

NATUROPATHIC PHYSICIAN LICENSING AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Keith Grover

House Sponsor: Brady Brammer

LONG TITLE

General Description:

This bill repeals and enacts provisions related to naturopathic physicians.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ repeals the prohibition on a naturopathic physician from having an ownership interest in certain entities;
- ▶ prohibits a naturopathic physician from referring an individual to entities where the naturopathic physician or the physician's immediate family member has an ownership interest unless certain requirements are met;
- ▶ requires a naturopathic physician to comply with relevant federal laws regarding patient referrals and kick-backs; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-71-102, as last amended by Laws of Utah 2022, Chapter 440

58-71-801, as last amended by Laws of Utah 2005, Chapter 17

30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **58-71-102** is amended to read:

32 **58-71-102. Definitions.**

33 In addition to the definitions in Section **58-1-102**, as used in this chapter:

34 (1) "Acupuncture" means the same as that term is defined in Section **58-72-102**.

35 (2) "Administrative penalty" means a monetary fine imposed by the division for acts or
36 omissions determined to constitute unprofessional or unlawful conduct, as a result of an
37 adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative
38 Procedures Act.

39 (3) "Board" means the Naturopathic Physicians Licensing Board created in Section
40 **58-71-201**.

41 (4) "Controlled substance" means the same as that term is defined in Section **58-37-2**.

42 (5) "Diagnose" means:

43 (a) to examine in any manner another individual, parts of an individual's body,
44 substances, fluids, or materials excreted, taken, or removed from an individual's body, or
45 produced by an individual's body, to determine the source, nature, kind, or extent of a disease
46 or other physical or mental condition;

47 (b) to attempt to conduct an examination or determination described under Subsection
48 (5)(a);

49 (c) to hold oneself out as making or to represent that one is making an examination or
50 determination as described in Subsection (5)(a); or

51 (d) to make an examination or determination as described in Subsection (5)(a) upon or
52 from information supplied directly or indirectly by another individual, whether or not in the
53 presence of the individual the examination or determination concerns.

54 (6) "Local anesthesia" means an agent, whether a natural medicine or nonscheduled
55 prescription drug, which:

56 (a) is applied topically or by injection associated with the performance of minor office
57 procedures;

58 (b) has the ability to produce loss of sensation to a targeted area of an individual's
59 body;

60 (c) does not cause loss of consciousness or produce general sedation; and

61 (d) is part of the competent practice of naturopathic medicine during minor office
62 procedures.

63 (7) "Medical naturopathic assistant" means an unlicensed individual working under the
64 direct and immediate supervision of a licensed naturopathic physician and engaged in specific
65 tasks assigned by the licensed naturopathic physician in accordance with the standards and
66 ethics of the profession.

67 (8) (a) "Minor office procedures" means:

68 (i) the use of operative, electrical, or other methods for repair and care of superficial
69 lacerations, abrasions, and benign lesions;

70 (ii) removal of foreign bodies located in the superficial tissues, excluding the eye or
71 ear;

72 (iii) the use of antiseptics and local anesthetics in connection with minor office surgical
73 procedures; and

74 (iv) percutaneous injection into skin, tendons, ligaments, muscles, and joints with:

75 (A) local anesthesia or a prescription drug described in Subsection (9)(d); or

76 (B) natural substances.

77 (b) "Minor office procedures" does not include:

78 (i) general or spinal anesthesia;

79 (ii) office procedures more complicated or extensive than those set forth in Subsection
80 (8)(a);

81 (iii) procedures involving the eye; and

82 (iv) any office procedure involving nerves, veins, or arteries.

83 (9) "Natural medicine" means any:

84 (a) food, food extract, dietary supplement as defined by the Federal Food, Drug, and
85 Cosmetic Act, 21 U.S.C. Sec. 301 et seq., homeopathic remedy, or plant substance that is not

86 designated a prescription drug or controlled substance;

87 (b) over-the-counter medication;

88 (c) other nonprescription substance, the prescription or administration of which is not
89 otherwise prohibited or restricted under federal or state law; or

90 (d) prescription drug:

91 (i) the prescription of which is consistent with the competent practice of naturopathic
92 medicine;

93 (ii) that is not a controlled substance except for testosterone; and

94 (iii) that is not any of the following as determined by the federal Food and Drug
95 Administration's general drug category list:

96 (A) an anticoagulant for the management of a bleeding disorder;

97 (B) an anticonvulsant;

98 (C) an antineoplastic;

99 (D) an antipsychotic;

100 (E) a barbiturate;

101 (F) a cytotoxic;

102 (G) a sedative;

103 (H) a sleeping drug;

104 (I) a tranquilizer; or

105 (J) any drug category added after April 1, 2022, unless the division determines the drug
106 category to be consistent with the practice of naturopathic medicine under Section [58-71-203](#).

107 (10) (a) "Naturopathic childbirth" means uncomplicated natural childbirth assisted by a
108 naturopathic physician.

109 (b) "Naturopathic childbirth" includes the use of:

110 (i) natural medicines; and

111 (ii) uncomplicated episiotomy.

112 (c) "Naturopathic childbirth" does not include the use of:

113 (i) forceps delivery;

- 114 (ii) general or spinal anesthesia;
- 115 (iii) caesarean section delivery; or
- 116 (iv) induced labor or abortion.

117 (11) (a) "Naturopathic mobilization therapy" means manually administering
118 mechanical treatment of body structures or tissues for the purpose of restoring normal
119 physiological function to the body by normalizing and balancing the musculoskeletal system of
120 the body[;].

121 (b) "Naturopathic mobilization therapy" does not mean manipulation or adjustment of
122 the joints of the human body beyond the elastic barrier[; and].

123 (c) "Naturopathic mobilization therapy" does not include manipulation as used in [Title
124 ~~58, Chapter 73, Chiropractic Physician Practice Act~~] Chapter 73, Chiropractic Physician
125 Practice Act.

126 (12) (a) "Naturopathic physical medicine" means the use of the physical agents of air,
127 water, heat, cold, sound, light, and electromagnetic nonionizing radiation, and the physical
128 modalities of electrotherapy, acupuncture, diathermy, ultraviolet light, ultrasound,
129 hydrotherapy, naturopathic mobilization therapy, and exercise.

130 (b) "Naturopathic physical medicine" does not include the practice of physical therapy
131 or physical rehabilitation.

132 (13) "Naturopathic physician" means an individual licensed under this chapter to
133 engage in the practice of naturopathic medicine.

134 [~~(13)~~] (14) "Practice of naturopathic medicine" means:

135 (a) a system of primary health care for the prevention, diagnosis, and treatment of
136 human health conditions, injuries, and diseases that uses education, natural medicines, and
137 natural therapies, to support and stimulate the patient's intrinsic self-healing processes by:

138 (i) using naturopathic childbirth, but only if:

139 (A) the licensee meets standards of the American College of Naturopathic
140 Obstetricians (ACNO) or ACNO's successor as determined by the division in collaboration
141 with the board; and

142 (B) the licensee follows a written plan for naturopathic physicians practicing
143 naturopathic childbirth approved by the division in collaboration with the board, which
144 includes entering into an agreement with a consulting physician and surgeon or osteopathic
145 physician, in cases where the scope of practice of naturopathic childbirth may be exceeded and
146 specialty care and delivery is indicated, detailing the guidelines by which the naturopathic
147 physician will:

- 148 (I) refer patients to the consulting physician; and
- 149 (II) consult with the consulting physician;
 - 150 (ii) using naturopathic mobilization therapy;
 - 151 (iii) using naturopathic physical medicine;
 - 152 (iv) using minor office procedures;
 - 153 (v) prescribing or administering natural medicine;
 - 154 (vi) prescribing medical equipment and devices, diagnosing by the use of medical
155 equipment and devices, and administering therapy or treatment by the use of medical devices
156 necessary and consistent with the competent practice of naturopathic medicine;
 - 157 (vii) prescribing barrier devices for contraception;
 - 158 (viii) using dietary therapy;
 - 159 (ix) taking and using diagnostic x-rays, electrocardiograms, ultrasound, and
160 physiological function tests;
 - 161 (x) taking of body fluids for clinical laboratory tests and using the results of the tests in
162 diagnosis;
 - 163 (xi) taking of a history from and conducting of a physical examination upon a human
164 patient; and
 - 165 (xii) administering local anesthesia during the performance of a minor office
166 procedure;
- 167 (b) to maintain an office or place of business for the purpose of doing any of the acts
168 described in Subsection [~~(13)~~(a)] (14)(a), whether or not for compensation; or
- 169 (c) to use, in the conduct of any occupation or profession pertaining to the diagnosis or

170 treatment of human diseases or conditions, in any printed material, stationery, letterhead,
171 envelopes, signs, or advertisements, the designation "naturopathic physician," "naturopathic
172 doctor," "naturopath," "doctor of naturopathic medicine," "doctor of naturopathy,"
173 "naturopathic medical doctor," "naturopathic medicine," "naturopathic health care,"
174 "naturopathy," "N.D.," "N.M.D.," or any combination of these designations in any manner that
175 might cause a reasonable person to believe the individual using the designation is a licensed
176 naturopathic physician.

177 ~~[(14)]~~ (15) "Prescribe" means to issue a prescription:

178 (a) orally or in writing; or

179 (b) by telephone, facsimile transmission, computer, or other electronic means of
180 communication as defined by division rule.

181 ~~[(15)]~~ (16) "Prescription device" means an instrument, apparatus, implement, machine,
182 contrivance, implant, in vitro reagent, or other similar or related article, and any component
183 part or accessory, which is required under federal or state law to be prescribed by a practitioner
184 and dispensed by or through a person licensed under this chapter or exempt from licensure
185 under this chapter.

186 ~~[(16)]~~ (17) "Prescription drug" means a drug that is required by federal or state law or
187 rule to be dispensed only by prescription or is restricted to administration only by practitioners.

188 ~~[(17)]~~ (18) "Unlawful conduct" means the same as that term is defined in Sections
189 [58-1-501](#) and [58-71-501](#).

190 ~~[(18)]~~ (19) "Unprofessional conduct" means the same as that term is defined in
191 Sections [58-1-501](#) and [58-71-502](#), and as may be further defined by division rule.

192 Section 2. Section **58-71-801** is amended to read:

193 **58-71-801. Disclosure of financial interest by licensee -- Kick-back prohibition.**

194 (1) ~~[Except as provided in Subsections (2) and (5), licensees under this chapter may not~~
195 ~~own, directly or indirectly]~~ Except as provided in Subsection (2), a naturopathic physician may
196 not refer an individual to any of the following entities where the naturopathic physician or a
197 member of the naturopathic physician's immediate family has an ownership interest:

198 (a) ~~[any]~~ a pharmacy as defined in Section 58-17b-102 or pharmaceutical facility as
199 defined in Section 58-17b-102; or

200 (b) a retail store, wholesaler, distributor, manufacturer, or facility of any other kind
201 located in this state that is engaged in the sale, dispensing, delivery, distribution, or
202 manufacture of homeopathic remedies, dietary supplements, or natural medicines.

203 (2) ~~[A licensee may own or control less than 5% of the outstanding stock of a
204 corporation whose ownership is prohibited under Subsection (1), if the stock of the corporation
205 is publicly traded.]~~

206 (a) A naturopathic physician may refer an individual to an entity described in
207 Subsection (1)(a) or (b) if:

208 (i) the entity's stock is publicly traded and the naturopathic physician owns less than
209 5% of the entity's outstanding stock; or

210 (ii) at the time of the referral, the naturopathic physician discloses in writing that the
211 naturopathic physician or a member of the naturopathic physician's immediate family has an
212 ownership interest in the entity.

213 (b) A disclosure described in Subsection (2)(a)(ii) shall include a statement informing
214 the patient that the patient may choose to obtain a good or service from another entity.

215 (c) A naturopathic physician shall comply with any applicable federal laws regarding
216 patient referrals and kick-backs that apply to a physician.

217 ~~[(3) Licensees under this chapter may not refer patients, clients, or customers to any
218 clinical laboratory, ambulatory or surgical care facilities, or other treatment or rehabilitation
219 services such as physical therapy, cardiac rehabilitation, or radiology services in which the
220 licensee or a member of the licensee's immediate family has any financial relationship as that
221 term is described in 42 U.S.C. 1395nn, unless the licensee at the time of making the referral
222 discloses that relationship, in writing, to the patient, client, or customer.]~~

223 ~~[(4) The written disclosure under Subsection (3) shall also state the patient may
224 choose any facility or service center for purpose of having the laboratory work or treatment
225 service performed.]~~

226 [~~(5) Licensees under this chapter~~]

227 (3) A naturopathic physician may sell from [~~their offices~~] the naturopathic physician's
228 office homeopathic remedies or dietary supplements as defined in the Federal Food Drug and
229 Cosmetic Act consistent with division rule.