

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1375 Naturopathic Medicine  
**SPONSOR(S):** Bowen and others  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 2604 (i)

---

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care		Mitchell	Collins
2) Appropriations			
3)			
4)			
5)			

---

### SUMMARY ANALYSIS

Naturopathic practitioners were first licensed in Florida in 1927. In 1959, the Legislature abolished the licensing authority for naturopathy and the board was dissolved. Only naturopathic practitioners licensed at that time could continue to be licensed, and no new licenses could be issued (s. 462.023, F.S.). Currently, only seven naturopaths have active licenses.

HB 1375 amends ch. 462, F.S., to reestablish licensure of naturopathic physicians with an expanded scope of practice that will enable them to diagnose, treat, prescribe drugs and perform minor surgery. The provisions of the bill include:

- Renaming the profession from Naturopathy to Doctor of Naturopathic Medicine, and establishing a board;
- New education requirements, including graduation from a four year post-graduate program at a Florida school, or that is approved by the Council on Naturopathic Medical Education, and a one year internship or residency;
- New examination requirements, including several national examinations as well as those given by other states;
- Grandfathering in currently licensed naturopathic physicians;
- Allowing for prescription of drugs and minor surgery;
- Excluding acupuncture and oriental medicine, and providing exemptions for supplement retailers, religious freedoms and family remedies.

The Sunrise Act, s. 11.62, F.S., requires review of proposed legislation to establish regulation of a profession using statutory criteria in s. 11.62(3), F.S., to determine whether evidence shows:

- Substantial risk of harm to the public if there is no regulation;
- The skills required by the profession are specialized and readily measurable;
- Regulation will not have an unreasonable effect on job creation or job retention;
- The public can not be adequately protected by other means; and
- The overall cost effectiveness and economic impact of the proposed regulation is favorable.

The conclusions of the December, 2003, Sunrise Review Report prepared by staff of the Committee on Health Care found evidence to support licensure based on the profession's training programs and licensure exams, but that:

- Proponents of regulation did not provide evidence that there is substantial harm or that the public is endangered from the unregulated practice of the profession;
- The department and other sources indicated there is a risk of harm to the public from licensing naturopathic physicians with an expanded scope of practice;
- Licensure of naturopathic physicians would negatively impact practitioners of traditional and alternative health healing techniques that currently do not have to be licensed; and
- The broad scope of practice will overlap and compete with other health professionals, including medical doctors, osteopathic physicians, chiropractic physicians, acupuncturists, and massage therapists.

There is concern that the scope of the practice of naturopathy is very similar to medical and osteopathic physicians, including prescribing drugs and minor surgery, but that educational training, experience and licensure are less stringent.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h1375.hc.doc  
**DATE:** April 12, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |  |   |
|--------------------------------------|---|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

The bill increases state regulation that will restrict activities of some individuals. The bill increased the renewal fee cap from \$50 to \$100 and establishes a licensure fee cap of \$500.

#### B. EFFECT OF PROPOSED CHANGES:

HB 1375 amends ch. 462, F.S., to reestablish licensure of naturopathic physicians with an expanded scope of practice that will enable them to diagnose, treat, prescribe drugs and perform minor surgery in Florida. The bill provides for purpose, exceptions, rulemaking authority, general licensure requirements, and privileges and status of naturopathic physicians. The provisions of the bill:

- Rename the profession to Doctor of Naturopathic Medicine;
- Establish a Board of Naturopathic Medicine of seven members appointed by the Governor and approved by the Senate, with five naturopathic physicians and two non-health care practitioners;
- Establish new education requirements for licensure that include graduation from a four year post-graduate training program which meets one of several standards including graduation from a licensed Florida school or from a school accredited by the Council on Naturopathic Medical Education, and a one year internship or residency;
- Establish new examination requirements for licensure that include several possible approved national examinations as well as examinations given by other states;
- Grandfather in currently licensed naturopathic physicians;
- Allow for minor surgery;
- Allow prescription of drugs; and
- Provide exemptions to the naturopathic physician scope of practice to provide for the continued practice of supplement retailers, religious freedoms and family remedies.

The conclusions of the, December, 2003, Sunrise Report by staff of the Committee on Health Care based on statutory criteria of s. 11.62(3), F.S., for consideration of whether to license a profession found:

- There is evidence for support of licensure based on the existence of accredited training programs and a national licensure examination;
- The proponents of regulation did not provide evidence that there is substantial harm or that the public is endangered from the unregulated practice of the profession;
- The department and other sources indicated there is a risk of harm to the public from licensing naturopathic physicians with an expanded scope of practice;
- Licensure of naturopathic physicians would negatively impact practitioners of traditional and alternative health healing techniques that currently do not have to be licensed;
- The broad scope of practice of naturopathic physicians will overlap and compete with related licensed health professionals, including medical doctors, osteopathic physicians, chiropractic physicians, acupuncturists, massage therapists, and midwives;

- Licensure of naturopathic physicians with an expanded scope of practice would not be cost effective because the small number who would be licensed would have difficulty meeting statutory requirements to fund the cost of administering licensure and support for a board;
- Licensure of naturopathic physicians would negatively impact the non-invasive practice of traditional naturopathy and other non-invasive alternative health practices, which are not required to be licensed; and
- Current statutes already allow naturopathic modes of treatment by licensed medical doctors and osteopathic physicians, and other licensed health practitioners (s. 456.41, F.S.).

Concern has been expressed that although the scope of the practice of naturopathy is very similar to medical and osteopathic physicians, the educational training, experience and licensure requirements are less stringent.

## CURRENT SITUATION

### **History of Naturopathy in Florida**

Naturopathic practitioners were first licensed in Florida in 1927. In 1959, the Legislature abolished the licensing authority for naturopathy. Only those naturopathic practitioners licensed at that time could continue to be licensed and no new licenses have been issued (s. 462.023, F.S.). Currently, only seven naturopathic practitioners have active licenses. These licensees are regulated by the Division of Medical Quality Assurance of the Department of Health. In the last two legislative sessions, naturopathic physicians have sought to reestablish licensure in Florida with a board and an expanded scope of practice.

### **Naturopathic physicians**

According to the Florida Naturopathic Physician Association (FNPA), naturopathic practice distinguishes itself from other health care practitioners by its holistic approach, not the specific treatments it uses. Therapy is directed at the whole person and at the underlying cause of illness, such as the patient's lifestyle, diet, and emotional state.

Naturopathic physicians are trained in nutrition (diet and nutritional supplements), health-risk assessment, homeopathy, botanical medicine, counseling, and naturopathic physical medicine (such as therapeutic ultrasound, diathermy, hydrotherapy, and naturopathic manipulative therapy).

According to the FNPA, naturopathic childbirth (with specialty training), minor office procedures (superficial skin wound repair, etc.), and naturally derived prescription drugs and their synthetic analogs (antibiotics, hormones, etc.) are also part of naturopathic training and practice, but training does not include general surgery, surgical repair of fractures, or chemotherapy.

### **Florida Naturopathic Physician Association's reasons for licensure**

According to the Florida Naturopathic Physician Association (FNPA), licensure is needed to allow for:

- Improved consumer access to health care—consumers desire access to safe and cost effective natural treatment options provided by specifically trained physician-level professionals.
- Naturopathic physicians to practice as trained—without licensure, new naturopathic physicians are unable to practice to the full extent of their training.
- Insurance coverage—some insurance companies cover some naturopathic services, but new practitioners can not be reimbursed because they are unable to become licensed as naturopathic physicians.
- Training of naturopathic physicians in Florida—the new I.W. Lane College of Integrative Medicine in Orlando is able to train naturopathic physicians, but they can not practice in Florida unless they are already licensed as medical or osteopathic physicians.

- Increased cost effectiveness of health care—the profession considers naturopathic treatment to be a cost effective alternative to conventional medicine because it emphasizes prevention, patient participation, and technologically simpler treatments.

### **Statutory Criteria for Consideration of Licensure of a Profession**

Section 11.62(6), F.S., requires that when making a recommendation concerning proposed legislation providing for new regulation of a profession, a legislative committee shall determine:

- Whether the regulation is justified based on the Sunrise Review criteria, the information submitted by proponents of the regulation, and the information provided by the department under s. 11.62(3)-(5), F.S.;
- The least restrictive and most cost-effective regulatory scheme that will adequately protect the public; and
- The technical sufficiency of the proposed legislation, including its consistency with the regulation of other professions and occupations under existing law.

### **Conclusions of the Sunrise Review Report on Licensure of Naturopathic Physicians in Florida**

Staff of the Committee on Health Care completed a Sunrise Review in December, 2003, based on s. 11.62(3), F.S., which established statutory criteria for consideration of whether to license a profession. The Florida Naturopathic Physician Association did not complete a Sunrise questionnaire that answers specific questions regarding the need to regulate the profession, but rather provided staff with information that supported licensure based on the existence of accredited training programs, and licensure examinations.

### **Information That Supports Criteria for Licensure**

The review found that proponents have provided evidence that naturopathic medicine meets statutory standards of s. 11.62(3), F.S., of the Sunrise Act in terms of:

**Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability** (s. 11.62(3)(b), F.S.). The review found the profession of naturopathic physician has specialized skills and training as evidenced by:

- Recognized and accredited training programs for naturopathic physicians; and
- A recognized national examination for licensure that assesses specialized, measurable skills.

### **Information That Does Not Support Criteria for Licensure**

The review found that proponents have not provided evidence that naturopathic medicine meets statutory standards of s. 11.62(3), F.S., of the Sunrise Act, and that there is evidence to the contrary, in terms of:

**Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote** (s. 11.62(3)(a), F.S.). The review found there is:

- No documented evidence of substantial risk from not licensing naturopathic physicians in Florida; and
- Potential risk from licensing naturopathic physicians to allow them to provide a broad range of primary care services, including prescribing drugs and performing minor surgery.

**Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment (s 11.62(3)(c), F.S.).** The review found that:

- The proposed scope of practice of naturopathic physicians has been characterized as the third largest after medical doctors and doctors of osteopathy and will include prescribing medicine and performing minor surgery;
- The scope of practice overlaps with related health professionals that are already licensed, including medical doctors, osteopathic physicians, chiropractic physicians, acupuncturists, massage therapists, and midwives; and
- Persons who currently practice traditional and alternative health practices including, traditional naturopathy, through non-invasive counseling and guidance, may not be able to practice if the practices become licensed under naturopathic medicine.

**Whether the public is or can be effectively protected by other means (s. 11.62(3)(d), F.S.).** The review found that:

- The public can currently receive naturopathic modes of treatment from licensed allopathic and other physicians, and from other licensed health professionals; and
- The state currently permits many non-invasive, traditional, and alternative health practices as practiced by traditional naturopathy without state regulation.

**Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable (s. 11.62(3)(e), F.S.).** The review found that:

- The small number of naturopathic physicians would have difficulty meeting the high costs per licensed practitioner of administering licensure.
- It is estimated that the licensure and biennial renewal fee would range from \$686 to \$718 per licensee.

## **Scope of Naturopathic Practice**

**Three different groups of practitioners use naturopathic techniques:**

- “Naturopathic physicians,” who are licensed in 12 states to practice a limited form of primary care;
- “Traditional naturopaths,” who practice non-invasive traditional and alternative healing and are not licensed; and
- “Licensed health professionals,” such as medical doctors and nurses, who incorporate some naturopathic techniques in their practice.

## **Expanded Scope of Practice**

Existing statute uses archaic terms to define a broad scope of practice, but specifically prohibits surgery and materia medica. “Materia medica” is defined as: “a branch of medical science that deals with the sources, nature, properties, and preparation of drugs.” (Merriam-Webster’s, 10<sup>th</sup> Edition). This is a broad term relating to pharmacology and medicinal drugs. While current statute specifically prohibits materia medica, proponents of the bill maintain that prescribing of drugs is and will be permitted by naturopathic physicians under the provisions of the bill. The bill will also expand the scope of practice to permit surgery that is not major surgery.

In defining the scope of practice for naturopathy, current section 462.01(1), F.S., states that:

“Natureopathy” and “Naturopathy” shall be construed as synonymous terms and mean the use and practice of psychological, mechanical, and material health sciences to aid in purifying, cleansing, and normalizing human tissues for the preservation or restoration of health, according to the fundamental principles of anatomy, physiology, and applied psychology, as may be required. Naturopathic practice employs, among other agencies, phytotherapy, dietetics, psychotherapy, suggestotherapy, hydrotherapy, zone therapy, biochemistry, external applications, electrotherapy, mechanotherapy, mechanical and electrical appliances, hygiene, first aid, sanitation, and heliotherapy; provided, however, that **nothing in this chapter shall be held or construed to authorize any naturopathic physician licensed hereunder to practice materia medica or surgery** or chiropractic medicine, nor shall the provisions of this law in any manner apply to or affect the practice of osteopathic medicine, chiropractic medicine, Christian Science, or any other treatment authorized and provided for by law for the cure or prevention of disease and ailments.

Because materia medica is a broad term relating to pharmacology and medicinal drugs, a plain reading of current statute clearly prohibits the use of prescription drugs. In changing the scope of practice, the proposed bill retains this prohibition against materia medica, but changes the prohibition against surgery to allow for minor surgery. Proponents of the bill consider that based on court decisions, current statute allows for prescribing drugs, as will the provisions of the bill (See discussion of legal issues in the Comment Section.)

### **Educational Requirements**

In recent years, naturopathic physicians have improved the educational standards of their profession through nationally accredited four year programs, standardized licensure examinations, and support of professional associations. The profession is still in the process of development. The training programs for naturopathic physicians do not include residency programs, such as those required of Medical Doctors and Osteopathic Physicians. Only Utah requires a one year residence prior to licensure. Some of the colleges providing four year programs are not yet fully accredited.

The Council on Naturopathic Medical Education (CNME) has accredited or recognized five, four-year, graduate-level, naturopathic medical education programs leading to the Doctor of Naturopathic Medicine (N.M.D.) or Doctor of Naturopathy (N.D.) degree in the U.S.

Accreditation standards for naturopathic physician education established by CNME include a minimum of three years of undergraduate premedical study from an accredited college or university as a prerequisite for entry to a naturopathic medical school. (All except one program requires an undergraduate degree for admission.)

An accredited naturopathic medical college program is a four-year post-graduate curriculum. The first two years of study focus on standard medical sciences (e.g., anatomy, physiology, pathology, biochemistry, immunology, embryology and related areas). Specialty courses are required in pediatrics, obstetrics, cardiology, dermatology, neurology, urology, and other clinical sciences.

The second two years focus on clinical skills and a range of natural therapeutics. Training in naturopathic therapeutics includes botanical medicine, homeopathy, natural childbirth, acupuncture, hydrotherapy, naturopathic manipulative therapy and therapeutic nutrition. Along with these natural therapies, one full year of training is required in physical diagnosis, and laboratory and x-ray diagnosis. Training also includes pharmacology.

The four years of training include a clinical internship that consists of 1500 hours of treating patients under the supervision of licensed naturopathic and conventional medical physicians.

While residency programs after graduation are encouraged, they are only required for licensure in Utah and few positions are available.

The Florida Medical Association (FMA) argues in a fact sheet dated March 8, 2004, that naturopaths do not have the education or training needed to safely treat patients. The FMA maintains that the proposed scope of practice will allow a person who attends a school of naturopathy to diagnose, treat, operate and prescribe for disease, pain, injury or other physical or mental condition, which is the definition of the practice of medicine. According to the FMA, students who graduate from a school of naturopathic medicine are not adequately trained to become treating physicians. They will given the title "Naturopathic Physician" or "Doctor of Naturopathic Medicine" and allowed to among other things, perform surgery, prescribe controlled substances and perform psychotherapy.

According to the FMA, a medical doctor receives the following training:

1. A bachelor's degree in science;
2. Two years of medical school consisting primarily of classroom study;
3. Two years of medical school consisting of clinical work; and
4. Additionally, a three-year labor intensive residency program consisting of hands-on clinical practice.

In addition, according to the FMA, many physicians complete a fellowship lasting two to four years and consisting of more clinical, hands-on practice. A physician receives a minimum of six years of classroom study and five years of clinical practice before he/she becomes licensed as a physician in Florida.

### **National Accreditation Organization**

The Council on Naturopathic Medical Education (CNME) is recognized by the U.S. Department of Education as an accrediting agency for naturopathic graduate education programs under Sections 114 and 496 of the Higher Education Act of 1965. The Act requires federal recognition of accrediting organizations in order for the programs they accredit to be eligible for participation in federal educational loan programs and receive federal grants.

CNME lost its federal recognition, January 16, 2001, because the National Advisory Committee on Institutional Quality and Integrity of the U.S. Secretary of Education found that CNME had not responded appropriately to violations of its standards at Southwest College of Naturopathic Medicine and Health Sciences in Tempe, Arizona. The college had gone through an administrative upheaval that nearly led to its closure in 1997 and 1998. The committee concluded that CNME had failed to issue a timely order to show cause why Southwest should not have its candidacy for accreditation ended.

On September 10, 2003, CNME regained its recognition by the U.S. Department of Education. CNME was given initial recognition for two years as an accrediting agency for graduate-level, four-year naturopathic medical education programs leading to the Doctor of Naturopathic Medicine (N.M.D.) or Doctor of Naturopathy (N.D.).

### **Naturopathic Medical Colleges**

#### **Florida College of Integrative Medicine/ I.W. Lane College of Integrative Medicine (Orlando, FL)**

The Florida College of Integrative Medicine was established in 1990 as the National College of Oriental Medicine with a single program in Acupuncture, Herbology and Oriental Medicine. Currently, it is undergoing changes. On May 14, 2003, the Council on Naturopathic Medical Education (CNME) accepted the Florida College of Integrative Medicine's application for candidacy for accreditation of its naturopathy program. Candidacy status indicates the college or program satisfies the eligibility requirements, complies with the standards to the degree expected for its stage of development, and has demonstrated the potential for achieving accreditation within five years of having obtained candidacy. On October 8, 2003, the Florida College of Integrative Medicine closed on transfer of ownership of the Doctor of Naturopathic Medicine program to the I.W. Lane College of Integrative Medicine.

### **Bastyr University (Seattle, WA)**

Bastyr University was founded in 1978 to train naturopathic physicians. Degree programs have been added in nutrition, acupuncture, oriental medicine and psychology. Bastyr is accredited by the Council on Naturopathic Medical Education (CNME) and the Commission on Colleges of the Northwest Association of Schools and Colleges.

### **National College of Naturopathic Medicine (Portland, OR)**

The National College of Naturopathic Medicine was founded in 1956. It is the oldest naturopathic medical school in North America.

### **Southwest College of Naturopathic Medicine and Health Sciences (Tempe, AZ)**

The Doctor of Naturopathic Medicine program at Southwest College of Naturopathic Medicine and Health Sciences was started in 1993. Southwest College is approved by an autonomous Arizona Naturopathic Physicians Board of Medical Examiners and by the Arizona Board for Private Post-secondary Education.

### **University of Bridgeport College of Naturopathic Medicine (Bridgeport, CT)**

The University of Bridgeport, College of Naturopathic Medicine was granted candidacy status by the Council on Naturopathic Medical Education in 2001.

### **Varied Scope of Practice in Twelve States**

Naturopathy practice acts currently exist in twelve states: Alaska; Arizona; California; Connecticut; Hawaii; Maine; Montana; New Hampshire; Oregon; Utah; Vermont; and Washington.

In some jurisdictions, the scope of practice for naturopathy includes alternative modalities such as acupuncture, biofeedback, homeopathy, hypnotherapy or massage. A few statutes permit naturopaths to perform minor surgery and naturopathic or natural childbirth. In general, the practice acts allow naturopaths to utilize an extensive array of therapies and procedures. In several states, licensees must have a special certificate to practice natural childbirth, acupuncture, or to dispense natural substances or devices. In 2002, Kansas voted to register naturopaths. The state did not sanction licensing or any practice of medicine outside of botanical treatments.

California passed legislation in September, 2003, establishing licensure of naturopathic doctors. The California Medical Association opposed the legislation because it would allow naturopathic doctors to be primary care providers, including calling themselves physicians, prescribing medications, performing minor surgical procedures, and delivering babies. The medical association succeeded in getting restrictions that naturopathic doctors may not call themselves physicians and that require physician oversight for prescribing medications and childbirth assistance. Language on minor surgery was limited to treating minor abrasions and superficial treatments, such as removing warts. The legislation leaves the terms "naturopath" and "naturopathy" in the public domain so that graduates of naturopathic vocational programs or correspondence courses can describe their practice. It does not prevent or restrict the practices or activities of any other practitioner, consultant, or individual; nor does it restrict or prevent individuals engaged in the sale of vitamins, nutritional supplements, herbs or homeopathic remedies.

### **Small Number Estimated to be Licensed in Florida**

One estimate of how many naturopathic physicians might be licensed in Florida if the state reestablished licensure is based on the percentage of the U.S. population living in Florida. Florida population represents 5.7% of the national total. If the total number of 1,076 licensed naturopathic physicians in the U.S. practiced equally among the states, an estimated 5.7% might expect to be licensed in Florida. At this ratio, 61 of the 1,076 licensed naturopathic physicians nationwide might be expected to be licensed in Florida within the first several years. This compares with 53,256 medical doctors and 5,495 osteopathic physicians licensed in Florida in 2003.

## **C. SECTION DIRECTORY:**

**Section 1.** Redesignates ch. 462, F.S., from "Naturopathy" to "Naturopathic Medicine."



**Section 2.** Amends s. 462.01, F.S., relating to definitions to establish a title of “doctor of naturopathic medicine” or “naturopathic physician,” and to define the practice of naturopathic medicine to include surgery that is not major and to exclude acupuncture or oriental medicine.

**Section 3.** Creates s. 462.0215, F.S., relating to a Board of Naturopathic Medicine, to provide for a seven-member board within the Department of Health, and establish appointment, membership and terms.

**Section 4.** Amends s. 462.023, F.S., relating to powers and duties of the board to delete the provision that prohibited new licensure after July 1, 1959.

**Section 5.** Amends s. 462.08, F.S., related to renewal of license, conform terminology whereby regulation shall be determined by the board rather than the department.

**Section 6.** Amends s. 462.11, F.S., related to regulation, to correct name change to doctors of naturopathic medicine and naturopathic physicians.

**Section 7.** Amends s. 462.13, F.S., related to additional powers and duties of the department, to establish board authority.

**Section 8.** Amends s. 462.14, F.S., related to grounds for disciplinary action, to establish board authority and correct name change to naturopathic medicine.

**Section 9.** Amends s. 462.16, F.S., related to reissue of license, to establish board authority and correct name change to naturopathic medicine.

**Section 10.** Amends s. 462.17, F.S., related to penalties, to correct name change to naturopathic medicine.

**Section 11.** Amends s. 462.18, F.S., related to educational requirements, to establish board authority and correct name change to naturopathic medicine.

**Section 12.** Amends s. 462.19, F.S., related to renewal of license, to increase fee cap for renewal of inactive license from \$50 to \$100.

**Section 13.** Creates s. 462.193, F.S., related to licensure by examination; requirements; fees, to require: graduation from a licensed Florida school, other state approved school, or from a school accredited by the Council on Naturopathic Medical Education; passing one of 6 possible exams, with up to 5 attempts before required remediation; completion of a one year internship or residency; and an application fee of not more than \$500.

**Section 14.** Creates s. 462.195, F.S., related to exemptions from naturopathic licensure requirements, to exempt: vitamin supplements; religious practices; and domestic or family remedies.

**Section 15.** Amends s. 462.2001, F.S., related to the saving clause, to correct the name change to naturopathic medicine and provide for grandfathering in of licenses valid on July 1, 2004.

**Section 16.** Creates undesignated chapter law to retain the rights and privileges of licensed doctors of naturopathic medicine or naturopathic physicians before implementation of the act. [This provision may legally establish rights to prescribe drugs that are not allowed under current statute but are practiced by naturopathic physicians in the state.]

**Section 17.** Amends s. 20.43, F.S., related to divisions of the Department of Health to provide for establishing the Board of Naturopathic Medicine.

**Section 18.** Amends s. 381.0031, F.S., related to disease reports, to correct name change to naturopathic medicine.

**Section 19.** Amends s. 468.301, F.S., related to definitions, to correct name change to naturopathic medicine.

**Section 20.** Amends s. 476.044, F.S., related to exemptions, to correct name change to naturopathic medicine.

**Section 21.** Amends s. 477.0135, F.S., related to exemptions, to correct name change to naturopathic medicine.

**Section 22.** Amends s. 485.003, F.S., relating to definitions, to correct name change to naturopathic medicine.

**Section 23.** Amends s. 486.161, F.S., relating to exemptions, to correct name change to naturopathic physician.

**Section 24.** Amends s. 627.351, F.S., relating to insurance risk apportionment, to correct name change to naturopathic physician.

**Section 25.** Amends s. 893.02, F.S., relating to definitions, to correct name change to naturopathic physician.

**Section 26.** Amends s. 921.0022, F.S., relating to the criminal punishment code, to correct name change to naturopathic physician.

**Section 27.** Provides an effective date of July 1, 2004.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

Estimates provided by Department of Health:

<b>Estimated Revenue</b>	<b>1<sup>st</sup> Year</b>	<b>2<sup>nd</sup> Year</b> <b>(Annualized/Recurring)</b>
<b>Licensure fees</b>	\$50,000	\$50,000
<b>Total Estimated Revenue</b>	\$50,000	\$50,000

See Fiscal Comments.

2. Expenditures:

Estimates provided by Department of Health:

<u>Estimated Expenditures</u>	<u>1<sup>st</sup> Year</u>	<u>2<sup>nd</sup> Year</u> (Annualized/Recurring)
<b>Salaries</b>		
1 FTE, RS II, PG 17	\$28,345	\$37,794
<b>Other Personal Services</b>		
Board Member Compensation	\$1,400	\$350
<b>Expense</b>		
Non-recurring expense package	\$3,061	
Board Member Travel	\$10,500	\$2,625
Recurring expense package w/ medium travel	\$13,568	\$13,568
<b>Operating Capital Outlay</b>		
Non-recurring OCO package	\$1,500	
<b>Total Estimated Expenditures</b>	<b>\$58,374</b>	<b>\$54,337</b>

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Naturopathic physicians who are currently licensed in Florida will have increased licensure fees, and some alternative health related practices may be restricted.

D. FISCAL COMMENTS:

The Department of Health estimates that the board would operate at a deficit because of the small licensure base and that costs of regulation will be met by other licensed professions out of the Medical Quality Assurance Trust Fund.

According to the Department of Health, estimated costs for establishing the Board of Naturopathic Medicine are based on the assumption that there will be 4 board meetings in year 1 and one board meeting in year 2. Each board meeting will be 1 day in duration. Costs associated with a board meeting include \$50 Board member compensation; average round trip travel costs of \$250; one day per diem of \$26; and one night hotel costs at \$99 per night.

The department estimates that the support costs of implementing the board include 1 FTE, pay grade 17, with medium travel. Salary and benefits were computed using 10% above the annual minimum plus 28% for benefits. Year 1 was lapsed 75%.

According to the department, the amount of allocated expenses that support other regulation functions could range anywhere from \$75,000 to \$200,000 per year.

According to the department, the revenue estimates are based on an estimated application fee of \$500 and that each year 100 individuals would apply for licensure. Estimated renewals would be \$500 every two years. The first renewal cycle would be in year 3 or FY 05-06. Potential renewal revenues in year 3 are estimated at \$104,000 based on the current number of 8 active and inactive licensees, and renewal of the 100 new licensees in year 1 and year 2. If the estimate of 100 new licensees per year for the 2 years after implementation is too high, then revenues will be affected and costs will not be covered.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

Rulemaking authority is provided in statute and the bill.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

According to the Department of Health, the bill provides that naturopathic physicians shall have the same scope of practice as allopathic and osteopathic physicians to include prescribing and minor surgery. The term minor surgery is not defined. The bill does not require that the educational and training component required for licensure meet the same standards as allopathic and osteopathic licensure. According to the Department of Health, this may be a patient safety issue.

The bill allows for licensure of applicants who have graduated from programs that are not approved by the Council on Naturopathic Medical Education. The department has stated that the changes to s. 462.193, F.S., that require: graduation from a licensed Florida school, other state approved school, or a school accredited by the Council on Naturopathic Medical Education allows for graduation from schools that are not accredited by the council. The bill also allows passing of one of 6 possible exams, with up to 5 attempts before remediation, which weakens the standards of the bill. The department reports that there is an incorrect reference to a state special purpose examination (SPEX). The state does not have such an examination, the Federation of State Medical Boards offers the SPEX.

The bill allows currently licensed naturopaths to retain the same rights and privileges they had prior to implementation of the bill. According to the department, the provision will allow existing naturopaths who currently performing acupuncture to continue to do so, but will prohibit naturopathic physicians licensed after implementation of the bill from performing acupuncture. The provision may also legally establish rights to prescribe drugs that are not allowed under current statute, but that are practiced by naturopathic physicians in the state.

The department is concerned that the effective date of the bill of July 1, 2004, does not provide adequate time to put in place the necessary support for a new board or adequate time to consider and appoint members.

## Legal Concerns Relating to Scope of Practice and Prescribing of Drugs

In defining the scope of practice for naturopathy, s. 462.01, F.S., states that: "...**nothing in this chapter shall be held or construed to authorize any naturopathic physician licensed hereunder to practice materia medica or surgery** or chiropractic medicine, nor shall the provisions of this law in any manner apply to or affect the practice of osteopathic medicine, chiropractic medicine, Christian Science, or any other treatment authorized and provided for by law for the cure or prevention of disease and ailments." Because materia medica is a broad term relating to pharmacology and medicinal drugs, a plain reading of current statute and the proposed bill clearly prohibit the use of prescription drugs.

In changing the scope of practice, the proposed bill retains this prohibition against materia medica, but changes the prohibition against surgery to allow for minor surgery. Proponents of the bill argue that current statute and the proposed legislation allow for prescription of drugs based on court rulings.

**The current legal status of prescribing authority by naturopathic physicians in the courts and provisions of the bill are unclear.**

### History of Court Decisions:

- **In 1939**, the 5<sup>th</sup> Circuit Fed. Ct. interpreted the Federal Narcotic Drug Act which determined that a "naturopath" was not a "physician;" therefore, they were prohibited from prescribing narcotic drugs. The court determined that even under phytotherapy, they could not prescribe drugs. *Perry v. Larson*, 104 F.2d 728 (1939).
- **In 1954**, the court interpreted Florida's Uniform Narcotic Drug Law (F.S. § 398.01) as also prohibiting naturopaths from falling within the definition of "physician." Naturopaths, therefore, could not "use, mix, or otherwise prepare narcotic drugs." However, the court did ultimately determine that "licensed" naturopaths could prescribe narcotic drugs. *State Dept. of Public Welfare v. Melsner*, 69 So. 2d 347 (1954).
- **In 1957**, the Legislature created 3 classes of naturopathics. Class One, in 1957, had been practicing naturopathy for at least 15 years and were allowed to follow 1943 Statute and continue annual licensing, but the right to prescribe drugs given by the courts was limited to emergencies only. Class Two had been practicing for at least 2 years, but not more than 15. They could also continue annual licensing, but could not prescribe drugs. Class Three had practiced less than two years and could not **be licensed nor prescribe drugs**.
  - According to *Eslin v. Collins*, 108 So. 2d 889 (1959), the concurrence described some of the circumstances surrounding the 1957 amendment. Justice Thornall stated, "In his message to the Legislature in 1957, the Governor recommended outright abolition of the privilege to practice naturopathy in Florida."
  - The majority opinion of same case outlined the history of this amendment as follows:
    1. Introduced as House Bill 75, which would have repealed the entire Naturopathy Act.
    2. A Committee Substitute for HB 75 repealed only a portion of the 1927 Act and added the provisions authorizing naturopaths who had practiced more than 2 years to continue to be licensed and practice.
    3. The Senate added the provisions creating the Class One of naturopaths practicing more than 15 years.
- **In 1959**, the court determined that separating the 15 year practitioners from the 2 year practitioners in phasing out licensing was an unconstitutional violation of the Equal Protection Clause. There was no severability clause and the court determined, therefore, that the entire amendment was unconstitutional. *Eslin v. Collins*, 108 So. 2d 889 (1959).
- **In 1980**, SB 1256 amended physician provisions in Chapters 458, 459, 462, 466, F.S., to prohibit prescribing of certain controlled substances for certain conditions.
- **Presently**, the statute only reflects that naturopaths cannot practice *materia medica*. The Federal court above determined that this prohibited prescribing drugs and the Florida Supreme Court (binding here) determined, in 1954, that they could prescribe drugs.

## Discussion of Court Decisions

In *State Department of Public Welfare v. Melsner*, 69 So. 2d 347 (Fla. 1954), the Florida Supreme Court addressed the issue of whether the Uniform Narcotic Drug Law found in section 398.02(1), F.S.,<sup>1</sup> as read with section 462.01, F.S., conferred authority upon a licensed naturopathic practitioner to prescribe narcotic drugs. The lower court had rendered a decision in a suit for declaratory decree determining that the Dept. of Welfare had engaged in arbitrary discrimination against naturopaths when it excluded payment to welfare recipients for prescriptions written by naturopathic physicians. *Id.* at 348. The Supreme Court noted that in reaching its opinion, the lower court placed great weight on the definition of “physician” as that term was used in Section 398.01, F.S., *Id.* at 348. This definition required that a physician be “. . . authorized by law ‘to use, mix or otherwise prepare narcotic drugs in connection with such treatment.’” *Id.* at 349. Upon review then of the definition of naturopathy in Chapter 462, F.S., the Court took notice of the language that stated: “. . . nothing in this chapter shall be held or construed to authorize any naturopathic physician licensed hereunder to practice materia medica or surgery or chiropractic medicine...” The Court held:

- (1) That there is nothing in Section 398.02(1), F.S., as construed in connection with Section 462.01, F.S., that confers any power upon a licensed naturopathic practitioner to prescribe narcotic drugs.
- (2) Even if the definition of the word “physician” contained in Section 462.01, F.S., could be construed as authorizing the appellee to prescribe narcotic drugs, such word has reference only to the “Uniform Narcotic Law,” and not so as to classify appellee as a “physician” for the practice of materia medica or surgery or chiropractic, or as a “physician” for all purposes. *Id.* at 351.

The Court subsequently referenced *Melsner* in its opinion in *Eslin v. Collins*, 108 So. 2d 889, (Fla. 1959). In *Eslin*, the sole issue before the Court was the constitutionality of Chapter 57-129, Laws of Florida, as it amended the Naturopathy Practice Act. *Id.* at 890. Appellant, a licensed naturopath, claimed that the Act as amended denied him equal protection under the law by placing naturopaths into three different classes, replete with their own practice limitations based upon the length of time the members of each class had been licensed. *Id.* The Act separated practitioners who had been licensed for at least fifteen years prior to the enactment of the amendments to the Act (Class One), from practitioners that had only been licensed for not less than two years before such date (Class Two).<sup>2</sup> *Id.* Appellant as a Class Two licensee, was specifically prohibited from “...prescribing or administering any drug or medicine ‘included within materia medica or listed in United States pharmacopoeia.’” *Id.* at 891. Class One licensees, however, were also prohibited from prescribing narcotic drugs with the exception that they could administer such drugs “. . . in cases of emergency justifying their use.” *Id.* It was clear to the Court and admitted by appellees that differential treatment was afforded the two classes of licensees. *Id.* The Supreme Court held that there was no reasonable basis for creating a closed group with special privileges within this group of licensees, particularly in light of the fact that both classes were required to have the same training and pass the same examination as a condition of licensure. *Id.* at 891 - 892.

During the course of its analysis, the Court reviewed the Act before the 1957 amendments at issue, and stated:

Under the 1927 Act, as construed by this court in *In re Melsner*, 160 Fla. 333, 32 So.2d 742, and *State Department of Public Welfare v. Melsner*, Fla. 1954, 69 So.2d 347, licensed naturopaths were authorized to prescribe and administer drugs, including narcotics. *Id.* at 891.

---

<sup>1</sup> The Act regulated the “manufacture, sale, possession, control, prescribing, administering, dispensing, compounding, mixing, cultivation and growth of narcotic drugs in Florida.” *Melsner* at 348.

<sup>2</sup> A third class was also created of those licensed for less than two years (Class Three). The amended Act prohibited these practitioners from continuing to practice or from renewing their license. *Id.* at 890. Though the Court noted that the scheme enacted was unusual as a grandfathering provision, the propriety of this clause was not before the Court, thus no decision was rendered on this issue. *Id.*

This language in the *Collins* case appears to directly conflict the holding in *Melser* as addressed above. It is difficult to reconcile this contradiction. Legislators attempted to eliminate naturopaths or at least the right to prescribe drugs, but the amendment was overruled by the courts on a technicality involving separating the 15 year practitioners from the 2 year ones. Therefore, s. 462.01, F.S., remains as it is today. It is unclear whether the courts would still hold the naturopath had the right to prescribe drugs.

#### **Corrections to Florida Medical Association statements included in the Sunrise Report**

The statement from the Florida Medical Association (FMA) included on page 39 of the December, 2003, Sunrise Report misrepresents the educational requirements for Naturopathic Physicians. The FMA states that neither the proposed legislation nor the naturopathic schools require a bachelor's degree as a prerequisite for naturopathic training. In fact, most four-year, graduate, naturopathic medical training programs do require a bachelor degree or its equivalent for admission. The FMA statement is technically correct because the Council on Naturopathic Medical Education (CNME), which accredits the programs, only requires three years of pre-medical education and does not require a four year degree. Two of the naturopathic medical programs accredited by CNME have admission requirements that expect, but do not require, a four-year degree. The other programs do require a four-year degree for admission.

The issue of residency programs is also presented unclearly by the Florida Medical Association statement. Although residencies are not required, a one year residency or internship to gain more clinical experience after graduation is encouraged by naturopathic medical programs. However, the programs indicate the availability of residency positions is limited. Ten or fewer residency positions are available through each college program. Hospital residencies are not available. Utah is the only state requiring a one-year residency prior to obtaining a license (Utah Code § 58-71-302, 2000).

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**