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**LEGISLATIVE
RESEARCH COMMISSION**

ALTERNATIVE MEDICAL PRACTICES



**REPORT TO THE
1993 GENERAL ASSEMBLY
OF NORTH CAROLINA**

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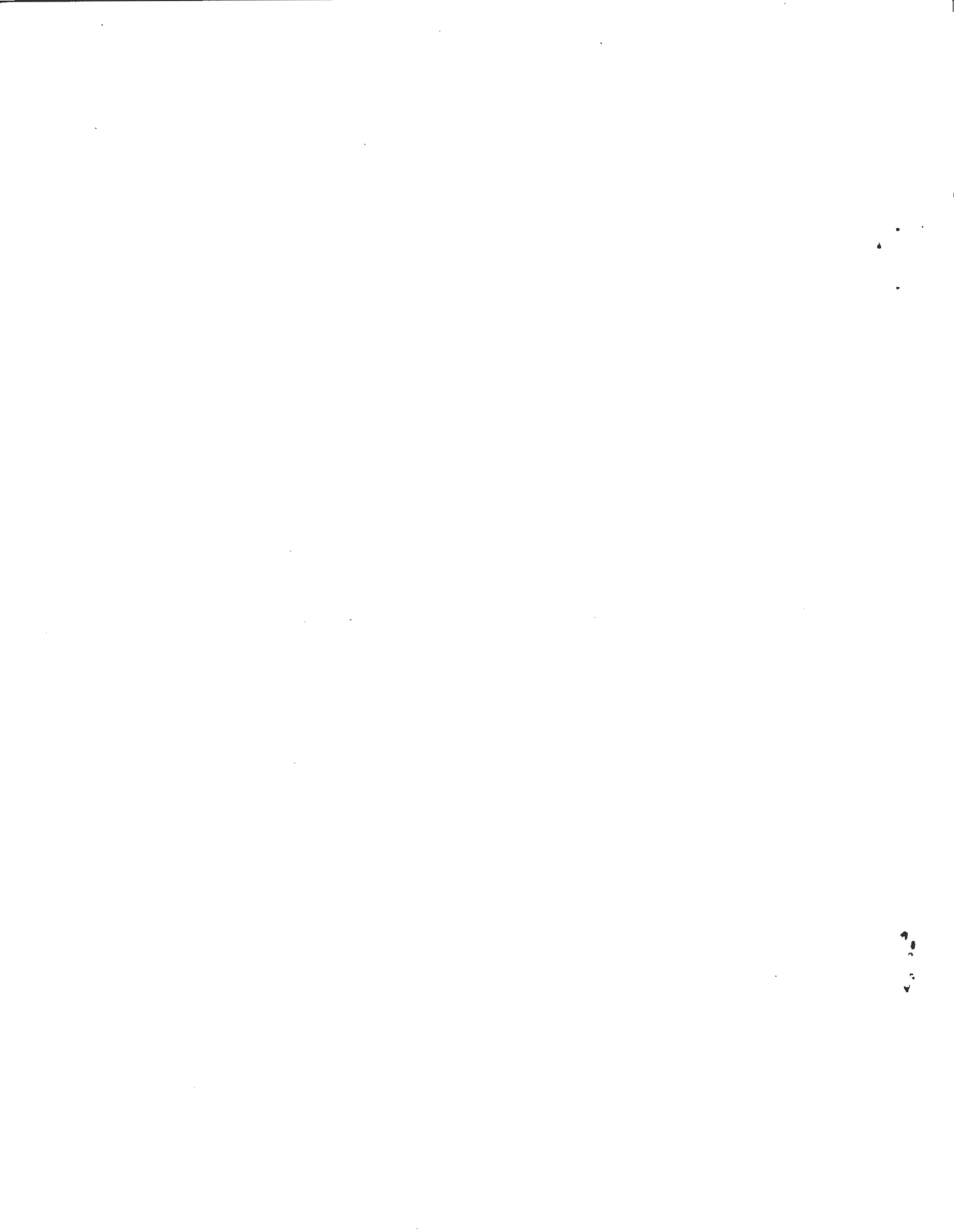
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STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611



January 15, 1993

TO THE MEMBERS OF THE 1993 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits to you for your consideration its final report on alternative medical practices in North Carolina. The report was prepared by the Legislative Research Commission's Committee on Alternative Medical Practices pursuant to the directive of the Legislative Research Commission.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Daniel T. Blue, Jr.", written over a horizontal line.

Daniel T. Blue, Jr.
Speaker of the House

A handwritten signature in cursive script, appearing to read "Henson P. Barnes", written over a horizontal line.

Henson P. Barnes
President Pro Tempore

Cochairmen
Legislative Research Commission



1991-1992

LEGISLATIVE RESEARCH COMMISSION

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PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

At the direction of the 1991 General Assembly and the cochairs of the Legislative Research Commission, the Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of alternative medicine was authorized by the Legislative Research Commission in 1992 pursuant to G.S. 120-30.17(1). The Legislative Research Commission grouped this study in its Health and Human Resources area under the direction of Senator Russell Walker. The Committee was chaired by Senator Mary Seymour and Representative Marie Colton. The full membership of the Committee is listed on page iii of this report. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.

COMMITTEE PROCEEDINGS

The Committee on Alternative Medical Practices met three times during the fall of 1992.

October 29, 1992

At its first meeting, the Committee heard statements from various speakers concerning alternative medicine, some of whom practiced a particular alternative therapy and some of whom, though not themselves practitioners, were knowledgeable of the therapies. The speakers were Dr. Richard Fireman, MD (holistic medicine), Dr. Ralph Coan, MD (acupuncturist), Dr. Susan Delaney (naturopathy), Dr. William Aldis, MD (homeopathy), Dr. Jim Sensenig (naturopathy), Dr. Michael Bergkamp (naturopathy, complementary medicine), and Dr. John Laird, MD (chelation therapy).

Dr. William Aldis, MD, is a physician specializing in internal medicine in Sylva, North Carolina. Although he practices conventional medicine, he has had the opportunity to care for patients who have been under the care of homeopathic physicians; this has given him insight into the degree of patient satisfaction with the practice of homeopathy. Dr. Aldis stated that the practice of homeopathy focuses more than conventional medicine on the patient's symptoms in the belief that each patient is unique and cannot be grouped into a category of diseases. It relies more on patient interview and less on lab tests. Homeopathy views symptoms as the body's response to illness, whereas conventional medicine often views and treats the symptoms as the illness. Dr. Aldis also noted that homeopathy relies on the use of single agents instead

of multiple agents for treatment in order to avoid the interactive and potentially toxic effects of medication. Dr. Aldis noted that conventional medicine is more cognizant today than in the past of the need to identify and treat the underlying illness rather than merely suppress its symptoms. Dr. Aldis feels that the availability of and access to homeopathic treatment should not be limited in light of its safety and benefit to patients.

Dr. Jim Sensenig, a naturopathic physician (N.D.) from New Haven, Connecticut, addressed the Committee on the practice of naturopathy. He stated that naturopathic physicians are general practitioners educated in conventional medical sciences, but specially trained as specialists in natural medicine. Naturopathic physicians treat disease and restore health using therapies from the sciences of clinical nutrition, herbal medicine, homeopathy, physical medicine, exercise therapy, acupuncture, natural childbirth, and hydrotherapy.

Dr. Michael Bergkamp, a naturopathic physician from Montana, spoke to the Committee. Dr. Bergkamp is serving as chairman of the Montana Alternative Health Care Board. Dr. Bergkamp discussed the recent legislation establishing the Board, noting that it regulates 2 professions: naturopathy and direct-entry midwifery. There are 2 naturopathic physicians, two midwives, one MD, and one public member on the board. Dr. Bergkamp noted his concerns that without regulation of alternative medicine, the public is at risk of seeking and getting health care from unqualified providers. In Montana, for example, since the creation of the Alternative Health Care Board, the Board has been able to enjoin at least four unqualified practitioners from advertising and practicing naturopathy. Dr. Bergkamp commended the Montana board

as a model for regulating the practice of naturopathy and other alternative therapies in North Carolina. (See Attachment B for Dr. Bergkamp's remarks).

Dr. Susan Delaney, a naturopathic physician from Carrboro, briefly addressed the Committee about the practice of naturopathy. She spoke on the benefits of alternative health care, particularly naturopathy, to her patients. Dr. Delaney was concerned that the recent actions of the Board of Medical Examiners involving the license of Dr. Guess had left many alternative practitioners in doubt about their ability to practice their profession in this State. Dr. Delaney was afraid more alternative practitioners would leave the State and others desiring to relocate here would not come until the status of alternative medicine was clarified to permit the use of safe, alternative therapies. She encouraged the Committee to look strongly at regulating the alternative therapies.

Dr. Ralph Coan, MD, a specialist in internal medicine from Bethesda, Maryland, spoke to the Committee about acupuncture. In addition to his active internal medical practice, Dr. Coan practices acupuncture. Dr. Coan spoke very favorably of the use of acupuncture and noted that about one-half the states restrict its practice to licensed physicians. He also noted that his home state of Maryland, though it allows nonphysicians to practice acupuncture, requires these acupuncturists to be under the general supervision of a licensed physician. Dr. Coan questioned whether many of the physicians had the appropriate training to perform acupuncture.

Dr. John Laird, MD, a physician from Leicester, spoke to the Committee about the use of chelation therapy for the treatment of atherosclerosis. The therapy involves the intravenous administration of a solution that includes the chemical EDTA and vital nutrients to slow down and reverse atherosclerosis. (EDTA's conventional use is for the

treatment of lead poisoning because of its ability to bond with heavy metals in the body in a manner that will allow them to be eliminated from the body). Dr. Laird noted the therapy has been in use for 50 years. He has treated over 1,000 patients, many of whom have improved and none of whom have had their condition worsened by the use of chelation therapy. Dr. Laird noted that by undergoing the chelation therapy, these patients were able to avoid more expensive heart by-pass surgery. Dr. Laird estimated the cost of chelation therapy at 70 - 90% less than that of cardiac by-pass surgery. He also noted that his patients travel hundreds of miles and pay the costs of treatment out of their own pockets just to be able to avail themselves of chelation therapy. He is reportedly the only doctor in North Carolina who practices chelation therapy and has been charged by the Board of Medical Examiners with violating the Medical Practice Act because of his use of chelation therapy for the treatment of atherosclerosis.

Dr. Laird was concerned that the Board of Medical Examiners can revoke a physician's license solely for the use of a nonprevailing therapy. He was concerned that other alternative practitioners would leave the State and out-of-state alternative practitioners would be reluctant to come in. Dr. Laird recommended that the General Assembly amend the Medical Practice Act to prohibit disciplinary action against a physician for the use of nonprevailing medicine absent a showing of fraud or an unreasonable risk of harm to the patient. Dr. Laird also recommended the creation of a separate board to license and regulate MDs who want to practice alternative medicine. (See Attachment C for Dr. Laird's remarks.)

Dr. Richard Fireman, MD, an emergency room physician at Forsyth Hospital in Winston-Salem, North Carolina, and practitioner of holistic medicine, spoke on the holistic approach to medicine and its benefits to patients. Holistic medicine represents

a philosophy of medical care that emphasizes personal responsibility and seeks to lead the patient to the maximum integration of body, mind, emotions, and spirit. The holistic practitioner chooses from among many conventional or alternative therapies to treat the patient; it attempts to treat the underlying cause of the illness as well as the symptoms. Dr. Fireman spoke for a more tolerable approach by the medical community to the use of alternative medicines and holistic medicine.

December 2, 1992

At its second meeting, the Committee heard a presentation from staff counsel, Linwood Jones, on the legal status of alternative therapies in North Carolina and in other states. Mr. Jones also briefly discussed his review of the medical practice acts in other states and a phone survey of states' policies on alternative therapies. (See Attachment F).

Dr. William Hazzard, MD, Professor and Chairman of the Department of Internal Medicine at Bowman Gray School of Medicine (Winston-Salem), addressed the Committee on the medical school curricula and how the process of using scientific evidence to support a treatment evolved. Dr. Hazzard noted that the medical school curriculum is crowded and is oriented towards conventional medicine. The school occasionally has speakers address acupuncture or other alternative treatment, but the school is not seriously considering adding alternative treatments to the list of topics to be discussed.

Dr. Hazzard explained that with the adoption of the Flexner Report in the early 1900s, the American system of medicine began its conversion from a non-scientific tradition to a tradition "increasingly rooted in science." Dr. Hazzard briefed the Committee on what are generally considered the essential steps of gaining acceptance of a therapy or treatment: developing a hypothesis, applying for funding to study the hypothesis, subjecting the hypothesis to peer review and scrutiny, conducting the study, and publishing the results of the study for peer review. Dr. Hazzard noted that some medical therapies are passed down through tradition, but most medical advances have come through the deliberate, controlled, scientifically-conducted studies. Dr. Hazzard spoke strongly in favor of this process as the best way to achieve effective medical advances.

Dr. Robert Bilbro, MD, a specialist in internal medicine and cardiovascular diseases in Raleigh, testified before the Committee on chelation therapy. Dr. Bilbro began researching chelation therapy in 1983 and now serves as a resource for the North Carolina Board of Medical Examiners on this topic. Dr. Bilbro traced the history of the development of EDTA and the first claims in the 1950s that the EDTA compound could be used to remove calcium from the walls of hardened arteries. Dr. Bilbro stated that all scientifically valid studies have failed to show the effectiveness of EDTA or chelation therapy for treatment of atherosclerosis and noted several medical articles and medical associations that have reached the same conclusion.

Dr. Bilbro questioned the studies cited in support of chelation therapy, stating that their methodology was flawed and that none used a control group of patients. Dr. Bilbro has found no medical schools in the United States that teach chelation therapy nor any medical faculty or university-based physicians who advocate its use for the

treatment of atherosclerosis. Dr. Bilbro also stated that repeated chelation treatments may accelerate the development of osteoporosis and that patients with significant arterial disease who use chelation therapy may be delayed from seeking appropriate and medical care. Dr. Bilbro's remarks are attached as Attachment D.

Dr. Nicholas Stratas, MD, a Raleigh psychiatrist and current President of the North Carolina Board of Medical Examiners, spoke to the Committee about the Board of Medical Examiners and how it regulates physicians. Dr. Stratas noted that the Board was established to regulate the practice of medicine and surgery in this State; it has been authorized by the General Assembly to discipline physicians who fail to practice in accordance with the statutory conduct guidelines. Dr. Stratas noted that the Board is here to protect the public and is therefore committed to holding physicians to the highest standards of medical care. Dr. Stratas compared the licensing requirements to those for attorneys, architects, and other professionals, noting that professional licensure standards protect the public and that the responsibility for ensuring compliance with these standards is properly delegated to licensing boards that have the proper expertise.

Dr. Stratas noted that the Board of Medical Examiners is not a barrier to citizen's access to alternative health care. It regulates only the licensed physicians and not the non-MD alternative practitioners. Dr. Stratas urged the Committee not to sanction alternative medicine before seeing the results of pending studies to be funded by the National Institute of Health. Dr. Stratas also expressed concern that changing the Medical Practice Act to require proof of a therapy's harm before disciplining a physician would handicap the Board and prevent it from pursuing dangerous physicians

until the patient had already been harmed. Dr. Stratas' remarks are attached as Attachment E.

Several patients testified before the Committee on the benefits of various alternative therapies. Dr. David Shumway, MD (Asheville) and Ms. Angie Waldorf, a Raleigh attorney, spoke favorably of their treatments from acupuncture. Miss Ann Marie Busbin, a YMCA Special projects coordinator from Charlotte, and Ms. Charlotte Abbate, an architect from Durham, testified about the benefits they had received from naturopathic medicine. Mr. Ken Gregory, Information and Research Director at Caldwell Community College in Lenoir, and Ms. Martha Gillis, certified clinical social worker from Apex, addressed the Committee on homeopathy and how they and their families had benefitted from homeopathic medicine. Mr. Doyle Duncan, a Statesville businessman, and Mr. Larry Cannon, a Morehead City businessman, testified about the improvements in their conditions as a result of chelation therapy. (The Committee minutes contain more detailed information on the remarks and experiences of these patients).

Committee members briefly discussed their thoughts about possible legislation for consideration at the final meeting of the Committee on December 17th. The Committee took no formal action on any proposals.

December 17, 1992

The Committee conducted its final meeting on December 17, 1992. After reviewing a brief news documentary and letter concerning homeopathy, the Committee began its review of proposed legislation.

Mr. Linwood Jones, Committee Counsel, presented four pieces of legislation to the Committee: (1) a bill to license acupuncturists; (2) a bill to license naturopaths; (3) a bill to license physicians practicing alternative ("complementary") medicine; and (4) a bill amending the Medical Practice Act and legalizing the practice of acupuncture and naturopathy.

Each of the first 3 bills created a new board. The fourth bill (See Appendix G) was submitted to the Committee as a substitute for the first 3 bills; instead of creating new boards, it would have required acupuncturists and naturopaths to be properly educated and to register with the Department of Environment, Health, and Natural Resources and it would have created a "patient's bill of rights" to allow physicians (MDs) to deliver alternative medical care to patients, provided that the alternative treatment did not pose an unreasonable risk of harm to the patient.

The Committee made minor changes to each of the first three bills and voted to recommend them to the Legislative Research Commission.

RECOMMENDED LEGISLATION AND EXPLANATIONS



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

DRAFT BILL #1
THIS IS A DRAFT ONLY
93-RNY-001

Short Title: Acupuncture License Required.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT REGULATING THE PRACTICE OF ACUPUNCTURE.
3 The General Assembly of North Carolina enacts:
4 Section 1. Chapter 90 of the General Statutes is amended by adding a new
5 Article to read:

6
7 "ARTICLE 30.
8 "Practice of Acupuncture.

9
10 "§ 90-450. Purpose.

11 It is the purpose of this Article to promote the health, safety and welfare of the
12 people of North Carolina by establishing an orderly system of acupuncture licensing
13 and to provide a valid, effective means of establishing licensing requirements without
14 undue financial burden to the people of North Carolina, through use of a national
15 certifying board which has been established to certify the competency of acupuncturists.

16 "§ 90-451. Definitions.

17 As used in this Article, unless the context requires otherwise:

18 (1) 'Acupuncture' means a form of health care developed from traditional
19 Chinese medical concepts that employs acupuncture diagnosis and
20 treatment, and adjunctive therapies and diagnostic techniques, for the
21 promotion, maintenance and restoration of health and the prevention
22 of disease.

1 (2) 'Board' means the Acupuncture Licensing Board.

2 (3) 'Practice of acupuncture' means the insertion of acupuncture needles
3 and the application of moxibustion to specific areas of the human
4 body based upon acupuncture diagnosis as a primary mode of therapy.
5 Adjunctive therapies within the scope of acupuncture may include
6 manual, mechanical, thermal, electrical and electro-magnetic
7 treatment, and the recommendation of herbs, dietary guidelines and
8 therapeutic exercise.

9 **"§ 90-452. Practice of acupuncture without license prohibited.**

10 (a) It is unlawful to practice acupuncture without a license issued pursuant to this
11 Article. This restriction does not apply, however, to the following:

12 (1) a physician licensed pursuant to Article I of this Chapter;

13 (2) a student practicing acupuncture under the direct supervision of a
14 licensed acupuncturist as part of a course of study approved by the
15 Board; or

16 (3) a chiropractor licensed pursuant to Article 8 of this Chapter.

17 It is also unlawful to advertise or otherwise represent oneself as qualified or
18 authorized to practice acupuncture without having the license required by this Article.

19 (b) A violation of this section is a misdemeanor punishable by imprisonment for up
20 to two years, a fine, or both.

21 **"§ 90-453. Acupuncture Licensing Board.**

22 (a) The Acupuncture Licensing Board shall consist of five members, one appointed
23 by the Governor and four by the General Assembly. The four members appointed by
24 the General Assembly must be licensed to practice acupuncture in this State. The
25 persons initially appointed to those positions need not be licensed at the time of
26 selection, but must meet all the qualifications for a license. The member appointed by
27 the Governor must be a layperson who is not employed in a health care profession.

28 (b) Of the members to be appointed by the General Assembly, two shall be
29 appointed upon the recommendation of the Speaker of the House of Representatives
30 and two shall be appointed upon the recommendation of the President Pro Tempore of
31 the Senate.

32 (c) The member appointed initially by the Governor shall serve a term ending on
33 June 30, 1994. Of the General Assembly's initial appointments upon the
34 recommendation of the Speaker of the House of Representatives, one shall serve a term
35 ending June 30, 1995 and the other shall serve a term ending June 30, 1996. Of the
36 General Assembly's initial appointments upon the recommendation of the President Pro
37 Tempore of the Senate, one shall serve a term ending June 30, 1995 and the other shall
38 serve a term ending June 30, 1996. After the initial appointments, all members shall
39 be appointed for terms of three years beginning on July 1. No person may serve more
40 than two consecutive full terms as a member of the Board.

41 (d) At the Board's first meeting each year after the new members have been
42 appointed, the members shall choose one member to chair the Board for the year and
43 another to serve as secretary. No person may chair the Board for more than five
44 consecutive years.

1 (e) The Board shall meet at least once each year within 45 days after the
2 appointment of the new members. The Board shall meet at other times as needed to
3 perform its duties.

4 (f) Members of the Board are entitled to compensation and to reimbursement for
5 travel and subsistence as provided in G.S. 93B-5.

6 **"§ 90-454. Powers and duties of Board.**

7 (a) The Board is authorized to:

8 (1) Issue, suspend and revoke licenses, collect fees, investigate violations
9 of this Article, and otherwise administer the provisions of this Article.

10 (2) Adopt rules to implement the provisions of this Article.

11 (3) Establish requirements for and approve schools of acupuncture in this
12 State, the requirements for which shall be at least as stringent as the
13 core curricula standards of the National Council of Acupuncture
14 Schools and Colleges.

15 (4) Adopt rules concerning continuing education programs and continuing
16 education requirements for license renewal.

17 (5) Issue advisory opinions interpreting this Article.

18 (6) Sue to enjoin violations of G.S. 90-347. An injunction may be issued
19 even though no person has yet been injured as a result of the
20 unauthorized practice.

21 (7) Adopt and use a seal to authenticate official documents of the Board.

22 (8) Employ such personnel as may be needed to carry out its functions,
23 and purchase, lease, rent, sell, or otherwise dispose of personal and
24 real property for the operations of the Board.

25 (9) Expend funds as necessary to carry out the provisions of this Article
26 from revenues generated by fees collected under this Article and
27 interest earned thereon.

28 **"§ 90-455. Qualifications for license; renewal.**

29 (a) To receive a license to practice acupuncture, a person must successfully complete:

30 (1) a licensing examination administered or approved by the Board;

31 (2) a 3-year post-graduate acupuncture college or training program
32 approved by the Board; and

33 (3) the Clean Needle Technique Examination offered by the Council of
34 Colleges of Acupuncture and Oriental Medicine.

35 (b) The Board shall waive the requirements of subsection (a) and shall grant a license
36 to practice acupuncture to a resident applicant who presents evidence satisfactory to the
37 Board no later than December 31, 1994, of successful completion of training at an
38 accredited Acupuncture College or a Board-approved apprenticeship or tutorial
39 program.

40 (c) The license to practice acupuncture must be renewed every two years. To renew
41 a license, a person must complete 40 hours of Board-approved Continuing Education
42 Units (CEU) within each renewal period.

43 **"§ 90-456. Prohibited activities.**

1 The Board may deny, suspend or revoke a license, require remedial education, or
2 issue a letter of reprimand, if a licensed acupuncturist or applicant:

- 3 (1) Engages in false or fraudulent conduct which demonstrates an
4 unfitness to practice acupuncture, including:
5 a. Misrepresentation in connection with an application for a license
6 or an investigation by the Board; or
7 b. Attempting to collect fees for services which were not
8 performed; or
9 c. False advertising, including guaranteeing that a cure will result
10 from an acupuncture treatment; or
11 d. Dividing, or agreeing to divide, a fee for acupuncture services
12 with anyone for referring the patient.
- 13 (2) Fails to exercise proper control over one's practice by:
14 a. Aiding an unlicensed person in practicing acupuncture;
15 b. Delegating professional responsibilities to a person the
16 acupuncturist knows or should know is not qualified to perform;
17 or
18 c. Failing to exercise proper control over unlicensed personnel
19 working with the acupuncturist in the practice.
- 20 (3) Fails to maintain records in a proper manner, by:
21 a. Failing to keep written records describing the course of
22 treatment for each patient; or
23 b. Refusing to provide to a patient upon request records that have
24 been prepared for or paid for by the patient; or
25 c. Revealing personally identifiable information about a patient,
26 without consent, unless otherwise allowed by law.
- 27 (4) Fails to exercise proper care for a patient, including:
28 a. Abandoning or neglecting a patient without making reasonable
29 arrangements for the continuation of care; or
30 b. Exercising, or attempting to exercise, undue influence within the
31 acupuncturist/patient relationship by making sexual advances or
32 requests for sexual activity, or making submission to such
33 conduct a condition of treatment.
- 34 (5) Displays habitual substance abuse or mental impairment to such a
35 degree as to interfere with the ability to provide effective treatment.
- 36 (6) Is convicted or pleads guilty or no contest to any crime which
37 demonstrates an unfitness to practice acupuncture.
- 38 (7) Negligently fails to practice acupuncture with the level of skill
39 recognized within the profession as acceptable under such
40 circumstances.
- 41 (8) Willfully violates any provision of this Article or rule of the Board.
- 42 (9) Has had a license denied, suspended or revoked in another jurisdiction
43 for any reason which would be grounds for such action in this State.

44 "§ 90-457. Fees.

1 The Board may charge fees not to exceed:

- 2 (1) Five hundred dollars (\$500.00) for the issuance of an initial license.
3 (2) One hundred dollars (\$100.00) for application fees and examination
4 fees.
5 (3) Three hundred dollars (\$300.00) for renewal of a license.
6 (4) Seventy-five dollars (\$75.00) as an additional amount for late renewal
7 of a license.
8 (5) The cost of administering the examination.

9 "§ 90-458. Use of titles and display of license.

10 (a) The titles 'Licensed Acupuncturist' and 'Acupuncturist' may be used by, and
11 only by, persons licensed under this Article. Possession of a license under this Article
12 does not by itself entitle a person to identify himself or herself as a doctor or physician.

13 (b) Each person licensed to practice acupuncture shall post the license in a
14 conspicuous location at the person's place of practice.

15 "§90-459. Third party reimbursements.

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

18 Sec. 2. G.S. 90-18 reads as rewritten:

19 **"90-18. Practicing without license; practicing defined; penalties.**

20 No person shall practice medicine or surgery, or any of the branches thereof, nor in
21 any case prescribe for the cure of diseases unless he shall have been first licensed and
22 registered so to do in the manner provided in this Article, and if any person shall
23 practice medicine or surgery without being duly licensed and registered, as provided in
24 this Article, he shall not be allowed to maintain any action to collect any fee for such
25 services. The person so practicing without license shall be guilty of a misdemeanor, and
26 upon conviction thereof shall be fined not less than fifty dollars (\$50.00) nor more than
27 one hundred dollars (\$100.00), or imprisoned at the discretion of the court for each and
28 every offense.

29 Any person shall be regarded as practicing medicine or surgery within the meaning
30 of this Article who shall diagnose or attempt to diagnose, treat or attempt to treat,
31 operate or attempt to operate on, or prescribe for or administer to, or profess to treat
32 any human ailment, physical or mental, or any physical injury to or deformity of
33 another person: Provided, that the following cases shall not come within the definition
34 above recited:

- 35 (1) The administration of domestic or family remedies in cases of
36 emergency.
37 (2) The practice of dentistry by any legally licensed dentist engaged in the
38 practice of dentistry and dental surgery.
39 (3) The practice of pharmacy by any legally licensed pharmacist engaged
40 in the practice of pharmacy.
41 (4) The practice of medicine and surgery by any surgeon or physician of
42 the United States army, navy, or public health service in the discharge
43 of his official duties.

- 1 (5) The treatment of the sick or suffering by mental or spiritual means
2 without the use of any drugs or other material means.
- 3 (6) The practice of optometry by any legally licensed optometrist engaged
4 in the practice of optometry.
- 5 (7) The practice of midwifery as defined in G.S. 90-178.2.
- 6 (8) The practice of chiropody by any legally licensed chiropodist when
7 engaged in the practice of chiropody, and without the use of any drug.
- 8 (9) The practice of osteopathy by any legally licensed osteopath when
9 engaged in the practice of osteopathy as defined by law, and
10 especially G.S. 90-129.
- 11 (10) The practice of chiropractic by any legally licensed chiropractor when
12 engaged in the practice of chiropractic as defined by law, and without
13 the use of any drug or surgery.
- 14 (11) The practice of medicine or surgery by any reputable physician or
15 surgeon in a neighboring state coming into this State for consultation
16 with a resident registered physician. This proviso shall not apply to
17 physicians resident in a neighboring state and regularly practicing in
18 this State.
- 19 (12) Any person practicing radiology as hereinafter defined shall be
20 deemed to be engaged in the practice of medicine within the meaning
21 of this Article. "Radiology" shall be defined as, that method of
22 medical practice in which demonstration and examination of the
23 normal and abnormal structures, parts or functions of the human body
24 are made by use of X ray. Any person shall be regarded as engaged in
25 the practice of radiology who makes or offers to make, for a
26 consideration, a demonstration or examination of a human being or a
27 part or parts of a human body by means of fluoroscopic exhibition or
28 by the shadow imagery registered with photographic materials and the
29 use of X rays; or holds himself out to diagnose or able to make or
30 makes any interpretation or explanation by word of mouth, writing or
31 otherwise of the meaning of such fluoroscopic or registered shadow
32 imagery of any part of the human body by use of X rays; or who
33 treats any disease or condition of the human body by the application
34 of X rays or radium. Nothing in this subdivision shall prevent the
35 practice of radiology by any person licensed under the provisions of
36 Articles 2, 7, 8, and 12A of this Chapter.
- 37 (13) Any act, task or function performed by an assistant to a person
38 licensed as a physician by the Board of Medical Examiners when
39 a. Such assistant is approved by and annually registered with the
40 Board as one qualified by training or experience to function as
41 an assistant to a physician, except that no more than two
42 assistants may be currently registered for any physician, and

- 1 b. Such act, task or function is performed at the direction or under
2 the supervision of such physician, in accordance with rules and
3 regulations promulgated by the Board, and
4 c. The services of the assistant are limited to assisting the physician
5 in the particular field or fields for which the assistant has been
6 trained, approved and registered;
7 Provided that this subdivision shall not limit or prevent any physician
8 from delegating to a qualified person any acts, tasks or functions
9 which are otherwise permitted by law or established by custom.
10 (14) The practice of nursing by a registered nurse engaged in the practice
11 of nursing and the performance of acts otherwise constituting medical
12 practice by a registered nurse when performed in accordance with
13 rules and regulations developed by a joint subcommittee of the Board
14 of Medical Examiners and the Board of Nursing and adopted by both
15 boards.
16 (15) The practice of acupuncture by a licensed acupuncturist in accordance
17 with the provisions of Article 30 of this Chapter."
18 Sec. 3. This act is effective upon ratification.



EXPLANATION OF DRAFT 1

Acupuncturist Licensing Board

This bill creates a licensing board to regulate non-MDs who practice acupuncture. It establishes standards an applicant must meet in order to be licensed. The bill provides for board disciplinary action against acupuncturists who are unfit to practice or who engage in professional misconduct. The board's powers and duties, and its fee schedule, are also set out in the bill. Third party reimbursement is not required.

Acupuncture is considered the practice of medicine in North Carolina and its use is therefore limited, with the exception of chiropractors, to licensed physicians. This bill allows persons other than medical doctors to practice acupuncture. These nonphysician acupuncturists will be regulated by a new Acupuncturist Licensing Board that is also created in the bill.

In order to be licensed as an acupuncturist, the applicant must complete a 3-year post-graduate acupuncture college or training program approved by the Board, successfully pass the acupuncture exam given by the Board, and complete the Clean Needle Technique Examination offered by the Council of Colleges of Acupuncture and Oriental Medicine. Forty-hours of continuing education every two years is required to renew the license. The bill will grandfather in acupuncturists already practicing and those who will be practicing by December 31, 1994, but only if they have successfully completed training at an accredited acupuncture college or Board-approved apprenticeship or tutorial program.

The Board may revoke or suspend the license of an acupuncturist or take other disciplinary action for fraud, patient neglect, substance abuse, false advertising, negligence, and other acts of professional misconduct. Persons other than M.D.s who practice acupuncture without an acupuncturist license from the Board are in violation of the act -- a misdemeanor punishable by fine, imprisonment, or both.

This bill does not require insurers or other third-party payors to reimburse patients for costs in acupuncture treatments from these nonphysician acupuncturists. This bill does not affect physicians (MDs) or chiropractors who practice acupuncture. They will continue to remain subject to whatever acupuncture training and education standards their respective boards impose (the State Board of Medical Examiners and the State Board of Chiropractic Examiners). A separate bill licensing naturopaths would exempt trained naturopathic acupuncturists from this bill, leaving them subject to the proposed Naturopathic Licensing Board.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1993

DRAFT BILL #2
THIS IS A DRAFT
93-RNY-002

Short Title: Naturopathic License Required.

(Public)

Sponsors:

Referred to:

- 1 A BILL TO BE ENTITLED
2 AN ACT REGULATING THE PRACTICE OF NATUROPATHY.
3 The General Assembly of North Carolina enacts:
4 Section 1. Chapter 90 of the General Statutes is amended by adding a new
5 Article to read:
6
7 "Article 28.
8 "Naturopathy.
9
10 "§90-410. Short Title.
11 This article shall be known as the North Carolina Naturopathic Practice Act.
12 "§90-411. Purpose; license required.
13 (a) The General Assembly finds that mandatory licensure of those engaged in the
14 practice of naturopathy is necessary to ensure minimum standards of competency
15 among naturopathic physicians and to protect the safety and health of the public.
16 (b) No person shall engage in this State in the practice of naturopathic medicine, or
17 advertise or represent himself as practicing naturopathic medicine, or adopt or use any
18 title or description of services using the terms or abbreviations listed in subsection (c)
19 without a license issued pursuant to the provisions of this Article, except as otherwise
20 permitted herein.
21 (c) Persons licensed pursuant to this Article shall use the title 'naturopathic
22 physician' and the recognized abbreviation 'N.D.'. Naturopathic physicians shall have

1 the exclusive right to the use of the following terms: 'naturopathic physician',
2 'naturopathic doctor', 'naturopath', 'doctor of naturopathic medicine', 'doctor of
3 naturopathy', 'naturopathic medical doctor', 'naturopathic medicine', 'naturopathic
4 health care', 'naturopathy', 'N.D.', or 'N.M.D.'.

5 "§90-412. Definitions.

6 As used in this Article, unless the context requires otherwise:

7 1. 'Acupuncture' means the insertion of acupuncture needles into specific points on
8 the skin to treat human disease and impairment and to relieve pain.

9 2. 'Approved naturopathic medical college' means a college or program granting the
10 degree of Doctor of Naturopathic Medicine or Doctor of Naturopathy that is approved
11 by the board and which:

12 a. Is accredited by the Council of Naturopathic Medical Education or
13 other accrediting agency recognized by the federal government.

14 b. Has candidate for accreditation status with such agency.

15 c. Has been investigated by the board and found to meet education
16 standards equivalent to those established by such agency.

17 3. 'Board' means the naturopathic board of examiners.

18 4. 'Homeopathic preparations' means medicines prepared according to the
19 Homeopathic Pharmacopoeia of the United States.

20 5. 'Minor surgery' means the use of operative, electrical or other methods for the
21 surgical repair and care incidental to superficial lacerations and abrasions, superficial
22 lesions, and the removal of foreign bodies located in the superficial tissues and the use
23 of antiseptics and local anesthetics in connection with such methods, except that it shall
24 not include general or spinal anesthetics, major surgery, surgery of the body cavities, or
25 specialized surgeries such as plastic surgery, surgery involving the eye, or surgery of
26 the hand when tendons are involved.

27 6. 'Natural antibiotics' means antimicrobial, antifungal, and antiprotozoal agents that
28 are naturally occurring substances or manufactured substances that are substantially
29 identical to such naturally occurring substances.

30 7. 'Naturopathic medicine' means a system of primary health care practiced by
31 naturopathic physicians for the prevention, diagnosis, and treatment of human health
32 conditions, injuries, and diseases that uses education, natural medicines and therapies to
33 support and stimulate the individual's intrinsic self-healing processes.

34 8. 'Naturopathic childbirth' means natural childbirth which includes the use of
35 natural obstetrical medicines, ophthalmic antibiotics, obstetrical emergency medicines
36 and minor surgery including episiotomies, but which does not include the use of
37 forceps delivery, general or spinal anesthesia, and cesarean section, or induced
38 abortions.

39 9. 'Naturopathic physician' means a person authorized and licensed to practice
40 naturopathic medicine under this chapter.

41 10. 'Naturopathic physical medicine' means the therapeutic use of the physical
42 agents of air, water, heat, cold, sound, light, and electromagnetic non-ionizing
43 radiation and the physical modalities of electrotherapy, diathermy, ultraviolet light,
44 ultrasound, hydrotherapy, naturopathic manipulative therapy, and therapeutic exercise.

1 11. 'Topical medicines' means topical analgesics, anesthetics, antiseptics, scabicides,
2 antifungals, and antibacterials.

3 "§90-413. Scope of Practice.

4 (a) Naturopathic physicians may use for preventive and therapeutic purposes the
5 following natural medicines and therapies: food, food extracts, vitamins, minerals,
6 enzymes, digestive aids, whole gland thyroid, plant substances, homoeopathic
7 preparations, natural antibiotics, immunizations, topical medicines, counseling,
8 hypnotherapy, biofeedback, dietary therapy, naturopathic physical medicine,
9 therapeutic devices, barrier devices for contraception, and minor surgery.

10 (b) Naturopathic physicians may use for diagnostic purposes the following: physical
11 and orifical examinations, x-rays, electrocardiograms, ultrasound, phlebotomy, clinical
12 laboratory tests and examinations, and physiological function tests.

13 (c) Naturopathic physicians may prescribe nonprescription medications and
14 therapeutic devices or use noninvasive diagnostic procedures commonly used by
15 physicians in general practice.

16 (d) Naturopathic physicians shall not:

17 (1) Prescribe, dispense, or administer any controlled substances except
18 those natural medicines authorized by this chapter.

19 (2) Perform surgical procedures except those procedures authorized by
20 this chapter.

21 (3) Practice emergency medicine except as a good samaritan rendering
22 gratuitous services in the case of emergency and except for the care of
23 minor injuries.

24 (4) Practice or claim to practice medicine and surgery, osteopathy,
25 dentistry, podiatry, optometry, chiropractic, physical therapy, or any
26 other system or method of treatment not authorized in this chapter.

27 "§90-414. Exemptions.

28 (a) Nothing in this chapter shall be construed to prohibit or to restrict:

29 (1) The practice of a profession by individuals who are licensed, certified,
30 or registered under other laws of this state who are performing
31 services within their authorized scope of practice.

32 (2) The practice of naturopathic medicine by an individual employed by
33 the government of the United States while the individual is engaged in
34 the performance of duties prescribed by the laws and regulations of
35 the United States.

36 (3) The practice by a naturopathic physician duly licensed in another
37 state, territory, or the District of Columbia when incidentally called
38 into this state for consultation with a licensed physician.

39 (4) The practice of naturopathic medicine by students enrolled in an
40 approved naturopathic medical college. The performance of services
41 shall be pursuant to a course of instruction or assignments from an
42 instructor and under the supervision of the instructor who is licensed
43 as a naturopathic physician pursuant to this chapter.

1 (b) A resident of this State may become licensed under this Chapter without meeting
2 the requirements of G.S. 90-417(a)(1) by filing an application and affidavit with the
3 Board, within six months of the effective date of this act, attesting that the applicant:

- 4 1. Is not licensed as a health care provider under any other law of this
5 State;
- 6 2. Derives the majority of his income from the practice of naturopathic
7 medicine; and
- 8 3. Has practiced naturopathy, in a manner acceptable to the Board, for at
9 least three years immediately prior to the effective date of this act.

10 To become licensed under this subsection, an applicant must also meet the
11 requirements of G.S. 90-417(a)(2), (3), (4), and (5).

12 "§90-415. Naturopathic Board of Examiners.

13 (a) There shall be a Naturopathic Board of Examiners consisting of 3 members,
14 selected as follows:

- 15 (1) Two naturopathic physicians appointed by the governor, each of
16 whom shall:
 - 17 a. Be a graduate of an approved naturopathic college;
 - 18 b. Be licensed in this State as a naturopath; and
 - 19 c. Have three years experience in the practice of naturopathy
20 immediately prior to appointment.
- 21 (2) One public member appointed by the governor, who shall:
 - 22 a. Be a resident of this state for 5 years immediately preceding
23 appointment;
 - 24 b. Be unaffiliated with and have no financial or other interest in a
25 school of medicine, health care institution, or any person
26 practicing any form of healing or treatment of bodily or mental
27 ailments; and
 - 28 c. Demonstrate an interest in the health problems in this state.

29 (b) Of the initial appointments, the Governor shall designate one naturopathic
30 physician for a 6-year term of office, one naturopathic physician for a 4-year term of
31 office, and one public member for a 2-year term of office. Their successors shall serve
32 six-year terms. No member may serve more than two complete consecutive six-year
33 terms. The Governor may remove a member for malfeasance, misfeasance or
34 dishonorable conduct.

35 (c) Board members and board personnel are not liable for any act done or proceeding
36 undertaken or performed in good faith and in furtherance of the purposes of this article.

37 (d) The Board shall meet at least semi-annually. In addition, the board may hold
38 special meetings as it deems necessary.

39 (e) Two members of the board constitute a quorum for the transaction of business.

40 (f) The board shall receive compensation in accordance with the provisions of G.S.
41 93B-5.

42 "§90-416. Powers and Duties of the Board.

43 (a) The board shall:

- 1 (1) Establish reasonable fees for examination, licensure, and license renewal,
2 subject to the following maximum amounts:
- | | | |
|---|-----------------------------|-----------------|
| 3 | <u>Examination</u> | <u>\$100.00</u> |
| 4 | <u>Licensure</u> | <u>200.00</u> |
| 5 | <u>License Renewal</u> | <u>150.00</u> |
| 6 | <u>Late Renewal Penalty</u> | <u>50.00</u> |
- 7 (2) Maintain an accurate account of all receipts, expenditures and refunds
8 granted under this chapter.
- 9 (3) Maintain a record of its acts and proceedings, including the issuance,
10 refusal, renewal, suspension or revocation of licenses.
- 11 (4) Maintain a roster of all naturopathic physicians licensed under this
12 chapter which indicates:
- 13 a. The name of the licensee;
14 b. His current professional office address;
15 c. The date of issuance and the number of his license;
16 d. Whether the licensee is in good standing.
- 17 (5) Keep all applications for licensure as a permanent record.
- 18 (6) Keep all examination records including written examination records
19 and tape recordings of the questions and answers in oral exams.
- 20 (7) Adopt and use a seal, the imprint of which, together with the
21 signatures of the chairman or vice-chairman and the secretary-treasurer
22 of the board, shall evidence its official acts.
- 23 (8) Annually compile and publish a directory.
- 24 (9) Adopt rules concerning the following:
- 25 a. standards and criteria for approval of colleges or programs
26 granting the degree of Doctor of Naturopathic Medicine or
27 Doctor of Naturopathy;
- 28 b. standards defining the scope of practice of naturopathic
29 physicians licensed pursuant to G.S. 90-414(b), based on the
30 licensee's training and experience;
- 31 c. naturopathic health care;
32 d. naturopathic medical assistants who assist naturopathic
33 physicians, including the qualification of naturopathic medical
34 assistants who are not otherwise licensed by law;
- 35 e. continuing education programs and requirements; and
36 f. certification of naturopathic physicians for specialty practice.
- 37 (10) Adopt any other rules which are necessary or proper for the
38 administration of this Article.
- 39 (b) The board may:
- 40 (1) Employ an executive secretary and other permanent or temporary
41 personnel as it deems necessary to carry out the purposes of this
42 Article and designate their duties.
- 43 (2) Appoint qualified personnel to administer any part or all of any
44 examination provided for under this chapter.

- 1 (3) Rent, lease, or purchase office space, supplies, and equipment for the
2 operation of the Board.
3 (4) Authorize expenditures deemed necessary to carry out the provisions
4 of this Article from the fees which it collects, but in no event shall
5 expenditures exceed the revenues of the Board during any fiscal year.

6 **"§90-417. Qualification for Licensure.**

7 **(a) To be eligible for a license to practice naturopathic medicine, the applicant shall:**

- 8 (1) Be a graduate of an approved naturopathic medical college and pass a
9 competency-based examination prescribed by the board covering the
10 appropriate naturopathic subjects.
11 (2) Possess a good moral and professional reputation.
12 (3) Be physically and mentally fit to practice naturopathic medicine.
13 (4) Not have had a license to practice naturopathic medicine or
14 naturopathy refused, revoked or suspended by any other state or
15 country for reasons which relate to the applicant's ability to skillfully
16 and safely practice naturopathic medicine.
17 (5) File an application and pay the licensing fees.

18 **(b) To obtain a license to practice naturopathy by reciprocity, the applicant shall:**

- 19 (1) Qualify under subsection (a), except that no written examination shall
20 be required; and
21 (2) Be licensed to practice naturopathic medicine by another state or the
22 District of Columbia, provided that the jurisdiction from which the
23 license was obtained requires a written examination which is
24 substantially equivalent to the written examination required by the
25 board of this State.

26 **"§90-418. Natural Childbirth and Acupuncture Specialty Certification.**

27 **(a) No naturopathic physician shall practice naturopathic childbirth or acupuncture**
28 **without first obtaining a certificate of specialty practice.**

29 **(b) To be certified in naturopathic childbirth, a naturopathic physician must:**

- 30 (1) Pass a specialty examination in natural childbirth approved by the
31 board.
32 (2) Have at least 100 hours of course work, internship or preceptorship in
33 obstetrics or natural childbirth approved by the board.
34 (3) Have participated in 40 supervised births, including prenatal and
35 postnatal care, under the direct supervision of a licensed naturopathic,
36 medical or osteopathic physician with specialty training in obstetrics or
37 natural childbirth. The board may prescribe a national standardized
38 examination in natural childbirth as constituting the specialty
39 examination.

40 **(c) To be certified in acupuncture, a naturopathic physician must:**

- 41 (1) complete a program in acupuncture approved by the board that
42 includes at least 500 hours of training in acupuncture, including both
43 didactic and clinical training; and

- 1 (2) pass a specialty examination in acupuncture approved by the board.
2 The board may prescribe a national standardized examination in
3 acupuncture as constituting the specialty examination.

4 "§90-419. License Renewal and Continuing Education.

- 5 The license to practice naturopathic medicine shall be renewed biennially. When
6 renewing a license, each naturopathic physician shall submit to the board evidence of
7 successful completion of the requisite hours of continuing education approved by the
8 board. The board shall not require more than 30 hours of continuing education
9 biennially.

10 "§90-420. Disciplinary Action.

- 11 The Board may deny, suspend or revoke a license, require remedial education, or
12 issue a letter of reprimand, if a licensed naturopath or applicant:

- 13 (1) Engages in false or fraudulent conduct which demonstrates an
14 unfitness to practice naturopathy, including:
15 a. Misrepresentation in connection with an application for a license
16 or an investigation by the Board; or
17 b. Attempting to collect fees for services which were not
18 performed; or
19 c. False advertising, including guaranteeing that a cure will result
20 from a naturopathic treatment; or
21 d. Dividing, or agreeing to divide, a fee for naturopathic services
22 with anyone for referring the patient.
23 (2) Fails to exercise proper control over one's practice by:
24 a. Aiding an unlicensed person in practicing naturopathy;
25 b. Delegating professional responsibilities to a person the
26 naturopath knows or should know is not qualified to perform; or
27 c. Failing to exercise proper control over unlicensed personnel
28 working with the naturopath in the practice.
29 (3) Fails to maintain records in a proper manner, by:
30 a. Failing to keep written records describing the course of
31 treatment for each patient; or
32 b. Refusing to provide to a patient upon request records that have
33 been prepared for or paid for by the patient; or
34 c. Revealing personally identifiable information about a patient,
35 without consent, unless otherwise allowed by law.
36 (4) Fails to exercise proper care for a patient, including:
37 a. Abandoning or neglecting a patient without making reasonable
38 arrangements for the continuation of care; or
39 b. Exercising, or attempting to exercise, undue influence within the
40 naturopath/patient relationship by making sexual advances or
41 requests for sexual activity, or making submission to such
42 conduct a condition of treatment.
43 (5) Displays habitual substance abuse or mental impairment to such a
44 degree as to interfere with the ability to provide effective treatment.

- 1 (6) Is convicted or pleads guilty or no contest to any crime which
- 2 demonstrates an unfitness to practice naturopathy.
- 3 (7) Negligently fails to practice naturopathy with the level of skill
- 4 recognized within the profession as acceptable under such
- 5 circumstances.
- 6 (8) Willfully violates any provision of this Article or rule of the Board.
- 7 (9) Has had a license denied, suspended or revoked in another jurisdiction
- 8 for any reason which would be grounds for such action in this State.

9 **"§90-421. Enforcement; injunctive relief.**

10 (a) Any person not licensed pursuant to this Article, or not otherwise exempted

11 hereunder, who

- 12 1. engages in the practice of naturopathic medicine;
- 13 2. advertises, represents, or holds himself out as a naturopathic physician
- 14 or as practicing naturopathic medicine; or
- 15 3. uses a title listed in G.S. 90-411

16 shall be guilty of a misdemeanor, punishable by a fine, imprisonment, or both in the

17 discretion of the court.

18 (b) The Board may make application to superior court for an order enjoining a

19 violation of this Article, and upon a showing by the Board that a person has violated or

20 is about to violate this Article, the court may grant an injunction or restraining order,

21 or take other appropriate action."

22 **"§90-422. Third party reimbursement.**

23 Nothing in this Article shall be construed to require direct third party reimbursement

24 to persons licensed under this Article."

25 Sec. 2. G.S. 90-18 reads as rewritten:

26 **"§ 90-18. Practicing without license; practicing defined; penalties.**

27 No person shall practice medicine or surgery, or any of the branches thereof, nor in

28 any case prescribe for the cure of diseases unless he shall have been first licensed and

29 registered so to do in the manner provided in this Article, and if any person shall

30 practice medicine or surgery without being duly licensed and registered, as provided in

31 this Article, he shall not be allowed to maintain any action to collect any fee for such

32 services. The person so practicing without license shall be guilty of a misdemeanor, and

33 upon conviction thereof shall be fined not less than fifty dollars (\$50.00) nor more than

34 one hundred dollars (\$100.00), or imprisoned at the discretion of the court for each and

35 every offense.

36 Any person shall be regarded as practicing medicine or surgery within the meaning

37 of this Article who shall diagnose or attempt to diagnose, treat or attempt to treat,

38 operate or attempt to operate on, or prescribe for or administer to, or profess to treat

39 any human ailment, physical or mental, or any physical injury to or deformity of

40 another person: Provided, that the following cases shall not come within the definition

41 above recited:

- 42 (1) The administration of domestic or family remedies in cases of
- 43 emergency.

- 1 (2) The practice of dentistry by any legally licensed dentist engaged in the
2 practice of dentistry and dental surgery.
3 (3) The practice of pharmacy by any legally licensed pharmacist engaged
4 in the practice of pharmacy.
5 (4) The practice of medicine and surgery by any surgeon or physician of
6 the United States army, navy, or public health service in the discharge
7 of his official duties.
8 (5) The treatment of the sick or suffering by mental or spiritual means
9 without the use of any drugs or other material means.
10 (6) The practice of optometry by any legally licensed optometrist engaged,
11 in the practice of optometry.
12 (7) The practice of midwifery as defined in G.S. 90-178.2.
13 (8) The practice of chiropody by any legally licensed chiropodist when
14 engaged in the practice of chiropody, and without the use of any drug.
15 (9) The practice of osteopathy by any legally licensed osteopath when
16 engaged in the practice of osteopathy as defined by law, and
17 especially G.S. 90-129.
18 (10) The practice of chiropractic by any legally licensed chiropractor when
19 engaged in the practice of chiropractic as defined by law, and without
20 the use of any drug or surgery.
21 (11) The practice of medicine or surgery by any reputable physician or
22 surgeon in a neighboring state coming into this State for consultation
23 with a resident registered physician. This proviso shall not apply to
24 physicians resident in a neighboring state and regularly practicing in
25 this State.
26 (12) Any person practicing radiology as hereinafter defined shall be
27 deemed to be engaged in the practice of medicine within the meaning
28 of this Article. "Radiology" shall be defined as, that method of
29 medical practice in which demonstration and examination of the
30 normal and abnormal structures, parts or functions of the human body
31 are made by use of X ray. Any person shall be regarded as engaged in
32 the practice of radiology who makes or offers to make, for a
33 consideration, a demonstration or examination of a human being or a
34 part or parts of a human body by means of fluoroscopic exhibition or
35 by the shadow imagery registered with photographic materials and the
36 use of X rays; or holds himself out to diagnose or able to make or
37 makes any interpretation or explanation by word of mouth, writing or
38 otherwise of the meaning of such fluoroscopic or registered shadow
39 imagery of any part of the human body by use of X rays; or who
40 treats any disease or condition of the human body by the application
41 of X rays or radium. Nothing in this subdivision shall prevent the
42 practice of radiology by any person licensed under the provisions of
43 Articles 2, 7, 8, and 12A of this Chapter.

- 1 (13) Any act, task or function performed by an assistant to a person
 2 licensed as a physician by the Board of Medical Examiners when
 3 a. Such assistant is approved by and annually registered with the
 4 Board as one qualified by training or experience to function as
 5 an assistant to a physician, except that no more than two
 6 assistants may be currently registered for any physician, and
 7 b. Such act, task or function is performed at the direction or under
 8 the supervision of such physician, in accordance with rules and
 9 regulations promulgated by the Board, and
 10 c. The services of the assistant are limited to assisting the physician
 11 in the particular field or fields for which the assistant has been
 12 trained, approved and registered;

13 Provided that this subdivision shall not limit or prevent any physician
 14 from delegating to a qualified person any acts, tasks or functions
 15 which are otherwise permitted by law or established by custom.

- 16 (14) The practice of nursing by a registered nurse engaged in the practice
 17 of nursing and the performance of acts otherwise constituting medical
 18 practice by a registered nurse when performed in accordance with
 19 rules and regulations developed by a joint subcommittee of the Board
 20 of Medical Examiners and the Board of Nursing and adopted by both
 21 boards.

- 22 (15) The practice of naturopathy by a licensed naturopath under the
 23 provisions of Article 28 of this Chapter."

24 Sec. 3. If a bill entitled 'AN ACT REGULATING THE PRACTICE OF
 25 ACUPUNCTURE' has been enacted, G.S. 90-452, as created by said act, reads as
 26 rewritten:

27 "§90-452. Practice of acupuncture without license prohibited.

28 (a) It is unlawful to practice acupuncture without a license issued pursuant to this
 29 Article. This restriction does not apply, however, to the following:

- 30 (1) a physician licensed pursuant to Article I of this Chapter;
 31 (2) a student practicing acupuncture under the direct supervision of a
 32 licensed acupuncturist as part of a course of study approved by the
 33 Board; ~~or~~
 34 (3) a chiropractor licensed pursuant to Article 8 of this ~~Chapter.~~ Chapter;
 35 or
 36 (4) a naturopath licensed pursuant to Article 28 of this Chapter and
 37 certified by the Board of Naturopathic Examiners as an acupuncture
 38 specialist.

39 It is also unlawful to advertise or otherwise represent oneself as qualified or
 40 authorized to practice acupuncture without having the license required by this Article.

41 (b) A violation of this section is a misdemeanor punishable by imprisonment for up
 42 to two years, a fine, or both."

43 Sec. 4. This act is effective upon ratification.

EXPLANATION OF DRAFT 2

Naturopathic Licensing Board

This bill regulates the practice of naturopathy. Naturopathy relies on natural medicines and therapies to support and stimulate the patient's natural healing mechanisms. The bill creates a Naturopathic Board of Examiners to regulate the profession and establishes the standards for one to become licensed as a naturopath. The bill also provides for specialties in naturopathic childbirth and acupuncture, with the appropriate training. Third-party reimbursement is not required.

The practice of naturopathic medicine involves the use of natural medicines and natural therapies to stimulate the body's self-healing powers. Since it involves diagnosis and treatment of medical conditions, it is technically considered the practice of medicine in North Carolina.

This bill creates a Naturopathic Board of Examiners to regulate persons wishing to practice naturopathic medicine. In order to become licensed as a naturopath, an applicant must be a graduate of an approved naturopathic medical college (a 4-year post-graduate school) and successfully complete the naturopathic examination. Continuing education of up to 30 hours every two years may be required by the Board as a prerequisite to license renewal. Persons practicing naturopathy for 3 years prior to the effective date of this act (as long as most of their income was derived from naturopathy) will be grandfathered in (G.S. §90-414(b)), but the scope of their practice may be limited by the Board (proposed G.S. §90-416(a)((11)b), based on the extent of their experience and training.

The practice of naturopathy is defined extensively in proposed G.S. §90-412 and §90-413 and includes within its scope the use of minor surgery, natural medications (but not controlled substances), x-rays, and manipulative therapy. Specialties in the practice of acupuncture and naturopathic childbirth are also recognized for those who meet the additional requirements (special examination, internship, and clinical or related experience in the areas of acupuncture or naturopathic childbirth, as appropriate).

Board powers are set out in proposed G.S. §90-416. The board's structure and appointments are set out in proposed G.S. §90-415. The board has authority to discipline its licensees for professional misconduct.

The practice of naturopathy without a license is a misdemeanor, punishable by fine, imprisonment, or both.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

D

DRAFT BILL #4
THIS IS A DRAFT
93-RNY-003

Short Title: Bd. of Complementary Med. Examiners.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT REGULATING THE PRACTICE OF COMPLEMENTARY MEDICINE.
3 The General Assembly of North Carolina enacts:
4 Section 1. Chapter 90 of the General Statutes is amended by adding a new
5 Article to read:
6
7 "ARTICLE 29.
8 "Board of Complementary Medical Examiners.
9
10 "§90-430. Short Title. This Article shall be known as the North Carolina
11 Complementary Medical Practice Act.
12 "§90-431. Definitions.
13 (1) 'Board' means the board of Complementary Medical Examiners.
14 (2) 'Chelation therapy' means medical therapy to restore cellular homeostasis
15 through the use of intravenous, metal-binding and bioinorganic agents such as ethylene
16 diamine tetraacetic acid.
17 (3) 'Doctor of complementary medicine' means a physician licensed pursuant to the
18 provisions of Article I of this Chapter who has completed and documented post-
19 graduate education in one or more therapies, including homeopathy, nutritional
20 therapy, chelation therapy, or any other complementary therapy as designated by the

1 Board in its rules, and who has met all such licensing requirements for qualification
2 under this statute.

3 (4) 'Homeopathy' means a system of medicine employing substances of animal,
4 vegetable or mineral origin which are given in microdosages, prepared according to
5 homeopathic pharmacology, in accordance with the principle that a substance which
6 produces symptoms in a healthy person can cure those symptoms in an ill person.

7 (5) 'Letter of concern' means an advisory letter to notify a physician that, while
8 there is sufficient evidence to support disciplinary action, the Board believes the
9 physician should modify or eliminate certain practices.

10 (6) 'Nutrition therapy' means therapy to provide the optimum concentration of
11 substances normally present in the human body such as vitamins, minerals, amino
12 acids, and enzymes.

13 **"§90-432. Board of Complementary Medical Examiners.**

14 (a) There is established a Board of Complementary Medical Examiners which shall
15 consist of five members appointed by the Governor, four of whom shall be
16 complementary physicians who are licensed under this Article, except as provided in
17 subsection (b), and one of whom shall be a public member. Except as provided for
18 initial appointments in subsection (b), the term of office of each member of the Board
19 is three years, ending on June 30.

20 (b) The terms of the initial board members shall be staggered such that one
21 complementary physician's term and the public member's term expires June 30, 1994,
22 two complementary physicians' terms expire June 30, 1995, and two complementary
23 physician's terms expire June 30, 1996. The initial complementary physician appointees
24 shall be medical doctors engaged in the practice of one or more complementary
25 therapies.

26 (c) Board members may be removed by the Governor for neglect of duty,
27 malfeasance or misfeasance.

28 **"§90-433. Meetings; organization; compensation.**

29 (a) The Board shall hold an annual meeting during the month of January of each
30 year and may hold other meetings at times and places determined by a majority of the
31 Board upon 10 days written notice to each member. A majority vote of a quorum
32 present at any meeting governs all actions taken, except that licenses shall be issued
33 under this Chapter only upon the vote of a majority of the full Board.

34 (b) At each annual meeting the Board shall select from among its membership a
35 president and vice-president who shall serve until their successors are chosen.

36 (c) Each Board member is eligible to receive compensation pursuant to G.S. 93B-5
37 for each day actually engaged in carrying out duties as an officer or member of the
38 Board. Compensation and expenses shall be paid from the board of complementary
39 medical examiner's fund.

40 **"§90-434. Powers and Duties.**

- 1 (a) The Board shall:
2 (1) Conduct all examinations for applicants for a license under this
3 Article, issue licenses, conduct hearings, place complementary
4 physicians on probation, revoke or suspend licenses, and administer
5 and enforce this Article.
6 (2) Enforce within the complementary medical profession in this State the
7 standards of practice prescribed by this Article and the rules and
8 regulations adopted by the Board pursuant to the authority granted by
9 this Article.
10 (3) Collect and account for all fees under this Article and to deposit same
11 in a fund maintained by the board; funds may be expended from
12 revenues generated by fees and interest thereon for the administration
13 of this Article.
14 (4) Maintain a record of its acts and proceedings, including, but not
15 limited to, the issuance, refusal to issue, renewal, suspension or
16 revocation of licenses to practice according to this Article.
17 (5) Maintain a roster of all complementary physicians licensed under this
18 Article which shall indicate:
19 a. The name of the licensed physician.
20 b. The current professional office address.
21 c. The date and the number of the license issued under this Article.
22 d. Whether the licensee is in good standing.
23 (6) Adopt and use a seal, the imprint of which, together with the
24 signatures of the president or vice-president of the Board and the
25 secretary-treasurer, shall evidence its official acts.
26 (7) Contract for administrative and record keeping services.
27 (8) Charge additional fees that do not exceed the cost of the services for
28 the services the Board deems necessary to carry out its intent and
29 purposes.
30 (b) The Board may:
31 (1) Make and adopt rules and regulations necessary for the administration
32 of this Article.
33 (2) Accredite educational institutions in this State which grant degrees
34 toward licensing therapies which are regulated under this Article.
35 (3) Hire permanent or temporary personnel to carry out the purposes of
36 this Article.
37 (4) Hire or contract with investigators to assist in the investigation of
38 violations of this Article and contract with other State agencies if
39 required to carry out this Article.

1 (5) Purchase, rent, lease, sell, or otherwise transfer office space,
2 equipment, supplies, or other real or personal property for the
3 administration of this Article.

4 **"§90-345. Persons and acts not affected by this Article.**

5 (a) This Article exists for the exclusive purpose of licensing and regulation of
6 medical doctors who practice complementary therapies. It shall not be construed to
7 govern any method, system, or science of healing by non-medical doctors.

8 (b) This Article does not govern the practice of complementary physicians
9 discharging their duties while members of the armed forces of the United States or
10 other federal agencies.

11 **"§90-346. Qualifications of applicant; application; fees.**

12 (a) A license to practice medicine as a complementary physician shall be granted
13 only to an applicant who:

14 (1) Is of good moral character and is licensed pursuant to Article I of this
15 Chapter;

16 (2) Has a professional record which indicates that the applicant has not
17 had a license to practice medicine refused, revoked, suspended or
18 restricted in any state, territory, district or county for reasons which
19 relate to his ability to competently and safely practice medicine;

20 (3) Has a professional record which indicates that the applicant has not
21 committed any act or engaged in any conduct which would constitute
22 grounds for disciplinary action against a licensee under this Article;

23 (4) Has the physical and mental capacity to safely engage in the practice
24 of medicine; and

25 (5) Submits to the Board, at least 30 days prior to the meeting at which
26 the application is to be considered:

27 a. Affidavits from three physicians licensed to practice medicine in
28 any state of the United States or the District of Columbia who
29 are in active practice, attesting to the good moral character of
30 the applicant and fitness to practice medicine as a doctor of
31 complementary medicine. The applicant shall submit to any
32 other reasonable investigation deemed necessary by the Board;

33 b. A diploma or certificate evidencing the completion of post-
34 graduate training in the complementary modality in which the
35 applicant intends to engage. Such training must be approved by
36 the Board and documentation shall evidence requirements
37 equivalent to those established for eligibility for certification by
38 the national accreditation board for the particular therapy; or
39 equivalent to the appropriate number of hours and subjects
40 which are generally accepted as necessary, as determined by the

- 1 board, for a thorough knowledge of the practice of each
2 modality.
- 3 c. A verified application, upon forms furnished by the board,
4 stating, in addition to any other information requested, that the
5 applicant is the person named in the diploma or certificate and
6 the lawful holder of such diploma or certificate and that the
7 diploma was procured in a regular course of instruction and
8 examination without fraud or misrepresentation;
- 9 (6) Successfully passes an examination as provided in this Article, except
10 that the Board may waive any such examination if the applicant either:
- 11 a. Has for three years practiced primarily the complementary
12 therapy for which the applicant is seeking to be licensed as a
13 doctor of complementary medicine, has affidavits from three
14 physicians which attest to competency for this therapy, and is
15 licensed pursuant to Article I of this Chapter or
- 16 b. Holds a current, unsuspended and unrevoked license to practice
17 this complementary therapy issued by another state of the
18 United States or the District of Columbia and is licensed
19 pursuant to Article I of this Chapter;
- 20 (7) Pays to the Board upon application a fee of two hundred fifty dollars
21 (\$250.00), and an additional fee of two hundred fifty dollars
22 (\$250.00) upon issuance of the license; and
- 23 (8) Submits to a personal interview at a reasonable time and place as
24 prescribed by the Board.

25 **"§90-437. Examination; reexamination.**

26 (a) Examination for a license to practice under this Article shall include all subjects
27 which are generally accepted as necessary for a thorough knowledge of the practice of
28 the selected areas of complementary therapies. The Board shall prescribe rules and
29 regulations for conducting the examinations and set the passing grade.

30 (b) Examinations shall be conducted at least twice annually at times and places to be
31 designated by the Board. Written notice of the date and place of examination shall be
32 mailed to all applicants at least 30 days prior to the date of the examination. A person
33 failing to pass an examination may be reexamined within one year without payment of
34 an additional fee.

35 **"§90-438. Renewal of license; failure to renew; reinstatement.**

36 (a) Each physician holding a license under this Article shall renew it and pay a
37 renewal fee not to exceed one thousand dollars (\$1,000) prior to January 1 each year.
38 Failure to renew an active license as required by this section on or before February 1
39 requires an additional late payment fee of one hundred fifty dollars (\$150.00). Failure
40 to renew an active license on or before May 1 shall result in the expiration of the active

1 license. The secretary-treasurer of the Board shall notify each licensee of the renewal
2 date at least 30 days prior to January 1 each year.

3 (b) A person whose license has expired may reapply for a license to practice
4 complementary medicine as provided in this Article.

5 **"§90-439. Use of title or abbreviation by a complementary physician.**

6 A physician practicing pursuant to this Article may only use the title 'complementary
7 medicine physician' or 'doctor of complementary medicine', or the abbreviations
8 'M.D.C.M.D.'

9 **"§90-440. Definition of unprofessional conduct.**

10 'Unprofessional conduct' includes the following acts, whether occurring in the State
11 or elsewhere:

- 12 (1) Immoral or dishonorable conduct;
- 13 (2) Producing or attempting to produce an abortion contrary to law;
- 14 (3) Making false statements or representations to the Board, or willfully
15 concealing from the board material information in connection with his
16 application for a license;
- 17 (4) Being unable to practice medicine with reasonable skill and safety to
18 patients by reason of illness, drunkenness, excessive use of alcohol,
19 drugs, chemical, or any other type of material or by reason of any
20 physical or mental abnormality. The board is empowered and
21 authorized to require a physician licensed by it to submit to a mental
22 or physical examination by physicians designated by the Board before
23 or after charges may be presented against him, and the results of
24 examination shall be admissible in evidence in a hearing before the
25 Board;
- 26 (5) Unprofessional conduct including, but not limited to, the committing
27 of any act contrary to honesty, justice, or good morals, whether the
28 same is committed in the course of his practice or otherwise, and
29 whether committed within or without North Carolina;
- 30 (6) Conviction in any court of a crime involving moral turpitude, or the
31 violation of a law involving the practice of medicine, or a conviction
32 of a felony;
- 33 (7) By false representations obtaining or attempting to obtain practice,
34 money or anything of value;
- 35 (8) Advertising or publicly professing to treat human ailments under a
36 system or school of treatment or practice other than that for which he
37 has been educated;
- 38 (9) Adjudication of mental incompetency, which shall automatically
39 suspend a license unless the Board orders otherwise;

- 1 (10) Lack of professional competence to practice medicine with a
2 reasonable degree of skill and safety for patients. In this connection
3 the Board may consider repeated acts of a physician indicating his
4 failure to properly treat a patient and may require such physician
5 indicating his failure to properly treat a patient and may require such
6 physician to submit inquiries or examinations, written or oral, by
7 members of the Board or by other physicians licensed to practice
8 medicine in this State, as the Board deems necessary to determine the
9 professional qualifications of such licensee;
- 10 (11) Promotion of the sale of drugs, devices, appliances or goods for a
11 patient, or providing services to a patient, in such a manner as to
12 exploit the patient for financial gain of the physician; and upon a
13 finding of the exploitation for financial gain, the Board may order
14 restitution be made to the payer of the bill, whether the patient or the
15 insurer, by the physician; provided that a determination of the amount
16 of restitution shall be based on credible testimony in the record;
- 17 (12) Suspension or revocation of a license to practice medicine in any other
18 state, or territory of the United States, or other country.
- 19 (13) The failure to respond, within a reasonable period of time and in a
20 reasonable manner as determined by the Board, to inquiries from the
21 Board concerning any matter affecting the license to practice
22 medicine.
- 23 (14) The use of experimental forms of diagnosis and treatment without
24 adequate informed patient consent, without a board-approved written
25 disclosure that the form of diagnosis and treatment to be used is
26 experimental, and without conforming to generally accepted
27 experimental criteria, including protocols, detailed records, periodic
28 analysis of results and periodic review by a peer review committee.
- 29 (15) Sexual intimacies with a patient in the course of direct treatment.
- 30 (16) Refusal, revocation or suspension of a license by any other state,
31 territory, district or country, unless it can be shown that such was not
32 occasioned by reasons which relate to the ability to practice
33 complementary medicine safely and skillfully or to any act of
34 unprofessional conduct as provided in this section.

35 **§90-441. Grounds for suspension or revocation of license; duty to report;**
36 **unprofessional conduct hearing; decision of Board.**

- 37 (a) The Board on its own motion may investigate any information which appears to
38 show that a complementary physician is or may be guilty of unprofessional conduct or
39 is or may be mentally or physically unable to engage safely in the practice of medicine.
40 Any complementary physician, the North Carolina Complementary Medical Association

1 or any health care institution shall, and any other person may, report to the Board any
2 information such person may have which appears to show that a complementary
3 physician is or may be guilty of unprofessional conduct or is or may be mentally or
4 physically unable to engage safely in the practice of medicine. The Board shall notify
5 the complementary physician about whom information is received as to the content of
6 the information within 120 days after the receipt of the information. Any person who
7 reports or provides information to the Board in good faith is not subject to an action for
8 civil damages as a result thereof, and such person's name shall not be disclosed unless
9 such person's testimony is essential to the disciplinary proceedings conducted pursuant
10 to the section. It is an act of unprofessional conduct for any complementary physician
11 to fail to report as required by this section. Any health care institution which fails to
12 report as required by this section shall be reported by the Board to such institution's
13 licensing agency.

14 (b) A health care institution shall inform the Board when the privileges of a
15 complementary physician to practice in the health care institution are denied, revoked,
16 suspended or limited because of actions by the complementary physician which
17 jeopardized patient health and welfare or if the physician resigns during pending
18 proceedings for revocation, suspension or limitation of his privileges. A report to the
19 Board pursuant to this subsection shall contain a general statement of the reasons the
20 health care institution denied or took action to revoke, suspend or limit a
21 complementary physician's privileges.

22 (c) If, after completing its investigation, the Board finds that the information
23 provided pursuant to subsection (a) of this section is not of sufficient seriousness to
24 merit direct action against the license of the complementary physician it may take either
25 of the following actions:

26 (1) Dismiss if, in the opinion of the Board, the information is without
27 merit.

28 (2) File a letter of concern.

29 (d) If, in the opinion of the Board, and after completing the investigation, it appears
30 this information is or may be true, the Board may request an informal interview with
31 the complementary physician concerned. If the complementary physician refuses the
32 invitation or if he accepts the invitation and if the results of the interview indicate
33 suspension or revocation of his license might be in order, a formal complaint shall be
34 issued and a formal hearing shall be conducted in accordance with the provisions of
35 Chapter 150B of the General Statutes. If, after completing the investigation, at the
36 informal interview, the Board finds the information provided under subsection (a) of
37 this section is not of sufficient seriousness to merit suspension or revocation of license,
38 it may take the following actions:

39 (1) Dismiss if, in the opinion of the Board, the information is without
40 merit.

- 1 (2) File a letter of concern.
- 2 (3) Issue a decree of censure which constitutes an official action against
3 the complementary physician's license and which may include but not
4 be limited to a requirement for restitution of fees to a patient resulting
5 from violations of this Article or rules promulgated under this Article.
- 6 (4) Fix such period and terms of probation best adapted to protect the
7 public health and safety and rehabilitate or educate the complementary
8 physician concerned. The probation, if deemed necessary, may
9 include but not be limited to temporary suspension of the license not
10 to exceed 12 months, restriction of the complementary physician's
11 license to practice medicine or a requirement for restitution of fees to
12 a patient resulting from violations of this Article or rules promulgated
13 under this Article. The failure to comply with any probation is cause
14 for filing a summons, complaint and notice of hearing pursuant to this
15 section based on the information considered by the Board at the
16 informal interview and any other acts or conduct alleged to be in
17 violation of this Article or rules adopted by the Board pursuant to this
18 Article.
- 19 (5) Enter into an agreement with the complementary physician to restrict
20 or limit the complementary physician's practice or medical activities in
21 order to rehabilitate the complementary physician, protect the public
22 and insure the complementary physician's ability to safely engage in
23 the practice of medicine.
- 24 (e) In an informal interview pursuant to subsection (d) of this section or in a hearing
25 pursuant to subsection (f) of this section, the board, in addition to any other action
26 which may be taken, may impose a civil penalty in an amount of not less than five
27 hundred dollars (\$500.00) but not to exceed two thousand dollars (\$2,000) on a
28 complementary physician who violates any provision of this Article or any rule
29 promulgated pursuant to this Article. Actions to enforce the collection of these
30 penalties shall be brought in the name of this State by the Attorney General or the
31 county attorney in the county in which the violation occurred. Penalties imposed under
32 this section are in addition to and not in limitation of other penalties imposed pursuant
33 to this Article.
- 34 (f) If in the opinion of the Board it appears that the allegations concerning a
35 complementary physician are of such magnitude as to warrant suspension or revocation
36 of his license, the Board shall serve on such physician a summons and a complaint fully
37 setting forth the conduct or inability concerned; hearings shall be held in accordance
38 with the provisions of Article 3A of Chapter 150B of the General Statutes.
- 39 (g) Patient records, including clinical records, medical reports, laboratory statements
40 and reports, any file, film, any other report or oral statement relating to diagnostic

1 findings or treatment of patients, any information from which a patient or his family
2 might be identified or information received and records kept by the Board as a result of
3 investigation procedures shall not be available to the public.

4 (h) Hospital records, medical staff records, medical staff review committee records
5 and testimony concerning such records, and proceedings related to the creation of such
6 records, are not available to the public, shall be kept confidential by the Board and are
7 subject to the same provisions concerning discovery and use in legal action as are the
8 original records in the possession and control of hospitals, their medical staffs and their
9 medical staff review committees. The Board shall use such records and testimony
10 during the course of investigations and proceedings pursuant to this Article.

11 "§90-442. Violation; classification.

12 A person who practices or attempts to practice medicine as a complementary
13 physician in violation of this Article, or who violates any of the provisions of this
14 Article, is guilty of a misdemeanor, punishable by a fine not to exceed five hundred
15 dollars (\$500.00) per offense.

16 "§90-443. Third party reimbursement.

17 Nothing in this Article shall be construed to require direct third party reimbursement
18 to persons licensed under this Article for the provision of complementary medical
19 services."

20 Sec. 2. G.S. 90-14(a) reads as rewritten:

21 "(a) The Board shall have the power to deny, annul, suspend, or revoke a license, or
22 other authority to practice medicine in this State, issued by the Board to any person
23 who has been found by the Board to have committed any of the following acts or
24 conduct, or for any of the following reasons:

25 (1) Immoral or dishonorable conduct;

26 (2) Producing or attempting to produce an abortion contrary to law;

27 (3) Made false statements or representations to the Board, or who has willfully
28 concealed from the Board material information in connection with his application for a
29 license;

30 (4) Repealed by Session Laws 1977, c. 838, s. 3.

31 (5) Being unable to practice medicine with reasonable skill and safety to patients by
32 reason of illness, drunkenness, excessive use of alcohol, drugs, chemicals, or any other
33 type of material or by reason of any physical or mental abnormality. The Board is
34 empowered and authorized to require a physician licensed by it to submit to a mental
35 or physical examination by physicians designated by the Board before or after charges
36 may be presented against him, and the results of examination shall be admissible in
37 evidence in a hearing before the Board;

38 (6) Unprofessional conduct, including, but not limited to, any departure from, or the
39 failure to conform to, the standards of acceptable ~~and prevailing~~ medical practice, or
40 the ethics of the medical profession, irrespective of whether or not a patient is injured

1 thereby, or the committing of any act contrary to honesty, justice, or good morals,
2 whether the same is committed in the course of his practice or otherwise, and whether
3 committed within or without North ~~Carolina~~; Carolina. Medical doctors practicing
4 complementary therapies who are not licensed pursuant to Article 29 of this Chapter
5 are subject to fines and penalties as set forth in that Article. The board is not
6 authorized to revoke, suspend or deny a license, nor deem as unacceptable the
7 therapies of complementary physicians licensed pursuant to Article 29 of this Chapter,
8 solely on the basis of their use of complementary therapies; provided, however, the
9 Board may take disciplinary action against a physician licensed under Article 29 upon
10 proof that the therapy creates an unreasonable risk of harm that exceeds the degree of
11 risk inherent in the practice of traditional therapies.

12 (7) Conviction in any court of a crime involving moral turpitude, or the violation of a
13 law involving the practice of medicine, or a conviction of a felony; provided that a
14 felony conviction shall be treated as provided in subsection (c) of this section;

15 (8) By false representations has obtained or attempted to obtain practice, money or
16 anything of value;

17 (9) Has advertised or publicly professed to treat human ailments under a system or
18 school of treatment or practice other than that for which he has been educated;

19 (10) Adjudication of mental incompetency, which shall automatically suspend a
20 license unless the Board orders otherwise;

21 (11) Lack of professional competence to practice medicine with a reasonable degree
22 of skill and safety for patients. In this connection the Board may consider repeated acts
23 of a physician indicating his failure to properly treat a patient and may require such
24 physician to submit to inquiries or examinations, written or oral, by members of the
25 Board or by other physicians licensed to practice medicine in this State, as the Board
26 deems necessary to determine the professional qualifications of such licensee;

27 (12) Promotion of the sale of drugs, devices, appliances or goods for a patient, or
28 providing services to a patient, in such a manner as to exploit the patient for financial
29 gain of the physician; and upon a finding of the exploitation for financial gain, the
30 Board may order restitution be made to the payer of the bill, whether the patient or the
31 insurer, by the physician; provided that a determination of the amount of restitution
32 shall be based on credible testimony in the record;

33 (13) Suspension or revocation of a license to practice medicine in any other state, or
34 territory of the United States, or other country;

35 (14) The failure to respond, within a reasonable period of time and in a reasonable
36 manner as determined by the Board, to inquiries from the Board concerning any matter
37 affecting the license to practice medicine.

38 For any of the foregoing reasons, the Board may deny the issuance of a license to an
39 applicant or revoke a license issued to him, may suspend such a license for a period of
40 time, and may impose conditions upon the continued practice after such period of

1 suspension as the Board may deem advisable, may limit the accused physician's
2 practice of medicine with respect to the extent, nature or location of his practice as the
3 Board deems advisable. The Board may, in its discretion and upon such terms and
4 conditions and for such period of time as it may prescribe, restore a license so revoked
5 or rescinded."

6 Sec. 3. This act is effective upon ratification.

EXPLANATION OF DRAFT 4

Board of Complementary Medicine

This bill establishes a board of complementary medicine solely for licensed physicians who want to practice "complementary" (alternative) medicine. "Complementary medicine" specifically includes, but is not limited to, the practice of chelation therapy, homeopathy, and nutrition therapy by licensed physicians. Other complementary therapies will be designated by the board created under this bill. Training in a complementary treatment is required before the treatment can be used. Third-party reimbursement is not required.

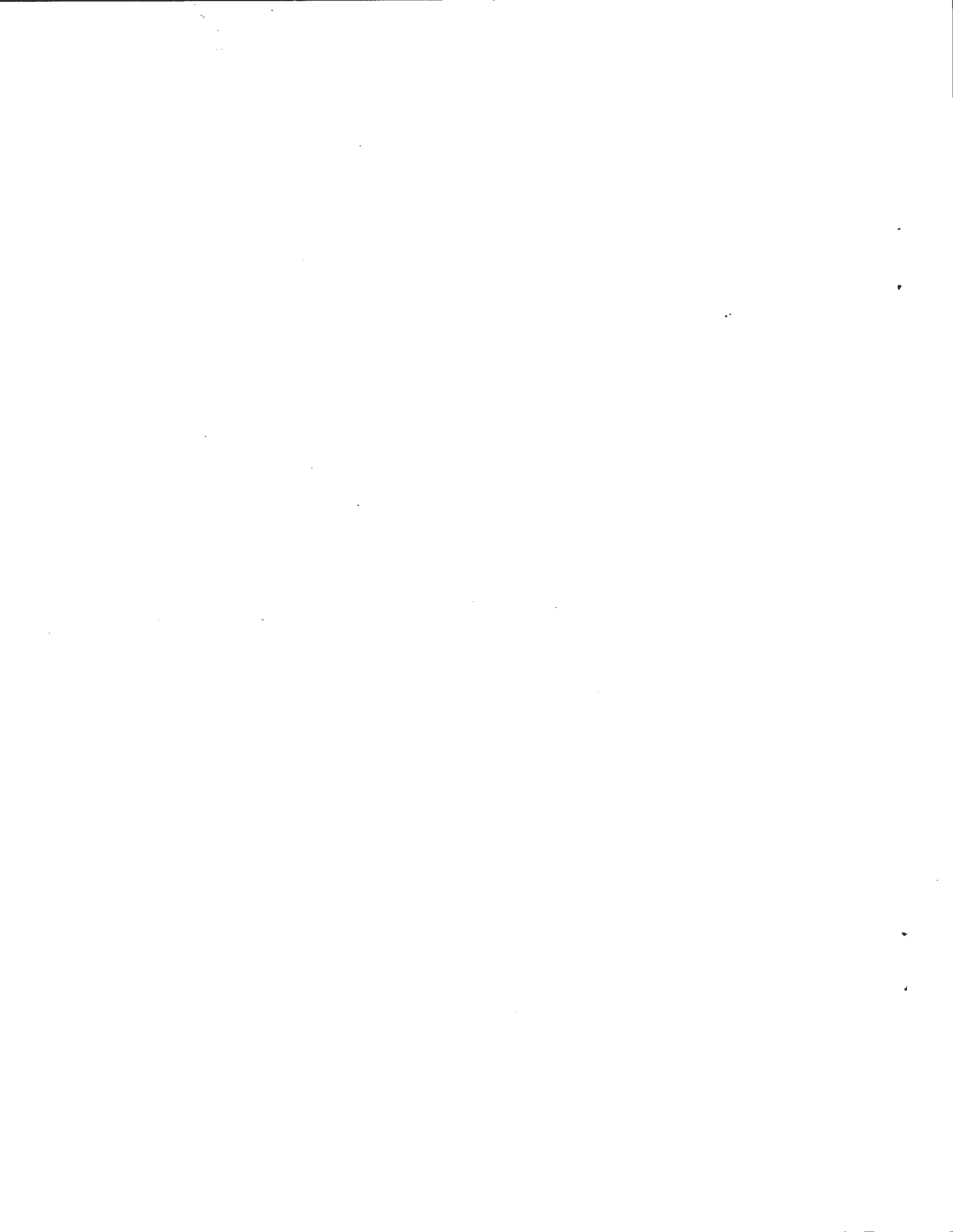
Licensed physicians are currently regulated by the North Carolina Board of Medical Examiners and are statutorily restricted in their practice of medicine to the "prevailing and acceptable" standards of medical treatment. With the exception of acupuncture, most of the alternative therapies fall within the scope of "nonprevailing" medical practices and can lead to disciplinary action against a physician unless they are part of an experimental study conducted according to proper scientific research protocols.

This bill creates a Board of Complementary Medicine to regulate MDs who want to practice alternative medicine. Only licensed MDs can seek licensure as complementary physicians. In order to be licensed as a complementary physician, an MD must present proof to the Board that he or she has met the Board-established requirements for training in the particular complementary "modality" (chelation, homeopathy, etc.) that will be practiced. An examination is required unless the applicant has 3 years experience and letters of reference attesting to his or her competency with the particular type of treatment.

The Board consists of 5 members appointed by the Governor, 4 of whom are complementary physicians and 1 of whom is a public member. The Board's powers are enumerated in proposed G.S. §90-433 and the standards for professional misconduct, which are identical in many cases to those currently used by the North Carolina Board of Medical Examiners, are listed in proposed G.S. §90-440.

The practice of complementary medicine without a license is a misdemeanor, punishable by a fine not to exceed \$500. The bill also amends the Medical Practice Act to prohibit the Board of Medical Examiners from taking action against complementary physicians solely for the practice of alternative medicine absent a showing of risk of harm exceeding the risks inherent in conventional medical treatments.

Third party reimbursement is not required.



**ALTERNATIVE MEDICAL PRACTICES STUDY COMMITTEE
MEMBERSHIP - 1992**

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DR. MICHAEL BERGKAMP

NATUROPATHIC PHYSICIAN & ACUPUNCTURIST

516 FULLER AVENUE
HELENA, MT 59601
406-442-2091

My name is Dr. Michael Bergkamp. I have been practicing naturopathy and acupuncture for the last ten years. I am speaking to you today as the governor appointed chair of the Alternative Health Care Board of Montana. The state of Montana is the most recent state to license Naturopathy and as such represents the latest model of naturopathic regulation.

During the last legislative session the naturopathic licensing effort coincided with the licensing effort for Direct Entry Midwives (D.E.M.) Both efforts were independently successful. As a consequence of legislative compromise both professions were placed under the same licensing board. This an attempt to share expenses and save the state from any added fiscal burden. I am happy to report that almost one year and four board meetings later this concept of an umbrella board labeled the Alternative Health Care Board is working very well.

My hope today is to share my experience as board chairman with this committee and to present a possible model for North Carolina to consider. The board is appointed by the governor and presently consists of two Naturopathic Physicians, two Direct Entry Midwives, one Medical Physician who practices obstetrics plus one member of the general public. The Department of Commerce assists board function with the services of a licensing specialist and an attorney for legal counsel. This model allows for expansion by including two representatives from any other profession the state grants licensing privileges. The legislative intent was again to provide an umbrella board that could license multiple professions that shared similar health care concepts with minimal fiscal burden to the state.

In our first year of operation we have found this model very effective. I would like to briefly share with this committee how the board set standards of licensing criteria for the profession of Naturopathy.

I spent some time with the boards licensing specialist and our legal counsel in preparing this presentation. I am proud to report they reminded me how much easier it was to regulate the naturopathic profession because we have clear national standards. Having a national association and a national examination standards was very helpful in putting unchallenged regulations in place.

The Montana Naturopathic Practice Act has very specific definitions of an "approved naturopathic medical college". These definitions based on our national standards allowed the board to successfully adopt administrative rules with the Dept. of Commerce approval. After a public hearing and administrative review the board was able to implement these rules and start to accept naturopathic license applications. With an application fee of \$300 and an original license fee of \$200 the board was able to pay back our start up loan from the general fund in relative short time. The board has licensed fourteen naturopaths to date with three more pending approval at our next board meeting. Because we have strong national standards we were able to generate board income. In contrast, the midwives lacking these national standards are still developing their regulatory criteria.

One of the primary goals in our initial legislative effort to regulate naturopathy was to provide the public with an informed, qualified health care choice. As chair of the Alternative Health Care Board I feel the board has maintained this responsibility.

I would like to take a moment to speak about this responsibility. The growth of naturopathy in Montana reflects the national trend of alternative, complimentary medicine. In speaking with Dr. Delaney before this hearing, she mentioned some of the same concerns we had in Montana prior to regulating the naturopathic profession. These are the same concerns echoed by physicians throughout the country. One of the main concerns is without regulation the public is at the risk of seeking and getting health care from unqualified providers. This not only risks public harm but also reflects negatively on the perspective health care profession. It is the public's right to choose the type of health care that best serves their health needs. I would hope the parties appointed by the public to provide them with qualified providers aid their choice and not restrict it by limiting their access.

During this first year of board operation we have been able to stop at least four unqualified practitioners from advertising and practicing naturopathy. Naturopathy in Montana now enjoys a standard of definition and regulation which insures the public the type of health care it seeks. Just as important the board is now in place to process any complaints against the practitioners it has licensed. Prior to this most of these types of complaints were sent to the Medical Board of Examiners. Because that board had no jurisdiction over people not practicing Medicine most of the complaints were never actually heard much less dealt with. The Alternative Health Care Board has heard and acted on four complaints during this first year.

The recent Montana legislative session was faced with the immediate problem of being neighbor to a state that has defined naturopathy by a court mandate. The state of Idaho has been taken to task to define naturopathy in a court challenge. My understanding was that the court ruling defined naturopathy as not being the practise of medicine. This excluded the Medical Board from regulating it and in fact has basically left the profession unregulated in that state. This has fractionated the profession resulting in a situation Montana, North Carolina nor any state would find ideal. This situation was a compelling factor when the state of Montana decided to regulate the profession by legislation before the courts were forced to define it. The passing of the Naturopathic Practise Act and formation of the Alternative Health care board has not only saved the state of Montana the expense of unnecessary court litigation but has also protected the health care public in the process.

In conclusion I feel that alternative, complimentary medicine is here to stay. Dr. Sensinig has spoke about the growing public recognition and need for it. The model is well established throughout the world. As it continues to gain acceptance in the USA each state will be facing the issues we are addressing today. I hope I have provided a model of how it can be successfully regulated for your consideration.

Sincerely,

Michael Bergkamp N O, Lic A

Dr. Michael Bergkamp

**TESTIMONY BY DR. JOHN LAIRD BEFORE THE LEGISLATIVE STUDY
COMMITTEE ON ALTERNATIVE MEDICINE--OCTOBER 29, 1992**

CHELATION THERAPY

Chelation therapy is a non-invasive therapy using intravenous prescription drugs and vital nutrients to slow down and reverse atherosclerosis.

Therapy in use for 50 years. More than 500,000 Americans and 22 million people worldwide have received chelation therapy.

Dr. Laird is a board certified specialist under the auspices of the American Board of Chelation Therapy.

The Board has published a peer reviewed protocol that establishes a national standard for the safe and effective use of chelation.

Dr. Laird has treated nearly 1000 patients with chelation therapy in the past 10 years. He has administered over 17,000 treatments. No patient has been left worse off in any way.

The therapy has helped dozens of patients avoid cardiac bypass surgery and carotid artery surgery. Dozens more have been able to save their legs from being amputated, some when all other options had been exhausted.

Chelation typically costs 70 to 90% less than conventional approaches to artery disease. In ten years of practice, Dr. Laird's therapies have reduced medical costs for his patients by at least three to four million dollars.

His patients cover virtually the entire medical costs of his programs out of their own pockets. They often travel 500 miles weekly to receive treatments.

If these therapies didn't work, these patients who have to pay cash and travel long distance certainly wouldn't come.

Although hundreds of doctors offer chelation nationwide, North Carolina has only one doctor left.

LEGAL BACKGROUND: WHY THE GENERAL ASSEMBLY IS INVOLVED

1. NCBME moves to revoke medical license of Dr. George Guess in spite of the fact that the BME has found him to be compassionate and competent and homeopathy to be safe.
2. Guess appeals--Superior Ct rules the BME was arbitrary & capricious.
3. BME appeals--The Court of Appeals also rules in favor of Guess emphasizing that since homeopathy is safe, the BME has no compelling reason to revoke Guess' license.
4. BME Appeals--NC Supreme Court rules that BME can revoke Dr. Guess' license solely on the grounds that his therapy is non-prevailing.. Scientific evidence of efficacy and safety, as well as availability of the therapy throughout the US and around the world, is all considered "interesting" but "irrelevant."
5. Justice Frye dissents--claiming that the majority has misinterpreted the legislative intent behind the statute. The majority ruled that any deviation from "prevailing" medical practice is "inherently dangerous" and therefore, the BME is justified in eliminating any "non-prevailing" therapy.

Frye claims that the legislature surely must have intended that the board act only in cases where the public is put at unreasonable risk of harm, that the practice of safe, non-prevailing therapies is not sufficient reason to revoke a doctor's license.

Frye observes that the logical extension of the majority's interpretation is that new therapeutic advances could never emerge in NC. Literally, the law prevents any "doctor from being the first one in the State to use a particular medicine or form of healing."
6. With the exception of the two supreme court judges who constituted the majority of the Supreme Court decision, every Carolinian judge has ruled against the BME and in favor of a moderate and tolerant policy toward safe medical alternatives. In short, the prevailing legal interpretation of the law is distinctly in the minority.
7. The Supreme Court says the remedy for any alternatively oriented doctor lies with the legislature; i.e., amend the law.

CONSEQUENCES OF NC SUPREME COURT DECISION

1. BME can revoke any doctor's license solely for the use of a non-prevailing therapy. The doctor can be competent and caring. His therapy can be safe and life-saving. The therapy may be routinely available in every other state in the country. All that is interesting but irrelevant.

2. The doctor can't even put forth available scientific evidence in his/her behalf.

3. Basically the BME can go after any therapy they consider "unacceptable."

4. Literally thousands of North Carolinians have written letters and lobbied legislators in an attempt to preserve access to just two alternatives. When the BME goes after more doctors, how many more citizens will be suddenly confronted with losing access to therapies that citizens in every state outside of North Carolina can routinely receive?

5. Between Dr. Guess and myself, nearly \$250,000 has been spent in an effort to preserve access to homeopathy and chelation. Virtually every dime has been spent by citizens who will do anything in their power to secure this basic right. How much state revenue has the board spent in prosecuting doctors and defending their policies in the courts?

6. Dozens of doctors who would like to offer natural alternatives have essentially been intimidated into non-action. Just to testify in public to this committee would be enough, given the current climate created by the BME, to set in motion disciplinary proceedings that would ultimately lead to license revocation.

Thus, even this committee will never hear about the full range of alternative therapies currently available in North Carolina.

7. A doctor brain-drain. Several doctors have already left the state, More are planning to leave. In addition, the BME has denied licenses to highly qualified and reputable out of state doctors who wanted to move here.

8. In general, alternatively oriented medical doctors are highly motivated, very idealistic, dedicated, and compassionate physicians. They are not out to make a quick buck. In fact, the quickest bucks in medicine come from invasive diagnostic and surgical procedures. Every alternative medicine doctor that I know in this state, including myself, earns substantially less than he/she could if they offered only conventional therapies.

9. The current law guarantees the elimination of dozens of low cost safe alternatives. Medical costs are rising substantially. Invasive cardiac surgery costs have increased 30% in just the past few years. Alternative medical therapies, in practiced by qualified physicians, in my experience are always substantially safer and cheaper. It is simply totally irrational to leave intact a statute that virtually guarantees the elimination of the safest, least expensive alternatives that thousands of citizens strongly favor.

10. Hostile Climate between the medical society and thousands of citizens. One medical society doctor who addressed the Mavretic committee earlier this year told a TV reporter that Dr. Laird was only in it for the money. Most alternative medicine patients would tell you that the only thing the medical society cares more about protecting their power and their wallets than protecting the public. This is a highly polarized and charged situation where truth and public health will be the first two fatalities.

11. NC is out of step with the rest of the country.

A. Scientific evidence increasingly documents the benefits of nutritional therapies--all of which are grounds for license revocation in our state.

B. Over 30% of Americans chose "non-prevailing" therapies according to Time magazine.

C. Even the National Institutes of Health has set up a department of alternative medicine with \$2,000,000 annual budget.

D. NC is known nation-wide as having taken the most extreme and reactionary stand against these new trends.

FINDING A WIN-WIN SOLUTION

1. What are the legitimate interests of each party involved?

A. The medical board must retain the power to discipline any doctor whose practice jeopardizes the health or safety of our citizens. They also must have the right to eradicate fraudulent practices.

B. The General Assembly must be able to feel confident that any statutory revisions will preserve adequate safeguards for the public.

C. Any doctor offering an alternative therapy should be able to do so if the therapy is safe, reasonably effective, and rationally based. He should be able to use available scientific evidence to justify his treatment decisions. He should not be singled out solely because his therapy is not used by the majority.

D. Any citizen wanting a safe alternative therapy should be able to access that therapy, especially if they are fully informed of all the alternatives and the "non-prevailing" nature of the therapy in question.

2. Possible Solutions

A. Amend the statute so that a physician can't have his license revoked solely for offering a "non-prevailing" alternative unless there exists clear evidence of fraud or an unreasonable risk of harm to the public. This essentially is what Chief Justice Frye described as the most likely intent of the General Assembly.

Two states (Washington & Alaska) have already passed similar measures. This proposal is so modest that the Washington Medical Society didn't even bother to take a position on the issue. Indeed, if the legislature adopted the proposed amendment, the medical board's power to protect the public would not be diluted in any substantive manner.

B. Establish a second medical board that would set standards for the licensing and regulation of physicians offering alternative therapies. This has been done in Nevada, Connecticut, and Arizona. All of the therapies in question in our state have national certification boards and national accreditation standards. These therapies can be strictly and safely regulated by a board of qualified practitioners.

John Laird, MD
Leicester, NC 28748
(704) 683-3101



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**DECEMBER 2, 1992 STATEMENT OF ROBERT H. BILBRO, M.D. TO LRL
STUDY COMMITTEE ON MEDICINE**

First let me salute you for your time given to the people of North Carolina through your service on this committee. Your presence here speaks strongly for your commitment to public service and your willingness to deal with emotional issues that affect the well being of our citizens.

Let me tell you briefly of my background as it pertains to my being here to speak before you today. I am originally from Greenville, NC, and attended both undergraduate school and medical school at UNC in Chapel Hill. After a residency out of state and military duty in the Army Medical Corps in Korea, I returned to North Carolina for more residency training in Chapel Hill, then a fellowship in cardiology at Duke Medical Center. I have been in practice of internal medicine and cardiovascular disease in Raleigh since 1973. I do not perform cardiac surgery nor do I perform cardiac catheterizations or angioplasty. My role in caring for patients with cardiovascular disease is to try to appropriately integrate use of the proper medications, selected vitamins, diet, exercise, and stress reduction and make accurate judgements as to when patients need surgical treatment such as coronary artery bypass grafting. I would then refer the patient to the appropriate doctor to carry out such treatment. In our physician group we've had a psychologist on our staff part-time since 1974 and a dietician on staff for more than 10 years. It sounds like holistic medicine I suppose, but we never have advertised it as being such.

I was also involved in the initiation of a nonprofit Cardiac Rehabilitation Program in Raleigh in 1977. This involved working with patients with heart disease, after heart attack or after

bypass surgery to utilize exercise, psychological evaluation, stop smoking programs, dietary therapy, stress reduction as well as appropriate medications for these patients. Believe me, we worked hard in the early years to verify on a scientific basis that this alternative therapy of cardiac rehabilitation was truly effective.

My interest in chelation therapy began in 1983 when a physician was practicing such treatment here in Raleigh. He was advertising on radio and television and had suggested to one or two of my patients they undergo such treatment. I did research into the matter at that time and was thoroughly convinced that his claims of effective treatment were fraudulent. A colleague and I appeared on a television program to rebut claims he had made on an earlier program. We subsequently invited this physician to come to an open forum to discuss his mode of therapy. The Board of Medical Examiners began to ask questions. Rather than participate in any honest discussion, he chose to leave the State of North Carolina. I have since followed the literature regarding chelation therapy and have been asked over the last year or two by the Board of Medical Examiners to serve as a resource person in regard to this issue.

Let me give you some highlights of what I have learned about chelation therapy. Chelation refers to a chemical phenomenon whereby a compound will chemically bind with a metal in the body and then be excreted through the kidneys. Ethylenediaminetetraacetic (EDTA) is the chelating substance that was developed by Abbott Laboratories in the 1950's. It is still preferred treatment for lead poisoning or for iron overload as occurs in certain unusual anemic conditions. The hypothesis was raised in the 1950's as to the possibility of this compound being

useful in removing calcium from the walls of hardened arteries. Abbott Laboratory studied that possibility and found it ineffective in that regard. In short, all scientifically valid studies have failed to show the effectiveness of EDTA or chelation therapy for this purpose. Even so, as you well know, there are practitioners around the country and one physician in North Carolina who continues to use intravenous EDTA as a means of allegedly treating hardening of the arteries.

Obviously, I will not take time to discuss with you all of the research that's been done in this matter. Let me give you a few quotes from authoritative sources, and then describe to you a recent controlled study that shows this mode of treatment to be non-effective.

First, let me quote from the Medical Letter of Drug and Therapeutics, which is widely recognized as a non-profit organization that produces a bimonthly publication which gives physicians and surgeons an unbiased assessment of various therapies as they are proposed and advertised. The Medical Letter draws on a wide panel of experts across the country using particular professional people who are involved in the areas being evaluated.

The Medical Letter, after its discussion and review of the various clinical trials concludes, "there is no acceptable evidence that chelation therapy with EDTA is effective in the treatment of atherosclerosis (hardening of the arteries) and the adverse effects of this drug can be lethal". The Harvard Medical School Health Letter, which is a well recognized monthly publication that is written for non-physicians and reviews various clinical issues, had a detailed discussion on chelation therapy published in 1984. Let me quote a few excerpts from that article, "EDTA has no demonstrated

effect on the calcium in plaques of hardened arteries. Calcium removed from the bloodstream by chelation is rapidly replaced by calcium withdrawn from the bone, not from plaques". Even if chelation did remove calcium from the plaques, the remaining material, cholesterol, excessive smooth muscle tissue, and fibrous scar, would still remain to obstruct blood flow.

Advocates of chelation have provided a variety of elaborate theories. The theories are often quite vague and sometimes highly improbable. In no instance have they been subjected to rigorous testing. All of the evidence in favor of chelation therapy is in the form of anecdotes or uncontrolled trials. There is no credible evidence that chelation therapy works as claimed.

It is conceivable that some of these efforts do contribute to psychological improvement. However, there is no reason to think that the chelation agent EDTA makes any direct contribution to a person's well being.

From an editorial in the Archives of Internal Medicine, I quote "Not a single reputable cardiovascular society in the world endorses chelation therapy for the treatment of atherosclerosis". That same editorial goes on to note that an author from New Zealand who noted that "While orthodox science and medicine are restricted to the laws of logic and the dictates of controlled observation, those promoting fringe medicine and the pseudo sciences operate through the media with no such restrictions". It sure sounds descriptive of North Carolina as well as New Zealand.

Let me point out also that there are several medical associations which have assessed the data regarding chelation therapy. The American Heart Association found no scientific evidence to support the claims. A similar opinion has been

forthcoming from the American College of Physicians, the American Academy of Family Physicians, the American Society for Clinical Pharmacology and Therapeutics, the American College of Cardiology, and the American Osteopathic Association.

Even Abbott Laboratories, which produces EDTA for the purpose of treating lead or iron overload, states that they have no evidence that EDTA is effective in treating atherosclerosis or hardening of the arteries.

You have heard presentations from some who utilize and advocate chelation therapy. They have alluded to various "studies". Let me say in summary that the methodology in all of these studies is severely flawed. None of these studies that the advocates are pointing to have control patients. Several of the articles use a style with fancy scientific jargon, point to the research of others, and deliberately jumble together these concepts. You might call it scientific voodoo.

As best I can determine the American College for Advancement in Medicine is a storefront for printing a journal that is really self serving propaganda with no scientific validity.

On the other hand, let me spend a couple of minutes sharing with you what appears to be the most extensive study to date using appropriate scientific methodology to evaluate EDTA as a treatment for hardened arteries. This study was done in Denmark and was published in this country in March 1991 and 1992. It involved patients with compromised blood flow to the legs such that when they walked they experienced pain in the legs. This study utilized 153 such patients who were randomized to receive either the EDTA in a dosage advocated by chelation therapists, or a salt water solution. In the study they monitored walking distances for these

patients which involved the patient's sensation of pain, but also they measured blood flow to the ankles. By neither method of assessment could they find EDTA to be any more effective than the salt water solution in treating this problem. Interestingly, they did find 45% improvement in the walking time with those patients treated with the placebo saline solution, but that was no different than the experience for patients treated with EDTA.

My plea to you is that we utilize the knowledge that we can gain from scientific analysis and clinical study. That we rely on the opinions of experts from all over the world who have examined this possibility of utilizing chelation therapy to treat hardening of the arteries. It is most unfortunate that this issue has become so emotional and has become a political matter. We in North Carolina should take pride in having four fine medical schools in our state. Let me tell you that I can find no faculty person at any of these medical schools who advocates chelation therapy for this purpose. In fact, I would submit to you that there is not a university-based physician in the western world who advocates chelation therapy for this purpose.

I do think you need to recognize that all of the professional people who advocate this practice do gain financially quite well from this practice. It seems obvious that when you search for truth, you should discount the arguments from those who profit from the position they advocate.

Regarding the issue of potential harm, recognize that in earlier years of chelation therapy there were some deaths that occurred in the state of Louisiana that seemed to be related to kidney poisoning or renal toxicity that is a recognized side effect from this substance. It seems apparent that the practitioners of

chelation therapy have in more recent years deluted out the EDTA to minimize the chance of such kidney problems. There is a theoretical concern that if one were to use EDTA repeatedly it would accelerate the development of osteoporosis or thinning of bones due to removal of calcium from those bones. This problem can lead to hip fractures, vertebral fractures, wrist fractures, obviously problems that are getting a lot of attention today with trying to avoid these fractures in older women. Also, there is the obvious concern that if a patient has significant arterial disease that might benefit from scientifically valid therapy, to be treating that patient with chelation therapy would tend to obstruct appropriate treatment and thus would potentially indirectly cause significant harm to that patient.

Obviously, there is great concern in medical circles as well as in seats of government that we find appropriate means to control costs of health care. As a part of this effort, various organizations of physicians across the country are developing and beginning to implement practiced guidelines. These are being done in an effort to try to spend the health care dollar wisely, not to waste it on ineffective or unnecessary diagnosis or treatment. Certainly there are continuous and daily innovations in medical treatment across this country. The forward progress that has been made over the last 40 years since EDTA first became available has been mind boggling. The challenge is for us to move forward with scientific evaluation and on a rational basis, not a political and emotional basis.

To open the gates for chelation treatment in North Carolina would be a huge step backwards, when we are struggling to make some forward progress in the efficiency of our health care system.

Our statements here are not intended to discount the sincerity of the patients who will speak to you about their perceived benefit from chelation therapy. They are very convinced of that benefit. You do need to recognize three points in this regard. First the human body does have a remarkable power to heal itself at least to adapt to a problem in certain circumstances. Two, there is the uncertainty as to the underlying diagnosis. Here again scientific assessment is needed to define the diagnosis before one can do a proper scientific study. Three, placebo effect needs to be recognized. Again, I refer you to the Danish study with 153 patients and they found that 45% of the patients treated with saline solution did improve in their symptoms with that treatment.

Please recognize that the decision you make is not for or against doctors, but rather how best to protect the interests of the citizens of North Carolina. I encourage you to be extremely cautious.

I thank you again for the opportunity to speak to you on this matter. I will be happy to try to respond to any questions or comments you may have.

MY NAME IS NICHOLAS EMANUEL STRATAS, M.D. I'M IN RALEIGH, NORTH CAROLINA. I WAS ORIGINALLY BORN IN TORONTO, ONTARIO, CANADA AND BECAME A CITIZEN OF THE UNITED STATES OF AMERICA IN 1963. I'M MARRIED AND HAVE THREE SONS. I AM LICENSED IN VIRGINIA, NORTH CAROLINA AND SOUTH CAROLINA. I AM CERTIFIED BY THE AMERICAN BOARD OF PSYCHIATRY AND NEUROLOGY AND HAVE CERTIFICATIONS FROM THE AMERICAN ACADEMY OF BEHAVIORAL MEDICINE AND THE BIOFEEDBACK CERTIFICATION INSTITUTE OF AMERICA. I HAVE BEEN HONORED WITH THE BESTOWAL OF FELLOWSHIPS IN SEVERAL PROFESSIONAL ORGANIZATIONS.

I AM CURRENTLY IN THE PRIVATE PRACTICE OF PSYCHIATRY DOING CLINICAL WORK WITH INDIVIDUALS, COUPLES, AND GROUPS AND UTILIZE PSYCHOTHERAPY INCLUDING HYPNOSIS AND COGNITIVE BEHAVIORAL THERAPY.

IN ADDITION I DO PRIVATE CONSULTATION IN THE AREA OF ORGANIZATION AND EXECUTIVE DEVELOPMENT TO PRIVATE INDUSTRY AND TO MENTAL HEALTH AND HUMAN RESOURCE PROGRAMS.

I AM ON THE STAFF OF WAKE, REX, RALEIGH COMMUNITY AND HOLLY HILL HOSPITALS.

I AM ASSOCIATE CONSULTING PROFESSOR OF PSYCHIATRY AT DUKE UNIVERSITY MEDICAL CENTER AND CLINICAL PROFESSOR OF PSYCHIATRY AT THE UNIVERSITY OF NORTH CAROLINA.

FINALLY I AM PRESIDENT OF THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF NORTH CAROLINA.

I APPRECIATE THE OPPORTUNITY TO BE HERE. I APPRECIATE THE EFFORTS OF THE ALTERNATIVE TREATMENT PRACTICES COMMITTEE AND OF EACH INDIVIDUAL ON THIS COMMITTEE. IT IS A PRIVILEGE AND AN OPPORTUNITY FOR ME TO PRACTICE IN NORTH CAROLINA WHERE WE HAVE A WORLD CLASS TYPE OF MEDICINE PRACTICED, BOTH BY OUR PRIVATE PRACTITIONERS AND THOSE IN OUR WORLD-CLASS ACADEMIC CENTERS. I HAVE BEEN HONORED AND AM HUMBLLED THAT MY PEERS AND THE PUBLIC HAVE ALLOWED ME TO HAVE A LARGE AND SUCCESSFUL PRACTICE. I AM HONORED BY MY PEERS AND BY THIS STATE AND PRIVILEGED TO SERVE EACH INDIVIDUAL NORTH CAROLINIAN AND MY FELLOW PHYSICIANS ON THE BOARD OF MEDICAL EXAMINERS. I MUST TELL YOU THAT THIS IS A LABOR OF LOVE FOR THOSE WHO ARE APPOINTED IN THIS CAPACITY. WE ARE SEVEN PHYSICIANS AND ONE PUBLIC MEMBER. THE PHYSICIANS ARE ELECTED BY THE MEDICAL SOCIETY AND APPOINTED BY THE GOVERNOR AND THE PUBLIC MEMBER IS APPOINTED DIRECTLY BY THE GOVERNOR.

AT THE ASSUMPTION OF THE PRESIDENCY ON NOVEMBER 1 AND AT OUR FIRST MEETING, WE DID DISCUSS THE STATUTE CREATING THE BOARD, THE BOARD'S FUNCTIONS AND ALTERNATIVE TREATMENT PRACTICES. I, AT THAT TIME, APPOINTED A COMMITTEE TO LOOK AT ALTERNATIVE TREATMENT PRACTICES AND PROPOSE A STATEMENT IN TIME FOR REVIEW AT THE JANUARY BOARD MEETING.

MY STATEMENT HERE REPRESENTS A DISTILLATION OF THE DISCUSSION OF OUR NOVEMBER MEETING OF THIS AREA. THERE IS A LONG HISTORY AND THE DEVELOPMENT OF A LARGE BODY OF

LITERATURE AND DOCUMENTED KNOWLEDGE IN THE AREA OF MEDICINE AND SURGERY WHICH HAS EVENTUATED IN THE CREATION OF THE BOARD OF MEDICAL EXAMINERS. THIS STATUTE WAS REWRITTEN AND INTRODUCED IN 1975 BY FOUR OF THE MOST PROMINENT HUMAN BEINGS WHO HAVE SERVED THIS STATE IN LEGISLATIVE CAPACITY: SENATORS KENNETH ROYAL, JULIAN ALSBROOK, LUTHER BRITT, AND LAMAR GUDGER. IT IS MY PRIVILEGE TO HAVE DIRECT AND PERSONAL EXPERIENCES WITH EACH OF THESE GENTLEMEN.

THE STATUTORY DUTY OF THE BOARD IS TO "PROPERLY REGULATE THE PRACTICE OF MEDICINE AND SURGERY." GUIDELINES FOR PHYSICIAN CONDUCT ARE SET OUT IN THE STATUTE. IF A PHYSICIAN IS THOUGHT TO BE PRACTICING IN AN IMPROPER FASHION, THEN THE BOARD HAS THE DUTY TO DETERMINE WHETHER THE CONTACT IS INAPPROPRIATE. IF THE PRACTICE IS NOT WITHIN THE STANDARDS RECOGNIZED, THE BOARD CAN TAKE ACTION.

BEFORE THE BOARD TAKES A LICENSE, THERE MUST BE A HEARING IN WHICH THE PHYSICIAN IS GIVEN THE OPPORTUNITY TO DEMONSTRATE THAT HIS PRACTICE IS WITHIN THE STANDARDS. IF THERE IS A USE OF NEW TREATMENT, THERE IS THE OPPORTUNITY TO DEMONSTRATE THAT ACCEPTED STANDARDS FOR THE USE OF NEW PROCEDURES OR MEDICATIONS ARE BEING FOLLOWED.

BY STATUTES AND PHILOSOPHICALLY, THE BOARD'S RESPONSIBILITY IS TO PROTECT THE PUBLIC. TO THIS END, THE BOARD IS COMMITTED TO THE HIGHEST STANDARDS OF MEDICAL CARE AND IS CONCERNED THAT EACH PHYSICIAN MAINTAIN WELL-BEING AND CONTINUING EDUCATION. THE BOARD WORKS TO CONTAIN, CONTROL AND REHABILITATE WHEN FEASIBLE, PHYSICIANS WHO WOULD OTHERWISE BE OF POTENTIAL HARM TO THE PUBLIC. THERE

ARE CURRENTLY CLOSE TO 13,000 PHYSICIANS LICENSED IN THE STATE WITH A NORTH CAROLINA ADDRESS AND AN ADDITIONAL 7500 PHYSICIANS WHO HAVE AN OUT-OF-STATE ADDRESS.

THE BOARD REGULATES THROUGH LICENSING AND DISCIPLINING M.D.'S AND M.D. EXTENDERS. THE BOARD IS FUNDED BY ITS OWN ACTIVITIES, SUCH AS LICENSING, ADMINISTRATION OF EXAMINATIONS, AND IS NOT FUNDED BY TAXES IN ANY FORM.

THE BOARD DOES NOT REGULATE NON-M.D.'S OR NON-M.D. EXTENDERS.

THE BOARD DOES NOT PROHIBIT ALTERNATIVE TREATMENT PRACTICES BY NON-M.D.'S.

REQUESTS, COMPLAINTS AND REPORTS COME FROM A VARIETY OF SOURCES, INCLUDING PATIENTS OR RELATIVES OF PATIENTS, PHYSICIANS, HEALTH ORGANIZATIONS, THE PUBLIC IN GENERAL, OTHER HEALTH PROFESSIONALS AND BOARD MEMBERS. EACH IS CONSIDERED IN DETAIL. IN ADDITION THERE IS MANDATORY REPORTING FROM THE LIABILITY INSURANCE COMPANIES OF MALPRACTICE CASES DECIDED AGAINST PHYSICIANS OR SETTLED OUT OF COURT. THE BOARD ALSO REVIEWS HOSPITALS AND OTHER HEALTH CARE INSTITUTIONS REPORTS OF CHANGES OF STATUS, DISCIPLINARY ACTIONS OR RELEASES FROM MEDICAL STAFFS.

TO UNDERSTAND THE ISSUES THIS COMMITTEE MUST FACE, IT IS IMPORTANT TO UNDERSTAND WHY WE LICENSE PROFESSIONALS AND WHY WE REQUIRE THEM TO OPERATE WITHIN THE PARAMETERS OF STANDARDS AND ACCEPTED PRACTICES.

WE SIT COMFORTABLY IN THIS BUILDING TODAY BECAUSE IT WAS

BUILT BY LICENSED PROFESSIONALS. IT WAS DESIGNED BY AN ARCHITECT WHO WAS LICENSED TO DESIGN BUILDINGS. ITS CONSTRUCTION WAS SUPERVISED BY A LICENSED CONTRACTOR. ANY INDIVIDUAL WHO ENTERS THIS BUILDING DOES SO WITH THE CONFIDENCE THAT IT WAS CONSTRUCTED BY LICENSED PROFESSIONALS IN CONFORMANCE WITH PREVAILING STANDARDS. IN REGULATING THESE PROFESSIONALS, WE DO NOT AWAIT HARM TO COME TO AN INDIVIDUAL BECAUSE OF SUCH CONSTRUCTION IN ORDER TO TAKE ACTION. WHERE WE DO AWAIT HARM, SUCH AS IN THE CASE OF RECENT TRAGEDY IN RALEIGH, THERE IS A PUBLIC OUTCRY.

ATTORNEYS LICENSED BY THE STATE BAR MUST MEET CERTAIN REQUIREMENTS. WHEN YOU HAVE A WILL DRAFTED, YOU CAN THEREFORE BE CONFIDENT THAT IF THE WILL IS CONTESTED YOUR LOVED ONES WILL STILL BENEFIT. WHEN WE TRAVEL ON AN AIRPLANE, WE DO SO COMFORTABLY WITH THE GUARANTEE THAT THE VISION AND HEALTH OF THE PILOT ARE WITHIN CERTAIN LEVELS THAT ASSURE OUR SAFETY. THAT PILOT IS ALSO LICENSED AND MUST PILOT THE PLANE WITHIN SPECIFIC RULES AND LIMITATIONS.

PROFESSIONAL LICENSURE STANDARDS PROTECT THE PUBLIC. UNFORTUNATELY, NOT EVERYONE HAS THE EDUCATION AND EXPERTISE TO EVALUATE EVERY PROFESSIONAL DECISION OR ACT. THAT'S WHY WE LICENSE PROFESSIONALS. THAT'S WHY WE DELEGATE TO EXPERT LICENSING BOARDS THIS RESPONSIBILITY. THAT'S WHY WE ONLY GRANT A MEDICAL LICENSE AFTER ONE HAS COMPLETED FOUR YEARS OF COLLEGE, FOUR YEARS OF MEDICAL SCHOOL, AND ADDITIONAL YEARS OF TRAINING IN SPECIALTY RESIDENCY PROGRAMS. IF YOU ARE AWAY FROM HOME AND HAVE

TO BE RUSHED TO AN EMERGENCY ROOM, THE FACT THAT THE DOCTOR WHO TREATS YOU IS LICENSED GUARANTEES THAT THE CARE YOU RECEIVE WILL BE REASONABLE NO MATTER WHERE YOU ARE.

NOW, LET ME TURN TO THE CHARGE OF THIS COMMITTEE TO HELP ME STRUCTURE THE REST OF MY REMARKS AND I QUOTE: "THE COMMITTEE'S STUDY MAY INCLUDE, BUT IS NOT LIMITED TO, THE FOLLOWING MATTERS: (1) RECOMMENDATIONS ON A STATE POLICY ON CITIZEN ACCESS TO ALTERNATIVE PRACTICES.

THE BOARD OF MEDICAL EXAMINERS HAS NO JURISDICTION AND IS NOT A BARRIER TO CITIZENS OF ACCESS TO ALTERNATIVE PRACTICES. IF WE DOUBT THIS, WE HAVE ONLY TO PICK UP THE LOCAL INDEPENDENT NEWSPAPER WHICH HAS SEVERAL PAGES AT THE BACK WHICH ADVERTISE THESE PRACTICES.

HERE I MUST VERBALIZE A CAUTION. THE CREATION OF A BOARD OF ALTERNATIVE TREATMENT PRACTICES OR EVEN THE STATEMENT OF A LEGISLATED STATE POLICY HAS THE POTENTIAL TO LEGITIMIZE AND PUT THE STATE'S STAMP OF APPROVAL ON A WIDE RANGE OF PRACTICES FOR AND TO THE PUBLIC.

EACH INDIVIDUAL WANTS AND DESERVES ACCESS FOR SELF HELP. WE MUST TAKE INTO ACCOUNT HOWEVER THE RISKS FOR CHILDREN AND OTHER NON-ENFRANCHISED PATIENTS WHO MUST BE PROTECTED FROM ABUSES WHATEVER THEY MAY BE AND IN THIS CASE BY "ALTERNATIVE HEALING" AS

SUBSTITUTE FOR PROVEN THERAPY. THERE MUST BE A CONCERN FOR ACCURATE DIAGNOSIS AND TREATMENT.

SOCIETY DEMANDS THAT PARENTS AND GUARDIANS EXERCISE APPROPRIATE DECISION MAKING IN SEEKING MEDICAL CARE FOR THEIR CHILDREN AND CHARGES. IT IS ESSENTIAL TO CARRY OUT STUDIES REGARDING ALTERNATIVE TREATMENT PRACTICES AND THEIR OUTCOMES AND EDUCATE US ALL REGARDING THESE FINDINGS.

THERE IS A NATIONAL EFFORT SUBSEQUENT TO THE PASSING OF A 1992 APPROPRIATION AND AN UNDERTAKING BY THE NATIONAL INSTITUTES OF HEALTH THROUGH THE CREATION OF THE OFFICE FOR THE STUDY OF UNCONVENTIONAL MEDICAL PRACTICES. THIS IS FUNDED BY A TWO MILLION DOLLAR APPROPRIATION AND CHARGED WITH EVALUATING ACUPUNCTURE, SO-CALLED FOLK REMEDIES, USE OF HERBS, HOMEOPATHY, NATUROPATHY, NUTRITIONAL TREATMENTS, MASSAGE THERAPY AND OTHER PRACTICES. TWENTY PERSONS WITH WIDELY DIVERSE INTERESTS IN UNCONVENTIONAL PRACTICE HAVE BEEN CALLED TOGETHER BY THE NIH.

I URGE YOU TO AWAIT THE NIH FINDINGS.

"(2) REGULATION OF ALTERNATIVE MEDICAL PRACTICES IN OTHER STATES."

THIS DOCUMENTATION IS CLEARLY AVAILABLE AND I AM CONFIDENT THAT YOU WILL OBTAIN THIS.

"(3) CRITERIA FOR EVALUATING NON-PREVAILING MEDICAL PRACTICES THAT ARE COMPARABLE TO THOSE APPLIED TO PREVAILING MEDICAL PRACTICES."

THIS IS A MAMMOTH JOB AND LIKELY ONE THAT WILL COME CLOSER TO BEING ADDRESSED IN THE TWO MILLION DOLLAR NATIONAL INSTITUTE OF HEALTH STUDY THAN ANYTHING WE ARE LIKELY TO DO HERE IN THIS STATE.

"(4) COMPARISON OF THE POWERS OF THE NORTH CAROLINA BOARD OF MEDICAL EXAMINERS WITH THE POWERS OF SIMILAR BOARDS IN OTHER STATES REGARDING NON-PREVAILING MEDICAL PRACTICES."

AGAIN, THIS DOCUMENTATION IS READILY AVAILABLE AND I BELIEVE YOU WILL FIND THAT IN PRACTICALLY ALL OF THE OTHER STATES, THE LEGISLATION PARALLELS OURS.

"(5) THE EXISTENCE AND EFFECTIVENESS OF NATIONAL CERTIFICATION BOARDS OF NON-PREVAILING MEDICAL PRACTICES IN THE PROTECTION OF THE PUBLIC'S HEALTH."

HERE, I WOULD LIKE TO ADDRESS THE ISSUE OF PHYSICIANS WHO DO PRACTICE ALTERNATIVE TREATMENTS AND SHOULD THERE BE SUCH A BOARD, PHYSICIANS WHO MIGHT BE LICENSED BOTH BY THE BOARD OF MEDICAL EXAMINERS AND BY AN ALTERNATIVE TREATMENT PRACTICES BOARD.

IN BOTH INSTANCES, THE BOARD OF MEDICAL EXAMINERS,

MUST RETAIN REGULATORY POWER.

THE BOARD OF MEDICAL EXAMINERS DOES WORK TO STAY ABREAST OF CURRENT DEVELOPMENTS. THE ACTIONS OF PAST BOARDS ARE NOT CARVED IN STONE AND EACH BOARD BRINGS TO ITS FUNCTION TODAY'S KNOWLEDGE AND INFORMATION. THIS IS FURTHER GUARANTEED BY CONTINUAL ROTATION OF THE MEMBERS OF THE BOARD. IN FACT, EVEN AS WE SPEAK, THREE MEMBERS OF OUR CURRENT BOARD ARE MOVING OFF THE BOARD TO BE REPLACED BY THREE NEW APPOINTEES. I WILL COMPLETE MY TERM ON THE BOARD AS OF THE END OF OCTOBER 1993, AS WILL THE PUBLIC MEMBER, AND WILL BE REPLACED AT THAT TIME.

AS AN EXAMPLE OF THE OPENNESS OF THE BOARD AND THE MEDICAL COMMUNITY, I CITE MYSELF. WHEN I CAME TO NORTH CAROLINA, I WAS PERHAPS ONE OF FEW, IF NOT THE ONLY PERSON, WHO BROUGHT WITH HIM SKILLS IN HYPNOSIS, COGNITIVE BEHAVIORAL THERAPY AND BIOFEEDBACK TRAINING. WHILE THIS WAS NOT EMBRACED IMMEDIATELY, I MUST SHARE WITH YOU THAT I WAS SOUGHT OUT EVEN BY MY MEDICAL COLLEAGUES FOR TREATMENT OF FAMILY MEMBERS BECAUSE OF THE KNOWLEDGE THAT I HAD BROUGHT. TODAY THESE MODALITIES ARE FREQUENTLY FOUND AS TOOLS NOT ONLY OF PSYCHIATRISTS BUT OF MANY FAMILY PRACTITIONERS, INTERNISTS, AND OTHERS. MOREOVER, I HAVE BEEN INTERESTED IN DRUGS WHICH HAVE NOT YET HAD APPROVAL TO THE OPEN MARKET BY THE FDA. I HAVE AVAILED MYSELF OF THE STRUCTURES WHICH ARE PROVIDED TO ENGAGE IN STUDIES OF NEW DRUGS WITH PROPER OVERSIGHT TO PROVIDE FOR MONITORED RESULTS. THUS WHILE MAKING

NEW DRUGS AVAILABLE I DO SO WITH AN EYE TO RESEARCH
PROTOCOL AND WITH PARTICULAR CARE FOR THE HEALTH
AND SAFETY OF THE PATIENTS AND WITH THEIR FULL
KNOWLEDGE.

THE QUESTION HAS BEEN RAISED - WHY SHOULD THERE BE
DISCIPLINARY POWERS WITHOUT EVIDENCE OF HARM?

IN A SITUATION WHERE A PHYSICIAN IS INCURRING BOUNDARY
VIOLATIONS, THAT IS, PRACTICING IN SUCH A WAY THAT THE
PATIENT EXPERIENCES SEXUAL INTRUSION: SHOULD WE
AWAIT HARM?

IN THE CASE OF THE PHYSICIAN WHOSE PRESCRIBING
PRACTICES INCLUDE THE HEAVY USE OF NARCOTICS
INAPPROPRIATELY: SHOULD WE AWAIT HARM?

IN THE CASE OF THE PHYSICIAN WITH SUBSTANCE ABUSE
AND/OR PSYCHIATRIC PROBLEMS WHO IS IN DENIAL AND
WITHOUT TREATMENT: SHOULD WE AWAIT HARM?

IN THE CASE OF A PHYSICIAN USING UNSTUDIED OR EVEN
FRAUDULENT THERAPIES IN LIEU OF KNOWN AND PROVEN
TREATMENT: SHOULD WE AWAIT HARM?

I THINK NOT.

IN A PERFECT WORLD OF PERFECT PEOPLE, FREEDOM TO CHOOSE

MEDICAL CARE IS IDEAL. IN THE REAL WORLD, FOR MANY PEOPLE NOT KNOWLEDGABLE, FREEDOM OF CHOICE IS NO CHOICE AT ALL.

FOR M.D.'S, PATIENTS WANT REGULATION. AS AN EXAMPLE OF THIS, WE GET MANY LETTERS OF COMPLAINT WHICH WE REVIEW AT EACH MEETING. MANY OF THESE LETTERS HAVE TO DO WITH BILLING BY PHYSICIANS. BELIEVE IT OR NOT, THIS IS NOT WITHIN THE JURISDICTION OF THE BOARD OF MEDICAL EXAMINERS.

I URGE YOU TO AFFIRM AND EVEN TO CONSIDER EXPANSION OF THE REGULATORY POWERS OF PHYSICIANS BY THE BOARD OF MEDICAL EXAMINERS.

FINALLY, IN SUMMARY, I COMMEND FOR YOUR CONSIDERATION:

- (1) THAT YOUR ACTION AWAIT THE FINDINGS OF THE NATIONAL INSTITUTE OF HEALTH STUDY, AND
- (2) THAT YOU AFFIRM THE STATUTORY, REGULATORY MANDATE OF THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF NORTH CAROLINA. WE MUST NOT UNDERMINE OR ERODE A SYSTEM THAT HAS PROVIDED US WITH A FIRST-CLASS MEDICAL COMMUNITY. WE MUST BUILD UPON IT BY SEEKING OUT AND INTEGRATING NEW INFORMATION ABOUT NEW TREATMENT PRACTICES.

AGAIN, I THANK YOU FOR YOUR TIME, EFFORTS, AND ENERGIES IN THESE MATTERS. I AND THE BOARD OF MEDICAL EXAMINERS ARE AVIALABLE TO YOU NOW OR AT ANY TIME FOR WHATEVER RESOURCE WE MAY BE AND WHATEVER QUESTIONS YOU MAY HAVE.

THANK YOU FOR PERMITTING ME TO BE HERE.

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December 2, 1992

MEMORANDUM

TO: Members of the LRC Committee on Alternative Medicine

FROM: Linwood Jones, Staff Attorney

RE: Alternative Medicine - Background and Issues

This memorandum is intended to briefly describe alternative medicine, how it is regulated, and why it has become an issue in the North Carolina General Assembly. Other states' experiences with alternative medical practices are also noted. This memorandum does not address whether homeopathy, naturopathy, chelation therapy and other alternative practices are appropriate for this State, nor does it recommend what policies the Committee should adopt concerning these practices.



I. LEGISLATIVE BACKGROUND

The topic of alternative medical practices first surfaced in the legislature earlier this year when the Legislative Research Commission's Health Care Access Study Committee heard testimony concerning alternative medicine. The Committee's review of the issue was brief and did not result in any recommendations to the 1992 General Assembly.

At about the same time, a case involving a physician (Dr. George Guess) disciplined by the Board of Medical Examiners for practicing homeopathy was winding down in federal court. On June 25, 1992, the 4th Circuit Court of Appeals ruled in favor of the Board, ending a 7-year old legal battle with Dr. Guess. Shortly thereafter, the House State Government Committee, chaired by Representative Mavretic, heard testimony on alternative medicine, particularly the use of chelation therapy. No legislation resulted from the hearings.

In September, 1992, the Legislative Research Commission created the LRC Committee on Alternative Medical Practices and authorized the Committee to report its recommendations to the General Assembly by January 6, 1993.

II. ALTERNATIVE MEDICINE

The phrase "alternative medicine" is generally used to refer to therapies, treatments, and remedies not normally offered in conventional medicine. The list of alternative medical practices varies, depending on whose list is used, but includes such fields as naturopathy, homeopathy, acupuncture, chiropractic, osteopathy, holistic medicine, Ayurvedic, behavioral medicine, Native American medicine, and metaphysical healing.¹ This memorandum primarily addresses naturopathy, homeopathy, and acupuncture, as well as the practice of chelation therapy. These four areas have been the focus thus far of the Committee's discussions.

In conventional medicine, the practice of medicine is divided into different specialties and subspecialties. The same is true of the practice of surgery. In alternative medicine, however, the practices listed above do not constitute distinct specialties. Naturopaths, for example, use homeopathic remedies as one of many types of treatment for their patients. Likewise, holistic medicine involves the use of all responsible methods of treatment in attempting to treat the "whole" person. Chelation therapy, on the other hand, is neither a "discipline" within alternative medicine nor a "holistic" approach, but instead involves the use of a conventional drug for a nonconventional treatment. The

alternative practices upon which this Committee is focusing are described in more detail as follows:

Homeopathy: Homeopathy is based on the principle that "like cures like." This principle holds that the same ingredient that causes disease or illness in a patient can be administered to the patient in highly diluted dosages to help the body's natural healing process restore the patient's health. Homeopaths believe that a patient's disease or illness cannot be classified into a particular diagnostic category but is unique to that patient, requiring a single appropriate remedy for that patient.²

Homeopathy traces its roots to Samuel Hahnemann, a German physician of the late 1700s and early 1800s. Hahnemann opposed many of the conventional medical practices of his time such as bloodletting and the use of toxic drugs because they conflicted with his belief in the body's natural healing processes. Hahnemann, in conducting his own pharmacological studies of drugs, derived the principle of "like cures like" and later determined that the more diluted the drug, the more effective it would be. Many of Hahnemann's drugs were made from botanical and mineral substances.³

Homeopathy began to attract followers among other physicians in Europe and eventually spread to the United States. The first homeopathic physician came to America in 1828 and the first homeopathic medical college opened a few years later in Philadelphia. The transplanting of homeopathy to American soil came at the same time as the Jacksonian-led Popular Health Movement of the early 1800s. The Popular Health Movement pushed for government deregulation and succeeded in repealing most states' medical licensing laws, thus allowing homeopaths and others to practice their professions at will.⁴ (I have found no record of North Carolina having had medical licensing laws on the books prior to 1858, although the General Assembly was considering such legislation as early as 1790).⁵

Homeopathy competed with conventional medicine during the early and mid 1800s. Most of the homeopaths in this country at that time were trained as conventional physicians. Many, in fact, practiced what we would generally refer to today as "complementary medicine" -- i.e., they used a combination of conventional and homeopathic medicine, depending on the patient's illness. By the late nineteenth century, however, the practice of homeopathy in America began its decline, attributable in part to advances in conventional medicine (particularly in bacteriology and immunology) and in part to a rift that developed among homeopaths who believed in strict adherence to Hahnemann's principles and those who believed in the complementary approach. Many of the latter group eventually were absorbed back into

the conventional medicine mainstream; nevertheless, even as late as 1900, one of every six physicians was a homeopathic physician.⁶

The gradual disappearance of homeopathic medical colleges, homeopathic licensing boards, and homeopathic representation on medical boards is discussed further in Section IV of this memorandum.

Naturopathy: Naturopathy is a drugless method of healing that relies on many different therapies in the treatment of patients, including nutritional therapy, botanical medicine, homeopathy, hydrotherapy, manipulation, behavioral medicine, and Oriental medicine.⁷ All of these therapies are oriented toward "natural healing" -- hence, the term "naturopathy."

Naturopathy can be traced back to the European health spas and related hydrotherapy methods of the eighteenth century. However, its recognition as a formal treatment system dates back only to the turn of this century, when Dr. Benedict Lust, a German physician (MD), moved to America in 1892 to practice hydrotherapy. In 1900, he and his followers added other natural healing methods (listed above) and founded the first naturopathic school in New York City a couple of years later.⁸

Naturopathy did not flourish in America as homeopathy once had. Because of the diverse therapies to which naturopathy subscribed, the naturopathic movement in America was a looser, more informal collection of alternative practitioners. As a result, they were not as successful as their alternative contemporaries -- osteopaths and chiropractors -- in organizing politically and obtaining state licensure acts. In addition, the naturopathic movement came well after the Popular Health Movement and mid-nineteenth century concerns about conventional medicine.⁹

Like homeopathy, naturopathy was founded by an MD, but naturopathy failed to attract conventional physicians as homeopathy had done. This distinction continues in the states that formally recognize these professions: homeopaths must be medical (or osteopathic) school graduates while naturopaths are generally graduates of naturopathic school. Historically, since most states have failed to recognize naturopathy, naturopaths have often sought licensure as chiropractors in order to perform manipulation therapy.¹⁰

Acupuncture: Acupuncture, which involves the insertion of needles into strategic points on the patient's body, is one of many techniques comprising Oriental (Chinese) medicine. Oriental medicine is over 3,000 years old. It is based on the belief that there is a basic universal energy that flows through the body (called "ch'i") and that disease represents an imbalance of this energy within the body. The goal of Oriental medicine

is to determine which organs are affected by the imbalance and whether those organs need more or less of the energy. (The term "organ" in Chinese medicine actually refers not to a specific organ, but to a "sphere of influence" near the organ.¹¹

Treatments in Oriental medicine include massage, herbal remedies, nutritional therapy, and what is perhaps the most publicized therapy -- acupuncture. One of the theories of Oriental medicine is that the flow of energy inside the patient's body manifests itself outside the patient's body through pulse, skin color and texture, temperature, body odor, etc. The Oriental practitioner relies on these symptoms to diagnose the underlying energy imbalance; he then uses acupuncture needles to stimulate certain areas on the surface of the body to move energy to or away from organs.¹²

Acupuncture is a fairly recent emigrant to America. Its use in this country is often for pain control rather than for the traditional Chinese purpose of correcting energy imbalances.¹³

Chelation Therapy: Chelation therapy involves the use of EDTA (ethylene diamine tetracarboxylic acid) to remove heavy metals from the blood. EDTA is referred to as a "chelating" agent because it binds in the bloodstream with metal ions such as lead, mercury, and calcium. The resulting compound becomes soluble in the blood and is eventually eliminated through the kidneys.¹⁴

EDTA's conventional use is in the treatment of heavy metal poisoning (for example, lead poisoning). However, in the 1950s, physicians began using EDTA chelation therapy to treat atherosclerosis, based on reports by Dr. Norman Clarke that EDTA removed calcium deposits from the cholesterol plaques in the arteries.¹⁵ It is the use of chelation therapy for treatment of atherosclerosis and related conditions that falls under the umbrella of "alternative medical practices." For the remainder of this memorandum, the term "chelation therapy" refers only to this alternative use.

III. REGULATION OF MEDICINE AND ALTERNATIVE MEDICINE

The practice of medicine and surgery in this State is regulated by the North Carolina Board of Medical Examiners. The Board consists of 7 members elected by the North Carolina Medical Society and 1 member appointed by the Governor. The public member cannot be a health care provider or have a significant financial interest in a health service or profession.¹⁶

The North Carolina Medical Practice Act determines whether a particular medical practice constitutes the "practice of medicine or surgery." A person is considered to be engaged in the practice of medicine or surgery under G.S. §90-18 if he or she "shall diagnose or attempt to diagnose, treat or attempt to treat, operate or attempt to operate on, or prescribe for or administer to, or profess to treat any human ailment, physical or mental, or any physical injury to or deformity of another person."

When the State began regulating physicians 135 years ago, the "practice of medicine and surgery" was interpreted by the courts to include only those practitioners who used medicines, drugs, or surgery in the treatment of their patients.¹⁷ Osteopaths, homeopaths, and certain other drugless healers were considered not to be practicing medicine or surgery and therefore did not have to obtain a license from the Board of Medical Examiners. The General Assembly eventually created a separate licensing board for osteopathic physicians.¹⁸ Years later, as part of what appears to have been a national trend during the early part of this century,¹⁹ the legislature added diagnosis, treatment, operation and prescription (the current definition) as activities that could, either alone or in conjunction with each other, constitute the practice of medicine or surgery. The resulting definition is very broad and potentially covers all alternative medical practices that are not specifically exempted in the act.

Once it is determined that an activity constitutes the practice of medicine, the next inquiry is how that activity is regulated. For purposes of this Committee's work, regulation of these activities can be separated into four categories:

- (1) the activity can be performed only by licensed physicians;
- (2) the activity can be performed by persons licensed by other health-related licensing boards;
- (3) the activity can be performed by anyone, without any regulatory oversight, as an exemption under the Medical Practice Act; or
- (4) the activity is the unlawful practice of medicine.

The second category includes dentists, pharmacists, and others whose practices fit the definition of "medicine or surgery," but who are regulated by boards other than the Board of Medical Examiners.²⁰ Also included in this category are a couple of groups that have historically been considered "alternative" practitioners but have their own licensing boards: osteopaths and chiropractors.²¹ The third category (exemptions) includes such activities as the administration of domestic remedies in emergencies and healing through spiritual means.²²

It is the first and fourth categories that are primarily at issue in this study. They apply, respectively, to the conduct of licensed physicians and the conduct of alternative

(nonphysician) practitioners. Each is regulated by the State in a different manner, under different statutes:

Practice of Medicine by Licensed Physicians: The North Carolina Board of Medical Examiners oversees and regulates the practice of medicine and surgery by licensed physicians. Since its inception in 1858, the Board has had statutory authority to revoke a physician's license for misconduct.²³ G.S. §90-14 currently provides the Board with 14 different grounds for revoking or suspending a physician's license. Included in the list is the "unprofessional conduct" standard, which provides that a physician may be sanctioned for:

"Unprofessional conduct, including, but not limited to, any departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the medical profession, irrespective of whether or not a patient is injured thereby..." (G.S. §90-14(6)).

In 1985, the Board began disciplinary proceedings against an Asheville physician, Dr. George Guess (MD), for using homeopathic remedies in his practice of medicine. Dr. Guess was charged with unprofessional conduct because his use of homeopathic medicine was a departure from the "acceptable and prevailing standards of medical practice." The Board revoked Dr. Guess' license in January, 1986, with a condition that it would be restored if he ceased practicing homeopathy.²⁴

Dr. Guess appealed the Board's order to Wake County Superior Court. The Superior Court overturned the Board's order in May, 1987, on grounds that the Board's findings and conclusions were not supported by competent evidence. The Board then appealed the Superior Court's order to the North Carolina Court of Appeals. Initially, the Court of Appeals dismissed the case on jurisdictional grounds²⁵ but eventually heard the case on its merits.²⁶ The Court, while finding that the Superior Court was in error in rejecting the Board's evidence, nevertheless ruled that the Board cannot discipline a physician unless it proves that he has engaged in conduct that posed a danger of harm to the patient or the public.²⁷

The Board of Medical Examiners appealed to the North Carolina Supreme Court, arguing that the language in G.S. §90-14(6) clearly gives the Board the authority to discipline a physician regardless of whether the physician's conduct involved potential harm to a patient. The Supreme Court agreed, stating that "the legislature, in enacting N.C.G.S. §90-14(a)(6), reasonably believed that a general risk of endangering the public is **inherent** in any practices which fail to conform to the standards of 'acceptable and prevailing' medical practice in North Carolina."²⁸ The Court, after disposing of Dr. Guess' remaining arguments, upheld the Board of Medical Examiner's disciplinary action against Dr. Guess. Justice Frye dissented, arguing that the statutory intent was merely

to allow the Board to discipline a physician **before** the injury occurs, not to do away with the necessity for proving potential harm to the patient or public.²⁹ A copy of the decision is attached as Appendix A.

Dr. Guess petitioned the U.S. Supreme Court to hear his appeal, but the Court declined to do so. Dr. Guess then brought an action in federal district court, challenging the constitutionality of G.S. §90-14. The district court dismissed the case on grounds that it had no jurisdiction to re-hear the same claims, based on the same constitutional issues, that had already been decided by the North Carolina Supreme Court. Several patients of Dr. Guess filed a separate lawsuit in federal district court, claiming a constitutional right to obtain homeopathic treatment from Dr. Guess and seeking an injunction against the Board's revocation of Dr. Guess' license. The district court also dismissed the patients' suit. Both Dr. Guess and his patients appealed, and the appeals were consolidated before the Fourth Circuit Court of Appeals. The Fourth Circuit Court of Appeals affirmed the district court's decisions in both cases in June of this year.³⁰

The final resolution of the Guess case has shifted the issue of alternative medicine from the judiciary to the legislature. Throughout the Guess proceedings, the courts focused on the statutory intent of the the "prevailing medical practices" standard for unprofessional conduct, not on whether homeopathy should be recognized in North Carolina. As the Supreme Court noted:

"While questions as to the efficacy of homeopathy and whether its practice should be allowed in North Carolina may be open to valid debate among members of the medical profession, the courts are not the proper forum for that debate. The legislature may one day choose to recognize the homeopathic system of treatment, or homeopathy may evolve by proper experimentation and research to the point of being recognized by the medical profession as an acceptable and prevailing form of medical practice in our State; such choices, however, are not for the courts to make."³¹

Alternative (Nonphysician) Practitioners: Unless otherwise provided by statute, persons who engage in the practice of medicine or surgery without being licensed are guilty of a misdemeanor, punishable by a small fine or imprisonment.³² The Board of Medical Examiners has no disciplinary authority over these persons. If the Board believes that a nonlicensed person is practicing medicine, it may complain to the Attorney General, who may direct the local district attorney to initiate criminal proceedings.³³ In addition, the district attorney may on his own initiative pursue criminal proceedings without a complaint from the Board of Medical Examiners.³⁴

In the late 1800s and early 1900s, most of the alternative medical practitioners were **not** considered to be practicing "medicine or surgery." The courts even

questioned whether the legislature had a constitutional right to regulate the practice of these alternative therapies.³⁵ Since that time, however, the legislature has extensively broadened the definition of the "practice of medicine or surgery," and more recent court decisions indicate that these alternative practitioners are engaged in the unlawful practice of medicine.³⁶ Whether or not they are prosecuted depends in part on the willingness of the local district attorney to pursue these cases.

IV. OTHER STATES

One of the charges of this Committee is to examine how other states have treated alternative medical practices. In compiling the following information, I have reviewed the grounds for physician discipline in the medical practices acts of all 50 states and have surveyed approximately 2/3rd of the states for information on board policies concerning the practice of homeopathy and chelation therapy by their physicians. Information on naturopathy, homeopathy, acupuncture, and chelation therapy was also obtained from other sources.

Like North Carolina, most states maintain the distinction between the practice of medicine by physicians and by nonphysicians. The practice of medicine by physicians is generally governed by "unprofessional conduct" standards that may result in the loss or suspension of the physician's license to practice medicine. The practice of medicine by nonphysicians is controlled by either alternative boards or is subject to the general law against the unlawful practice of medicine. The discussion below follows this distinction.

PHYSICIANS: Licensed physicians are regulated in every state by a board of medical examiners or comparable entity. Every state has authority to discipline its physicians for what can generally be termed "unprofessional conduct." The states vary, however, as to what constitutes unprofessional conduct.

Some states, like North Carolina, treat "nonprevailing medical practices" as unprofessional conduct. Some require proof of deceit, fraud, or potential harm to a patient or the public before a physician can be disciplined. Other standards represented among the states include "unacceptable standards of care," "unbecoming conduct," ethical violations, and/or generally-worded "incompetence" or "misconduct" standards.

For the most part, the application of these standards to physicians practicing nonprevailing medicine is untested in the courts. Among the medical boards surveyed around the country, none reported having taken disciplinary action against physicians solely for the practice of homeopathy. The practice of homeopathy is not an issue in most states, including several where homeopathic physicians are known by the board to be practicing. Many of the surveyed states indicated that, in the absence of harm or risk of harm to the patient, they would not discipline a physician solely for practicing homeopathy.³⁷

Their reasons for not pursuing sanctions varied: some felt that the choice of treatment, if safe, was the physician's prerogative; some indicated that their statutes or their interpretation of those statutes prohibited any action; and others were reluctant to pursue these cases in court without additional proof of the treatment's inefficacy. Again, most of these states were answering hypothetically because the practice of homeopathy has not been an issue; many qualified their response by stating that each case must be examined on its own merits to ensure that clinically appropriate care was rendered.

Chelation therapy, on the other hand, is a more volatile issue around the country. Many of the surveyed states' boards are opposed to the use of chelation therapy for the treatment of atherosclerosis, although their opposition is often informal and is not expressed as an official board policy. States attempting to formally ban chelation therapy have often run into outspoken and organized opposition from chelation proponents. West Virginia is now repealing a recent ban on chelation therapy and South Dakota's legislature recently did the same (although its bill was vetoed). Several other states (including Arkansas, Indiana, Michigan, Missouri, and Mississippi) have studied the issue of chelation therapy but have stopped short of adopting an official ban, either because of public opposition or the desire for additional research on the subject. Two states, Virginia and Minnesota, are actively studying chelation therapy now. Four of the surveyed states (Connecticut, Idaho, Kentucky, and New Jersey) indicated that they had taken disciplinary action against physicians using chelation therapy. Some states noted, as they had with homeopathy, that each case would be examined on a case by case basis to determine whether chelation therapy was appropriate.

Some of the predominant statutory standards for "unprofessional conduct" are listed below:

Nonprevailing Practices: Ten states (Georgia, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Ohio, Oregon, Pennsylvania, and Rhode Island) have laws identical or

similar to North Carolina's "prevailing medical practices" law.³⁸ In most of these states, the law specifically states that actual injury to the patient is not a prerequisite for board disciplinary action. Georgia is an exception: it requires proof of potential harm to the patient or the public before a physician can be disciplined under the "prevailing practices" standards.³⁹ Louisiana's statute is silent on the issue of proof of harm.⁴⁰ Unanswered in these statutes is the same question that was left unanswered in North Carolina's law until the Guess decision: in the absence of an actual injury to the patient, must the board prove a risk of harm to the patient or public? The answer in North Carolina, according to Guess, is "no," but the issue has apparently not been litigated in the ten other states using the "prevailing practice" standard.

In addition, Florida's medical practice act appears to treat nonprevailing therapies as "experimental," allowing their use with the fully informed and written consent of the patient.⁴¹ A Florida court ruled several years ago that proof of harm or risk of harm must be shown before a physician can be disciplined solely for using nonprevailing medical treatment (in this case, chelation therapy) in Florida.⁴²

Other Misconduct Standards: The remaining states have no specific language in their medical practice acts concerning prevailing medical practices, but many have statutory language that could potentially be used to prevent the practice of nonprevailing medicine. For example, in seven states (Hawaii, Maine, Nevada, South Carolina, Utah, Virginia, and Wyoming), physicians may be disciplined for violating the medical profession's standards of ethics.⁴³ In three other states (Montana, New Mexico and South Dakota), they may be sanctioned for conduct "unbecoming a physician."⁴⁴ In Oregon, a recent amendment to the Medical Practice Act empowers the board of medical examiners to discipline a physician for the employment of "outmoded, unproved, or unscientific treatments."⁴⁵

Four states (Colorado, Idaho, Kansas, and Vermont) subject a physician to discipline for failing to meet acceptable standards of care.⁴⁶ The "unacceptable care" standards actually appear to be malpractice standards, common in many states, and their application to cases involving nonprevailing medical treatments is questionable.

Many states (among them, Delaware, Kansas, Illinois, Mississippi, Montana, New Mexico, New York, North Dakota, Oklahoma, and Texas) provide that a physician may be sanctioned for conduct likely to "deceive, defraud, or harm the public."⁴⁷ Although a medical licensing board could potentially pursue sanctions against a physician under this standards for nonprevailing medical practices, it would face the burden of showing either that the practice was harmful or that the physician intended to deceive or defraud the patient or the public.

Many states also have rather vague "professional misconduct" or "professional incompetency" standards that are difficult to classify as far as their relationship to nonprevailing medical practices. Again, as noted in the beginning of this section, many of the states surveyed by telephone, including some who have "prevailing practice" statutes like North Carolina, indicated that the practice of alternative medicine alone is generally not sufficient grounds for disciplinary action against a physician.

Homeopathy Boards: Three states have expressly recognized homeopathy through the creation of homeopathic licensing boards. Arizona, Connecticut, and Nevada license the practice of homeopathy.⁴⁸ Only licensed physicians (M.D.s) and osteopathic physicians (D.O.s) can become licensed as homeopaths, and then only if they complete the required homeopathic educational and training requirements.⁴⁹ In addition, New Jersey still recognizes homeopaths in its statutes, although there have been recent attempts to repeal the statute.⁵⁰

Homeopathic licensing boards and homeopathic membership on conventional medical licensing boards existed at one time in several states throughout the country. For example, New York, Maryland, and Louisiana each had homeopathic medical boards near the turn of the century.⁵¹ Even more common at that time were requirements that homeopaths be represented on state boards of medical examiners. Arizona, Connecticut, Louisiana, Maryland, Michigan, New York, Pennsylvania, and Virginia are among the states that at one time required homeopathic representation on their conventional medical boards.⁵²

Stricter standards and requirements for medical schools after the turn of the century left many of the homeopathic medical colleges in the United States unable to continue operating, especially in light of new state laws denying licensure to graduates of schools not meeting the standards. As the homeopathic medical colleges disappeared, the number of homeopathic physicians diminished, leaving few to carry on the practice. The homeopathic licensing boards and homeopathic membership on medical examining boards gradually disappeared. Interestingly, the homeopathy boards in Arizona and Nevada are not survivors from the early 1900s; they were created in the 1980s.⁵³

NONPHYSICIANS: There is tremendous diversity among the states on the status of nonphysicians practicing alternative medicine.

Naturopathy: The practice of naturopathy is explicitly recognized in 8 states (Alaska, Arizona, Connecticut, Florida, Hawaii, Montana, Oregon, and Washington).⁵⁴ In most of these states, naturopathy is regulated by its own board. At least three other states (Kansas, Utah, and Virginia) have terminated recognition of naturopaths within the last 10 years, but have grandfathered in those naturopaths practicing at the time of the termination.⁵⁵ Unlike homeopaths, naturopaths are not required to be physicians, although they generally must undergo the appropriate education (graduation from a school of naturopathic medicine) in order to be licensed.

In the remaining states, naturopathy does not enjoy the same status. Two states (South Carolina and Tennessee) explicitly outlaw the practice through legislation; Georgia appears to have also outlawed it through legislation until changes earlier this year.⁵⁶ In other states, the legal status of the practice of naturopathy is controlled by state laws prohibiting the unlawful practice of medicine. Many court decisions and/or attorney general opinions have found the practice of naturopathy to be in violation of those laws.

Interestingly, many of the states that license naturopaths allow them to use homeopathic remedies in their practice.⁵⁷ Thus, even though only three states expressly sanction homeopathy and limit it to licensed physicians, nonphysicians licensed as naturopaths can practice homeopathy in several other states.

Acupuncture: Acupuncture, like some of the naturopathic therapies (such as nutritional therapy), is used by many conventional physicians. In fact, virtually every state allows its MDs to use acupuncture, although the training prerequisites for MD acupuncturists vary from state to state.

The study of alternative medicine focuses upon the use of acupuncture by non-physicians. Nearly one-half the states allow nonphysicians to practice acupuncture. California, Florida, Hawaii, Maine, Massachusetts, and Nevada have created special acupuncture licensing boards that license and discipline these acupuncturists.⁵⁸ In most of the remaining states that recognize non-MD acupuncturists (Alaska, Arizona, Colorado, Delaware, Maryland, Montana, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Vermont and Washington), licensure is generally controlled by a state agency such as the state health department, an umbrella licensing board such as a department of professional regulation, or by the state board of medical examiners.⁵⁹ In many of these states, acupuncture advisory boards or advisory officials exist to advise the regulatory board on appropriate rules and other matters.⁶⁰

Some of the states place restrictions on nonphysician acunpuncturists by requiring that their patients be first diagnosed by or referred from a physician (Massachussetts, New Jersey, Pennsylvania);⁶¹ that they recognize in writing their patients' need to consult physicians for appropriate care (New York, Washington);⁶² or that they practice under the general supervision of a physician (Pennsylvania, Maryland, Utah).⁶³

V. RECENT LEGISLATION

Several state legislatures have recently addressed or considered the issue of alternative medical practices. Within the past 2 years, Alaska and Washington have enacted legislation ensuring patient's access to alternative medical practices and treatments. The Alaska law provides that the board (State Medical Board) "may not base a finding of professional incompetence solely on the basis that a licensee's practice is unconventional or experimental in the absence of demonstrable physical harm to a patient."⁶⁴ The Washington law states that "the use of nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed."⁶⁵

Other states have recently considered legislation on access to alternative medical treatment. During 1992, New York and Maryland considered legislation similar to the Washington and Alaska laws concerning patient's access to nontraditional treatment. In addition, the New York and Maryland proposals would each establish a task force to study alternative medicine and require one member on its medical board to be a physician who uses alternative medical practices. The New York proposal goes on to define "complementary" (alternative) medicine as the "inclusion within a regular medical practice of non-traditional, alternative or other therapies that have been demonstrated in medical literature to be of empirical clinical benefit, when the licensee and the patient determine that it is beneficial for the patient's care."

Earlier this year, South Dakota considered legislation identical to the Alaska law. The bill was eventually enacted after amendments narrowed its application solely to the practice of chelation therapy. However, the Governor of South Dakota vetoed the legislation, citing the medical board's need for discretion in "making its decisions based on a scientific understanding of the risks and benefits of a therapy."

VI. RECOMMENDATIONS

Several speakers at the first meeting made recommendations to the Committee concerning alternative medicine. These recommendations are summarized below. Again, these are not the recommendations of the committee staff.

(1) Change the Medical Practice Act to ensure that a licensed physician cannot be disciplined for the use of "nonprevailing" medical treatment unless some proof of potential harm is shown.

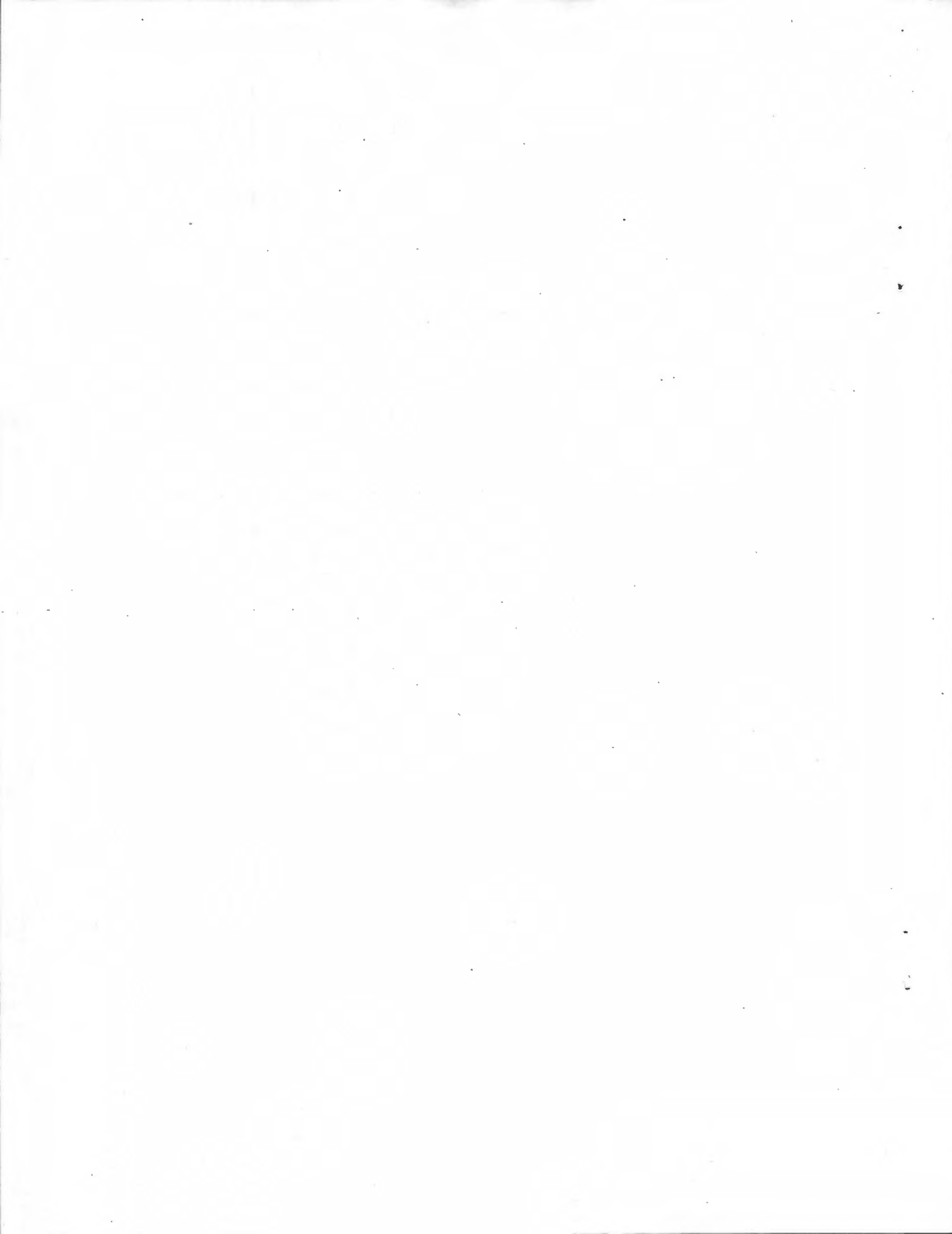
*See Attachment B for New York, Maryland, and South Dakota proposals.

(2) Create a board to license and regulate physicians who want to practice alternative medicine.

(3) Create a licensing board for alternative therapies practiced by nonphysicians or create separate licensing boards for each of the alternative practices (for example, separate boards for acupuncture and naturopathy).

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- ¹ Achterburg, "A Brief Guide to Health Care Alternatives" (Jan. 1988).
- ² Weiner, Dr. M., Complete Book of Homeopathy 34-38 (1989).
- ³ Weil, Dr. Andrew, Health & Healing: Understanding Conventional and Alternative Medicine 12-20 (1983); Gevitz, N., "Sectarian Medicine," Journal of American Medicine, v. 257, n. 12 (March, 1987).
- ⁴ Weil, *supra*, at 20-21.
- ⁵ See, e.g., Clark, W., The State Records of North Carolina 1788-1790, v. XXI at p. 1023 (1903).
- ⁶ Weil, *supra*, at 23-24.
- ⁷ Bergner, Safety, Effectiveness, and Cost Effectiveness in Naturopathic Medicine (1991).
- ⁸ Weil, *supra*, at 135-142.
- ⁹ *Id.*
- ¹⁰ *Id.* at 139.
- ¹¹ *Id.* at 143-155.
- ¹² *Id.*
- ¹³ *Id.*
- ¹⁴ Whitaker, Health and Healing, v. 2, n. 4 (Apr. 1992).
- ¹⁵ *Id.*
- ¹⁶ N.C. Gen. Stat. §90-2.
- ¹⁷ See, e.g., State v. McKnight, 131 N.C. 717 (1902); State v. Biggs, 133 N.C. 729 (1903).
- ¹⁸ Chapter 90, Article 7 of the North Carolina General Statutes.
- ¹⁹ See Hodgson, "Restrictions on Unorthodox Health Treatment in California: A Legal and Economic Analysis," 24 UCLA Law Rev. 647 (1977).
- ²⁰ See, e.g., N.C. Gen. Stat. §90-18(2)(exception for dentists, who are licensed by the Board of Dental Examiners, N.C. Gen. Stat. §90-22 et. seq.); N.C. Gen. Stat. §90-18(3)(exception for pharmacists, who are licensed by the Board of Pharmacy, N.C. Gen. Stat. §90-85.2 et seq.).
- ²¹ N.C. Gen. Stat. §90-129 et seq. (osteopathy); N.C. Gen. Stat. §90-139 et seq. (chiropractic). The State Board of Osteopathic Examination and Registration is no longer functional. There are few, if any, persons still licensed as osteopaths. Graduates of osteopathic schools have been permitted for many years to be licensed by the Board of Medical Examiners as physicians.
- ²² N.C. Gen. Stat. §§90-18(1), -18(5).
- ²³ 1858 Session Laws, ch. 258, s. 16.
- ²⁴ In re Guess, 327 N.C. 46, 49 (1990).
- ²⁵ In re Guess, 89 N.C. App. 711 (1988).
- ²⁶ See In re Guess, 324 N.C. 105 (1989)(remand of case from Supreme Court to Court of Appeals on jurisdictional issue).
- ²⁷ In re Guess, 95 N.C. App. 435 (1989).
- ²⁸ 327 N.C. at 52-53.
- ²⁹ *Id.* at 58-61.
- ³⁰ Guess v. Board of Medical Examiners and Fuller v. Board of Medical Examiners, 967 F.2d 998 (1992).
- ³¹ 327 N.C. at 56.
- ³² N.C. Gen. Stat. §90-18.
- ³³ N.C. Gen. Stat. §90-21.
- ³⁴ State v. Loesch, 237 N.C. 611 (1953).
- ³⁵ See *supra*, note 17.
- ³⁶ State v. Nelson, 69 N.C. App. 638 (1984); State v. Howard, 78 N.C. App. 262, *appeal dismissed* 316 N.C. 198 (1985).
- ³⁷ Alabama, Indiana, Maine, Maryland, Michigan, Minnesota, New Jersey, New Mexico, Oklahoma, South Carolina, and Wisconsin.

- ³⁸ Ga. Code Ann. §43-34-37(a)(7); Iowa Code Ann. §148.6(g); Ky. Rev. Stat. Ann. §311.597(4); La. Rev. Stat. Ann. §37:1285(A)(14); Mich. Comp. Laws Ann. §333.16221(b)(i), §333.16106(1); Minn. Stat. Ann. §147.091(1)(k); Ohio Rev. Code Ann. §4731.22(B)(6); Ore. Rev. Stat. §677.190(1), §677.188(4)(b); Pa. Stat. Ann., tit. 63, §422.41(8); R.I. Gen. Laws §5-37-5.1(19).
- ³⁹ Ga. Code Ann. §43-34-37.
- ⁴⁰ La. Rev. Stat. Ann. §37:1285.
- ⁴¹ Fla. Stat. Ann. §458.331(1)(u).
- ⁴² State Bd. of Medical Examiners of Fla. v. Rogers, 387 So.2d 937 (Fla. S.Ct. 1980). Arizona has similar language concerning chelation therapy as experimental therapy. Ariz. Stat. Ann. §32-1401(21)(gg).
- ⁴³ Hawaii Rev. Stat. §453-8(a)(9); Me. Rev. Stat. Ann., tit. 32, §3282-A(2)(F); Nev. Rev. Stat. §630.306(2)(b); S.C. Code Ann. §40-47-8(12); Utah Code Ann. §58-1-15, §58-12-36(15); Va. Code §54.1-2914(9); Wyo. Stat. §33-26-402(a)(xxvi)(A)(I).
- ⁴⁴ Mont. Code Ann. §37-3-321, §37-3-322(12); N.M. Stat. Ann. §61-6-15(29); S.D. Codified Laws Ann. §36-4-29, §36-4-30(22).
- ⁴⁵ Or. Rev. Stat. §677.188(4)(c).
- ⁴⁶ Colo. Rev. Stat. §12-36-117(1)(p); Ind. Code Ann. §54-1814(7); Kansas Stat. Ann. §65-2837(24)(Supp.); Vt. Stat. Ann. tit. 26, §1354(22).
- ⁴⁷ Dela. Code Ann. tit. 24, §1731(b)(3); Kan. Stat. Ann. §65-2837(a)(12)(Supp.); Ill. Ann. Stat. ch. 111, §4433 (Smith-Hurd); Miss. Code Ann. §73-25-29(8)(d); Mont. Code Ann. §37-3-322(13); N.M. Stat. Ann. §61-6-15(D)(18); N.D. Cent. Code §43-17-31(6); Okla. Stat. Ann. tit. 59, §509(9); Tex. Stat. Ann. art. 4495b, §3.08(4).
- ⁴⁸ Ariz. Rev. Stat. Ann. §32-1501 et seq.; Conn. Gen. Stat. §20-8; Nev. Rev. Stat. §630A.010 et seq.).
- ⁴⁹ Id.
- ⁵⁰ N.J. Rev. Stat. §45:9-4.
- ⁵¹ Miller, M., "The Historic and Practical Argument for the Inclusion of Homeopathic Medical Society of the State of New York on the Board for Professional Misconduct," (Apr. 1990, presentation to Homeopathic Medical Society of the State of New York); Md. Code Ann. art. 43, §116 (1925 Code)(repealed); La. Rev. Stat. Ann. tit. 37, §1311 et seq. (1950 Code)(repealed 1968).
- ⁵² Ariz. Rev. Code 1928, §2554 (repealed); Conn. Gen. Stat. §2856 (1918 Revisal)(superceded); La. Rev. Stat. of 1950 tit. 37, §1311 et seq. (repealed in 1968); Md. Code Ann. 1939, art. 43, §117 (repealed 1949); Mich. Comp. Laws 1915, §6724 (repealed); 1926 N.Y. Laws, ch. 834 (repealed); Pa. Stat. 1920, §16780 (repealed 1949); Va. Code 1887, §1744 (5 homeopathic representatives); Va. Code 1898, §1753 (reduced to 2 homeopathic representatives).
- ⁵³ See *supra*, note 49.
- ⁵⁴ Alaska Stat. §.0845.010 et seq.; Ariz. Rev. Stat. §32-1501 et seq.; Conn. Gen. Stat. §20-34; Fla. Stat. Ann. §462.01 et seq.; Hawaii Rev. Stat. §455-1 et seq.; Mont. Code Ann. §2-15-1840 (establishing alternative health care board over naturopathy and direct entry midwifery) and §37-26-101 et seq. (regulating the practice of naturopathy); Or. Rev. Stat. §685.010 et seq.; Wash. Rev. Code Ann. §18.36A.010 et seq.).
- ⁵⁵ Ks. Stat. Ann. §65-2872a; Utah Code Ann. §58-12-22; Va. Code §54.1-2901).
- ⁵⁶ Ga. Code Ann. §43-34-1 (language replaced by 1992 Ga. Laws 2062, §2; S.C. Code Ann. §40-31-10 et seq.; Tenn. Code Ann. §63-6-205.)
- ⁵⁷ See *supra*, note 53.
- ⁵⁸ Cal. Bus. & Prof. Code §4925 et seq.; Fla. Stat. Ann. §457.101; Hawaii Rev. Stat. §436E-1 et seq.; Me. Rev. Stat. Ann., tit. 32, §12401 et seq.; Mass. Gen. Laws Ann., ch. 112, §148 et seq.; Nev. Rev. Stat. §634A.010 et seq.
- ⁵⁹ Alaska Stat. §8.06.010 et seq.; Ariz. Rev. Stat. Ann. §32-925; Colo. Rev. Stat. §12-

29.1-101 et seq.; Md. Health Occupations Code Ann. §14-506; Mont. Code Ann. §37-13-101 et seq.; N.J. Stat. Ann. §45:2C-1 et seq.; N.Y. Education Law §8210 et seq. (McKinney); Or. Rev. Stat. §677.755; Pa. Stat. Ann. tit. 63, §1801 et seq. (Purdon); R.I. Gen. Laws §5-37.2-1; Utah Code Ann. §58-12-57 et seq.; Vt. Stat. Ann. tit. 26, §3251; Wash. Rev. Code Ann. §18.06.010 et seq. In six of these states, the state medical examining board or a board of physician quality assurance regulates acupuncturists.

⁶⁰ Maryland, New Jersey, New York, Rhode Island, Utah, Washington.

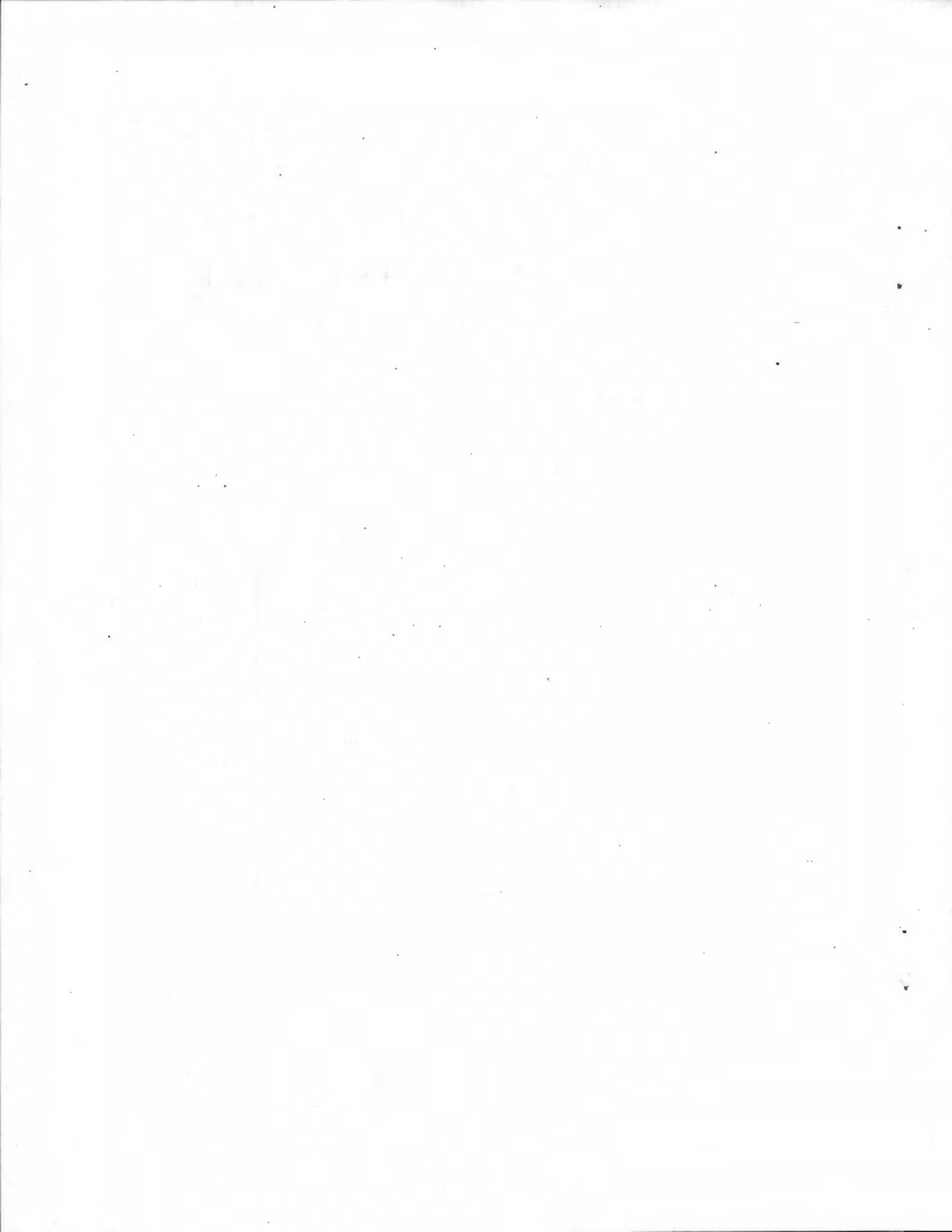
⁶¹ Mass. Gen. laws Ann. ch. 112, §158(a); N.J. Stat. Ann. §45:2C-5; Pa. Stat. Ann. tit. 63, §1803(c).

⁶² N.Y. Education Law §8211; Wash. Rev. Code Ann. §18.06.140

⁶³ Pa. Stat. Ann. tit. 63, §1803(c); Md. Health Occupations Code §14-506. In Utah, supervision can be either by a physician or an acupuncturist with 3 years experience (Utah Code. Ann. §58-12-66).

⁶⁴ Alaska Stat. §08.64.326(a)(8)A.

⁶⁵ Wash. Rev. Code Ann. §18.130.180(4)(Supp.).



**Physicians, Surgeons, and Allied Professions § 6 (NC13d)—
medical license—revocation by Board of Medical Examiners—
statute as valid exercise of police power**

The statute permitting the Board of Medical Examiners to suspend or revoke a physician's license to practice medicine for "unprofessional conduct" based on a deviation from "the standards of acceptable and prevailing medical practice," N.C.G.S. § 90-14(a)(6), is a valid exercise of the police power and does not require a finding that the deviation must pose an actual threat of harm to the public.

**Am Jur 2d, Physicians, Surgeons, and Other Healers
§§ 76-78.**

**Constitutional Law § 7.1 (NC13d); Physicians, Surgeons, and
Allied Professions § 6 (NC13d)— medical license revocation—
deviation from acceptable and prevailing standards—no unlawful
delegation of legislative powers**

The statute permitting the Board of Medical Examiners to suspend or revoke a physician's license for unprofessional conduct based on a deviation from the "standards of acceptable and prevailing medical practice," N.C.G.S. § 90-14(a)(6), is sufficiently specific to provide the Board with the adequate guiding standards necessary to support the legislature's delegation of authority to the Board.

**Am Jur 2d, Physicians, Surgeons, and Other Healers
§§ 76-78.**

**Physicians, Surgeons, and Allied Professions § 6.2 (NC13d)—
practice of homeopathy— not acceptable and prevailing medical
practice— revocation of medical license— sufficiency of evidence**

The evidence supported a decision by the Board of Medical Examiners to revoke the medical license of a physician who practiced homeopathy on the ground that the practice of homeopathy does not conform to "the standards of acceptable and prevailing medical practice" in North Carolina and thus constitutes unprofessional conduct prohibited by N.C.G.S. § 90-14(a)(6).

**Am Jur 2d, Physicians, Surgeons, and Other Healers
§ 213.**

**4. Physicians, Surgeons, and Allied Professions § 6.2 (NC13d)—
practice of homeopathy—applicable and prevailing medical
standards—efficacy and use of homeopathy outside N.C.
irrelevant**

Evidence concerning the efficacy of homeopathy and its use outside North Carolina was not relevant to the issue before the Board of Medical Examiners as to whether the practice of homeopathy meets "acceptable and prevailing standards of medical practice" in North Carolina.

**Am Jur 2d, Physicians, Surgeons, and Other Healers
§ 213.**

**5. Physicians, Surgeons, and Allied Professions § 6 (NC13d)—
acceptable and prevailing medical standards—statute not un-
constitutionally vague**

The statute permitting the revocation of a physician's medical license for unprofessional conduct based on acts which do not conform to "the standards of acceptable and prevailing medical practice" in North Carolina, N.C.G.S. § 90-14(a)(6), is not unconstitutionally vague.

Am Jur 2d, Physicians, Surgeons, and Other Healers § 77.

**6. Physicians, Surgeons, and Allied Professions § 6 (NC13d)—
practice of homeopathy—revocation of medical license—no in-
vasion of privacy rights**

A decision by the Board of Medical Examiners to revoke a physician's license because of his practice of homeopathy did not unconstitutionally invade his privacy rights or the privacy rights of his patients. Furthermore, the physician had no standing to raise his patients' privacy interests in this regard.

Am Jur 2d, Physicians, Surgeons, and Other Healers § 116.

**7. Physicians, Surgeons, and Allied Professions § 6 (NC13d)—
practice of homeopathy—revocation of medical license—no ex-
ercise of monopoly**

The Board of Medical Examiners did not exercise unbridled and unconstitutional monopoly power by denying a physician the opportunity to practice homeopathy.

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Am Jur 2d, Physicians, Surgeons, and Other Healers § 116.

Justice FRYE dissenting.

ON discretionary review pursuant to N.C.G.S. § 7A-31 of the decision of the Court of Appeals, 95 N.C. App. 435, 382 S.E.2d 459 (1989), affirming an order entered by *Farmer, J.*, on 20 May 1987 in Superior Court, WAKE County. Heard in the Supreme Court on 11 April 1990.

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, by Michael E. Weddington and Susan M. Parker, for the complainant appellant Board of Medical Examiners of the State of North Carolina.

Manning, Fulton & Skinner, by Charles E. Nichols, Jr., for the respondent appellee George A. Guess, M.D.

MITCHELL, Justice.

At issue in this case is whether the Court of Appeals erred in affirming a Superior Court order which reversed and vacated a decision of the Board of Medical Examiners of the State of North Carolina conditionally revoking the respondent appellee's medical license. We conclude that the Court of Appeals did err in this regard, and we reverse its holding.

The facts of this case are essentially uncontested. The record evidence tends to show that Dr. George Albert Guess is a licensed physician practicing family medicine in Asheville. In his practice, Guess regularly administers homeopathic medical treatments to his patients. Homeopathy has been defined as:

A system of therapy developed by Samuel Hahnemann on the theory that large doses of a certain drug given to a healthy person will produce certain conditions which, when occurring spontaneously as symptoms of a disease, are relieved by the same drug in small doses. This [is] . . . a sort of "fighting fire with fire" therapy.

Stedman's Medical Dictionary 654 (24th ed. 1982); see Schmidt's Attorneys' Dictionary of Medicine II-110 (1962). Homeopathy thus differs from what is referred to as the conventional or allopathic system of medical treatment. Allopathy "employ[s] remedies which affect the body in a way *opposite* from the effect of the disease

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treated." Schmidt's Attorneys' Dictionary of Medicine A-147 (emphasis added); see Stedman's Medical Dictionary 44.

The Board of Medical Examiners of the State of North Carolina (herein Board) is a legislatively created body established "to properly regulate the practice of medicine and surgery." N.C.G.S. § 90-2 (1985). On 25 June 1985, the Board charged Dr. Guess with unprofessional conduct, pursuant to N.C.G.S. § 90-14(a)(6), specifically based upon his practice of homeopathy. In a subsequent Bill of Particulars, the Board alleged that in his practice of medicine, Guess utilized "so-called 'homeopathic medicines' prepared from substances including, but not limited to, moss, the night shade plant and various other animal, vegetable and mineral substances." The Board further alleged that the use of homeopathic medicines "departs from and does not conform to the standards of acceptable and prevailing medical practice in the State of North Carolina." See N.C.G.S. § 90-14(a)(6) (1985).

Following notice, a hearing was held by the Board on the charge against Dr. Guess. The hearing evidence chiefly consisted of testimony by a number of physicians. Several physicians licensed to practice in North Carolina testified that homeopathy was not an acceptable and prevailing system of medical practice in North Carolina. In fact, there was evidence indicating that Guess is the only homeopath openly practicing in the State. Guess presented evidence that homeopathy is a recognized system of practice in at least three other states and many foreign countries. There was no evidence that Guess' homeopathic treatment had ever harmed a patient, and there was anecdotal evidence that Guess' homeopathic remedies had provided relief to several patients who were apparently unable to obtain relief through allopathic medicine.

Following its hearing, the Board revoked Dr. Guess' license to practice medicine in North Carolina, based upon findings and conclusions that Guess' practice of homeopathy "departs from and does not conform to the standards of acceptable and prevailing medical practice in this State," thus constituting unprofessional conduct as defined and prohibited by N.C.G.S. § 90-14(a)(6). The Board, however, stayed the revocation of Guess' license for so long as he refrained from practicing homeopathy.

Guess appealed the Board's decision to the Superior Court, Wake County, pursuant to N.C.G.S. § 90-14.8. On 17 January 1986, the Superior Court stayed the Board's decision pending judicial

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review. After review, the Superior Court entered an order on 20 May 1987 which reversed and vacated the Board's decision. The Superior Court found and concluded that Guess' substantial rights had been violated because the Board's findings, conclusions and decision were "not supported by competent, material and substantial evidence and [were] arbitrary and capricious."

The Board appealed the Superior Court's order to the Court of Appeals, which dismissed the appeal for lack of jurisdiction. *In re Guess*, 89 N.C. App. 711, 367 S.E.2d 11 (1988). This Court reversed that decision and remanded this case to the Court of Appeals for its determination of the issues raised by the appeal. *In re Guess*, 324 N.C. 105, 376 S.E.2d 8 (1989). On remand, the Court of Appeals rejected the Superior Court's reasoning to the effect that the Board's findings, conclusions and decision were not supported by competent evidence. *In re Guess*, 95 N.C. App. 435, 437, 382 S.E.2d 459, 461 (1989). The Court of Appeals, nonetheless, affirmed the Superior Court's order reversing the Board's decision,

because the Board neither charged nor found that Dr. Guess' departures from approved and prevailing medical practice either endangered or harmed his patients or the public, and in our opinion the revocation of a physician's license to practice his profession in this state must be based upon conduct that is detrimental to the public; it cannot be based upon conduct that is merely different from that of other practitioners.

Id. at 437, 382 S.E.2d at 461. We granted the Board's Petition for Discretionary Review, and now reverse the Court of Appeals.

I.

The statute central to the resolution of this case provides in relevant part:

§ 90-14. Revocation, suspension, annulment or denial of license.

(a) The Board shall have the power to deny, annul, suspend, or revoke a license . . . issued by the Board to any person who has been found by the Board to have committed any of the following acts or conduct, or for any of the following reasons:

. . . .

(6) Unprofessional conduct, including, but not limited to, any departure from, or the failure to conform to, the standards

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of acceptable and prevailing medical practice, or the ethics of the medical profession, irrespective of whether or not a patient is injured thereby

N.C.G.S. § 90-14 (1985) (emphases added). The Court of Appeals concluded that in exercising the police power, the legislature may properly act only to protect the public from harm. *In re Guess*, 95 N.C. App. at 437-38, 382 S.E.2d at 461. Therefore, the Court of Appeals reasoned that, in order to be a valid exercise of the police power, the statute must be construed as giving the Board authority to prohibit or punish the action of a physician only when it can be shown that *the particular action in question* poses a danger of harm to the patient or the public. *Id.* Specifically, the Court of Appeals held that:

Before a physician's license to practice his profession in this state can be lawfully revoked under G.S. 90-14(a)(6) for practices contrary to acceptable and prevailing medical practice that it *must also appear that the deviation complained of posed some threat of harm to either the physician's patients or the public.*

Id. at 438, 382 S.E.2d at 462 (emphasis added).

The Board argues, and we agree, that the Court of Appeals erred in construing the statute to add a requirement that each particular practice prohibited by the statute must pose an actual threat of harm. Our analysis begins with a basic constitutional principle: the General Assembly, in exercising the state's police power, may legislate to protect the public health, safety and general welfare. *See, e.g., Treants Enterprises, Inc. v. Onslow County*, 320 N.C. 776, 360 S.E.2d 783 (1987); *Martin v. Housing Corp.*, 277 N.C. 29, 175 S.E.2d 665 (1970); *Shelby v. Power Co.*, 155 N.C. 196, 71 S.E. 218 (1911). When a statute is challenged as being beyond the scope of the police power, the statute will be upheld unless it has no rational relationship to such a legitimate public purpose. *See, e.g., In re Hospital*, 282 N.C. 542, 193 S.E.2d 729 (1973); *Surplus Stores, Inc. v. Hunter*, 257 N.C. 206, 125 S.E.2d 764 (1962); *Skinner v. Thomas*, 171 N.C. 98, 87 S.E. 976 (1916).

Turning to the subject of this case, regulation of the medical profession is plainly related to the legitimate public purpose of protecting the public health and safety. *See Board of Medical Examiners v. Gardner*, 201 N.C. 123, 127, 159 S.E. 8, 10 (1931). State

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regulation of the medical profession has long been recognized as a legitimate exercise of the police power. As the Supreme Court of the United States has pointed out:

The power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulations as in its judgment will secure or *tend to secure* them against the consequences of ignorance and incapacity as well as of deception and fraud. As one means to this end it has been the practice of different States, from time immemorial, to exact in many pursuits a certain degree of skill and learning upon which the community may confidently rely The nature and extent of the qualifications required must depend primarily upon the judgments of the States as to their necessity. . . .

Few professions require more careful preparation by one who seeks to enter it than that of medicine. It has to deal with all those subtle and mysterious influences upon which health and life depend The physician must be able to detect readily the presence of disease, and prescribe appropriate remedies for its removal. Everyone may have occasion to consult him, but comparatively few can judge of the qualifications of learning and skill which he possesses. Reliance must be placed upon the assurance given by his license, issued by an authority competent to judge in that respect, that he possesses the requisite qualifications. . . . The same reasons which control in imposing conditions, upon compliance with which the physician is allowed to practice in the first instance, may call for further conditions as new modes of treating disease are discovered, or a more thorough acquaintance is obtained of the remedial properties of vegetable and mineral substances, or a more accurate knowledge is acquired of the human system and of the agencies by which it is affected.

Dent v. West Virginia, 129 U.S. 114, 122-23, 32 L. Ed. 623, 626 (1889) (emphasis added); see also, e.g., *Barsky v. Board of Regents*, 347 U.S. 442, 449, 98 L. Ed. 829, 838 (1954) ("It is elemental that a state has broad power to establish and enforce standards of conduct within its borders relative to the health of everyone there.").

[1] The provision of the statute in question here is reasonably related to the public health. We conclude that the legislature, in enacting N.C.G.S. § 90-14(a)(6), reasonably believed that a general risk of endangering the public is *inherent* in any practices which

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fail to conform to the standards of "acceptable and prevailing" medical practice in North Carolina. We further conclude that the legislative intent was to prohibit any practice departing from acceptable and prevailing medical standards without regard to whether the particular practice itself could be shown to endanger the public. Our conclusion is buttressed by the plain language of N.C.G.S. § 90-14(a)(6), which allows the Board to act against *any* departure from acceptable medical practice "irrespective of whether or not a patient is injured thereby." By authorizing the Board to prevent or punish *any* medical practice departing from acceptable and prevailing standards, irrespective of whether a patient is injured thereby, the statute works as a regulation which "tend[s] to secure" the public generally "against the consequences of ignorance and incapacity as well as of deception and fraud," even though it may not immediately have that direct effect in a particular case. See *Dent v. West Virginia*, 129 U.S. at 122, 32 L. Ed. at 626. Therefore, the statute is a valid exercise of the police power.

[2] We next address a related question, whether the statute, N.C.G.S. § 90-14(a)(6), properly delegates authority to the Board. We have previously recognized that the legislature may delegate certain authority, such as adjudicative and rule-making functions, to administrative bodies. See *Adams v. Dept. of N.E.R. and Everett v. Dept. of N.E.R.*, 295 N.C. 683, 249 S.E.2d 402 (1978); *Board of Medical Examiners v. Gardner*, 201 N.C. 123, 159 S.E. 8. However, the legislature may not give unfettered discretion to the administrative body, but must instead provide "adequate guiding standards to govern the exercise of the delegated powers." *Adams v. Dept. of N.E.R. and Everett v. Dept. of N.E.R.*, 295 N.C. at 697, 249 S.E.2d at 410 (citing cases). Regarding this level of guidance which the legislature must provide to administrative bodies, we have held that:

When there is an obvious need for expertise in the achievement of legislative goals the General Assembly is not required to lay down a detailed agenda covering every conceivable problem which might arise in the implementation of the legislation. It is enough if general policies and standards have been articulated which are sufficient to provide direction to an administrative body possessing the expertise to adapt the legislative goals to varying circumstances.

Id. at 698, 249 S.E.2d at 411.

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Certain aspects of regulating the medical profession plainly require expertise beyond that of a layman. Our legislature recognized that need for expertise when it created a Board of Medical Examiners composed of seven licensed physicians and one additional member. N.C.G.S. § 90-2 (1985). Examining the language of N.C.G.S. § 90-14(a)(6), we conclude that the legislature clearly wished to protect the public from "unprofessional conduct" by physicians, and gave as an example of such conduct that which does not conform to the "standards of acceptable and prevailing medical practice." The statutory phrase "standards of acceptable and prevailing medical practice" is sufficiently specific to provide the Board—comprised overwhelmingly of expert physicians—with the "adequate guiding standards" necessary to support the legislature's delegation of authority.

The statute in question is a valid regulation which generally tends to secure the public health, safety, and general welfare, and the legislature has permissibly delegated certain regulatory functions connected with that valid exercise of the police power to the Board. There is no requirement, however, that every action taken by the Board specifically identify or address a particular injury or danger to any individual or to the public. It is enough that the statute is a valid exercise of the police power for the public health and general welfare, so long as the Board's action is in compliance with the statute. The Court of Appeals thus erred in requiring a showing of potential harm from the particular practices engaged in by Dr. Guess as a prerequisite to Board action, and for that reason the Court of Appeals' decision is reversed.

II.

[3] Having determined that N.C.G.S. § 90-14(a)(6) does not require that an unacceptable practice by a physician pose a particular threat of public harm before the Board may take action against that physician, we next consider whether the Board's action in this case was otherwise within its statutory authority. We first must decide whether the Board's decision in this case was supported by "competent, material, and substantial evidence." N.C.G.S. § 90-14.10 (1985). Judicial review of a decision by the Board of Medical Examiners is made according to what is frequently referred to as the "any competent evidence" standard. See *In re Rodgers*, 297 N.C. 48, 64 n.4, 253 S.E.2d 912, 922 n.4 (1979). The Superior Court found that the Board's decision was not supported by "competent, material

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and substantial" evidence. On this issue, however, we agree with the Court of Appeals:

The Superior Court's findings and conclusions as to the Board's findings of fact have no basis, as the Board's principal findings of fact are not only supported by competent evidence, they are essentially undisputed. Dr. Guess himself testified that he frequently used homeopathic medicines in treating patients, several qualified North Carolina physicians testified that such use is contrary to the "standards of acceptable and prevailing medical practice" in this state, and no doctor testified otherwise; indeed, so far as the record indicates Dr. Guess is the only physician in North Carolina that administers homeopathic medicines to patients.

In re Guess, 95 N.C. App. 435, 437, 382 S.E.2d 459, 461 (1989).

[4] Findings by the Board of Medical Examiners, if supported by competent evidence, may not be disturbed by a reviewing court. Further, "[j]udicial review of a revocation of license by order of the Board does not authorize the reviewing court to substitute its discretion for that of the Board." *In re Wilkins*, 294 N.C. 528, 545, 242 S.E.2d 829, 839 (1978) (citations omitted), *criticized on other grounds by In re Guess*, 324 N.C. 105, 376 S.E.2d 8 (1989). Dr. Guess argues that the Board must show a specific risk of harm resulting from his homeopathic practices before it may interfere with them and that, since no such risk was shown, the Board's decision could not be based upon competent evidence. As we have already rejected his underlying premise, his argument here is likewise rejected. The Board's findings leading to its decision were based upon competent, material, and substantial evidence regarding what constitutes "acceptable and prevailing" standards of medical practice in North Carolina. No more was required. Guess' evidence concerning the efficacy of homeopathy and its use outside North Carolina simply was not relevant to the issue before the Board.

Dr. Guess also contends that the Board's decision was arbitrary and capricious and, therefore, must be reversed under N.C.G.S. § 90-14.10. He argues that the Board's arbitrariness is revealed in its "selective" application of the statute against him. He seems to contend that if the Board is to take valid action against him, it must also investigate and sanction every physician who is the "first" to utilize any "new" or "rediscovered" medical procedure. We disagree. The Board properly adhered to its statutory notice

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and hearing requirements, and its decision was amply supported by uncontroverted competent, material and substantial evidence. We detect no evidence of arbitrariness or capriciousness.

Dr. Guess strenuously argues that many countries and at least three states recognize the legitimacy of homeopathy. While some physicians may value the homeopathic system of practice, it seems that others consider homeopathy an outmoded and ineffective system of practice. This conflict, however interesting, simply is irrelevant here in light of the uncontroverted evidence and the Board's findings and conclusion that homeopathy is not currently an "acceptable and prevailing" system of medical practice in North Carolina.

While questions as to the efficacy of homeopathy and whether its practice should be allowed in North Carolina may be open to valid debate among members of the medical profession, the courts are not the proper forum for that debate. The legislature may one day choose to recognize the homeopathic system of treatment, or homeopathy may evolve by proper experimentation and research to the point of being recognized by the medical profession as an acceptable and prevailing form of medical practice in our state; such choices, however, are not for the courts to make.

We stress that we do not intend for our opinion in this case to retard the ongoing research and development of the healing arts in any way. The Board argues, and we agree within our admittedly limited scope of medical knowledge, that preventing the practice of homeopathy will not restrict the development and acceptance of new and beneficial medical practices. Instead, the development and acceptance of such new practices simply must be achieved by "acceptable and prevailing" methods of medical research, experimentation, testing, and approval by the appropriate regulatory or professional bodies.

III.

[5] Dr. Guess also argues that N.C.G.S. § 90-14(a)(6) is unconstitutionally vague, because a reasonably intelligent doctor will not know whether he is engaging in unprofessional conduct each time he tries a new or different medical practice not widely used in North Carolina. See *In re Wilkins*, 294 N.C. 528, 548, 242 S.E.2d 829, 841 (1978), criticized on other grounds by *In re Guess*, 324 N.C. 105, 376 S.E.2d 8 (1989). We have previously held that the predecessor statute to the current N.C.G.S. § 90-14 was neither

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vague nor overbroad. *Id.* at 546-49, 242 S.E.2d at 839-41. For reasons similar to those expressed in *Wilkins*, we conclude that any reasonably intelligent licensed physician will know when he is engaging in a practice which does not conform to "the standards of acceptable and prevailing medical practice" in North Carolina. Our conclusion is buttressed by the hearing testimony before the Board, where several doctors testified without hesitation that the practice of homeopathy does not conform to the standards of acceptable and prevailing medical practice in North Carolina.

IV.

[6] Dr. Guess next contends that the Board's decision unconstitutionally invades his and his patients' privacy rights, by invading Guess' right to select his method of practice and invading his patients' rights to their choice of treatments. We disagree on both points. Regarding Guess' ability to select his method of practice, "there is no right to practice medicine which is not subordinate to the police power of the states." *Lambert v. Yellowstey*, 272 U.S. 581, 596, 71 L. Ed. 422, 429 (1926) (citing cases). Further, the Board's decision does not deprive Guess of his privilege to practice medicine, it simply limits his methods of treating patients to those which conform to the acceptable and prevailing standards of medical practice in North Carolina. Regarding Guess' claim that the Board's decision invades his patients' right to select the treatment of their choice, we initially note that he has no standing to raise his patients' privacy interests in this regard. See *Stanley, Edwards, Henderson v. Dept. Conservation & Development*, 284 N.C. 15, 28, 199 S.E.2d 641, 650 (1973) (citing cases), limited on other grounds by *Madison Cablevision v. City of Morganton*, 325 N.C. 634, 386 S.E.2d 200 (1989). Further, we have recognized no fundamental right to receive unorthodox medical treatment, and we decline to do so now. See *State v. Howard*, 78 N.C. App. 262, 269, 337 S.E.2d 598, 603 (1985), disc. rev. denied, appeal dismissed, 316 N.C. 198, 341 S.E.2d 581 (1986).

V.

[7] Finally, Dr. Guess contends that by denying him the opportunity to practice homeopathy, the Board is exercising unbridled and unconstitutional monopoly power. We disagree. The Board's authority to regulate the practice of medicine creates no unconstitutional monopoly. See *State v. Call*, 121 N.C. 643, 646, 28 S.E. 517, 517 (1897); *State v. Howard*, 78 N.C. App. at 266, 337 S.E.2d at 601.

VI.

The order of the Board of Medical Examiners allowed Dr. Guess to continue practicing medicine so long as he refrained from practicing homeopathy and otherwise conformed to the standards of acceptable and prevailing medical practice in North Carolina. The Superior Court erred in reversing and vacating the Board's decision, and the Court of Appeals erred in its decision affirming the Superior Court. The decision of the Court of Appeals is reversed. This case is remanded to the Court of Appeals for its further remand to the Superior Court, Wake County, for proceedings consistent with this opinion.

Reversed and remanded.

Justice FRYE dissenting.

The underlying and essential question in this case is whether the Board may revoke a physician's license to practice medicine for "unprofessional conduct" under N.C.G.S. § 90-14(a)(6) based on a deviation from "the standards of acceptable and prevailing medical practice" without a finding that the deviation carries with it a potential for harm to the physician's patients or to the public. The Court of Appeals held that the Board may not do so. I agree and therefore dissent from the majority's holding to the contrary.

I believe that the majority has construed subsection (6) of N.C.G.S. § 90-14(a) in a manner inconsistent with its purpose and legislative intent. N.C.G.S. § 90-14(a) provides that the Board shall have the power to deny, annul, suspend, or revoke a physician's license to practice medicine in this State for any of some thirteen reasons. In addition to "unprofessional conduct," a license may be revoked for immoral or dishonest conduct; for producing or attempting to produce an abortion contrary to law; for making false statements to the Board; for being unable to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, etc.; for conviction of a crime involving moral turpitude; for making false representations in order to obtain practice, money or anything of value; for advertising or publicly professing to treat human ailments under a system or school of treatment or practice other than that for which the person has been educated; for mental incompetency; for lack of professional competence to practice medicine with a reasonable degree of skill and safety for

patients; for promotion of the sale of drugs, etc., in such a manner as to exploit the patient for financial gain; upon suspension or revocation of a license to practice medicine in another state; or for failure to respond, within a reasonable period of time and in a reasonable manner, to inquiries from the Board concerning any matter affecting the license to practice medicine. Even a cursory review of subsection (6) shows that it is directed to protecting the health and safety of patients and the public. The common thread running through each of these reasons for revocation of a license is the threat or potential for harm to patients and the public.

Subsection (6) of N.C.G.S. § 90-14(a) provides that the Board shall have the power to deny, annul, suspend, or revoke a physician's license for:

(6) unprofessional conduct, including, but not limited to, any departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the medical profession, irrespective of whether or not a patient is injured thereby, or the committing of any act contrary to honesty, justice or good morals, whether the same is committed in the course of his practice or otherwise, and whether committed within or without North Carolina[.]

The majority treats the language "irrespective of whether or not a patient is injured thereby" as meaning irrespective of whether there is an injury or threat of injury caused by the deviation. I do not believe that the legislature so intended. Dr. Guess argues, and I agree, that this language gives the Board authority to act before injury occurs, but does not eliminate the public purpose requirement that the medical practice pose some threat or potential for harm to the public. The phrase "unprofessional conduct" connotes dishonorable or unethical behavior, *In re Wilkins*, 294 N.C. 528, 242 S.E.2d 829 (1978), and, in the context of the statute, means substandard medical practice that cannot be tolerated because of the risk of harm such treatment poses to the public. Subsection (6), like the remainder of section 90-14(a), was enacted for the purpose of regulating the medical profession to protect the public health and safety and not simply to prevent a doctor from being the first one in the State to use a particular medicine or form of healing.

A careful examination of the evidence presented before the Board shows that Dr. Guess' practice of homeopathy is not un-

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professional conduct within the meaning of N.C.G.S. § 90-14(a)(6). All of the evidence tended to show that Dr. Guess is a highly qualified practicing physician who uses homeopathic medicines as a last resort when allopathic medicines are not successful. He takes 150 credits of continuing medical education approved by the American Medical Association every three years and from fifty to eighty hours of homeopathic continuing medical education each year. The homeopathic medications prescribed by him are listed in the Homeopathic Pharmacopoeia of the United States and are regulated by the United States Federal Food, Drug and Cosmetic Act. The homeopathic approach is often preferred, in Dr. Guess' words, "primarily because of its well documented safety." This is not a case of a quack beguiling the public with snake oil and drums, but a dedicated physician seeking to find new ways to relieve human suffering. The legislature could hardly have intended this practice to be considered "unprofessional conduct" so as to revoke a physician's license in the absence of some evidence of harm or potential harm to the patients or to the public. Nothing in the record before the Board or this Court justifies so broad a sweep in order to secure the public "against the consequences of ignorance and incapacity as well as of deception and fraud." *See Dent v. West Virginia*, 129 U.S. 114, 122, 32 L.Ed. 623, 626 (1889).

I also disagree with the majority's conclusion that Dr. Guess's evidence presented to the Board concerning the efficacy of homeopathy and its use outside North Carolina was not relevant to the issue before the Board. North Carolina does not and should not exist as an island to itself. The evidence that homeopathy is accepted in other states and in other countries of the world and that it has a beneficial rather than harmful effect certainly ought to be of some significance to the Board and to the citizens of this State concerned about the public health and safety. The majority rejects evidence of the legitimacy of homeopathy in other states and countries throughout the world as being irrelevant because homeopathy is not currently an acceptable and prevailing system of medical practice in North Carolina. This raises the legitimate question of how the acceptable and prevailing practice can be improved in North Carolina if we do not even consider what happens in other states and countries.

Lastly, I disagree with the majority's conclusion that Dr. Guess' remedy lay with the legislature. As I have stated earlier, N.C.G.S. § 90-14(a) is intended to protect the public from harmful or dangerous

IN RE ADOPTION OF CLARK

[327 N.C. 61 (1990)]

practices. In light of this policy, I do not believe that the General Assembly would require a physician to undergo a possibly lengthy wait for legislative action while it is attending to other matters before allowing him to make non-dangerous, beneficial treatments available to members of the public who knowingly consent. Where there is no showing of danger, I do not believe specific legislative approval is a prerequisite to a physician engaging in a practice which is by all indications helpful when used wisely.

I vote to affirm the unanimous decision of the Court of Appeals.

 IN RE THE ADOPTION OF DANIEL JAMES CLARK

No. 395A89

(Filed 26 July 1990)

Adoption § 13 (NCI4th) — statutorily required affidavit — rights of father

The trial court did not abuse its discretion in an adoption proceeding by not allowing the affidavit required by N.C.G.S. § 48-13, filed two years after the adoption petition, to relate back to the original adoption petition where the child was born out of wedlock; the father was unaware of the birth of the child; the adoption agency filed a petition to terminate the father's parental rights; notice of service by publication was published in a local newspaper and the order terminating parental rights was issued; the child was then placed with adoptive parents who filed a petition for adoption; and the petition for adoption included a copy of the termination order rather than the affidavit required by N.C.G.S. § 48-13. The affidavit provides the basis for the clerk to determine if the father is a necessary party to the proceeding and is therefore not a mere technicality; moreover, the termination order filed here was invalid because the service by publication was void since due diligence was not used to determine the father's address. Although the adoption agency subsequently filed an affidavit, the father would be prejudiced by any attempt to relate a filing back to a time when he had no notice of the birth of his child in that he could lose his parental rights after taking action to avoid that outcome by filing a petition

STATE OF NEW YORK
11837
IN ASSEMBLY
June 1, 1992

6 introduced by COMMITTEE ON RULES -- (at request of M. of A. Hinchey,
7 Colman, Weisenberg, Christensen, Davis, Glick) -- read once and referred
8 to the Committee on Higher Education

9

10 AN ACT to amend the education law and the public health law, in relation
11 to the practice of complementary medicine

12

13 THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY,
14 DO ENACT AS FOLLOWS:

15

16 Section 1. Legislative Intent. The legislature hereby finds and
17 determines that medicine is a living science which continues to change
18 with the development of new technology and research. In the course of such
19 evolution, nontraditional medical methods frequently become the standard
20 of traditional practice over time. The use of nontraditional or
21 complementary medical methods also may result in significant cost savings,
22 particularly when such innovative practices are preventive in nature
23 Given these general precepts regarding the evolution of medical practice
24 standards, it behooves this legislature to examine the use of
25 complementary medicine and ensure that physician practitioners of such
26 complementary medical practices are not adversely disciplined for such use
27 solely on the grounds of their nontraditional status.

28 S 2. Section 6521 of the education law, as added by chapter 987 of
29 the laws of 1971, is amended to read as follows:

30 S 6521. Definition of practice of medicine. The practice of the
31 profession of medicine is defined as diagnosing, treating, operating or
32 prescribing for any human disease, pain, injury, deformity or physical
33 condition. COMPLEMENTARY MEDICINE IS DEFINED AS THE INCLUSION WITHIN A
34 REGULAR MEDICAL PRACTICE OF NON-TRADITIONAL, ALTERNATIVE OR OTHER
35 THERAPIES THAT HAVE BEEN DEMONSTRATED IN MEDICAL LITERATURE TO BE OF
36 EMPIRICAL CLINICAL BENEFIT, WHEN THE LICENSEE AND THE PATIENT DETERMINE
37 THAT IT IS BENEFICIAL FOR THE PATIENT'S CARE

38 S 3. The education law is amended by adding a new section 6533 to
39 read as follows:

40 S 6533. COMPLEMENTARY MEDICINE. 1. THERE IS HEREBY CREATED WITHIN THE
41 DEPARTMENT A TASK FORCE ON COMPLEMENTARY MEDICINE WHOSE FUNCTION SHALL BE
42 TO STUDY THE USE OF NONTRADITIONAL AND COMPLEMENTARY MEDICAL PRACTICES BY
43 NEW YORK STATE PHYSICIANS.

44 2. THE TASK FORCE SHALL BE COMPOSED OF: THREE MEMBERS EACH FROM THE
45 ASSEMBLY AND THE SENATE, INCLUDING THE RESPECTIVE CHAIRMAN OF THE STANDING
46 COMMITTEES ON HEALTH AND INSURANCE, AND TWELVE MEMBERS APPOINTED BY THE
47 GOVERNOR, AS FOLLOWS: THE COMMISSIONERS OF HEALTH AND EDUCATION, ONE
48 REPRESENTATIVE OF THE BOARD FOR PROFESSIONAL MEDICAL CONDUCT, TWO NEW YORK
49 STATE PHYSICIANS WHOSE PRACTICE INCLUDES COMPLEMENTARY MEDICINE, ONE
50 REPRESENTATIVE OF THE MEDICAL SOCIETY OF THE STATE OF NEW YORK, ONE

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1 REPRESENTATIVE OF THE NEW YORK STATE OSTEOPATHIC SOCIETY, ONE
2 REPRESENTATIVE OF THE NEW YORK ACADEMY OF MEDICINE, AND FOUR MEMBERS OF
3 THE GENERAL PUBLIC, AT LEAST TWO OF WHOM SHALL BE PATIENTS OF
4 COMPLEMENTARY MEDICINE PHYSICIANS OTHER THAN THOSE ASSIGNED TO THE TASK
5 FORCE.
6 3. THE TASK FORCE SHALL:
7 (A) DETERMINE THE KIND AND EXTENT OF COMPLEMENTARY MEDICAL PRACTICES USED
8 BY PHYSICIANS IN NEW YORK STATE;
9 (B) EVALUATE THE BENEFITS AND RISKS TO PATIENTS OF COMPLEMENTARY
10 MEDICINE; AND
11 (C) EVALUATE THE COSTS AND SOCIAL BENEFITS OF COMPLEMENTARY MEDICAL
12 PRACTICES INCLUDING, BUT NOT LIMITED TO THE POTENTIAL EFFECTS ON THIRD
13 PARTY AND INSURANCE REIMBURSEMENTS AND THE POTENTIAL REDUCTIONS IN
14 HOSPITAL UTILIZATION COSTS.
15 4. THE GOVERNOR SHALL DESIGNATE FROM THE MEMBERS OF THE TASK FORCE A
16 CHAIRPERSON, WHO SHALL BE A PHYSICIAN, AND A VICE-CHAIRPERSON. SECRETARIAL
17 AND OTHER STAFF SERVICES SHALL BE PROVIDED TO THE TASK FORCE BY THE
18 DEPARTMENT. THE TASK FORCE SHALL MEET UPON THE CALL OF THE CHAIRPERSON AND
19 SHALL RECEIVE NO COMPENSATION OTHER THAN THE NORMAL AND NECESSARY EXPENSES
20 ATTENDANT UPON SERVING ON THE TASK FORCE. A QUORUM FOR THE TRANSACTION OF
21 BUSINESS BY THE TASK FORCE SHALL BE A MAJORITY OF ITS MEMBERS.
22 5. THE TASK FORCE SHALL REPORT ITS FINDINGS AND RECOMMENDATIONS TO
23 THE GOVERNOR AND THE LEGISLATURE WITHIN EIGHTEEN MONTHS FOLLOWING
24 ENACTMENT OF THIS STATUTE AND SHALL THEREAFTER TERMINATE ITS EXISTENCE.
25 § 4. Subdivision 1 of section 230 of the public health law, as
26 amended by chapter 97 of the laws of 1992, is amended to read as follows:
27 1. A state board for professional medical conduct is hereby created
28 in the department in matters of professional misconduct as defined in
29 sections sixty-five hundred thirty and sixty-five hundred thirty-one of
30 the education law. Its physician members shall be appointed by the
31 commissioner at least eighty-five percent of whom shall be from among
32 nominations submitted by the medical society of the state of New York, the
33 New York state osteopathic society, the New York academy of medicine,
34 county medical societies, statewide specialty societies recognized by the
35 council of medical specialty societies, and the hospital association of
36 New York state. Its lay members shall be appointed by the commissioner
37 with the approval of the governor. The board of regents shall also appoint
38 twenty percent of the members of the board. Not less than sixty-seven
39 percent of the members appointed by the board of regents shall be
40 physicians. Not less than eighty-five percent of the physician members
41 appointed by the board of regents shall be from among nominations
42 submitted by the medical society of the state of New York, the New York
43 state osteopathic society, the New York academy of medicine, county
44 medical societies, statewide medical societies recognized by the council
45 of medical specialty societies, and the hospital association of New York
46 state. Any failure to meet the percentage thresholds stated in this
47 subdivision shall not be grounds for invalidating any action by or on
48 authority of the board for professional medical conduct or a committee or
49 a member thereof. The board for professional medical conduct shall consist
50 of not fewer than eighteen physicians licensed in the state for at least

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1 five years two of whom shall be doctors of osteopathy, AT LEAST ONE OF
2 WHOM SHALL BE A PHYSICIAN PRACTICING COMPLEMENTARY MEDICINE, and not fewer
3 than seven lay members. An executive secretary shall be appointed by the
4 chairperson and shall be a licensed physician. Such executive secretary
5 shall not be a member of the board, shall hold office at the pleasure of,
6 and shall have the powers and duties assigned and the annual salary fixed
7 by the chairperson. The chairperson shall also assign such secretaries or
8 other persons to the board as are necessary.

9 S 5. Subdivision 10 of section 230 of the public health law is
10 amended by adding a new paragraph (9) to read as follows:

11 (G) A COMMITTEE ON PROFESSIONAL CONDUCT SHALL NOT BASE A FINDING OF
12 PROFESSIONAL MISCONDUCT SOLELY ON THE BASIS THAT A LICENSEE'S PRACTICE IS
13 COMPLEMENTARY, IN THE ABSENCE OF DEMONSTRABLE HARM TO THE PATIENT.

14 S 6. This act shall take effect on the thirtieth day after it shall
15 have become a law.

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Drafted by: Townsend
Typed by: pc
Stored - 09/16/91
Proofread by AS ETP
Checked by PM RS

By: Delegate Huff

A BILL ENTITLED

AN ACT concerning

Physicians - Nontraditional Practices

FOR the purpose of requiring the Board of Physician Quality Assurance (Board) to develop a certain model informed consent form for use by certain licensees; prohibiting the Board from taking certain disciplinary action against certain licensees solely because the licensee's practice is unconventional or experimental; and generally relating to certain physicians with unconventional or experimental practices.

BY repealing and reenacting, with amendments,

Article - Health Occupations

Section 14-205 and 14-404

Annotated Code of Maryland

(1991 Replacement Volume and 1991 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

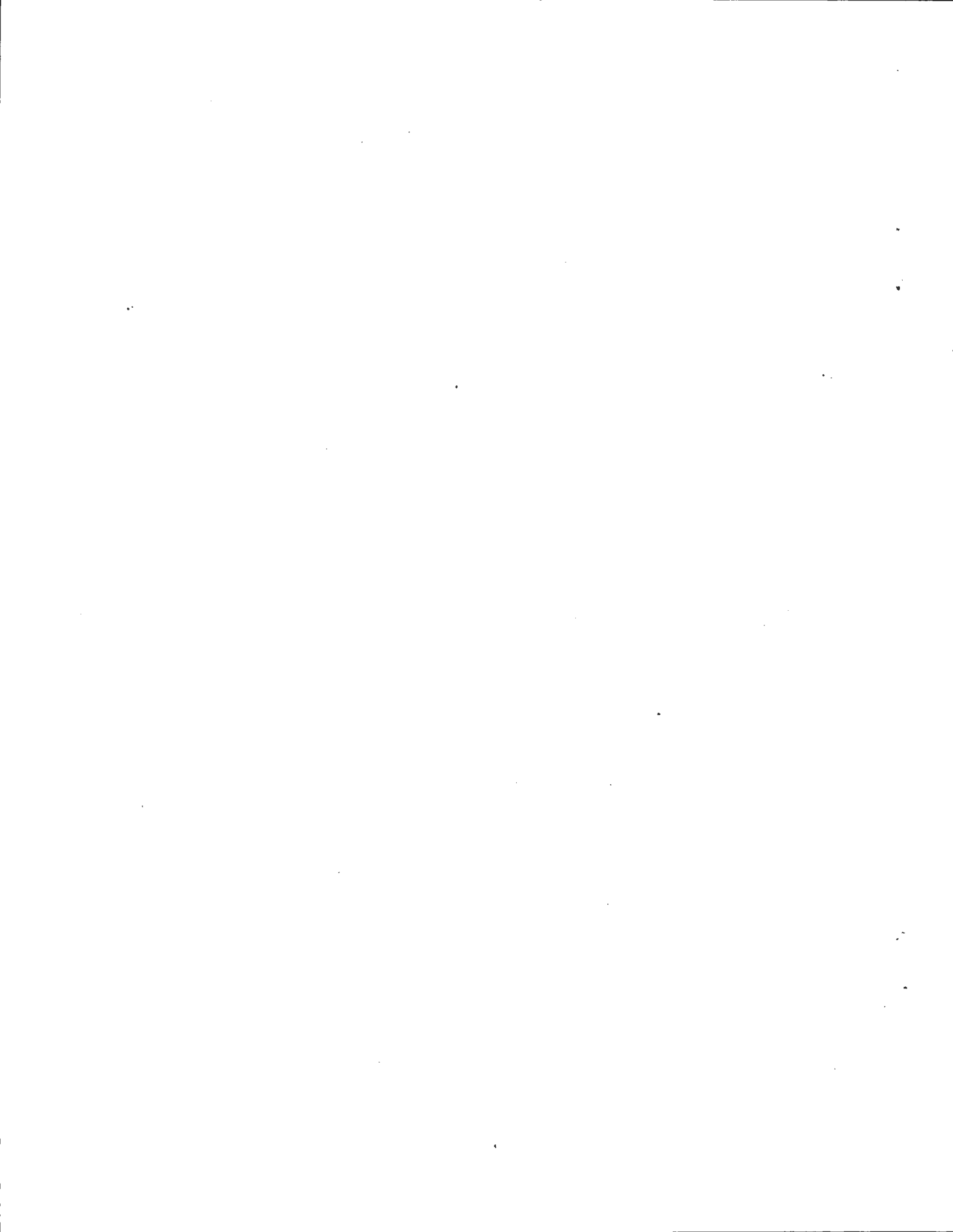
Article - Health Occupations

14-205.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

- (a) (1) In addition to the powers set forth elsewhere in this title, the Board may: 1
- (i) Adopt rules and regulations to: 1
 - 1. Carry out the provisions of this title; or 2
 - 2. Regulate the performance of acupuncture, but only to the extent authorized by § 14-506 of this title; 2
 - (ii) After consulting with the State Board of Pharmacy, adopt rules and regulations regarding the dispensing of prescription drugs by a licensed physician; and 2
 - (iii) Subject to the Administrative Procedure Act, deny a license to an applicant or refuse to renew or reinstate an applicant's license for any of the reasons that are grounds for action under § 14-404 of this title. 2
- (2) The Board on receipt of a written and signed complaint may investigate an alleged violation of this title. 2
- (b) (1) In addition to the duties set forth elsewhere in this title, the Board shall: 3
- (i) Submit an annual report to the Faculty and to the Secretary; 3
 - (ii) Issue, for use in other jurisdictions, a certificate of professional standing to any licensed physician; [and] 3
 - (iii) Keep a list of all license applicants; AND 3
 - (IV) DEVELOP A MODEL INFORMED CONSENT FORM FOR USE BY THE LICENSEES WHOSE PRACTICE IS IN WHOLE OR IN PART NONTRADITIONAL. 3
- (2) The Board shall keep a list of all physicians who are currently licensed. Each list prepared under this subsection shall be kept as a permanent record of the Board. The list of currently licensed physicians is a public record. 4

- (29) Falls to comply with the provisions of § 12-102 of this article; 113
- (30) Refuses, withholds from, denies, or discriminates against an individual 114
with regard to the provision of professional services for which the licensee is licensed and 115
qualified to render because the individual is HIV positive; or 116
- (31) Except as to an association that has remained in continuous existence 117
since July 1, 1963: 118
- (i) Associates with a pharmacist as a partner or co-owner of a 119
pharmacy for the purpose of operating a pharmacy; 120
- (ii) Employs a pharmacist for the purpose of operating a pharmacy; or 121
- (iii) Contracts with a pharmacist for the purpose of operating a 122
pharmacy. 123
- (b) (1) On the filing of certified docket entries with the Board by the Office of 124
the Attorney General, the Board shall order the suspension of a license if the licensee is 125
convicted of or pleads guilty or nolo contendere with respect to a crime involving moral 126
turpitude, whether or not any appeal or other proceeding is pending to have the 127
conviction or plea set aside. 128
- (2) After completion of the appellate process if the conviction has not been 129
reversed or the plea has not been set aside with respect to a crime involving moral 130
turpitude, the Board shall order the revocation of a license on the certification by the 131
Office of the Attorney General. 132
- (C) IN THE ABSENCE OF DEMONSTRABLE PHYSICAL HARM TO A 133
PATIENT, THE BOARD MAY NOT REPRIMAND ANY LICENSEE, PLACE ANY 134
LICENSEE ON PROBATION, OR SUSPEND OR REVOKE A LICENSE SOLELY 135
BECAUSE THE LICENSEE'S PRACTICE IS NONTRADITIONAL. 136



Drafted by: townsend
Typed by: III
Stored - 09/25/91
Proofread by: DLI PLL
Checked by: W.M. J.

By: Delegate Huff

A BILL ENTITLED

AN ACT concerning

Commission on Nontraditional Medical Practices

FOR the purpose of establishing a Commission on Nontraditional Medical Practices; providing for the membership of the Commission; charging the Commission with certain duties; requiring the Commission to issue a report and make recommendations by a certain date; providing for the termination of the Commission; and generally relating to the Commission on Nontraditional Medical Practices.

BY adding to

Article 41 - Governor - Executive and Administrative Departments

Section 18-303

Annotated Code of Maryland

(1990 Replacement Volume and 1991 Supplement)

Preamble

WHEREAS, The practice of medicine has changed and continues to change with the development of new technology and research; and

WHEREAS, Nontraditional medical practices often become the standard or traditional practice pattern over time; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

WHEREAS, Individuals should have the right and freedom to choose what they believe is the most appropriate course of treatment for their medical conditions; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article 41 - Governor - Executive and Administrative Departments

18-303.

(A) THERE IS A COMMISSION ON NONTRADITIONAL MEDICAL PRACTICES, WHICH SHALL STUDY HOW TO ALLOW THE USE OF NONTRADITIONAL MEDICAL PRACTICES BY MARYLAND PHYSICIANS WITH PATIENTS WHO WANT TO BE TREATED THROUGH NONTRADITIONAL METHODS FOR THEIR MEDICAL CONDITIONS.

(B) THE COMMISSION ON NONTRADITIONAL MEDICAL PRACTICES IS COMPOSED OF:

(1) 2 MEMBERS OF THE HOUSE OF DELEGATES, APPOINTED BY THE SPEAKER OF THE HOUSE;

(2) 2 MEMBERS OF THE SENATE OF MARYLAND, APPOINTED BY THE PRESIDENT OF THE SENATE; AND

(3) 10 MEMBERS APPOINTED BY THE GOVERNOR, AS FOLLOWS:

(I) THE SECRETARY OF HEALTH AND MENTAL HYGIENE, OR THE SECRETARY'S DESIGNEE;

(II) 2 MEMBERS REPRESENTING THE BOARD OF PHYSICIAN QUALITY ASSURANCE;

(III) 2 MEMBERS REPRESENTING THE MEDICAL AND CHIRURGICAL FACULTY OF MARYLAND;

(IV) 1 MARYLAND PHYSICIAN WITH EXPERTISE IN THE USE 44
OF NONTRADITIONAL MEDICAL PRACTICES; 45

(V) 2 PATIENTS OR FORMER PATIENTS OF PHYSICIANS 46
WHO TREAT PATIENTS WITH NONTRADITIONAL MEDICAL PRACTICES; 47
AND 48

(VI) 2 MEMBERS OF THE GENERAL PUBLIC. 49

(C) THE COMMISSION IS CHARGED WITH: 50

(1) DETERMINING WHAT KIND OF NONTRADITIONAL MEDICAL 51
PRACTICES ARE BEING USED BY PHYSICIANS IN MARYLAND; 52

(2) EVALUATING THE COSTS AND BENEFITS ASSOCIATED WITH 53
THE USE OF NONTRADITIONAL MEDICAL PRACTICES; AND 54

(3) DETERMINING HOW TO BEST INFORM PATIENTS OF THE 55
BENEFITS AND RISKS ASSOCIATED WITH THE USE OF NONTRADITIONAL 56
MEDICAL PRACTICES. 57

(D) THE MEMBERS OF THE COMMISSION SHALL SELECT A 58
CHAIRPERSON FROM THE MEMBERSHIP. 59

(E) THE COMMISSION SHALL REPORT ITS FINDINGS AND 60
RECOMMENDATIONS TO THE GOVERNOR AND, CONSISTENT WITH § 2-1312 61
OF THE STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY BY 62
JULY 1, 1993 AND THEREAFTER TERMINATE ITS EXISTENCE. 63

(F) STAFF FOR THE COMMISSION SHALL BE PROVIDED BY THE 64
DEPARTMENT OF HEALTH AND MENTAL HYGIENE. 65

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect 66
July 1, 1992. 67

2lr0472

J2

Withdrawn

send

91
AS
7. AS

By: Delegate Huff

A BILL ENTITLED

AN ACT concerning

Board of Physician Quality Assurance - Membership

FOR the purpose of altering the membership of the Board of Physician Quality Assurance.

BY repealing and reenacting, with amendments,

Article - Health Occupations

Section 14-202(a)

Annotated Code of Maryland

(1991 Replacement Volume and 1991 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That: the Laws of Maryland read as follows:

Article - Health Occupations

14-202.

(a) (1) The Board shall consist of 15 members appointed by the Governor.

(2) Of the 15 members:

(i) 10 shall be practicing licensed physicians appointed from a list

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

2lr0472

submitted by the faculty, 1 OF WHOM SHALL HAVE A PRACTICE THAT IS IN 17
WHOLE OR IN PART NONTRADITIONAL; 18

(ii) 1 shall be a practicing licensed physician appointed at the 19
Governor's discretion; 20

(iii) 1 shall be a representative of the Department nominated by the 21
Secretary; 22

(iv) 2 shall be consumer members appointed with the advice and 23
consent of the Senate; and 24

(v) 1 shall be a consumer member knowledgeable in risk management 25
or quality assurance matters appointed from a list submitted by the Maryland Hospital 26
Association. 27

SECTION 2 AND BE IT FURTHER ENACTED, That this Act shall take effect 28
July 1, 1992. 29

STATE OF SOUTH DAKOTA

SIXTY-SEVENTH SESSION, LEGISLATIVE ASSEMBLY, 1992

1ZZT0154

HOUSE BILL NO. 1104

Introduced by: Representatives Edwin Olson, Gabriel, Hagen, Haley, Hodges, Carol Johnson, Koskan, McKillop, Moore, Schreiber and Wishard and Senators Miner, Emery, Herzeth, Maicki and Saukerson

FOR AN ACT ENTITLED, An Act to limit the board of medical and osteopathic examiners' authority to define unprofessional or dishonorable conduct.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

That S 36-4-29 be amended to read as follows:

36-4-29. The South Dakota state board of medical and osteopathic examiners may cancel, revoke, suspend or limit the license of any physician, surgeon or osteopathic physician or surgeon issued under this chapter upon satisfactory proof in compliance with chapter 1-25 of such a licensee's gross incompetence, or unprofessional or dishonorable conduct or proof of a violation of this chapter in any respect. However, the board may not base a finding of unprofessional or dishonorable conduct solely on the basis that a ~~licensee's practice is unconventional or experimental in the absence of demonstrable physical harm to a patient~~ ~~****Delete:~~ ****Insert: licensee practices chelation ~~****Insert: therapy~~ ~~****Delete: for atherosclerosis~~ ~~****~~

850 copies of this document were printed by the South Dakota Legislative Research Council at a cost of \$.014 per page.

Insertions into existing statutes are indicated by underscores. Deletions from existing statutes are indicated by ~~overstrikes~~.

PAV
11/17

HB 1104 VETO MESSAGE

447

CONSTITUTIONAL Veto Letters

March 12, 1992

The Honorable Jim Hood
Speaker of the House
State Capitol
Pierre, SD 57501-5070

Mr. Speaker and Members of the House of Representatives:

I herewith return House Bill 1104 and VETO the same.

This bill is intended to reverse a decision made last spring by the South Dakota Board of Medical and Osteopathic Examiners which declares the practice of chelation therapy for non-FDA approved indications as professional misconduct. The charge of professional misconduct is grounds for revocation of a physician's license to practice medicine. Thereby, the declaration in essence forbids the practice of chelation therapy for other than FDA-approved indications.

During committee and floor discussion on this bill, the perceived benefits and risks of chelation therapy for arteriosclerosis and other chronic conditions were intensely debated. Proponents included numerous individuals providing personal testimony to the benefits of chelation therapy and to their belief in their right to choose treatment after appropriate risk/benefit counseling and their right to have local access to services which are available in neighboring states.

In addition to the specific issue of chelation therapy, the debate also considered the more fundamental issue of the board's authority over medical practice matters.

While I appreciate the concerns of the proponents, it is clear House Bill 1104 places inappropriate limitations on the Board of Medical and Osteopathic Examiners. The board's purpose is to regulate the practice of medicine to best protect the public's interest. In carrying out this function, the board has a responsibility to make objective decisions based on the scientific understanding of the risks and benefits of a therapy and is consistent with the (current practice of the majority of physicians) and the opinion of professional and scientific organizations.

Implicit in the authority granted the board is an accountability to the public, the medical profession and the authority-granting body -- the Legislature. In regard to chelation therapy, the board has the obligation to be receptive to public and professional testimony and to forthcoming data from scientific studies currently underway.

Because of the specialized expertise required to carry out its function, it is imperative the board retain full authority over the practice of medicine. House Bill 1104 sets an inappropriate precedent in limiting the authority of the board for a specific instance.

I ask your concurrence in my VETO of House Bill 1104

Respectfully submitted,
GEORGE S. MICKELSON
GOVERNOR

INDEX - Subsequent Veto Letters

March 12, 1992

The Honorable Jim Hood
Speaker of the House
State Capitol
Pierre, SD 57501-5070

Mr. Speaker and Members of the

I herewith return House Bill

House Bill 1152 allows the government in and of the executive branch or the st

It addresses the authority interim appropriations committee simply clarifies what has been committee for years with authority and full-time equal provisions. However, Section the authority of the special and the Governor without challenges in court.

The special committee has the assumption that the power the Legislature that cannot people of South Dakota reject article of the South Dakota the Legislature the power to contingency funds and gr provided for in previous constitutional question, have served to allow the Co surface between legislative

Section 5 of House Bill committee to urgent matters session or "if that act considered....during the this section is the potenti

In the past, the committee has been presented to appropriations act or any denial of the request by the same item during the constitute an unconstitutional special committee.

What does "substantia appropriations bills that included in the Governor appropriations act due to action? Where is the considerations?

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1993

DRAFT BILL #7
MEDP.v3

Short Title: Alternative Medical Treatment

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE PATIENTS ACCESS TO ALTERNATIVE MEDICAL
3 TREATMENT.

4 The General Assembly of North Carolina enacts:

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

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"ARTICLE 23A.
"Right to Alternative Medical Treatment.

"Part 1. General.

"§90-324. Purpose; patient's right to choice.

The General Assembly recognizes as a matter of public policy that an individual's rights include the right to choose medical care and treatment and that the choice of care and treatment should reside with the patient and the patient's physician. It is the purpose of this Article to establish the standards by which alternative medical care and treatment may be administered to patients.

"Part 2. Physicians.

"§90-325. Access to alternative medical treatment by physicians.

1 A physician licensed to practice medicine pursuant to Article 1 of this Chapter may
2 administer alternative medical treatment to a patient, consistent with the provisions of
3 G.S. 90-14, provided that:

- 4 (1) the physician has obtained the written, informed consent of the
5 patient;
6 (2) the physician maintains records concerning the treatments as required
7 by the Board of Medical Examiners;
8 (3) the treatment is not recognized as an accepted medical practice
9 pursuant to Article 1 of this Chapter but
10 a. is demonstrated by the physician through credible scientific or
11 empirical evidence to be of therapeutic benefit to patients, or
12 b. is part of an experimental study conducted pursuant to
13 generally-accepted protocols for experimental medical research."
14

15 "Part 3. Naturopathy.

16
17 "§90-326. Registration; definition.

18 Every person practicing or desiring to practice naturopathy in this State shall register
19 with the Department of Environment, Health, and Natural Resources. Naturopaths
20 practicing as of the effective date of this Article shall register with the Department no
21 later than December 31, 1993. All others shall register prior to engaging in or
22 advertising as or otherwise holding himself or herself out as a naturopath. Registration
23 shall be renewed annually in accordance with the Department's requirements. Persons
24 licensed pursuant to this Part shall use the title 'naturopathic physician' and the
25 recognized abbreviation 'N.D.'

26 As used in this Part, 'naturopathy' means a system of primary health care practiced
27 by naturopathic physicians for the prevention, diagnosis, and treatment of human health
28 conditions, injuries, and diseases that uses education and natural medicines and
29 therapies to support and stimulate the individual's intrinsic self-healing process.

30 "§90-326.1. Qualifications; sworn statement.

31 In order to register under this Article, an applicant must submit on a sworn statement
32 provided by the Department that he or she:

33 (a) holds the degree of Doctor of Naturopathic Medicine or Doctor of Naturopathy
34 from a naturopathic medical college or naturopathic medical program that is accredited
35 by the Council of Naturopathic Medical Education or other federally-recognized
36 accrediting agency or is a candidate for accreditation, as determined by the
37 Department; or

38 (b) has been engaged for the three-year period immediately preceding the effective
39 date of this Article in the practice of naturopathy as the primary source of income and
40 is not licensed as a health care provider by any other agency of this State.

41 "§90-326.2. Fees.

42 The Department shall charge an annual fee, not to exceed \$100, for registration
43 under this Part.

44 "§90-326.3. Penalty.

1 (a) It is unlawful for any person to practice naturopathy, or to advertise or hold
2 oneself out as a naturopath, or to use the title 'naturopathic physician' or the
3 recognized abbreviation 'N.D.' without registering under this Part. It is also unlawful
4 for any person to knowingly falsify his or her qualifications for registration under G.S.
5 90-362.1. A violation of this section is a misdemeanor, punishable by a fine of up to
6 \$10,000, imprisonment up to two years, or both, in the discretion of the court."

7
8 "Part 4. Acupuncture.

9
10 "§90-327. Registration; definition.

11 Every person practicing or desiring to practice acupuncture in this State shall register
12 with the Department of Environment, Health, and Natural Resources. Acupuncturists
13 practicing as of the effective date of this Article shall register with the Department no
14 later than December 31, 1993. All others shall register prior to engaging in or
15 advertising or otherwise holding himself or herself out as an acupuncturist.
16 Registration shall be renewed annually in accordance with the Department's
17 requirements. Persons licensed pursuant to this Part shall use the title 'registered
18 acupuncturist' or 'acupuncturist'; provided that registration under this Article does not
19 entitle the person to identify himself or herself as a doctor or physician.

20 As used in this Part, 'acupuncture' means a form of health care developed from
21 traditional Chinese medical concepts that employs acupuncture diagnosis and treatment,
22 and adjunctive therapies and diagnostic techniques, for the promotion, maintenance,
23 and restoration of health and the prevention of disease.

24 "§90-327.1. Qualifications; sworn statement.

25 In order to register under this Article, an applicant must submit on a sworn statement
26 provided by the Department that he or she has successfully completed a 3-year post-
27 graduate acupuncture college or training program approved by the Department after
28 consultation with the North Carolina Acupuncture Association and has successfully
29 completed the Clean Needle Technique Examination offered by the Council of Colleges
30 of Acupuncture and Oriental Medicine.

31 "90-327.2. Fees.

32 The Department shall charge an annual fee, not to exceed \$100, for registration
33 under this Part.

34 "§90-327.3. Penalty.

35 (a) It is unlawful for any person to practice acupuncture or to advertise or hold
36 oneself out as an acupuncturist, or to use the title 'acupuncturist' or 'registered
37 acupuncturist' without registering under this Part. It is also unlawful for any person to
38 knowingly falsify his or her qualifications for registration under G.S. 90-327.1. A
39 violation of this section is a misdemeanor, punishable by a fine of up to \$10,000,
40 imprisonment up to two years, or both, in the discretion of the court.

41 "§90-327.4. Applicability.

42 This Part does not apply to physicians licensed pursuant to Article I of this Chapter.

43
44 "Part 5. Enforcement.

1

2 "§90-328. Fees; enforcement by department.3 The Department of Environment, Health, and Natural Resources shall use the
4 registration fees collected pursuant to Parts 3 and 4 of this Article for the enforcement
5 thereof.6 The Department may revoke or suspend the registration of any naturopath or any
7 acupuncturist for a violation of G.S. 90-326.1 or 90-327.1, an adjudication of insanity
8 or incompetency, inability to competently diagnose and treat patients due to substance
9 abuse or other physical or mental impairment, or conviction of a felony involving moral
10 turpitude.11 "§90-329. Board of Medical Examiners;12 Nothing in this Article shall be construed to impair the authority of the Board of
13 Medical Examiners to regulate the conduct of licensed physicians pursuant to Article I
14 of this Chapter."

15 Sec. 2. G.S. 90-14(a) reads as rewritten:

16 (a) The Board shall have the power to deny, annul, suspend, or revoke a license, or
17 other authority to practice medicine in this State, issued by the Board to any person
18 who has been found by the Board to have committed any of the following acts or
19 conduct, or for any of the following reasons:

20 (1) Immoral or dishonorable conduct;

21 (2) Producing or attempting to produce an abortion contrary to law;

22 (3) Made false statements or representations to the Board, or who has willfully
23 concealed from the Board material information in connection with his application for a
24 license;

25 (4) Repealed by Session Laws 1977, c. 838, s. 3.

26 (5) Being unable to practice medicine with reasonable skill and safety to patients by
27 reason of illness, drunkenness, excessive use of alcohol, drugs, chemicals, or any other
28 type of material or by reason of any physical or mental abnormality. The Board is
29 empowered and authorized to require a physician licensed by it to submit to a mental
30 or physical examination by physicians designated by the Board before or after charges
31 may be presented against him, and the results of examination shall be admissible in
32 evidence in a hearing before the Board;33 (6) Unprofessional conduct, including, but not limited to, any departure from, or the
34 failure to conform to, the standards of acceptable ~~and prevailing~~ medical practice, or
35 the ethics of the medical profession, irrespective of whether or not a patient is injured
36 thereby, or the committing of any act contrary to honesty, justice, or good morals.
37 whether the same is committed in the course of his practice or otherwise, and whether
38 committed within or without North Carolina; provided, however, that a physician may
39 not be disciplined for unprofessional conduct solely for the use of an alternative medical
40 treatment in accordance with the provisions of Article 23A of this Chapter, absent proof
41 that the treatment or therapy poses an unreasonable risk of harm to the patient or
42 otherwise violates the provisions of this section. A risk of harm is 'unreasonable' if the
43 Board determines, after a review of all the evidence, that the risks associated with the
44 alternative treatment pose a greater threat to the patient's safety or health than (a) those

1 associated with the conventional treatment for the same disease or (b) in instances
2 where there is no comparable conventional treatment for the disease, those associated
3 with conventional treatments generally for similar diseases.

4 (7) Conviction in any court of a crime involving moral turpitude, or the violation of a
5 law involving the practice of medicine, or a conviction of a felony; provided that a
6 felony conviction shall be treated as provided in subsection (c) of this section;

7 (8) By false representations has obtained or attempted to obtain practice, money or
8 anything of value;

9 (9) Has advertised or publicly professed to treat human ailments under a system or
10 school of treatment or practice other than that for which he has been educated;

11 (10) Adjudication of mental incompetency, which shall automatically suspend a
12 license unless the Board orders otherwise;

13 (11) Lack of professional competence to practice medicine with a reasonable degree
14 of skill and safety for patients. In this connection the Board may consider repeated acts
15 of a physician indicating his failure to properly treat a patient and may require such
16 physician to submit to inquiries or examinations, written or oral, by members of the
17 Board or by other physicians licensed to practice medicine in this State, as the Board
18 deems necessary to determine the professional qualifications of such licensee;

19 (12) Promotion of the sale of drugs, devices, appliances or goods for a patient, or
20 providing services to a patient, in such a manner as to exploit the patient for financial
21 gain of the physician; and upon a finding of the exploitation for financial gain, the
22 Board may order restitution be made to the payer of the bill, whether the patient or the
23 insurer, by the physician; provided that a determination of the amount of restitution
24 shall be based on credible testimony in the record;

25 (13) Suspension or revocation of a license to practice medicine in any other state, or
26 territory of the United States, or other country;

27 (14) The failure to respond, within a reasonable period of time and in a reasonable
28 manner as determined by the Board, to inquiries from the Board concerning any matter
29 affecting the license to practice medicine.

30 For any of the foregoing reasons, the Board may deny the issuance of a license to an
31 applicant or revoke a license issued to him, may suspend such a license for a period of
32 time, and may impose conditions upon the continued practice after such period of
33 suspension as the Board may deem advisable, may limit the accused physician's
34 practice of medicine with respect to the extent, nature or location of his practice as the
35 Board deems advisable. The Board may, in its discretion and upon such terms and
36 conditions and for such period of time as it may prescribe, restore a license so revoked
37 or rescinded. Upon petition by a physician whose license has been revoked or
38 rescinded prior to the effective date of Article 23A of this Chapter for unprofessional
39 conduct for departing from or failing to conform to the standards of acceptable and
40 prevailing medical practice, the Board shall restore the license only upon a
41 determination that (i) the conduct for which the physician was disciplined would have
42 been permitted under Article 23A of this Chapter had it then been in effect, (ii) there
43 were no other grounds upon which the physician was or could have been disciplined,

1 and (iii) there are no grounds existing at the time of the filing of the petition for which
2 license restoration could be denied."

3 Sec. 3. G.S. 90-14.6 reads as rewritten:

4 **"§90-14.6. Evidence admissible.**

5 In proceedings held pursuant to this Article the Board shall admit and hear evidence
6 in the same manner and form as prescribed by law for civil actions. In proceedings
7 wherein a physician's use of an alternative or innovative treatment has been identified
8 by the Board as grounds for disciplinary action, the Board shall admit and hear all
9 evidence pertinent to the treatment's safety and efficacy and to the physician's
10 participation, if applicable, in experimental research under generally-accepted research
11 protocols for experimental medical research. A complete record of such evidence shall
12 be made, together with the other proceedings incident to such hearing."

13 Sec. 4. G.S. 90-14.10 reads as rewritten:

14 **"§90-14.10. Scope of review.**

15 Upon the review of the Board's decision revoking or suspending a license, the case
16 shall be heard by the judge without a jury, upon the record, except that in cases of
17 alleged omissions or errors in the record, testimony thereon may be taken by the court.
18 The court may affirm the decision of the Board or remand the case for further
19 proceedings; or it may reverse or modify the decision if the substantial rights of the
20 accused physician have been prejudiced because the findings or decisions of the Board
21 are in violation of substantive or procedural ~~law, law;~~ law; ~~or~~ are not supported by
22 competent, material, and substantial evidence admissible under this Article, in view of
23 the entire record as submitted; or are arbitrary or capricious. At any time after the
24 notice of appeal has been filed, the court may remand the case to the Board for the
25 hearing of any additional evidence which is material and is not cumulative and which
26 could not reasonably have been presented at the hearing before the Board."

27 Sec. 5. This act is effective upon ratification.

**EXPLANATION OF DRAFT 7
(MEDP.v3)**

Right to Alternative Medical Treatment

This bill creates a "patient's bill of rights" to allow patients access to alternative medical care. No new boards are created in this bill. Instead, it would regulate alternative medicine by allowing physicians to administer alternative treatments subject to certain standards and continued oversight by the Board of Medical Examiners, and it would allow qualified acupuncturists and naturopaths to practice after registering with the Department of Environment, Health, and Natural Resources.

This bill creates a patient's bill of rights. The purpose of the bill is stated in Part 1 of Section 1: to recognize the patient's right to access to alternative health care. The statement of purpose is similar to that found in Article 23, the Right to Natural Death Law, which also recognizes that the patient has the fundamental right to control the decisions relating to his own medical care. The bill is discussed below by subject matter:

Physicians. Part 2 governs the use of alternative therapies by physicians. Part 2 must be read in conjunction with Sections 2, 3, and 4 of the bill for a complete understanding of how the practice of alternative medicine by physicians will be regulated. First, the physician practicing alternative medicine must meet three standards set out in Part 1:

- (1) The physician must have the informed, written consent of the patient to the treatment;
- (2) The physician must keep records of the treatments as required by the Board of Medical Examiners; and
- (3) The physician must demonstrate to the Board either that the treatment is part of an ongoing study or that it has been shown through credible scientific evidence or credible *empirical* evidence to be of therapeutic benefit to patients.

It is important to note that "empirical evidence" is not the same as "scientific evidence." Scientific evidence generally refers to double-blind, placebo-controlled studies whereas empirical evidence refers to observations of patients based on a theory of treatment. Empirical evidence is generally not acceptable to the Board of Medical Examiners as supporting the use of a treatment that uses drugs or medicines, such as chelation therapy and homeopathy.

Once the physician has met these standards, the burden then shifts to the Board of Medical Examiners to determine whether the alternative therapy poses an unreasonable risk of harm to patients. This is accomplished in Section 2 of the bill by an amendment to the unprofessional conduct standard in the Medical Practice Act. Under Section 2, the Board must compare the risks associated with the conventional treatment for the disease with the risks posed by the alternative treatment. If it finds that the alternative treatment poses a greater risk to the patient's safety or health, then it can take action against the physician. There is no requirement that the Board must wait for an actual injury to the patient before taking disciplinary action. The Board can also use its existing disciplinary powers to stop a physician whose "alternative" treatment is outright fraud (G.S. §90-14(a)(8)) or who has inadequate training in the use of the treatment (G.S. §90-14(a)(9)). Although the reference to "prevailing" medical practice has been

struck, primarily as a matter of conforming to the other changes. the standard of "acceptable" medical care is retained.

If the Board elects to discipline a physician for using alternative treatment. Sections 3 and 4 of the bill provide reassurances to the physician that all evidence will be considered. Section 3 of the bill amends the Board's evidence law to require the Board to hear all evidence submitted (scientific or empirical) of a treatment's efficacy and safety.

Section 4 of the bill changes the scope of review of decisions rendered by the Board of Medical Examiners from the "competent evidence" standard to the "whole record test." This means that the court hearing a disciplinary appeal from the Board will look at all the evidence in the record. It does not mean that the court will re-hear the matter *de novo*. It merely means that the court will consider all of the evidence in the record to determine whether the record as a whole supports the Board's decision. If the record shows reasonably conflicting evidence. the court cannot substitute its judgment for that of the Board.

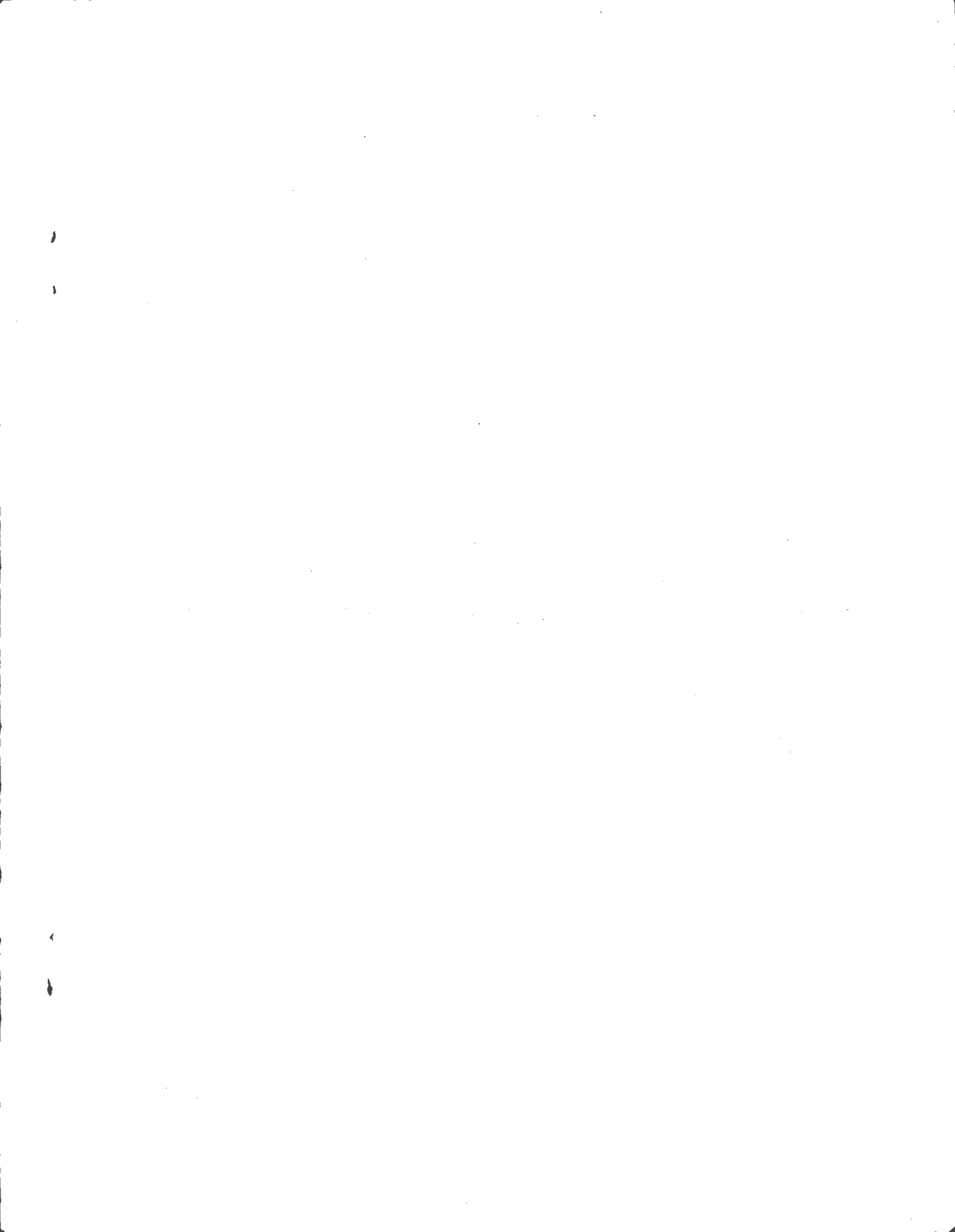
Finally, there is an amnesty provision added to the Medical Practice Act (see the end of Section 2) that will allow a physician whose license has been revoked for practicing alternative medicine to have it restored. However, the physician must show that the alternative treatment for which he was disciplined is now acceptable under the new law and that there were not then and are not now other grounds for denying him a license.

Naturopathy. Part 3 of Section 1 requires naturopaths to register with the Department of Environment, Health, and Natural Resources ("DEHNR"). In order to register, an applicant must be a graduate of an accredited naturopathic school or qualify under the grandfather clause (which requires 3 years experience). There are severe criminal penalties for practicing without being registered and for knowingly filing false information about qualifications with DEHNR.

Under Part 5 of Section 1, a naturopath can lose his or her registration for specified misconduct.

Acupuncture. Part 4 of Section 1 requires acupuncturists to register with DEHNR. In order to register, an applicant must be a graduate of an approved acupuncture college or training program and have completed the Clean Needle Technique Examination. There are severe criminal penalties for practicing without being registered and for knowingly filing false information about qualifications with DEHNR.

Under Part 5 of Section 1, an acupuncturist can lose his or her registration for specified misconduct.



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