

HOUSE BILL 723

By Niceley

AN ACT to amend Tennessee Code Annotated, Title 63,  
relative to licensure of naturopathic physicians.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 63, is amended by inserting sections 2 through 17 below as a new, appropriately designated chapter thereto.

SECTION 2. As used in this chapter, unless the context otherwise requires:

(1) "Approved naturopathic medical program" means a doctoral level program of supervised resident study in naturopathic medicine approved by the board;

(2) "Board" means the board of naturopathic medical examiners created pursuant to this chapter;

(3) "Minor office procedures" means the methods for the repair and care incidental to superficial lacerations and abrasions, superficial lesions and the removal of foreign bodies located in the superficial tissues;

(4) "Naturopathic medical formulary" means the list of prescription medicines which naturopathic physicians use in the practice of their profession, as determined by the formulary council and reviewed by the board;

(5) "Naturopathic medical formulary council" means that council comprised of members appointed pursuant to this chapter to determine and authorize the formulary list;

(6) "Naturopathic medicine" means a distinct and comprehensive system of primary health care practiced by naturopathic physicians. For the purpose of this chapter, naturopathic medicine does not include natural health care services as defined

herein, however, nothing contained herein is intended to prohibit a naturopathic physician from providing natural health care services;

(7) "Naturopathic physician" means a person authorized and licensed to practice naturopathic medicine pursuant to this chapter; and

(8) "Natural health care services" means the broad domain of health care services and procedures, including diagnosis and treatment, where treatment or advice regarding the human body and its functions is administered by a person who:

(A) Does not use legend drugs or prescription drugs in such practice;

(B) Uses only natural elements including, without limitation, air, heat, water and light;

(C) Only uses class I or class II nonprescription, approved medical devices as defined in § 513 of the federal Food, Drug and Cosmetic Act;

(D) Only uses vitamins, minerals, herbs, natural food products and their extracts, nutritional supplements and homeopathic preparations and remedies not otherwise prohibited by law; and

(E) Does not perform surgery.

### SECTION 3.

(a) No person shall hold out to others to be a naturopathic physician or practice naturopathic medicine without first applying for and receiving a license.

(b) A person holds out to others to be a naturopathic physician when the person adopts or uses any or all of the following designations: "naturopathic physician," "physician of naturopathic medicine," "physician of natural medicine," "doctor of naturopathic medicine," or its abbreviation "N.M.D."

(c) The titles and terms in subsection (b) identify naturopathic physicians and are restricted to describing and identifying licensed practitioners. Nothing contained in this

subsection (c) shall prohibit or restrict the right to use or employ the titles "doctor of naturopathy," "naturopathic doctor," or the designation "N.D." by a person who has:

(1) Received a doctor of naturopathy degree from a school, college or institution that is licensed, or exempt from licensure as a religious school, college or institution, by the appropriate state educational licensing agency in which its principal operations or offices are located;

(2) Completed a doctoral level course of study that includes coursework and practical experience, which may include apprenticeship, of at least eight hundred (800) hours, upon completion of which a doctor of naturopathy degree is conferred;

(3) Practiced as a doctor of naturopathy for twenty (20) years prior to the effective date of this chapter;

(4) Practiced as a doctor of naturopathy for at least five (5) years and received a doctor of naturopathy degree prior to the effective date of this chapter;  
or

(5) Received a license pursuant to this chapter.

(d) No person who does not meet the criteria set forth in this section may use the titles and terms contained in subsection (c).

#### SECTION 4.

(a) A naturopathic physician may use physical and laboratory examinations consistent with naturopathic medical education and training for diagnostic purposes. A naturopathic physician may order and perform diagnostic and imaging tests consistent with naturopathic medical education and training. All diagnostic and imaging tests not consistent with naturopathic medical education and training must be referred for performance and interpretation by an appropriately licensed health care professional.

(b) Naturopathic physicians are authorized to dispense, administer and prescribe prescription drugs and medical devices determined by the naturopathic medical formulary council, and authorized by the board.

(c) A naturopathic physician may perform minor office procedures pursuant to privileges authorized by the board.

(d) A naturopathic physician may perform those therapies as trained and educated and authorized by the board.

SECTION 5. A naturopathic physician shall not:

(1) Prescribe, dispense or administer any controlled substance, as defined in § 39-17-402 or as identified in 21 U.S.C. §§ 801 - 971, except as authorized by this chapter;

(2) Perform surgical procedures except those minor office procedures authorized by this chapter;

(3) Practice or claim to practice as a medical doctor, osteopath, dentist, podiatrist, optometrist, psychologist, advanced practice professional nurse, physician assistant, chiropractor, physical therapist, acupuncturist, or any other health care professional not authorized in this chapter unless licensed to do so;

(4) Use general or spinal anesthetics;

(5) Administer ionizing radioactive substances for therapeutic purposes;

(6) Perform surgical procedures using a laser device;

(7) Induce or perform an abortion;

(8) Perform surgical procedures involving the eye, ear, tendons, nerves, veins or arteries extending beyond superficial tissue;

(9) Treat any lesion suspicious of malignancy requiring surgical removal.

Lesions requiring surgical removal shall be referred to an appropriately licensed health

care professional. Nothing in this chapter shall prohibit treatment of a person with suspicious or malignant lesions in conjunction with a physician licensed pursuant to this title;

(10) Perform any manipulation which constitutes the practice of chiropractic, as defined in § 63-4-101; or

(11) Perform any manipulation which constitutes the practice of physical therapy, as defined in § 63-13-103.

SECTION 6. This chapter is not intended to and does not prohibit, restrict or apply to:

(1) The practice of a profession by individuals who are licensed, certified or registered under other laws of this state and are performing services within the authorized scope of practice;

(2) The practice of naturopathic medicine by an individual employed by the federal government while the individual is engaged in the performance of duties prescribed by the laws and regulations of the United States;

(3) An individual rendering aid to a family member or in an emergency, when no fee or other consideration for the service is charged, received, expected or contemplated;

(4) A person engaged in the sale of vitamins, health foods, over the counter homeopathic products, dietary supplements, herbs, or other products of nature, the sale of which is not otherwise prohibited under state or federal law;

(5) A person engaged in good faith practices for religious reasons as a matter of conscience;

(6) The practice by a naturopathic physician duly licensed in another state, territory or the District of Columbia when that naturopathic physician is incidentally called into this state for consultation with a licensed physician;

(7) The practice of naturopathic medicine by students enrolled in an approved naturopathic medical program. Services shall be performed pursuant to a course of instruction or assignments from an instructor and under the supervision and observation of the instructor;

(8) Those who practice massage therapy; or

(9) The practice and providing of natural health care services as defined herein in compliance with this title by a person who is not licensed, certified or registered in this state as a health care professional or practitioner.

#### SECTION 7.

(a) Any person providing natural health care services who is not a naturopathic physician and who is advertising or charging a fee for those services, shall, prior to providing such services, disclose to the client in a clearly worded statement:

(1) The practitioner's name, business address and telephone number;

(2) The nature of the natural health care services to be provided; and

(3) That the practitioner is not an "M.D.," "D.O." or "N.M.D."

(b) Before a practitioner provides natural health care services to a client for the first time, such practitioner must obtain a written acknowledgment from the client stating that the client has been provided with the information described in this section and that the client recognizes that the practitioner is not licensed to practice medicine, surgery or naturopathic medicine. The client shall be provided with a copy of this written acknowledgment which must be maintained for two (2) years by the person providing the services. If the disclosure information changes, then the practitioner has a duty to repeat the disclosure if a client obtains services after the change.

#### SECTION 8.

(a) There is created in the department of health, division of health related boards, the board of naturopathic medical examiners.

(b) The board shall consist of five (5) members, four (4) of whom shall be licensed pursuant to this chapter and one (1) of whom shall be a member of the public with an interest in the rights of consumers of naturopathic physician services.

(c) One (1) member of the initial board shall be appointed for a one year term of office, one (1) member of the initial board shall be appointed for a two year term of office, one (1) member of the initial board shall be appointed for a three year term of office, one (1) member shall be appointed for a four year term of office, and one (1) member of the initial board shall be appointed for a five year term of office. Thereafter, the term of office for each member shall be five (5) years.

(d) Appointments to the board shall be made by the governor.

(e) The four (4) members of the board who are naturopathic physicians shall be licensed pursuant to this chapter, practicing within this state for the duration of their appointment and shall have been practitioners within this state for a minimum of two (2) years immediately preceding appointment; provided, however, that any person appointed to the board prior to January 1, 2010, shall not be required to have been a practitioner in this state for two (2) years preceding appointment.

(f) The initial four (4) licensed naturopathic physician members of the board shall be persons with at least two (2) years of experience in the practice of naturopathic medicine who are eligible to become licensed pursuant to this chapter. In the event of death, resignation or removal of any member before the expiration of the term to which appointed, the vacancy shall be filled for the unexpired portion of the term in the same manner as the original appointment.

(g) The governor may remove any member of the board for cause, prior to the expiration of the member's term.

(h) The board, within thirty (30) days after its appointment, and at least annually thereafter, shall hold a meeting and elect a chairman. The board may hold additional meetings on the call of the chair or at the written request of any two (2) members of the board. The board may appoint such committees as it considers necessary to carry out its duties. A majority of the board shall constitute a quorum.

SECTION 9. The board shall have the authority to:

(1) Determine the qualifications of persons applying for licensure pursuant to this chapter and define, by rule, the appropriate scope of naturopathic medicine in this state, provided however, that the scope of practice may not exceed that defined in this chapter;

(2) Grant a special competency certificate for naturopathic childbirth attendance to those licensees who apply, provided that such applicant can document training and experience equal to or greater than that required by the rules of the board of nursing. The applicant shall hold hospital privileges and perform such procedures under the supervision of a physician licensed pursuant to chapter 6 or 9 of this title;

(3) Establish special competency certification requirements for licensees as deemed necessary by action of the board;

(4) Adopt rules for the defined scope of practice for licensees;

(5) Hire and appoint employees, including an executive director, investigators, attorneys, consultants and independent hearing examiners;

(6) Adopt such rules as are necessary for the administration of this chapter, including standards of professional conduct;

(7) Conduct investigations and examinations and hold hearings;

(8) Collect fees and other funds as prescribed by this chapter;



(9) Provide a uniform, independently proctored and psychometrically valid examination for use in licensing naturopathic physicians, which will adequately test the applicant's knowledge of naturopathic medicine, including the basic medical sciences and the diagnostic and therapeutic skill of license applicants;

(10) Provide such other services and perform such other functions as are necessary and desirable to fulfill its purposes;

(11) Establish by rule examination standards for licensure and when those examinations will be provided; and

(12) Establish a minimum amount and kind of continuing education to be required annually for each naturopathic physician seeking licensure renewal.

SECTION 10. There is established a naturopathic medical formulary council, which is separate and distinct from the board, to be composed of seven (7) members. Two (2) members shall be naturopathic physicians licensed pursuant to this chapter, appointed by the board of naturopathic medical examiners. Three (3) members shall be pharmacists licensed pursuant to chapter 10 of this title, appointed by the board of naturopathic medical examiners from a list of nominees provided by the board of pharmacy. Two (2) members shall be physicians licensed pursuant to chapter 6 or 9 of this title, appointed by the board of naturopathic medical examiners from a list of nominees provided by the board of medical examiners. The initial council shall be appointed as follows: one (1) naturopathic physician shall be appointed for a one year term; one (1) physician licensed pursuant to chapter 6 or 9 of this title, and one (1) pharmacist shall be appointed for two year terms; and two (2) pharmacists, one (1) naturopathic physician and one (1) physician licensed pursuant to chapter 6 or 9 of this title shall be appointed for three year terms. Thereafter, the term of office shall be three (3) years. A quorum shall consist of five (5) members and shall be required for any vote to be taken. It shall be the duty of the naturopathic medical formulary council to establish a formulary for use by naturopathic

physicians, and immediately upon adoption or revision of the formulary, the council shall transmit the approved formulary to the board, which shall adopt the formulary by temporary rule. The formulary shall be reviewed annually by the council, or at any time at the request of the board. The formulary list may not go beyond the scope of prescription medicines and medical devices covered by approved naturopathic medical education and training and existing naturopathic medical formularies, or board-approved continuing education. The naturopathic medical formulary shall not include medicines and devices that are inconsistent with the training provided by approved naturopathic medical colleges. Nothing in this section shall allow a naturopathic physician to dispense, administer or prescribe any prescription drug or device, as defined in § 63-10-204, unless such prescription drug or device is specifically included in the naturopathic medical formulary.

SECTION 11. All fees received pursuant to this chapter shall be paid to the division of health related boards, department of health. All costs and expenses incurred under this chapter shall be a charge against and paid from the funds of the health related boards and in case shall any salary, expense or other obligation of the board be charged against the general fund. The fee for licensure shall not exceed five hundred dollars (\$500).

SECTION 12. To be eligible for a license to practice as a naturopathic physician in this state, the applicant shall:

- (1) Provide proof, on a form provided by the board, of completion of a naturopathic medical program approved by the board;
- (2) Have passed a competency-based examination approved by the board covering basic medical sciences and the diagnostic and clinical sciences consistent with the education, training and practice of naturopathic medicine. Such examination shall include, but not be limited to, exams in anatomy, biochemistry, microbiology, immunology, pathology, physiology, naturopathic philosophy and principles, physical and

clinical diagnosis, lab diagnosis, diagnostic imaging, botanical medicine, naturopathic physical medicine, and nutrition;

(3) Sit for a personal interview by the board to specifically review the applicant's qualifications, professional credentials, knowledge, and skills pertaining to the practice of naturopathic medicine if the board so requires;

(4) Possess a good, ethical and professional reputation;

(5) Be physically and mentally capable of safely practicing naturopathic medicine with or without reasonable accommodation;

(6) Have never had a license to practice naturopathic medicine or other health care license, registration or certificate refused, revoked or suspended by any other state or country for reasons that relate to the applicant's ability to skillfully and safely practice naturopathic medicine, or other health care profession unless that license, registration or certification has been restored to good standing by that state or country;

(7) Have on file with the board a board-approved disclosure form stating the degrees, training, experience, credentials and the health care services they are board approved to provide; and

(8) File a board-approved application and pay the licensing fees.

SECTION 13. The board shall establish by rule the standards for licensure of applicants licensed in another jurisdiction. However, the standards for endorsement of licensure shall not be less than those required for licensure in the state of Tennessee.

SECTION 14.

(a) The board shall be empowered to investigate, or cause to be investigated, all complaints regarding any conduct prohibited by this chapter.

(b) The board may conduct hearings to assist with investigations, to determine whether grounds exist for suspension, revocation or denial of a license or to fulfill its responsibilities under this chapter as the board determines necessary.

(c) The board may subpoena witnesses, administer oaths in any hearing or disciplinary proceeding and compel, by subpoena duces tecum, the production of papers and records.

SECTION 15. The board may suspend, revoke or refuse to issue or renew a license on any of the following grounds:

(1) The employment of fraud or deceit in obtaining a license under this chapter or in connection with services rendered as a naturopathic physician;

(2) A legal finding of mental incompetence;

(3) Aiding or abetting a person, not duly licensed under this chapter, in claiming to be a naturopathic physician or in practicing naturopathic medicine;

(4) Any negligence, incompetence or misconduct in the performance of naturopathic medicine;

(5) Conviction of any crime involving moral turpitude or the entering of a plea of guilty or the finding of guilt by a jury or court of a commission of a felony or a crime involving moral turpitude;

(6) Practicing as a naturopathic physician when physical or mental abilities are impaired by the use of controlled substances or other drugs, chemicals or alcohol;

(7) Failure of the individual practitioner to maintain his or her professional premises in a clean and sanitary condition;

(8) Any other good cause, relevant to qualifications to practice as a naturopathic physician. The board may not suspend, revoke or refuse to issue or renew a license based on the findings that a licensee's practice is unconventional in the absence of

demonstrable harm to a patient and the patient has signed a waiver to the effect that the treatment or device is considered unconventional.

SECTION 16. When the board proposes to refuse to issue or renew a license, or proposes to revoke or suspend a license, opportunity for a hearing shall be pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 17.

(a) It is an offense to knowingly hold oneself out to be a naturopathic physician or to practice naturopathic medicine in this state without a license.

(b) Violation of subsection (a) is a Class A misdemeanor. A second or subsequent violation of subsection (a) is a Class E felony.

(c) If the board determines in good faith that a person is holding out to be a naturopathic physician, practicing naturopathic medicine or using a title or term in violation of this chapter, the board may seek an injunction, provided it has given thirty (30) days' prior written notice to cease and desist, against any person who does not comply with such notice and who holds out to be a naturopathic physician in violation of this chapter. In the event a permanent injunction is entered against such person, the board shall be entitled to all costs and fees incurred by the board in seeking the injunction.

SECTION 18. Tennessee Code Annotated, Section 63-6-205, is amended by deleting the current language in its entirety.

SECTION 19. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 20. If any provision of this act or the application thereof to any person or circumstance is held invalid, then all provisions and applications of this are declared to be invalid and void.

SECTION 21. For the purpose of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2010, the public welfare requiring it.