

BACKGROUND PAPER FOR The Naturopathic Medicine Committee

**Joint Sunset Review Oversight Hearing, March 7, 2022
Assembly Committee on Business and Professions and the
Senate Committee on Business, Professions, and Economic Development**

IDENTIFIED ISSUES, BACKGROUND, AND RECOMMENDATIONS REGARDING THE NATUROPATHIC MEDICINE COMMITTEE

BRIEF OVERVIEW OF THE NATUROPATHIC MEDICINE COMMITTEE

The Naturopathic Medicine Committee (Committee) is responsible for licensing and regulating naturopathic doctors (NDs) under the Naturopathic Doctors Act. The foundational principle of naturopathy is a belief that the human body is capable of healing itself with the assistance of natural therapies and treatments. Naturopathic medicine is a system of primary health care that integrates the values and practices of traditional naturopathy with modern methods and modalities for the diagnosing, treating, and preventing of health conditions, injuries, and disease.

As of December 2021, there are 917 NDs actively licensed by the Committee. California is one of 22 states that provide for licensure of naturopathic professionals. While NDs function similarly to allopathic and osteopathic physicians and surgeons, California does not allow them to use the title “physician.” According to the Committee, a majority of NDs working in California provide family centered, primary care medicine through office-based private practice, and may often work in collaboration with physicians and surgeons, doctors of chiropractic, and acupuncturists, some in integrative practices.

NDs are authorized to order physical and laboratory examinations, as well as diagnostic imaging studies under certain conditions. An ND may dispense, administer, order, prescribe, and furnish various foods, medicines, vitamins, therapies, and devices. An ND can engage in health education and counseling, and may treat superficial lacerations and abrasions and remove foreign bodies in superficial tissue. An ND is also authorized to furnish or order drugs in accordance with standardized procedures or protocols developed with a supervising physician and surgeon.

An ND may professionally refer to themselves as “Doctor” or “Dr.” but must clearly state that they are doctors of naturopathic medicine. While only a licensee of the Committee may represent themselves as licensed, refer to themselves as a naturopathic doctor, or use the professional designation “ND,” more general words like “naturopath” and “naturopathic practitioner” are not protected or reserved and may be used generally by anyone educated and trained in naturopathy. These unlicensed individuals are not subject to regulation or oversight by the Committee.

Early History of Naturopathic Practice in California

While naturopathic doctors and practitioners trace their profession back to Classical Greece and the teachings of Hippocrates, “naturopathy” as a healing art was popularized at the beginning of the 20th century by Benedict Lust, who is regarded as the “Father of American Naturopathy.” Lust’s promotion of naturopathy was rooted in the European “nature cure” movement and incorporated drugless therapies such as nutrition, herbalism, hydrotherapy, and stress reduction. Lust never expressly defined “naturopathy,” but sought to bring many natural methods under a unified practice.¹

Naturopathy was one of several natural healing disciplines competing for recognition during the Progressive Era, including homeopathy, osteopathy, physcultopathy, naprapathy, magnetopathy, and neuropathy.² In 1878, California created three boards to regulate medical practice, each appointed by a different society: the Medical Society, the Eclectic Medical Society, and the Homeopathic Medical Society.³ These boards were consolidated into a single Board of Medical Examiners in 1901,⁴ and the Governor was subsequently required to select appointments from lists of names presented by those societies, along with the Osteopathic Association.⁵

In 1909, Assembly Bill 254 was enacted, which required the Board of Medical Examiners to accept and endorse certificates issued by the Association of Naturopaths and expressly authorized the practice of naturopathy under the board’s jurisdiction.⁶ However, in 1913, the board was again reconstituted with the role of societies and associations removed, along with any direct reference to naturopathy. The new board was authorized to issue two forms of certificates: a “physician and surgeon” certificate that granted the holder the authority to use drugs, medical preparations, and surgical procedures to treat patients; and a “drugless practitioner certificate.”⁷

The new law reflected the medical dominance of allopathy, the system utilizing drugs and surgery to treat patients that some would eventually term “modern medicine.”⁸ Under the revised Medical Practice Act, individuals practicing within any of the natural or noninvasive medical systems—including naturopaths—were required to hold a certificate as a drugless practitioner. Drugless practitioners were explicitly prohibited from calling themselves “physicians” or “doctors of medicine.”

Naturopaths and others newly relegated to drugless practitioner status immediately resisted the law. Chinese herbalists⁹ and nonreligious faith healers¹⁰ unsuccessfully challenged its constitutionality. In 1914, Proposition 46 was placed on the ballot to create a Board of Examiners for Drugless Physicians. The initiative would have allowed practitioners who treated patients without drugs or medicine to be regarded as physicians, outside the jurisdiction of the Board of Medical Examiners. While supporters argued that the initiative would give each Californian “the right to choose his or her own doctor without any interference by unfair or drastic laws,” it was rejected by 67 percent of voters.

¹ Lust, Benedict, ed. *Universal Naturopathic Encyclopedia, Directory and Buyers' Guide*. Benedict Lust, 1918.

² Cody, George W. "The Origins of Integrative Medicine—The First True Integrators: The Philosophy of Early Practitioners." *Integrative Medicine: A Clinician's Journal* 17.2 (2018).

³ Chapter 576, Statutes of 1878.

⁴ Chapter 51, Statutes of 1901.

⁵ Chapter 212, Statutes of 1907.

⁶ Chapter 276, Statutes of 1909.

⁷ Chapter 354, Statutes of 1913.

⁸ Willis, Evan. *Medical dominance*. Routledge, 2020.

⁹ *People v. Chow Let*, 28 Cal. App. 803 (1915)

¹⁰ *P.L. Crane v. Hiram Johnson*, 242 U.S. 339 (1917)

In 1922, chiropractic and osteopathic practitioners each respectively sponsored ballot measures to regulate their professions separately from the Board of Medical Examiners.¹¹ Arguments in favor accused medical doctors on the board of being “biased and prejudiced,” viewing practitioners within other medical systems as competitors and seeking to “destroy” and “suppress” those systems. Opponents argued that if chiropractors and osteopaths each received their own special board, then new boards could be established for “the other twenty-five drugless cults,” which “would result in a chaotic condition constantly menacing the public health.” Both of these initiatives passed.

Following these electoral successes, naturopathic practitioners sought to secure their own independence from the Board of Medical Examiners. In 1934, Proposition 17—the Naturopathic Act—was placed on the ballot to create a “naturopathic physician’s license” under the oversight of a public corporation called the Naturopathic Association of California. Naturopathic physicians would hold the same rights and privileges as other physicians in the treatment of patients and could apply for a certificate to perform minor surgery. Supporters cited a court decision that limited the practice of naturopaths who had obtained licenses as chiropractors, and familiarly argued that the initiative would “[correct] apparent injustices by preventing monopoly of the healing profession, persecution of drugless practitioners and complete monopoly of all publicly supported institutions by medical men.” The opposition argued that naturopaths could already seek licensure as drugless practitioners, and that the broad scope of practice granted to them by the proposed act “would result in an orgy of unscientific, futile and dangerous experimentation upon the sick people of California.” Proposition 17 was rejected by the voters.

The naturopathic profession subsequently fell into decline. In 1949, the Legislature abolished the drugless practitioner classification within the Board of Medical Examiners.¹² While no new licenses would be granted, active practitioners were allowed to retain and renew their licenses. This grandfathering language would later be repealed in 1998 in Senate Bill 1981, at which point it had been determined that no active drugless practitioners remained.¹³ Court decisions subsequently affirmed that while individuals could practice naturopathic methods under another license, naturopaths were not otherwise subject to oversight or regulation by any state licensing board.¹⁴

Modern Legislative Actions to Regulate Naturopathic Practice

Naturopathy would experience a resurgence in the 1970s. The counterculture and new age movements each embraced nonwestern medical traditions and demonstrated skepticism toward biomedicine, giving rise to what was termed “alternative medicine.” Interest grew substantially in nonallopathic systems, including traditional Chinese medicine, Ayurveda, homeopathy, and naturopathy.¹⁵

The popularization of alternative medicine also led to the conceptual development of integrative and complementary approaches to medicine. Rather than viewing allopathic methods and modalities as adversative to natural healing, a growing number of naturopathic practitioners argued that education and training in conventional medical sciences, combined with a focus on natural and noninvasive therapies, should be the future of the profession. Many practitioners, however, continued to believe that traditional naturopathy should be practiced in its original unaltered form, eschewing any proposed integration with biomedicine. This rift would become increasingly evident during subsequent legislative deliberations.

¹¹ In 1919, the Board of Medical Examiners had ceased awarding physician and surgeon certificates to osteopaths.

¹² Chapter 233, Statutes of 1949.

¹³ Chapter 736, Statutes of 1998.

¹⁴ *Oosterveen v. Board Of Medical Examiners*, 112 Cal. App. 2d 201 (1952)

¹⁵ Whorton, James C. *Nature cures: The history of alternative medicine in America*. Oxford University Press, 2002.

Legislation to again provide for recognition and regulation of the naturopathic profession was repeatedly introduced in the latter half of the century, beginning in 1980 with Assembly Bill 3038 (Rosenthal). This bill would have established the Naturopathic Physician Practice Act to license naturopathic physicians as “a separate and distinct primary health care profession.” Amendments to the bill clarified that the licensed practice would be deemed “naturopathic medicine” rather than “naturopathy,” reflecting the modern integrative approach that would be advocated by the California Association of Naturopathic Physicians (CANP). The bill failed to pass its first policy committee. It was followed by Assembly Bill 2241 (Murray) and Senate Bill 1166 (Watson) in 1993, which also failed to move forward.

Senate Bill 1566 (Watson) was introduced in 1994 to require registration of naturopathic practitioners, then was narrowed to simply reserve the use of naturopathic titles for those with education and training. This bill also failed to pass after receiving opposition from a number of organizations including the Medical Board of California (MBC)¹⁶ and the California Medical Association. The bill was also opposed by the California Naturopathic Association (CNA), which represented “traditional” naturopaths who disagreed with CANP’s proposal to fuse naturopathic scope of practice with allopathic treatment modalities. CNA sponsored its own registration bill that same year, Assembly Bill 3765 (Campbell), which died in a fiscal committee. CANP next sponsored Senate Bill 1059 (Johannssen) in 1999 to simply require the Department of Consumer Affairs (DCA) to study and make recommendations regarding the regulation of naturopathy—this bill, too, faced opposition and failed to pass.

It was in 2003 that advocates for licensure of the naturopathic profession secured a legislative victory. Senate Bill 907, authored by Senator John Burton—President pro tempore of the State Senate—established a licensing program for naturopathic doctors under a new Bureau of Naturopathic Medicine within the DCA. Numerous concessions were made following negotiations with the bill’s opposition. For instance, the term “naturopathic physician” was replaced throughout the bill with “naturopathic doctor” to address opposition from the California Medical Association. Additionally, in response to CNA’s opposition, language was added to expressly allow nonlicensees to use phrases such as “naturopath” or “naturopathic practitioner”—only the use of titles implying licensure as a naturopathic doctor would be restricted. Amendments were also taken to narrow the license’s scope, specifically prohibiting naturopathic doctors from performing acupuncture or traditional Chinese medicine.¹⁷

Governor Gray Davis signed Senate Bill 907 on September 22, 2003, creating the first state license explicitly available for naturopathic practitioners since 1909. The Bureau of Naturopathic Medicine was accompanied by the establishment of an Advisory Council comprised of NDs, physicians and surgeons, and members of the public, which was tasked with making recommendations to the Bureau. (Statute encouraged the Advisory Council to “meet as few times as necessary to perform its duties” in order to reduce costs.) A naturopathic formulary advisory committee was also established to make recommendations to the Legislature regarding what prescribing and furnishing authority was appropriate for NDs.

The administrative foundation for the state’s regulation of naturopathic medicine was significantly altered in 2009 when Governor Arnold Schwarzenegger proposed his Governor’s Reorganization Plan. Under this plan, a number of licensing programs were consolidated or relocated under the DCA. Specifically, the plan abolished the Bureau of Naturopathic Medicine and instead established the Naturopathic Medicine Committee within the Osteopathic Medical Board of California (OMBC).¹⁸

¹⁶ The successor agency to the renamed Board of Medical Examiners.

¹⁷ Chapter 485, Statutes of 2003.

¹⁸ Chapter 18, Statutes of 2009.

The intent in placing the Committee under the jurisdiction of the OMBC was to replicate the regulatory scheme created for the Dental Hygiene Committee under the Dental Board. Legislative analysis suggested that “relocating the oversight of naturopathic medical doctors to the OMB would permit the continued regulation of naturopathic medicine and generate special fund savings through operational efficiencies, equipment sharing, and reduced staff.” However, it does not appear as though the OMBC ever played a substantial role in directing, coordinating, or meaningfully assisting the Committee in its duties. A legal opinion was reportedly provided to the Director of Consumer Affairs confirming the independence of the Committee in its regulation of NDs, and language requiring the OMBC to approve the Committee’s appointment of an Executive Officer was later removed.

Future of the Naturopathic Profession

As the Committee carries out its responsibilities, there will be a sustained discussion within the profession as well as the Legislature regarding where naturopathic medicine should fall within the spectrum of modern medical systems. Representatives of the ND committee will certainly promote further policies to further elevate their practice as a healing art, advocating for expansions of scope and the establishment of greater independence for NDs. At the same time, there will continue to be a resistance from those who practice more traditional naturopathy to any proposals that would diminish their claim to the professional legacy that began with the writings and teachings of Benedict Lust. The Legislature will play a role in reconciling these existential tensions, the nature of which may be appropriately discussed through sunset review.

Mission Statement

According to the Committee’s most recent Strategic Plan, its mission statement is as follows:

“To protect California health care consumers and expand access to safe and effective primary care by licensing and regulating Naturopathic Doctors through vigorous enforcement of the Naturopathic Doctors Act.”

Committee Membership and Subcommittees

The Committee consists of nine members. Seven are officially considered professional members, of which five are required to be NDs and the other two are required to be physicians and surgeons licensed by either the MBC or the OMBC. Each professional member is appointed by the Governor. The remaining two members are public members, each appointed by the Speaker of the Assembly and the Senate Committee on Rules respectively.

Committee members serve four-year terms and may not serve more than two consecutive terms; however, members may serve up to one additional year pending the appointment of their successor. Public members are required to be California residents for at least five years preceding their appointment, and no person may serve as a public member if they or a family member are involved in naturopathic practice or education. All members of the Committee receive customary per diem compensation. The Committee is required to meet at least two times each calendar year.¹⁹

The current composition of the Committee is as follows, including two vacancies:

¹⁹ Bus. & Prof. Code, § 3621

| Name and Bio | Appointment | Expiration of Current Term | Appointing Authority |
|--|-------------|----------------------------|----------------------|
| <p style="text-align: center;">Dara Thompson, N.D. (Chair) Professional Member (ND)</p> <p>Dara Thompson, N.D., received her bachelor's degree in biology from the University of California at Santa Cruz and her doctorate in naturopathic medicine from The National College of Naturopathic Medicine in Portland, Oregon. After 5 years of clinical practice she completed a 1-year post-graduate training in Environmental Medicine. Dr. Thompson taught Anatomy and Physiology as well as Clinical Nutrition and the Hawaii College of Oriental Medicine for 9 years. Dr. Thompson currently practices at Azzolino Chiropractic Neurology and Integrative Wellness in San Francisco. In this setting, she enjoys active collaboration with medical doctors and chiropractors. Dr. Thompson has been in practice since 2002 and her passion for medicine continues to grow. She combines the foundations of naturopathic medicine with her knowledge of environmental influences and genomic analysis to find solutions for complex medical conditions.</p> | 06/08/2018 | 01/01/2022 | Governor |
| <p style="text-align: center;">Greta Hauck D'Amico, N.D. (Vice Chair) Professional Member (ND)</p> <p>Greta Hauck D'Amico, N.D., received her Bachelor of Arts Degree in Social Science from UC Berkeley in 1990 and her Doctorate of Naturopathic Medicine (ND) from the Southwest College of Naturopathic Medicine and Health Sciences in 2004. She is currently President of the Four Rivers Naturopathic Clinic where she sees patients of all ages with her husband, Sandro D'Amico, ND, in Auburn. She utilizes several novel approaches to help her patients, including classical homeopathy, biotherapeutic drainage and European biological medicine, counseling and physical medicine. Dr. D'Amico has been active in the California Association of Naturopathic Doctors since 2004 and has served the association as Legislative Lead. She is also a member of the American Association of Naturopathic Physicians and P.E.O., a philanthropic organization that raises money for women's education. She is multi-lingual and has lived and studied in Norway, France, Thailand and Costa Rica.</p> | 06/08/2018 | 01/01/2022 | Governor |
| <p style="text-align: center;">Bruce N. Davidson, Ph.D. Public Member</p> <p>Bruce N. Davidson, Ph.D. has held executive positions in healthcare performance improvement, quality analytics, and data governance for prominent healthcare delivery organizations in Southern California. With 40 years of experience in health services delivery and evaluation, Dr. Davidson previously consulted to healthcare and human service organizations nationwide. He was also an Adjunct Assistant Professor in the Department of Health Policy and Management at the UCLA Fielding School of Public Health, where for nine years he taught the Quality Improvement course in the Executive Master of Public Health program. Dr. Davidson's prior public service includes three annual appointments as a Member of the Board of Examiners for the national Malcolm Baldrige Performance Excellence Program.</p> | 08/15/2018 | 01/01/2022 | Senate Rules |

| | | | |
|---|------------|------------|------------------|
| <p style="text-align: center;">Vera Singleton, N.D., M.B.A. Professional Member (ND)</p> <p>Vera Singleton, ND, MBA, is an honored graduate of Southwest Naturopathic Medical College with publications in the FASEB Journal on cell activation and wound healing. She is an active member of the California Naturopathic Doctor's Association, Alumni of the University of Michigan and Wayne State University. Dr. Singleton's practice is based in Lafayette, CA, where she enjoys assisting high performing professionals regain control of their health.</p> | 07/16/2018 | 01/01/2022 | Governor |
| <p style="text-align: center;">Shirley Worrels Public Member</p> <p>Shirley Worrels, is a retiree. She served as Department Administrator for Kaiser Permanente from 1979 to 2014. During her tenure she managed the day to day and financial operations for the Psychiatry Dept. and several Primary Care departments. She implemented, coordinated and managed several organizational initiatives for Kaiser. Ms. Worrels received her undergraduate degree from Cal State Los Angeles and her graduate degree in psychology from Pepperdine University. In retirement Shirley is involved in many civic and community service endeavors.</p> | 08/10/2018 | 01/01/2022 | Assembly Speaker |
| <p style="text-align: center;">Minna Yoon, N.D., M.S.T.O.M. Professional Member (ND)</p> <p>Dr. Yoon received her Bachelor of Arts in Biology from Washington University in St. Louis, Missouri in 1997, her Doctorate in Naturopathic Medicine from Bastyr University in Seattle, Washington in 2002, and her Master of Science in Traditional Oriental Medicine at Pacific College of Oriental Medicine in San Diego, California in 2004. For over 10 years, Dr. Yoon has been practicing at her clinic Bay Natural Medicine in San Francisco with an emphasis on treating adults with chronic illnesses, hormone imbalances, and digestive issues. She is also a licensed acupuncturist and Chinese herbalist.</p> | 07/16/2018 | 01/01/2022 | Governor |
| <p style="text-align: center;">Diparshi Mukherjee Professional Member (Physician)</p> <p>Dr. Mukherjee has been a Physician at Kaiser Permanent since 2004. He is a member of the American Osteopathic Association. Mukherjee earned a Master of Science degree in Sports Medicine from the University of Miami and a Doctor of Osteopathic Medicine degree from the Nova Southeastern University College of Osteopathic Medicine.</p> | 02/03/2022 | 01/01/2026 | Governor |
| <p style="text-align: center;"><i>Vacant</i> Professional Member (ND)</p> | -- | -- | Governor |
| <p style="text-align: center;"><i>Vacant</i> Professional Member (Physician)</p> | -- | -- | Governor |

The Committee currently contains several subcommittees. Statute requires the Committee to establish a naturopathic formulary advisory subcommittee to determine a naturopathic formulary based upon a review of naturopathic medical education and training.²⁰ This subcommittee is required to include an equal number of representatives from the clinical and academic settings of physicians and surgeons, pharmacists, and naturopathic doctors.

The Naturopathic Formulary Advisory Subcommittee was originally created as a committee under the Bureau of Naturopathic Medicine, which committee submitted a report in 2007 with recommendations to the Legislature regarding the prescribing and furnishing authority of NDs and supervision and protocols, including those for the utilization of intravenous and ocular routes of prescription drug administration. Revised reports and addenda were subsequently submitted in 2012 and 2015. However, the majority of recommendations made by the committee and subcommittee regarding ND scope of practice have never been implemented by the Legislature.

In 2019, the Committee established a Prescribing and Furnishing Authority of Naturopathic Doctors Subcommittee, consisting of an ND member, a physician and surgeon, and a pharmacist. The subcommittee was established to review the education and training of naturopathic doctors, determine drugs that are needed to properly carry out their duties and treatments and to provide recommendations on a formulary that NDs in California should incorporate in the scope of practice. This formulary was nearly completed when the physician member resigned; the Committee intends to reconvene and submit a new formulary for approval by the Legislature. Committee staff anticipate that the report will recommend that licensees be afforded broader independent prescriptive authority.

The Committee additionally established the Minor Office Procedures Subcommittee in 2019. The subcommittee’s purpose is to make recommendations regarding the potential development of scope and supervision requirements of a naturopathic doctor for the performance of minor office procedures. Statute previously required the Committee to submit a report on this topic in 2007. The Minor Office Procedures Subcommittee also suspended its meetings after the resignation of its physician member.

Another subcommittee established in 2019 was the Intravenous (IV) and Advanced Injection Therapy Subcommittee, which was created and convened for the first time to review education and training of NDs and develop regulatory language. This subcommittee has been working on drafting regulations, which have been considered by the full Committee and subsequently revised. The subcommittee intends to meet further in early 2022.

| Subcommittee | Members |
|--|---|
| <p align="center">Prescribing and Furnishing Authority of Naturopathic Doctors Subcommittee</p> | <p align="center">Minna Yoon, N.D., Chair Peter Koshland, Pharm.D., (Consultant) <i>Vacant (Physician Member)</i></p> |
| <p align="center">Minor Office Procedures Subcommittee</p> | <p align="center">Bruce Davidson, Ph.D., Chair Greta D’Amico, N.D. <i>Vacant (Physician Member)</i></p> |

²⁰ Bus. & Prof. Code, § 3627

| | |
|---|---|
| Intravenous (IV) and Advanced Injection Therapy Subcommittee | Dara Thompson, N.D., Chair Vera Singleton, N.D. Virginia Osborne, N.D. (Consultant) |
|---|---|

Staff

Statute authorizes the Committee to appoint a person to serve as its Executive Officer.²¹ The Committee’s current Executive Officer is Rebecca Mitchell, who joined the Committee in 2013. In addition to an Executive Officer, statute authorizes the Committee to employ “other officers and employees as necessary to discharge the duties of the committee.”²² Currently, there is only one other individual employed by the Committee—an analyst responsible with implementing the Committee’s mandates under the Consumer Protection Enforcement Initiative (CPEI). No new staff has been hired since 2014.

Fiscal and Fund Analysis

The Committee is entirely special funded and receives the majority of its funding through license fees. Fees are deposited into the Naturopathic Doctor’s Fund. Money in that fund is available to the Committee only upon appropriation by the Legislature.²³

As the number of NDs licensed in California by the Committee has risen, there has correspondingly been a steady increase in fee revenue collected by the Committee. The Committee had \$726,000, or 20 months in reserve, at the end of Fiscal Year (FY) 2020-21. Without hiring new staff or receiving approval for new program expenditures, the Committee is at risk of violating statute’s prohibition against DCA entities having more than 24 months in reserve.²⁴ In FY 2017-18, the Committee was budgeted at \$402,000. This was reduced to \$335,000 for FY 2020-21.

| Naturopathic Doctor’s Fund Condition | | | | | | |
|---|---------------|---------------|----------------|----------------|----------------|----------------|
| | FY 2017/18 | FY 2018/19 | FY 2019/20 | FY 2020/21 | FY 2021/22 | FY 2022/23 |
| Beginning Balance | 531 | 561 | 524 | 548 | 726 | 735 |
| Revenues and Transfers | 369 | 412 | 514 | 535 | 444 | 440 |
| Total Revenue | \$900 | \$ 973 | \$1,038 | \$1,038 | \$1,170 | \$1,175 |
| Budget Authority | 402 | 429 | 485 | 335 | 393 | 405 |
| Expenditures | 395 | 420 | 451 | 318 | 393 | 405 |
| Direct Draws to Fund | 32 | 26 | 39 | 39 | 42 | 55 |
| Fund Balance | \$ 473 | \$ 527 | \$ 548 | \$ 726 | \$ 735 | \$ 715 |
| Months in Reserve | 12.7 | 12.9 | 18.4 | 20.0 | 19.2 | 18.2 |

²¹ Bus. & Prof. Code, § 3621

²² Bus. & Prof. Code, § 3626

²³ Bus. & Prof. Code, § 3681

²⁴ Bus. & Prof. Code, § 28.5

Since the Committee's last sunset review, its enforcement program has grown to become an increasingly larger share of its overall expenditures. Licensing has historically been its smallest expenditure. As a relatively small entity, the Committee's Pro Rata contribution to the DCA is proportionally sizeable, at times representing its largest expenditure.

| Expenditures by Program Component (dollars in thousands) | | | | | | | | |
|--|--------------------|--------------|--------------------|--------------|--------------------|--------------|--------------------|--------------|
| | FY 2017/18 | | FY 2018/19 | | FY 2019/20 | | FY 2020/21 | |
| | Personnel Services | OE&E | Personnel Services | OE&E | Personnel Services | OE&E | Personnel Services | OE&E |
| Enforcement | 116 | 11 | 124 | 17 | 125 | 20 | 102 | 28 |
| Examination | N/A | | | | | | | |
| Licensing | 29 | 3 | 31 | 4 | 31 | 5 | 25 | 7 |
| Administration | 87 | 8 | 93 | 13 | 93 | 15 | 77 | 21 |
| DCA Pro Rata | | 141 | | 138 | | 162 | | 58 |
| Diversion | N/A | | | | | | | |
| TOTALS | \$232 | \$163 | \$248 | \$172 | \$249 | \$202 | \$204 | \$114 |

License fees are collected upon biennial renewal. Effective January 1, 2019, the first fee increases were made to the fees originally established by emergency regulations in 2004 under the Bureau of Naturopathic Medicine. The current fee for an active license is \$1,000. Pending regulations would reduce the inactive fee to fifty percent of the active fee. The delinquent tax and registration fee is \$225.

| Fee Schedule | | |
|---------------------------------|---------------------------|-----------------|
| | Current Fee Amount | Statutory Limit |
| ND Application Fee | \$400 | \$600 |
| ND Initial License Fee | \$1,000 <i>(prorated)</i> | \$1,200 |
| ND Delinquency Registration Fee | \$225 | \$225 |
| ND Renewal Fee | \$1,000 | \$1,200 |
| ND Duplicate License Fee | \$38 | \$38 |

Licensing

The only population licensed by the Committee is NDs. In FY 2020/21 there were 917 active NDs licensed by the Committee, including 137 out-of-state licensees. The Committee has a large number of delinquent licensees; expired licenses remain delinquent for three years prior to being canceled.

| Licensee Population | | | | | |
|------------------------------|--------------------|------------|------------|------------|------------|
| | | FY 2017/18 | FY 2018/19 | FY 2019/20 | FY 2020/21 |
| Naturopathic Doctors License | Active | 745 | 790 | 849 | 917 |
| | Out of State | N/A | | | 137 |
| | Out of Country | 0 | 1 | 2 | 1 |
| | Delinquent/Expired | 135 | 156 | 164 | 139 |
| | Retired | N/A | | | 3 |
| | Inactive | 14 | 19 | 20 | 23 |

The number of applications to the Committee for new licenses was 117 in FY 2020/21. Committee staff notes that it tends to see more applications when California is considering expanding ND scope through legislation. The Committee's performance targets for processing complete initial license applications are 45 days for the application process for licensure, and 25 days for payment of the initial license fee. The Committee has been successful in meeting these targets.

The Committee denies very few applications that are deemed complete. Over the past four years, only one application was denied, for reasons relating to a lack of qualifying education. Educational transcripts, examination scores, and out-of-state license verifications are submitted directly to the Committee by the source. Applicants are required to undergo a fingerprint criminal background check as well as a Federation of Naturopathic Medicine Regulatory Authorities (FNMRA) Disciplinary Actions list background check. Three applicants with prior criminal histories were granted licensure after submitting proof of rehabilitation.

Education

Applicants for ND licensure are required to have received a degree in naturopathic medicine from a naturopathic medical school accredited by the Council on Naturopathic Medical Education (CNME). Schools must meet additional requirements prescribed by statute.²⁵ Statute does not allow the Committee to consider applicants with degrees from schools located outside the United States or Canada.

There are currently eight approved naturopathic medical schools:

- National University of Naturopathic Medicine – *Portland, Oregon*
- Bastyr University – *San Diego, California*
- Bastyr University – *Seattle, Washington*
- Canadian Naturopathic Medical College – *Toronto, Ontario, Canada*
- Boucher Institute of Naturopathic Medicine – *New Westminster, British Columbia, Canada*
- Southwest College of Naturopathic Medicine and Health Sciences – *Scottsdale, Arizona*
- National University of Health Sciences – *Lombard, IL*
- Universidad del Turabo – *Gurabo, Puerto Rico*

Continuing Education

NDs are required to complete 60 hours of approved continuing education (CE) biennially to renew their licenses.²⁶ This requirement is waived for the initial license renewal. Qualifying CE must meet the following requirements:

- (1) At least 20 hours shall be in pharmacotherapeutics.
- (2) No more than 15 hours may be in naturopathic medical journals or osteopathic or allopathic medical journals, or audio or videotaped presentations, slides, programmed instruction, or computer-assisted instruction or preceptorships.
- (3) No more than 20 hours may be in any single topic.
- (4) No more than 15 hours of the continuing education requirements for the specialty certificate in naturopathic childbirth attendance shall apply to the 60 hours of continuing education requirement.
- (5) Course content shall pertain to the practice of naturopathic, osteopathic, or allopathic medicine.

²⁵ Bus. & Prof. Code, § 3623

²⁶ Bus. & Prof. Code, § 3635

CE courses may be approved by the Committee, the California Naturopathic Doctors Association, the American Association of Naturopathic Physicians, the California State Board of Pharmacy, the State Board of Chiropractic Examiners, or other courses that meet the standards for continuing education for licensed physicians and surgeons in California. The Committee maintains a list of approved providers on its website. Licensees are required to retain their certificates of CE completion for six years.²⁷ Recently, the Committee established a CE auditing process. Each quarter, a percentage of licensees are audited to confirm CE requirements. The Committee reports that only one licensee has failed to prove compliance, requiring a 30-day extension to meet the requirement.

Examination

California requires that all applicants have passed Parts I and II of the Naturopathic Physicians Licensing Examination (NPLEX). This examination is required by all other licensing states as well as most Canadian provinces. Part II of the NPLEX includes clinical elective examinations in Minor Surgery, Pharmacology, Parenteral Therapeutics and Acupuncture; however, these examinations are not required in California as the state does not include all of those subjects within its scope of practice for NDs.

Enforcement

The Committee's enforcement program is relatively limited, due to the profession's restricted scope and minimal staff. According to the Committee, 71 percent of its enforcement cases are related to unlicensed activity, with many complaints relating to unlicensed naturopaths not under the Committee's jurisdiction. There have been no formal disciplinary actions taken—including license revocation, suspension, probation imposition, and public reprimand—in the past three years. The Committee has indicated that it would engage in more robust enforcement if it had adequate staff to do so.

The Committee generally meets its enforcement performance targets, though COVID-19 and staffing issues have created slight backlogs. The target for complaint intake and assignment is one month; the Committee averages 22 days. The target for investigations is 12 months; the Committee averages between 12 to 133 days. The target for Formal Discipline is 18 months; there has recently been none.

Public Information Policies

The Committee regularly utilizes its internet website to provide information to both the public and to its licensees. The Committee also uses its website, subscription list, licensee/applicant email service, and Twitter, Facebook and YouTube accounts to deliver timely, accurate and relevant information to stakeholders. The Committee has also worked with the DCA's Office of Public Affairs to inform the public about the distinction between licensed and unlicensed "naturopaths," including brochures, a website, social media.

COVID-19 Pandemic Response

On March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency as a result of the impacts of the COVID-19 public health crisis. The Committee implemented a teleworking schedule, adjusted its processes and workflows, and moved its meetings from an in-person format to an online web meeting platform. Enforcement and investigation activities were also modified to allow for video or telephonic interviews and probation updates.

²⁷ Bus. & Prof. Code, § 3635.1

The Governor signed an executive order on March 30, 2020 that created a new process for boards and the public to request waivers of requirements related to healing arts professional licensing through the DCA.²⁸ Through this process, the Director of Consumer Affairs waived statute limiting the number of continuing education hours that may be completed through computer-assisted instruction and limiting such instruction to those that allow participants to concurrently interact with instructors or presenters while they observe the courses. The Director additionally waived statutes requiring individuals to complete education or examination requirements as a condition of license renewal. Finally, the Director issued waivers expanding the scopes of practice for various health professions to administer the COVID-19 vaccine, including NDs.

²⁸ Executive Order N-39-20

PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

The Committee last underwent a sunset review by the Legislature in 2017. During the prior sunset review, committee staff raised a number of issues provided recommendations. Below is a summary of actions which have been taken since that time to address these issues. Previous issues that were not completely addressed or may otherwise still be of concern they are further discussed under “Current Sunset Review Issues.”

Prior Issue #1: Insufficient data reporting. The previous sunset background paper noted that the Committee had issued its sunset report with significant omissions and inconsistencies, which was also a problem in the prior sunset report. The Committee responded that there were problems with some of the data being converted to the new BreEZe system. The Committee pledged to continue to work towards the goals outlined within the current Strategic Plan to assure proper data is available on an ongoing basis.

Prior Issue #2: Additional Title Protection. The background paper questioned the purpose of an “educational letter” in lieu of a Cease-and-Desist for cases of unlicensed practice. The paper also provided that the Committee should work with legislative staff to update title use. In regard to the reporting of Cease-and-Desist letters, the Committee clarified that what was referenced in their report was actually an educational notice which informs an individual that they may be in violation of the act. A legal opinion was provided to the Committee advising that “warning letters” should not be used as there is the possible risk of eliminating an individual’s due process. The Committee requested that immediate title protection language be added statutorily to immediately lower the risk to consumers and assist in reducing the Committee’s enforcement resources for unlicensed practice on an ongoing basis; this was not included in the Committee’s subsequent sunset bill.

Prior Issue #3: Webcasting Meetings. The background paper recommended that the Committee should webcast its meetings. The Committee has since created a process for requesting webcasting services from the DCA at the time of scheduling dates to assure services are available. The Committee will make every attempt to utilize webcasting for any Committee meetings in the future. If for any reason, a meeting cannot be webcast due to limited resources, the Committee will track its attempts to secure the webcasting services and record why it was unavailable. Since the last sunset, the Committee has made attempts to webcast the meetings and has been able to do so consistently.

Prior Issue #4: Military Experience. The prior sunset background paper proposed that the Committee should require schools to evaluate veteran’s military experience and training for education credit in compliance with state law. The Committee has since explained that its licensing program ensures licenses are only issued to applicants who meet legal and regulatory requirements and who are not precluded from licensure based on past incidents or activities, and that it identifies applicants who indicate they are military service veterans. The Committee waives application fees for license renewals and continuing education requirements for military reservists called to active duty and expedites license applications for military spouses and domestic partners of a military member who is on active duty in California. The Committee believes it is in compliance with the law.

CURRENT SUNSET REVIEW ISSUES FOR THE NATUROPATHIC MEDICINE COMMITTEE

ADMINISTRATIVE ISSUES

ISSUE #1: *Name and Placement of the Committee. Does statute establishing the Committee within the Osteopathic Medical Board accurately reflect its status as an independent regulatory entity?*

Background: When the Naturopathic Doctors Act was first enacted through SB 907 (Burton) in 2003, the regulatory entity established to administer it was a Bureau of Naturopathic Medicine under the DCA. The Act additionally required the Director of Consumer Affairs to establish an advisory council, consisting of three NDs, three physicians and surgeons, and three public members appointed by the Governor and the Legislature. Both the Bureau and its advisory committee were untethered from any other regulatory bodies, with the bureau chief reporting directly to the Director of Consumer Affairs.

When the DCA underwent a reorganization under Governor Schwarzenegger, the Bureau was abolished and replaced with the Committee, whose membership was similarly structured to the prior advisory council. The language of ABX4-20 (Strickland), which implemented this portion of the reorganization plan in 2009, provided that the Committee was both “created within” and “within the jurisdiction of” the OMBC. The bill additionally required the OMBC’s approval for the Committee to appoint its own Executive Officer and charged the OMBC with employing officers and employees to discharge the duties of the Committee.

However, it appears as though the Committee was never functionally under the direction or supervision of the OMBC. According to the Committee, the Director of Consumer Affairs was provided a legal opinion stating “that the OMBC was in no way responsible for the actions of the Committee and the Committee was deemed, independent, solely responsible for the regulation of naturopathic medicine in California.” It also does not appear as though the OMBC and the Committee shared any significant resources.

SB 1050 (Yee) was chaptered the following year to make a number of changes to the Committee’s administrative framework. First, the bill explicitly provided that the Committee was solely responsible for the implementation of the Naturopathic Doctors Act. The bill also struck the requirement that the OMBC approve the Committee’s appointment of an Executive Officer and that the Committee would employ its own officers and employees.

Despite these changes to clarify the effective autonomy of the Committee in regulating NDs, statute continues to refer to the Committee as being “within the Osteopathic Medical Board of California.” It would appear that this language inaccurately describes the structure Committee, which was never under the oversight or control of the OMBC. It may arguably be more accurate to retitle the Committee as a standalone board under the DCA.

Staff Recommendation: *The Committee should provide the Legislative Committees with its perspective on whether there would be any value in considering a renaming that would reflect its status as an independent regulatory body.*

ISSUE #2: *Committee Composition. Does the current membership on the Committee appropriately balance professional expertise and public objectivity?*

Background: The Naturopathic Doctors Act provides that the Committee shall consist of nine members, including five NDs, two physicians and surgeons, and two public members. Perhaps curiously, statute counts the physician and surgeon members as “professional members” alongside the ND representatives, with only two members officially designated as being from the public. However, NDs still represent a slight majority on the Committee established to regulate them, with five NDs outnumbering the four non-NDs.

In 2015, the United States Supreme Court ruled in *North Carolina State Board of Dental Examiners v. Federal Trade Commission* that when a state regulatory board features a majority share of active market participants, any allegedly anticompetitive decision-making may not be subject to *Parker* antitrust litigation immunity unless there is “active state supervision” to ensure that all delegated authority is being executed in the interest of the public and not the private commercial interests of the members.

To date, there has been no meaningful litigation against public bodies established under California law, and it is likely that the Committee receives more than enough active state supervision to qualify for immunity. The Committee is considered only semi-autonomous, with much of its rulemaking and disciplinary activity subject to involvement by multiple other governmental entities. Its current Executive Officer is not a licensee, and the DCA has also worked to ensure that members are adequately trained in certain procedures to ensure an adequate record of deliberation for purposes of defense against any potential allegations of antitrust.

Notwithstanding the legal sensitivities accompanying boards with majority professional memberships, the disproportionality for the Committee is arguably minor, with an advantage of only one additional member who is regulated by the Committee, and two of the professional members regulated by other boards. Considering the numerous benefits of having professional perspectives in deliberations by the Committee regarding the practice of naturopathic medicine, this technical imbalance is unlikely to be in need of any further statutory change. However, the Committee should remain mindful whenever it engages in formal decision-making that may appear to serve the economic interests of licensee populations represented on the Committee.

Staff Recommendation: *The Committee should indicate whether it believes there are any concerns with its current membership structure or whether any changes should be contemplated.*

ISSUE #3: *Member Terms. Is the fact that the majority of committee members are currently scheduled to term out at the same time a cause for concern?*

Background: Members of the Committee each serve four-year terms, and members may not serve more than two consecutive terms. Members may continue to serve after their term’s expiration date until a replacement is appointed or one year has elapsed, whichever occurs sooner. Appointments for prematurely vacated positions are initially for the remainder of the term only.

Of the nine members on the Committee, seven members completed their official terms on January 1, 2022 and are now serving within their one-year grace period. This means that an overwhelming majority of the Committee’s membership will likely need to be replaced simultaneously. This could foreseeably cause instability and represent a strain on the appointments process.

Staff Recommendation: *The Committee should offer any insights or recommendations it has regarding the current term schedule for its membership and whether any potential issues could be alleviated.*

ISSUE #4: Adequate Staffing. *Does the Committee currently employ the appropriate number of staff to ensure that it is fulfilling its legislative mandates and protecting the public?*

Background: Statute provides that the Committee may appoint an Executive Officer as well as “other officers and employees as necessary to discharge the duties of the committee.” Currently, the Committee is staffed by two individuals: an Executive Officer and an analyst position that was purportedly hired principally to ensure compliance with the Consumer Protection Enforcement Initiative. While the population of active NDs is substantially smaller than the licensee populations for most other boards, this is arguably still a very low number of staff for regulatory entity under the DCA. This could potentially prove problematic in the event that there are unanticipated changes in workload or if staff members are unable to perform their duties due to customary absences or illness.

Staff Recommendation: *The Committee should inform the Legislative Committees as to whether any efforts have been made to hire additional staff and whether the current organizational structure is sufficient to ensure that the Committee is consistently functioning and performing its duties.*

FISCAL ISSUES

ISSUE #5: Fund Reserves. *Considering the amount of fee revenue collected by the Committee against its program expenditures, is there a fiscal imbalance that could result in excessive reserves?*

Background: At the end of FY 2020-21, the Committee had \$726,000 in reserve, representing approximately 20 months of operating expenses. Statute generally prohibits DCA entities from having more than 24 months in reserve, and this is easily on the higher end of reserves held by licensing bodies. While the steady growth in the Committee’s licensing population provides an explanation for the recent increase in fee revenue, it is unclear why there has not been any corresponding increase in expenditures.

Staff Recommendation: *The Committee should explain why it believes its reserves have grown and why it has not had to take on new spending, such as hiring additional staff to engage in licensing and enforcement activities, as its licensee population has grown.*

ISSUE #6: Attorney General Billing Rate. *Will the abrupt increase in the Attorney General’s client billing rate for hours spent representing the Committee in disciplinary matters result in cost pressures for the Committee’s special fund?*

Background: In July of 2019, the California Department of Justice announced that it was utilizing language included in the Governor’s Budget authorizing it to increase the amount it billed to client agencies for legal services. The change was substantial: the attorney rate increased by nearly 30% from \$170 to \$220, the paralegal rate increased over 70% from \$120 to \$205, and the analyst rate increased 97% from \$99 to \$195. While justification was provided for why an adjustment to the rates was needed, the rate hike occurred almost immediately and without meaningful notice to client agencies. For special funded entities such as the Committee, unexpected cost pressures can quickly prove problematic.

Staff Recommendation: *The Committee should inform the Legislative Committees of whether it has had any fiscal challenges resulting from the increase in the Attorney General’s billing rate.*

LICENSING ISSUES

ISSUE #7: Delinquent Licenses. Why is there such a substantial population of delinquent licenses?

Background: A total of 917 NDs were actively licensed by the Committee in FY 2020/21. During that same time, a total of 139 licenses were delinquent, and the number of delinquent licenses has remained high over the past several years. Currently, licenses are canceled only after they have been delinquent for a total of three years. It is unclear why such a large percentage of the Committee’s licensing population has remained delinquent or whether this is an appropriate or normal delinquency rate.

Staff Recommendation: *The Committee should explain why it believes it has so many delinquent licensees and whether it believes that this presents any potential challenges or risk to the public.*

ISSUE #8: Fictitious Name Permits. Should the Committee be authorized to create a Fictitious Name Permit Program to ensure naturopathic practices are not violating the Moscone-Knox Act?

Background: The Committee has requested authority to establish a Fictitious Name Permits Program during prior sunset reviews and has since reiterated this request. According to the Committee, such a program would protect the public by improving oversight of naturopathic medical practices and enhancing ownership transparency of such practices to avoid violation of Moscone-Knox Act. Under the program, an ND would submit the name of the doctor’s company if the company is not the person’s name and pay a fee. The Committee believes this would stop confusion between practices that use similar names. Both the MBC and the OMBC currently have similar programs.

During the Committee’s prior sunset review, the Legislative Committees stated that there was insufficient justification for a new license category and fee. It was suggested that this work would be duplicative of articles of incorporation filed with the Secretary of State, could be resolved through other means, and would be of minimal value. However, the Committee continues to argue that such a program would provide an avenue to assure the naturopathic practices are not violating the Moscone-Knox Act, which is a cogent reason to reconsider the request.

Staff Recommendation: *The Committee should expand upon its request to establish a Fictitious Name Permits Program and why it believes it would allow it to better serve the public.*

ISSUE #9: Fair Chance Licensing Act. What is the status of the Committee’s implementation of AB 2138 (Chiu/Low)?

Background: In 2018, AB 2138 (Chiu/Low) was signed into law, making substantial reforms to the license application process for individuals with criminal records. Under AB 2138, an application may only be denied on the basis of prior misconduct if the applicant was formally convicted of a substantially related crime or was subject to formal discipline by a licensing board. Further, prior conviction and discipline histories are ineligible for disqualification of applications after seven years, with the exception of serious and registerable felonies, as well as financial crimes for certain boards.

Because AB 2138 significantly modifies current practice for boards in their review of applications for licensure, it was presumed that its implementation would require changes to current regulations for every board impacted by the bill. It is also possible that the Committee has identified changes to the law that it believes may be advisable to better enable it to protect consumers from license applicants who pose a substantial risk to the public. However, the Committee has reported that since FY 2018/19, it has denied only once license application, and there is no reason to believe this was due to the applicant's criminal history. It is therefore not certain that AB 2138 has had a substantial impact on the Committee.

Staff Recommendation: *The Committee should provide an update on its implementation of AB 2138 and inform the Legislative Committees of whether it has had any impact on its licensing activities.*

EDUCATION AND EXAMINATION ISSUES

ISSUE #10: *Should the Pharmacology and Parenteral Therapeutics elective examination be required for license applicants under certain conditions?*

Background: All applicants for licensure as an ND in California must pass both Parts I and II of the Naturopathic Physicians Licensing Examination (NPLEX). This examination is required by all other licensing states as well as most Canadian provinces. Part II of the NPLEX includes clinical elective examinations in Minor Surgery, Pharmacology, Parenteral Therapeutics and Acupuncture; while other states require these clinical elective examinations where those services are within an ND's scope, they are not required in California as the state does not include all of those subjects within its ND scope of practice for NDs.

However, NDs in California who meet certain training requirements are allowed to engage in parenteral therapy specialty (IV Therapy), which would suggest that requiring future applicants for ND licensure to pass the NPLEX Parenteral Therapeutics Elective Exam may be advisable. Further, the Committee has advocated for expanding the authority of NDs to independently prescribe medications, and recently approved a Formulary that meets the education and training as mandated by the Legislature. The Committee has suggested that, as a proactive measure, newly graduating naturopathic students applying for ND licensure in California should also be required to pass the NPLEX Pharmacology Elective Exam.

Staff Recommendation: *The Committee should provide more information regarding which elective examinations are not currently required and which it believes the Legislature should consider adding to the requirements for new licensure applicants.*

ISSUE #11: *Naturopathic Childbirth Attendance Examination. Should the American College of Nurse Midwives (ACNM) written examination be replaced with the American College of Naturopathic Obstetricians (ACNO) examination for naturopathic childbirth attendance?*

Background: Current law requires an ND to obtain a passing grade on the American College of Nurse Midwives (ACNM) written examination, "or a substantially equivalent examination approved by the committee," in order to be certified for the specialty practice of naturopathic childbirth attendance. The ACNM does not offer exams to any practitioner who does not go to one of their accredited nursing schools. Therefore, the Committee has requested that statute be amended to replace the ACNM with the American College of Naturopathic Obstetricians (ACNO), which is the standard exam for most states and has been successfully utilized to certify NDs for the practice of childbirth attendance and midwifery.

Staff Recommendation: *The Committee should provide more information about its request to update statute regarding the Naturopathic Childbirth Attendance Examination.*

ISSUE #12: *Continuing Education Course Approvers. Should the North American Naturopathic Continuing Education Accreditation Council (NANCEAC) be added as an authorized approver of continuing education courses?*

Background: The Naturopathic Doctors Act requires that all continuing education providers and classes be approved by the California Naturopathic Doctors Association (CNDA), the American Association of Naturopathic Physicians (AANP), the California Board of Chiropractic Examiners, the California Board of Pharmacy, or the Committee. Continuing education classes approved for physicians and surgeons in California are also accepted. In the Committee’s most recent Strategic Plan, it agreed to add the North American Naturopathic Continuing Education Accreditation Council (NANCEAC) as an approved continuing education provider. The Committee has requested that NANCEAC be added to the statutory list of approvers.

Staff Recommendation: *The Committee should provide any language that it believes would be necessary to accommodate its request to add an additional continuing education approver.*

ENFORCEMENT ISSUES

ISSUE #13: *Additional Title Protection. Should more general terms such as “naturopath” and “naturopathic” be reserved for use only by NDs?*

Background: The Naturopathic Doctors Act provides that only licensees of the Committee may refer to themselves as a “naturopathic doctor,” an ND, or “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.” However, the Act does not limit the ability to generally use variations of the root word “naturopath,” providing that it “permits, and does not restrict, the use of the following titles by persons who are educated and trained” as a “naturopath,” “naturopathic practitioner,” or “traditional naturopathic practitioner.” These practitioners are not under the jurisdiction of any state agency; some naturopaths have proposed the establishment of a registry to ensure compliance with basic educational standards and competency requirements.

Therefore, while only a licensed ND may take advantage of the scope of practice that comes with licensure in California, anyone may advertise themselves as a naturopath or a practitioner of naturopathy. The Committee believes that this can be very confusing for the public, who may not appreciate the distinction between an ND and an unlicensed naturopath. According to the Committee, approximately 71 percent of its enforcement activities involve unlicensed practice, and a substantially large percentage of its complaints are not against its ND licensees but against others using the naturopathic title.

The Committee has previously recommended that title protection be expanded to include all derivations of the term “naturopath,” though this reform was not successfully enacted during its prior sunset review. However, it is understood that this change would draw ire from many who consider themselves to practice a healing art that is closer to the original form of naturopathy popularized by Dr. Benedict Lust. Arguably, this “traditional naturopathic practice” predated the integrative form now practiced by NDs, and therefore depriving those practitioners of their claim to the term “naturopath” could be seen unjust.

However, there is little doubt that expanding title protection would provide clarity to consumers and ease the Committee's enforcement challenges. The Committee believes that unlicensed naturopaths could instead adopt other available titles such as "holistic health practitioner." The Committee has argued that additional title protection for NDs would place them more in line with other health care providers and would be consistent with other states. It is therefore appropriate to continue the discussion during the Committee's present sunset review.

Staff Recommendation: *The Committee should provide the Legislative Committees with more information and data regarding why it believes it is important to expand title protection; work to address opposition from the traditional naturopathic practitioner community; and opine on whether there are any alternative policies for improving state oversight of unlicensed naturopaths.*

ISSUE #14: *Lack of Formal Discipline. Why have there been zero cases resulting in formal discipline over the past several years, and does this represent appropriate enforcement by the Committee?*

Background: From FY 2018-19 through FY 2020/21, the Committee reports that it received 163 complaints and engaged in 175 investigations. During this time period, the Committee reports that it initiated zero cases with the Attorney General and that there were zero formal disciplinary outcomes, with no revocations, surrenders, or probationary actions taken. This may be explained by the Committee's high enforcement workload associated with unlicensed activity, its small staff, or the nature of its licensee population. Nevertheless, it is challenging to believe that there would be absolutely no cases over three years worthy of pursuing formal discipline action, and the situation should be better understood to ensure any necessary steps are taken to galvanize the Committee's protection of the public.

Staff Recommendation: *The Committee should explain to the Legislative Committees why it has not taken any formal disciplinary action over the past several years, whether it believes this statistic is appropriate, and whether any legislative changes would improve its ability to engage in more robust enforcement activities.*

PRACTICE ISSUES

ISSUE #15: *Independent Contractors. Does the new test for determining employment status, as prescribed in the court decision *Dynamex Operations West Inc. v. Superior Court*, have any unresolved implications for NDs?*

Background: In the spring of 2018, the California Supreme Court issued a decision in *Dynamex Operations West, Inc. v. Superior Court* (4 Cal.5th 903) that significantly confounded prior assumptions about whether a worker is legally an employee or an independent contractor. In a case involving the classification of delivery drivers, the California Supreme Court adopted a new test for determining if a worker is an independent contractor, which is comprised of three necessary elements:

- A. That the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;
- B. That the worker performs work that is outside the usual course of the hiring entity's business; and
- C. That the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

Commonly referred to as the “ABC test,” the implications of the *Dynamex* decision are potentially wide-reaching into numerous fields and industries utilizing workers previously believed to be independent contractors. Occupations regulated by entities under the Department of Consumer Affairs have been no exception to this unresolved question of which workers should now be afforded employee status under the law. In the wake of *Dynamex*, the new ABC test must be applied and interpreted for licensed professionals and those they work with to determine the rights and obligations of employees.

In 2019, the enactment of Assembly Bill 5 (Gonzalez, Chapter 296, Statutes of 2019) effectively codified the *Dynamex* decision’s ABC test while providing for clarifications and carve-outs for certain professions. Specifically, physicians and surgeons, dentists, podiatrists, psychologists, and veterinarians were among those professions that were allowed to continue operating under the previous framework for independent contractors. However, NDs were not included in the bill, and it has yet to be determined whether this has had any adverse consequences for the profession.

Staff Recommendation: *The Committee should provide the Legislative Committees with any information it has regarding the impact of the Dynamex decision on the practice of naturopathic medicine and whether the lack of an exemption for NDs has proven at all problematic.*

ISSUE #16: *Billing Issues. Have health insurance providers failed to reimburse for naturopathic care notwithstanding provisions enacted through the Affordable Care Act?*

Background: Language was included in the Affordable Care Act to improve coverage of integrative and complementary health care, limiting the ability of health plans to discriminate against which providers may treat a covered condition, specifically including NDs that are licensed in their state. While these provisions took effect in 2014, regulations were not effective in California until 2016. Since then, some insurance providers have started to cover naturopathic treatments using the treatments had the same billing codes as the other primary care providers. However, while NDs can order labs and medications under Medi-Cal, office visits continue not to be covered. The Committee reports that in its most recent study, this insurance limitation was one of the top five reasons why licensees would consider leaving the state.

Staff Recommendation: *The Committee should provide an update on the current status of billing issues experienced by NDs and whether any action could appropriately be taken by the Legislature to resolve these challenges.*

COVID-19 PANDEMIC ISSUES

ISSUE #17: *Emergency Waivers. How have the Committee and the profession utilized the Governor’s emergency process for obtaining waivers of the law during the COVID-19 pandemic?*

Background: Since the onset of the COVID-19 pandemic, state health experts have continued to highlight the ongoing need to bolster the California’s capacity to respond to a surge in patient needs across the state’s health care system. On March 30, 2020, Governor Newsom announced his an initiative to “expand California’s health care workforce and recruit health care professionals to address the COVID-19 surge” and signed Executive Order N-39-20. This executive order established the waiver request process under the DCA and included other provisions authorizing the waiver of licensing, certification, and credentialing requirements for health care providers.

Several waivers were obtained through this process impacting the Committee. Statutes were waived that limited the number of continuing education hours that may be completed through computer-assisted instruction and limited such instruction to those that allow participants to concurrently interact with instructors or presenters while they observe the courses. The DCA Director also waived statutes requiring individuals to complete education or examination requirements as a condition of license renewal. In addition to these DCA waivers, the Committee has also taken advantage of certain waivers of Bagley-Keene Open Meeting Act requirements, allowing it to conduct its meetings entirely virtually. While these waivers will currently expire when the State of Emergency is lifted, there may be some value in retaining some pandemic-era policies that have proven effective.

Staff Recommendation: *The Committee should inform the Legislative Committees of what waivers it has requested from the DCA and whether it believes any waiver might be continued after the conclusion of the pandemic.*

ISSUE #18: *Vaccine Misinformation. Are there issues with NDs engaging in the spread of COVID-19 vaccine misinformation? Has the Board received and responded to any related complaints regarding COVID-19 and COVID-19 vaccine misinformation from NDs?*

Background: In 2021, HR 74 passed the Assembly to declare health misinformation a public health crisis. News reports have indicated that misinformation regarding the COVID-19 vaccine has been spread by some health care professionals, including licensed NDs (such as the case of Dr. Juli Mazi in Napa Valley²⁹). Additionally, state regulatory boards have issued warnings that disciplinary action could be taken for licensees engaged in disseminating disinformation.

Legislation has since been introduced to make the dissemination of COVID-19 vaccine misinformation and disinformation an express cause for discipline for physicians and surgeons in California. However, it is unclear to what extent misinformation has originated from NDs. In the Committee's recent survey, a number of NDs responded that reasons to leave the state include vaccine mandates. However, the California Naturopathic Doctors Association has publicly stated that "the majority of California licensed naturopathic doctors advocate for vaccination."

Whether the naturopathic medicine community should be considered a significant source of COVID-19 vaccine misinformation is not immediately known and it is not certain that any action should be taken to prevent its spread among ND practices. The Committee should specify if it has received complaints of medical misinformation regarding the distribution of COVID-19 prevention, treatments, or vaccines by licensed NDs in California. In addition, the Committee should address how it has responded to any such complaints, and if it has taken measures to educate NDs about the consequences of disseminating vaccine and COVID-19 misinformation to consumers.

Staff Recommendation: *The Committee should provide its perspective on whether NDs are more or less likely to engage in disseminating COVID-19 vaccine misinformation than other health care professionals, and whether any action should be taken to help the Committee enforce against any such dissemination.*

²⁹ <https://www.justice.gov/usao-ndca/pr/napa-woman-arrested-fake-covid-19-immunization-and-vaccine-card-scheme>

ISSUE #19: *COVID-19 Immunizations. How has the Committee engaged in oversight and enforcement of NDs initiating and administering in COVID-19 vaccinations?*

Background: As part of the Executive Order N-39-20 waiver process established in response to the COVID-19 pandemic, DCA Waiver DCA-21-114 waived provisions of statute “to the extent they prohibit licensed naturopathic doctors from independently initiating and administering COVID-19 vaccines that are approved or authorized by the federal Food and Drug Administration (FDA) to persons 16 years of age or older and, in cases involving a severe allergic reaction, epinephrine or diphenhydramine by injection.” To be eligible to administer the COVID-19 vaccine, NDs must complete a training program prescribed by the California Department of Public Health and comply with certain recordkeeping requirements.

In a recent survey conducted by the Committee, only 17 percent of NDs responded that they currently administered the COVID-19 vaccine pursuant to the waiver. However, a relatively small number of NDs responded to this survey question, and it is unclear how commonly administered the vaccine has been by NDs since the waiver was issued. Further, because this waiver authority is not formally included in an ND’s scope of practice under the Naturopathic Doctors Act, it is unclear how the Committee would be expected to validate or track NDs using waiver authority. The Committee may assist its licensees with complying with requirements set by the California Department of Public Health to perform COVID-19 vaccinations; however, much of the relevant information may be with that department rather than the Committee. As the Committee’s licensees become more actively engaged in the state’s efforts to immunize its population, there may be questions as to whether the Committee is equipped or empowered to oversee those activities.

Staff Recommendation: *The Committee should provide an update regarding whether it believes a substantial number of NDs have been administering the COVID-19 vaccine and how it has engaged to ensure oversight and compliance with the waiver’s requirements.*

TECHNICAL CLEANUP

ISSUE #20: *Technical Cleanup. Is there a need for technical cleanup?*

Background: As the profession continues to evolve and new laws are enacted, many provisions of the Business and Professions Code relating to naturopathic medicine become outmoded or superfluous.

Staff Recommendation: *The Committee should recommend cleanup amendments for inclusion in its sunset bill.*

**CONTINUED REGULATION OF THE NATUROPATHIC MEDICINE PROFESSION
BY THE NATUROPATHIC MEDICINE COMMITTEE**

ISSUE #21: *Continued Regulation. Should the licensing of naturopathic doctors be continued and be regulated by the Naturopathic Medicine Committee?*

Background: In consideration of the Committee’s significant public protection mission in its regulation of NDs and the naturopathic medicine profession in California, it is relatively likely that the Legislature will ultimately determine that the Committee’s repeal date should be extended for an additional term.

However, this decision will not be ultimately made until there has been further discussion regarding the Committee, the profession, and what statutory language is appropriate to protect consumers and patients.

Staff Recommendation: *The Committee's current regulation of naturopathic medicine should be continued, with potential reforms, to be reviewed again on a future date to be determined.*