care Board of California to January 1, 2018. This bill extends the date to January 1, 2022.

Naturopathic Medicine. The Naturopathic Medicine Committee is charged with licensing and regulating Naturopathic Doctors (NDs). NMC’s 2016 Strategic Plan states that its mission is “To protect health care consumers through the proper licensing and regulation of NDs utilizing the vigorous, objective enforcement of the Naturopathic Doctors Act, and to promote access to

quality naturopathic medical care.” According to the Committee, Naturopathic medicine is a distinct and comprehensive system of primary health care that uses natural methods and substances to support and stimulate the body’s self-healing process. It is distinguished by the principles on which its practice is based.

Naturopathic medicine includes the combination of a variety of natural medicines and treatments. NDs are clinically trained in both natural and conventional approaches to medicine and can prescribe all natural and synthetic hormones, epinephrine, and vitamins, minerals, and amino acids independent of physician supervision. California NDs complete 72 pharmacology course hours in school and are required to complete a minimum of 20 hours of pharmacotherapeutic training every two years as part of their 60-hour continuing education requirement.

NDs attend four year, graduate-level, accredited naturopathic medical schools, are trained as primary care providers, and take a national, standardized licensing examination. NDs have limited opportunities to complete hospital residencies, but perform at least 1500 hours of clinical rotations at clinics and private doctors’ offices during their education program. California is one of 17 states that license NDs, and over 500 ND licenses have been issued to date. There is one naturopathic medicine school in California, located in San Diego.

NMC Military Credit. Existing law requires “rules and regulations of boards provided for in [the BPC] shall provide for methods of evaluating education, training, and experience obtained in the armed services, if applicable to the requirements of the business, occupation, or profession regulated.” The NMC asserts that it has not made any regulatory changes to conform to this law because “the military does not offer educational credits which can be applied towards obtaining a Naturopathic Doctor's degree; therefore regulatory changes are not necessary.”

The intent of this law is not to merely inquire as to whether the military issues a naturopathic degree, but to what extent basic biology or anatomy courses, or clinical training or experience may contribute to the transfer or credits earned in beginning a ND program. This bill addresses this issue by requiring the naturopathic medical program to evaluate an applicant's education, training, and experience obtained in the armed services, pursuant to BPC § 35, and provide course credit where applicable.

ARGUMENTS IN SUPPORT:

The **California Naturopathic Doctors Association** writes in support: “Licensure and regulation of naturopathic doctors ensures that only those individuals who meet all the education and competency standards explicit in SB 907 are eligible for a license. The NMC also verifies that those who are granted a license continue to meet the ongoing continuing medical education requirements outlined in statute as well as practice naturopathic medicine according to the scope requirements of SB 907, thereby assuring public safety.”

The **Naturopathic Medicine Committee** writes in support, “Consumers who choose to use naturopathic medicine for their healthcare needs are unknowingly being treated by unlicensed ‘traditional naturopaths.’ In most cases where consumer harm was inflicted, the consumers were not advised that they were being treated by an unlicensed provider. In the majority of the cases these ‘naturopaths’ were withholding the fact that they were providing unlicensed healing arts as Business and Professions Code section 2053.6 requires. Additionally, the ‘naturopaths’ are taking blood and other biological fluids, providing diagnoses, and in some instances advising the

consumer to stop taking medications prescribed to them by their primary care physicians. On several occasions, the unlicensed individuals were also administering injections to the consumers; all of which is in direct violation of Business and Professions Code section 2053.5.

“Unfortunately, the NMC has found these violations to be the normal practice of the ‘naturopaths’ and not a small fraction of isolated incidents. Complaints for the misuse of title and the practice of naturopathic medicine without the benefit of a license constitute 87% of all enforcement cases submitted to the NMC. To ignore these statistics would be negligent of the NMC and those who are willing to allow the continued use of the ‘naturopath and naturopathic’ titles.”

ARGUMENTS IN OPPOSITION:

The **California Health Freedom Coalition** writes in opposition: “Last year tragically, a patient died after receiving an intravenous drip containing turmeric from a medicalized naturopath. The medicalized naturopaths now argue that the solution to protect the public is to prevent any traditional naturopath—those who do not perform risky medical procedure—from using the name ‘traditional naturopath’ and from describing their works as ‘traditional naturopathy.’ This doesn’t make sense.

We want the public to know who is treating them and why, including traditional naturopaths—taking the name naturopathy and naturopath out of the public domain will confuse Californians and strip traditional practitioners of our title, which has been used for 115 years.

If [this bill] passes as written, traditional naturopaths, including Mexican-American curanderos, Chinese herbalists, and Indian Ayurvedists, to name a few, and many other groups who practice a form of traditional naturopathy will no longer be able to simply and clearly explain their work to their patients. It is an insult to cultures that have practiced naturopathy for hundreds, if not thousands of years. Most of these practitioners are small business women who serve their communities at a low cost compared to the medicalized naturopaths.”

California Naturopathic Association writes in opposition: “Traditional naturopaths serve all cultural and financial groups within the state and for the most part do not have a wealthy clientele. They serve a large part of the California population, bringing naturopathy to middle and lower income families and there is no just cause for denying their right to use the titles. This would greatly interfere with the good will they have built up over the past fifteen years as they built their practices according to the established law. Not to mention the freedom of choice that is being restricted, and of course the tremendous number of jobs and costs that are involved.”

Sunshine Health Freedom Foundation writes in opposition that the “amendment that was added regarding traditional titles would endanger many of our distributors in their businesses and practices of traditional naturopathy. The amendment would end the use of these traditional titles and terms that have been used for decades by traditional practitioners.”

POLICY ISSUES:

This bill aims to reduce consumer confusion “due to the interchangeable use of ‘naturopath’ and ‘naturopathic doctors’ by laypersons.” This bill does this by prohibiting the use of the titles “naturopath,” “naturopathic practitioner,” or “traditional naturopathic practitioner” by unlicensed individuals.

In the NMC's *2016 Sunset Review Report*, the NMC continues to report issues with unlicensed activity and the underground economy of naturopathic medicine (pages 58-59). Specifically, while the NMC was "lobbying for [SB 538 (Hueso) of 2015 (which would have expanded the ND scope of practice)], we noticed that there is a mass misconception in the public between individuals calling themselves 'naturopaths,' and licensed [NDs]." According to the NMC, the confusion "causes consumers to unknowingly seek out 'naturopaths,' not realizing these individuals are unlicensed and do not meet the extensive education and training that NDs are required to have for licensure."

The NMC also noted that most of its cases are for unlicensed practice. It believes that "this type of violation significantly increase[s] the risk of harm to the consumers in California" and "takes away potential patients from licensed Naturopathic Doctors (NDs). Additionally, this causes a potential loss of income for California NDs, causing yet, another workforce issue." To address this issue, the NMC "plans to do more to utilize the cite and fine program and will work towards 'naturopath' title protection to fully protect the consumers."

However, as with any consumer protection measure, the demonstrable harm must be weighed against the potential burdens on the practitioner. Further, the protectionist nature of any registration, title protection, or licensure request should be scrutinized as well (see Government Code §§ 9148-9148.8). A potential loss of income due to fair competition from the market is not a strong policy justification. Instead, the proponents should demonstrate patient harm or unfair business practices.

In this case data is limited. According to the NMC's *2016 Sunset Review Report*, the NMC's FY 2013/14 enforcement workload was as follows:

Unprofessional Conduct	1	(01%)
Advertising Violations	11	(08%)
Unlicensed Activity	126	(91%)
Total Cases	138	

The NMC notes that the "investigative costs associated with these cases was \$30,077, which is 9.6% of our total budget." Further, the "126 'unlicensed activity' cases were mostly misuse of title." Being relatively simple cases, the NMC can complete these cases through research during desk investigations by an enforcement analyst. The NMC notes that "[m]ost of the violators comply with the cease orders and the cases can be closed."

The following is a breakdown of the complaints by source, but it is unclear what proportion of each complaint source fell under each of the provided cases:

Source of Complaint	FY 2013-14	FY 2014-15	FY 2015-16
Public	158	170	154
Lic. / Prof. Groups	23	16	31
Gov. Agencies	4	7	11
Other/Internal	23	12	21

It is also unclear how many of these cases are serious violations. The NMC's *2016 Sunset Review Report* noted that there was a total of 4 pending "sworn investigations" (requiring a peace officer) at the end of FY 15/16.

According to the NMC, its “reports in BreZE have been problematic with providing the correct data. Some of this was due to the conversion from legacy systems, and some was programming issues. Once BreZE went into production, current staff resources could no longer enter data into both the new BreZE system and the legacy database, as such we do not have some of the information that was requested.” However, the NMC notes that this has now been corrected.

Given this, it is unclear whether the patient harm or potential unfair business practices are serious enough to warrant title protection. Therefore, rather than moving straight to title protection, it may be beneficial to explore alternative methods of consumer protections.

IMPLEMENTATION ISSUES:

Practice of Naturopathy vs Naturopathic Practitioner. This bill prohibits the use of the title “naturopathic practitioner” but expressly authorizes an unlicensed person to represent that the person “practices naturopathy.” This may be confusing to consumers.

AMENDMENTS:

- 1) Based on the available data, the necessity and urgency for the title restriction is not clear. Therefore, the author should amend the bill to delete the January 1, 2020 restriction on the title “naturopath,” terms “naturopath,” “naturopathic practitioner,” and “traditional naturopathic practitioner”:

SEC. 11. Section 3660 of the Business and Professions Code is amended to read:

3660. Except as provided in subdivision (h) of Section 3644, a person shall have a valid, unrevoked, or unsuspended license issued under this chapter to do any of the following:

(a) To claim to be a naturopathic doctor, licensed naturopathic doctor, doctor of naturopathic medicine, doctor of naturopathy, or naturopathic medical doctor.

(b) To use the professional *designation* “*N.D.*,” “naturopath,” “naturopathic practitioner,” “traditional naturopathic practitioner,” or other titles, words, letters, or symbols with the intent to represent that he or she practices, is authorized to practice, or is able to practice naturopathic medicine as a naturopathic doctor.

~~(c) Until January 1, 2020, the use of the terms “naturopath,” “naturopathic practitioner,” and “traditional naturopathic practitioner” may be used in marketing, advertisements, and other related materials by persons who are educated and trained, but not licensed, to practice naturopathy pursuant to this chapter. Individuals shall not be disciplined for the misuse of titles not under their control.~~

- 2) Until the NMC’s data tracking through BreZE can demonstrate harm requiring the elimination of the title “naturopath” from the marketplace, alternative methods to prevent consumer confusion should be tested. Therefore, the author should instead strengthen the existing disclosure requirements to require an unlicensed naturopath to include disclosures on any advertising or listing and over the phone prior to providing advice or arranging to provide services:

SEC. 10. Section 3645 of the Business and Professions Code is ~~repealed.~~ amended to read:

3645. (a) This chapter permits, and does not restrict the use of, the following titles by persons who comply with subdivision (c) of this section and are educated and trained as any of the following:

- (1) “Naturopath.”
- (2) “Naturopathic practitioner.”
- (3) “Traditional naturopathic practitioner.”

(b) This chapter permits, and does not restrict, the education of persons as described in paragraphs (1) to (3), inclusive, of subdivision (a). Those persons are not required to be licensed under this chapter.

(c) An unlicensed person may use the titles described under subdivision (a) if the unlicensed person does all of the following:

(1) Complies with Section 2053.6.

(2) Provides a conspicuous disclosure in all marketing, advertisements, and other related materials that states, in plain language, that the person is not licensed by the California Naturopathic Medicine Committee as a Naturopathic Doctor.

(3) Obtains verbal confirmation that client understands that the person is not licensed as a Naturopathic Doctor prior to providing advice or arranging for services related to the practice of naturopathy over the phone.

REGISTERED SUPPORT:

Bastyr University
 California Naturopathic Doctors Association
 Respiratory Care Board of California
 Naturopathic Medicine Committee
 Southern California University of Health Sciences
 State of Utah Division of Occupational and Professional Licensing
 State of Washington Board of Naturopathy

REGISTERED OPPOSITION:

American Naturopathic Medical Association
 California Health Freedom Coalition
 California Naturopathic Association
 Natural Health Freedom Action
 Natural Healing Institute of Naturopathy, Inc.
 Sunshine Health Freedom Foundation
 Numerous individuals

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