

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 1142

Short Title: Naturopathic Physicians Licensure. (Public)

Sponsors: Representatives Hill; and Luebke.

Referred to: Finance.

April 10, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE NORTH CAROLINA NATUROPATHIC
3 PHYSICIANS LICENSING ACT.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 90 of the General Statutes is amended by adding a
6 new Article to read:

7 "Article 40.

8 "Naturopathic Physicians.

9 "**§ 90-680. Short title.**

10 This act may be cited as the 'North Carolina Naturopathic Physicians Licensing Act'.

11 "**§ 90-681. Intent; purpose.**

12 (a) The General Assembly finds that a significant number of residents of the
13 State of North Carolina choose natural health care and declares that naturopathy is a
14 distinct health care profession that affects the public health, safety, and welfare and
15 provides for freedom of choice in health care.

16 (b) The purpose of this act is to provide standards for the licensure and regulation
17 of naturopathic physicians desiring to practice naturopathy in this State.

18 "**§ 90-682. Definitions.**

19 The following definitions apply in this Article:

20 (1) Approved naturopathic college. – A college that grants a degree of
21 doctor of naturopathic medicine or doctor of naturopathy, is accredited
22 by the Council of Naturopathic Medical Education, its successor, or
23 other accrediting agency recognized by the U.S. Department of
24 Education and this State, and is a candidate school for accreditation or
25 is accredited through a recognized accrediting agency.

26 (2) Board. – The North Carolina Naturopathy Board.

27 (3) Dietary therapy. – A method by which patients are educated about a
28 balanced diet.

- 1 (4) License. – A certificate issued by the Board recognizing the person
2 named therein as having met the qualifications to practice as a
3 naturopathic physician.
- 4 (5) Natural medicines. – Any herbal, nutritional, supplemental,
5 homeopathic, or other nonprescription remedies.
- 6 (6) Natural physical medicine. – The manual use of massage, stretching,
7 or resistance.
- 8 (7) Natural therapeutic devices. – Braces, bandages, supports, orthotics, or
9 other devices for correcting postural imbalances or retraining proper
10 function.
- 11 (8) Natural topical medicines. – Any herbal, homeopathic, or other
12 nonprescription remedies to be applied to the skin.
- 13 (9) Prescription medicine. – A drug that under federal law is required,
14 before being dispensed or delivered, to be labeled 'Caution: Federal
15 law prohibits dispensing without prescription.'
- 16 (10) Natural. – Occurring in nature or synthetically identical to substances
17 occurring in nature.
- 18 (11) Naturopathic physician. – A person licensed to practice naturopathy
19 pursuant to this Article.
- 20 (12) Naturopathy. – A system of natural health care that employs diagnosis
21 and treatment using natural therapies and diagnostic techniques for the
22 promotion, maintenance, and restoration of health and the prevention
23 of disease, including the following:
- 24 a. Administering or providing, for preventative and therapeutic
25 purposes, nonprescription natural medicines, natural therapies,
26 natural topical medicines, counseling, hypnotherapy, dietary
27 therapy, naturopathic physical medicine, and natural therapeutic
28 devices.
- 29 b. Using diagnostic procedures including physical and orificial
30 examination and excluding endoscopy, sigmoidoscopy, and
31 colonoscopy.
- 32 c. Ordering laboratory tests and diagnostic imaging to evaluate
33 appropriate referrals, excluding electrocardiograms,
34 echocardiograms, electroencephalograms, nuclear imagings,
35 MRIs, and CT scans, which are tests requiring referral to an
36 appropriate medical specialist. A properly trained medical
37 doctor or osteopath using telemedicine techniques, as
38 appropriate, must interpret the tests promptly.

39 **§ 90-683. License required; prohibitions.**

40 (a) No person shall practice or offer to practice as a naturopathic physician or use
41 any card, title, or abbreviation, including 'Naturopathic Physician', 'Doctor of
42 Naturopathy', 'Doctor of Naturopathic Medicine', or 'D.N.M.', to indicate that the person
43 is a naturopathic physician unless the person has been licensed under the provisions of
44 this Article.

1 (b) A naturopathic physician shall not:

- 2 (1) Prescribe, dispense, or administer any prescription medication as
3 defined under federal law.
4 (2) Perform surgical procedures, including procedures using a laser
5 device.
6 (3) Practice or attempt to practice as a medical physician, osteopath,
7 dentist, podiatrist, optometrist, chiropractor or any other system or
8 method of treatment not authorized by this Article unless licensed by
9 this State to do so.

10 **"§ 90-684. Exemptions.**

11 (a) Nothing in this Article shall be construed to prohibit or affect:

- 12 (1) The practice of a profession by an individual who is licensed, certified,
13 or registered under other laws of this State and is performing services
14 within the authorized scope of practice.
15 (2) The practice of naturopathy by a person employed by the federal
16 government while the person is engaged in the performance of duties
17 prescribed by laws and regulations of the United States.
18 (3) Any person, including a volunteer health care provider at a facility of a
19 local health department as defined in G.S. 130A-2 or a nonprofit
20 community health center or a volunteer member of a rescue squad,
21 who: (i) receives no compensation for his or her services as an
22 emergency health care provider; or (ii) renders first aid or emergency
23 health care treatment to a person who is unconscious, ill, or injured
24 under the following circumstances:
25 a. When it is reasonably apparent that circumstances require
26 prompt decisions and actions in medical or other health care.
27 b. When the necessity of immediate health care treatment is so
28 reasonably apparent that any delay in the rendering of treatment
29 would seriously worsen the physical condition or endanger the
30 life of the person.

31 A person rendering aid under this subdivision is not liable for damages
32 for injury or death of the person alleged to have occurred by reason of
33 an act or omission in the rendering of treatment unless it is established
34 that the injury or death was caused by gross negligence, wanton
35 conduct, or intentional wrongdoing on the part of the person rendering
36 the treatment.

- 37 (4) A person engaged in the sale of vitamins, health foods, dietary
38 supplements, herbs, or other products of nature, if the sale of these
39 products is not otherwise prohibited by State or federal law and the
40 person offering the products provides truthful and nonmisleading
41 information about the products. However, this subdivision does not
42 allow a person to diagnose any human disease, ailment, injury,
43 infirmity, deformity, pain, or other condition.

1 (5) The practice of medicine or surgery by any nonregistered reputable
2 physician or surgeon who comes into this State, either in person or by
3 use of any electronic or other mediums, on an irregular basis, to
4 consult with a resident registered physician or to consult with
5 personnel at a medical school about educational or medical training.
6 This provision shall not apply to physicians residing in a neighboring
7 state and regularly practicing in this State. The Board shall be notified
8 of naturopathic physicians coming into this State for those reasons.

9 (6) The practice of naturopathy by students enrolled in an approved
10 naturopathic college while completing a clinical requirement for
11 graduation that is performed under the supervision of an instructor.

12 (b) Nothing in this section shall be construed to relieve any person from liability
13 for damages for injury or death caused by an act or omission on the part of the person
14 rendering health care services in the normal and ordinary course of his or her business
15 or profession. For purposes of this section, services provided by the following
16 individuals are deemed not to be in the individual's normal and ordinary course of
17 business or profession:

18 (1) A volunteer health care provider who receives no compensation for his
19 or her services and renders first aid or emergency treatment to
20 members of athletic teams.

21 (2) A medical or health care provider who receives no compensation for
22 his or her services and voluntarily renders those services at facilities of
23 local health departments as defined in G.S. 130A-2, nonprofit
24 community health centers, or as a volunteer medical director of an
25 emergency medical services (EMS) agency.

26 In the event of any conflict between the provisions of this section and those of G.S.
27 20-166(d), G.S. 20-166(d) shall control and continue in full force and effect.

28 **"§ 90-685. North Carolina Naturopathy Board.**

29 (a) The North Carolina Naturopathy Board is created. The Board shall consist of
30 six members who shall serve staggered terms. The Governor shall appoint one member
31 to the Board who is a physician, the Lieutenant Governor shall appoint two naturopathic
32 physicians, and the General Assembly, upon the recommendation of the Speaker of the
33 House of Representatives, shall appoint two naturopathic physicians and one public
34 member. Each member shall have been a resident of this State for the three years
35 immediately preceding the appointment. The initial Board members shall be appointed
36 on or before January 1, 2004, as follows:

37 (1) Four members shall be naturopathic physicians who have been
38 licensed under this Article, two of whom shall serve four-year terms
39 and two of whom shall serve two-year terms.

40 (2) One member shall be a physician licensed pursuant to Article 1 of
41 Chapter 90 of the General Statutes, who shall serve a four-year term.

42 (3) One member shall be a member of the general public and not licensed
43 under Chapter 90 of the General Statutes who shall serve a four-year
44 term.

1 Upon the expiration of the terms of the initial Board members, each member shall be
2 appointed for a term of four years and shall serve until a successor is appointed. No
3 member may serve more than two consecutive terms.

4 (b) A vacancy shall be filled in the same manner as the original appointment.
5 Appointees to fill vacancies shall serve the remainder of the unexpired term and until
6 their successors have been duly appointed and qualified.

7 (c) The Board may remove any of its members for neglect of duty,
8 incompetence, or unprofessional conduct. A member subject to disciplinary proceedings
9 as a licensee shall be disqualified from participating in the official business of the Board
10 until the charges have been resolved.

11 (d) Each member of the Board shall receive per diem and reimbursement for
12 travel and subsistence as provided in G.S. 93B-5.

13 (e) The officers of the Board shall be a chair, a vice-chair, and other officers
14 deemed necessary by the Board to carry out the purposes of this Article. All officers
15 shall be elected annually by the Board for one-year terms and shall serve until their
16 successors are elected and qualified.

17 (f) The Board shall hold at least two meetings each year to conduct business and
18 to review the standards and rules for issuing licenses under this Article. The Board shall
19 adopt rules governing the calling, holding, and conducting of regular and special
20 meetings. A majority of Board members shall constitute a quorum.

21 **"§ 90-686. Powers of the Board.**

22 The Board shall have the power and duty to:

- 23 (1) Administer and enforce the provisions of this Article.
- 24 (2) Adopt rules as may be necessary to carry out the provisions of this
25 Article.
- 26 (3) Examine and determine the qualifications and fitness of applicants for
27 licensure and renewal of licensure.
- 28 (4) Issue, renew, deny, suspend, or revoke licenses and conduct any
29 disciplinary actions authorized by this Article.
- 30 (5) Collect fees for licensure, licensure renewal, and other services
31 deemed necessary to carry out the provisions of this Article.
- 32 (6) Establish and approve continuing education requirements for persons
33 licensed under this Article.
- 34 (7) Employ and fix the compensation of personnel that the Board
35 determines is necessary to carry out the provisions of this Article and
36 incur other expenses necessary to perform the duties of the Board.
- 37 (8) Adopt a seal containing the name of the Board for use on all licenses
38 and official reports issued by the Board.
- 39 (9) Institute corrective measures, as necessary, to rehabilitate naturopathic
40 physicians or limit their practice.

41 **"§ 90-687. Qualifications for licensure; limited license.**

42 (a) Upon application to the Board and the payment of the required fees, an
43 applicant may be licensed under this Article as a naturopathic physician if the applicant
44 meets all of the following qualifications:

- 1 (1) Has been granted a degree of doctor of naturopathic medicine from a
2 school accredited by one of the regional accrediting agencies
3 recognized by the U.S. Department of Education.
- 4 (2) Is of good moral and ethical character.
- 5 (3) Is physically and mentally fit to practice naturopathic medicine.
- 6 (4) Submits any other documentation the Board deems necessary to
7 determine the applicant's fitness for licensure under this Article.

8 The Board, in its discretion, may require an applicant for licensure to pass an
9 examination administered by the North American Board of Naturopathic Examiners.

10 (b) The Board may issue a limited license to an applicant while the applicant is
11 completing a clinical requirement for graduation under the supervision of a duly
12 licensed naturopathic physician or physician licensed under Article 1 of Chapter 90 of
13 the General Statutes. This limited license shall expire when the holder completes the
14 required training. A limited licensee who continues to practice naturopathy after the
15 limited license has expired shall be guilty of a Class 3 misdemeanor and, upon
16 conviction, fined not less than twenty-five dollars (\$25.00) and not greater than fifty
17 dollars (\$50.00) for each offense. As used in this subsection, applicants for limited
18 licensure shall include residents or students in clinical training in a naturopathic
19 education or training program approved by the Board.

20 "**§ 90-688. Reciprocity.**

21 The Board may grant, upon application and payment of fees, a license to a person
22 who resides in this State and has been licensed to practice as a naturopathic physician in
23 another state whose standards of competency are substantially equivalent to those
24 provided in this Article.

25 "**§ 90-689. Fees.**

26 The Board shall establish fees not exceeding the following amounts:

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|------------------|--|-----------------|
| 27 (1) | <u>Issuance of a license</u> | <u>\$600.00</u> |
| 28 (2) | <u>License renewal</u> | <u>\$400.00</u> |
| 29 (3) | <u>Late renewal fees</u> | <u>\$200.00</u> |
| 30 (4) | <u>Reasonable charges for duplication services and material.</u> | |

31 "**§ 90-690. Renewal; continuing education.**

32 (a) All licenses shall expire two years after the date they were issued unless
33 renewed. All applications for renewal shall be filed with the Board and shall be
34 accompanied by the renewal fee as required by G.S. 90-689. A license that has expired
35 for failure to renew may be reinstated after the applicant pays the late and renewal fees
36 as required by G.S. 90-689 and complies with any other requirements established in
37 rules adopted by the Board.

38 (b) As a condition of license renewal, a licensed naturopathic physician shall
39 complete a program of continuing education approved by the Board within the two
40 years preceding license renewal. The Board shall not require more than 40 hours of
41 continuing education biennially. Any licensee who fails to complete the continuing
42 education requirements shall be subject to discipline pursuant to rules adopted by the
43 Board.

44 "**§ 90-691. Disciplinary authority.**

1 (a) The Board may deny, suspend, revoke, or refuse to issue or renew a license if
2 the licensee or applicant:

- 3 (1) Engages in any act or practice in violation of any of the provisions of
4 this Article or of any of the rules adopted by the Board, or aids, abets,
5 or assists any other person in the violation of these provisions or rules.
- 6 (2) Gives false information to or withholds information from the Board in
7 procuring or attempting to procure a license.
- 8 (3) Has been convicted of or pled guilty or no contest to a crime that
9 indicates that the person is unfit or incompetent to practice as a
10 naturopathic physician or that indicates the person has deceived or
11 defrauded the public. A felony conviction shall result in the automatic
12 revocation of a license issued by the Board unless the Board
13 determines otherwise pursuant to rules adopted by the Board.
- 14 (4) Has been declared mentally incompetent by a court of competent
15 jurisdiction.
- 16 (5) Habitually uses or is addicted to drugs or intoxicating liquors to an
17 extent that affects his or her professional competency. If a licensee
18 violates this subdivision, the Board may require the licensee to
19 undergo a mental or physical examination by physicians designated by
20 the Board before or after the licensee has been charged. The results of
21 the examination shall be admissible as evidence in a hearing before the
22 Board.
- 23 (6) Has demonstrated gross negligence, incompetency, or misconduct in
24 the performance of naturopathic treatment.
- 25 (7) Engages in conduct that departs from or fails to conform to standards
26 of acceptable and prevailing naturopathic practices or ethical
27 considerations regardless of whether there is injury to the public.
28 However, the Board shall not revoke or deny a license solely because
29 that person's practice is experimental, nontraditional, or departs from
30 acceptable and prevailing naturopathic practices unless the Board can
31 establish that the treatment has a safety risk greater than the prevailing
32 treatment or that the treatment is generally not effective.
- 33 (8) Has advertised or attempted to advertise or publicly professed to treat
34 human ailments under a system or school of treatment or practice other
35 than that for which the naturopathic physician has been educated.
- 36 (9) Has had a license denied, restricted, revoked, or suspended by another
37 state or jurisdiction.
- 38 (10) Fails to maintain his or her professional premises in a sanitary
39 condition.
- 40 (11) Fails to respond, within a reasonable time, to inquiries from the Board
41 concerning any matter affecting the individual's license to practice
42 naturopathy.
- 43 (12) Fails to complete continuing education requirements within the time
44 prescribed.

1 (13) Has willfully violated any of the provisions of this Article.

2 (b) Denial, refusal to renew, suspension, or revocation of a license, or imposition
3 of probationary conditions upon a licensee may be ordered by the Board after a hearing
4 held in accordance with Article 3A of Chapter 150B of the General Statutes and rules
5 adopted pursuant to this Article. An application may be made to the Board for
6 reinstatement of a revoked license if the revocation has been in effect for not less than
7 two years.

8 (c) The Board may release confidential or nonpublic information about a licensee
9 to any health care licensure board in this State or another state relating to the issuance,
10 denial, suspension, revocation, or voluntary surrender of the license, including the
11 reasons for the action or any investigative report prepared by the Board. The Board shall
12 notify the naturopathic physician within 60 days after the information is released. The
13 Board shall furnish to the naturopathic physician a summary of the information being
14 released. However, if the naturopathic physician requests, in writing, within 30 days
15 from the date of notice, a copy of the information being released, the Board shall give to
16 the naturopathic physician a copy of all the information being released. Notice or copies
17 shall not be provided by the Board if the information relates to an ongoing criminal
18 investigation by a law enforcement agency or any Department of Health and Human
19 Services personnel with enforcement or investigative responsibilities.

20 **"§ 90-692. Enforcement; injunctive relief.**

21 (a) It is unlawful for a person not licensed or exempted under this Article to
22 engage in any of the following:

23 (1) Practice of naturopathy.

24 (2) Advertise, represent, or hold out himself or herself to others to be a
25 naturopathic physician.

26 (3) Use any title descriptive of any branch of naturopathy, as provided in
27 G.S. 90-683(a), to describe his or her practice.

28 (b) A person who violates subsection (a) of this section shall be guilty of a Class
29 1 misdemeanor.

30 (c) The Board may make application to superior court for an order enjoining a
31 violation of this Article. Upon a showing by the Board that a person has violated or is
32 about to violate this Article, the court may grant an injunction, restraining order, or take
33 other appropriate action.

34 **"§ 90-693. Reports; immunity from suit.**

35 (a) A person who has reasonable cause to suspect misconduct or incapacity of a
36 licensee, or who has reasonable cause to suspect that a person is in violation of this
37 Article, shall report the relevant facts to the Board. Upon receipt of a charge, or upon its
38 own initiative, the Board may give notice of an administrative hearing or may, after
39 diligent investigation, dismiss unfounded charges. A person who, in good faith, makes a
40 report pursuant to this section shall be immune from any criminal prosecution or civil
41 liability resulting from making the report.

42 (b) The Board and its staff shall be immune from any criminal prosecution or
43 civil liability for exercising, in good faith, its powers and duties authorized by this
44 Article.

1 **"§ 90-694. Informed consent to health care treatment or procedure.**

2 (a) No recovery shall be allowed against any health care provider upon the
3 grounds that the health care treatment was rendered without the informed consent of the
4 patient or the patient's spouse, parent, guardian, nearest relative, or other person
5 authorized to give consent for the patient under the following circumstances:

6 (1) The action of the health care provider in obtaining the consent of the
7 patient or other person authorized to give consent for the patient was in
8 accordance with the standards of practice among members of the same
9 health care profession with similar training and experience situated in
10 the same or similar communities.

11 (2) A reasonable person, from the information provided by the health care
12 provider under the circumstances, would have a general understanding
13 of the procedures or treatments and of the usual and most frequent
14 risks and hazards inherent in the proposed procedures or treatments
15 which are recognized and followed by other health care providers
16 engaged in the same field of practice in the same or similar
17 communities.

18 (3) A reasonable person, under all the surrounding circumstances, would
19 have undergone the treatment or procedure had he or she been advised
20 by the health care provider in accordance with the provisions of
21 subdivisions (1) and (2) of this subsection.

22 (b) A consent which is evidenced in writing and which meets the foregoing
23 standards, and which is signed by the patient or other authorized person, shall be
24 presumed to be a valid consent. This presumption, however, may be subject to rebuttal
25 only upon proof that the consent was obtained by fraud, deception, or misrepresentation
26 of a material fact.

27 (c) A valid consent is one that is given by a person who under all the surrounding
28 circumstances is mentally and physically competent to give consent.

29 (d) No action may be maintained against any health care provider upon any
30 guarantee, warranty, or assurance as to the result of any diagnostic procedure or
31 treatment unless the guarantee, warranty, or assurance, or some note or memorandum
32 thereof, shall be in writing and signed by the provider or by some other person
33 authorized to act for or on behalf of the provider.

34 (e) In the event of any conflict between the provisions of this section and those of
35 Article 7 of Chapter 35 and Articles 1A and 19 of Chapter 90, the provisions of those
36 Articles shall control and continue in full force and effect.

37 **"§ 90-695. Third-party reimbursement.**

38 Nothing in this Article shall be construed to require direct third-party reimbursement
39 to persons licensed under this Article."

40 **SECTION 2.** This act becomes effective October 1, 2003.