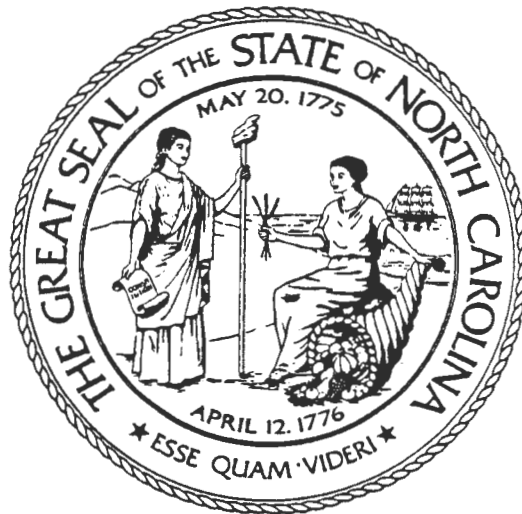


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LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

ALTERNATIVE MEDICINE



ASSESSMENT REPORT 1993

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May 18, 1993

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TO THE MEMBERS OF THE GENERAL ASSEMBLY:

The Legislative Committee on New Licensing Boards is pleased to present its assessment report on the licensing of alternative medical practitioners. This report serves as both the preliminary and final assessment reports.

Representative Mary Jarrell, Chair
Legislative Committee on New Licensing Boards

RFN 7726.1 .A46 1993 A47 c.2



PREFACE

The Legislative Committee on New Licensing Boards was created by the General Assembly in 1984 to screen bills creating new licensing boards. In 1987, the Committee's jurisdiction was broadened to include reviews of bills that would give existing boards licensing authority over previously unregulated professions or occupations.

The purpose of the review is to determine whether there is a justifiable need for licensure. The criteria under which these bills are evaluated by the Committee are set out in the statutes and include factors such as whether the occupation requires special skills, whether the public on its own can evaluate the competence of the practitioner, and whether the occupation can be effectively regulated by other means.

The Committee's findings and recommendations are released through a preliminary assessment report and a final assessment report. Until the final assessment report is released by the Committee, the bill cannot be debated in any other committee or on the floor of either house. The preliminary report gives the sponsor an opportunity to review and comment on an unfavorable recommendation before the Committee makes a final recommendation. The sponsor has up to 7 days to review the report but can waive this review period. When the preliminary assessment report is favorable, the review period is routinely waived so that the final report can be issued immediately.

The Committee has no jurisdiction over proposals to create voluntary certification boards -- i.e., those boards that require certification as a prerequisite to using a certain title but do not otherwise prohibit practice of the profession. The reason these proposals are not reviewed is that they do not prevent persons from practicing a profession; they merely provide a mechanism whereby members of the profession who want to distinguish themselves as "certified" can do so voluntarily.



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ALTERNATIVE MEDICAL PRACTITIONERS

Alternative medical practitioners are nonphysicians who practice one or more of the following: card reading, channeling, eclectic medicine, herbalism, holistic medicine, hypnosis, iridology, mystic healing, Native American medicine, palm reading, phrenology, psychic, or voodoo.

Currently, any medical diagnosis or treatment of or prescription for a condition, illness, or ailment constitutes the practice of medicine. By law, only licensed physicians can practice medicine (unless the General Assembly has expressly exempted a certain practice or practitioner from the Medical Practice Act). For the most part, the practice of any of the forms of alternative medicine listed above would constitute the practice of medicine. Their use is therefore restricted to physicians, and in some cases, to other health care providers. The practice of medicine without a license is a misdemeanor offense.

Under the proposed legislation, a Board of Alternative Medicine is created to license and discipline the nonphysician practitioners of alternative medicine. A person desiring to practice one or more of these forms of alternative medicine must successfully complete the Board-approved training (which would vary, depending on the type of alternative medicine) and the Board examination (which may also vary, depending on the type of alternative medicine).

It is unknown how many persons would be affected by the licensure of alternative medical practitioners. The proposal is separate and distinct from previous proposals

during the 1993 session to license complementary medical physicians, acupuncturists, and naturopaths.

The Committee finds that the requirements of G.S. 120-149.1 have not been met by the proposal to license alternative medical practitioners and therefore recommends that alternative medical practitioners not be licensed:

(1) The unregulated practice of alternative medicine (beyond the current Medical Practice Act prohibitions) does not substantially harm or endanger the public health.

(2) Alternative medicine does not possess qualities that distinguish it from ordinary labor.

(3) Alternative medicine does not require specialized skill or training.

(4) A substantial majority of the public has the knowledge or experience to evaluate whether an alternative medical practitioner is competent.

(5) The public can be protected by means other than licensure.

(6) Licensure of alternative medical practitioners would appear to have a substantial adverse economic impact upon consumers.

*This report serves as both the preliminary and final assessment report on the licensing of alternative medical practitioners. The report is based on information provided in the response to the Committee's questionnaire, testimony received before the Committee at its May 11, 1993 meeting, and the proposed legislation before the Committee (House Bill 669).

The response to the questionnaire is provided in this report.



Please supply information for the following questions to the Committee on New Licensing Boards. Please use the space provided. Supporting documents may be attached.

- I. A. In what ways has the marketplace failed to regulate adequately the profession or occupation?

The practice of medicine without a license in North Carolina is currently a misdemeanor punishable by a fine of \$50 to \$100 (N.C. Gen. Stat. §90-18). Currently the crime of practicing medicine without a license is seldom prosecuted. Possibly because of the labor intensive use of resources needed to prosecute such crimes combined with a growing acceptance of the practices enumerated in this bill, control through licensure may more effectively protect the public than current prosecutions under the criminal statutes. In this way, fraudulent practices might be limited.

- B. Have there been any complaints about the unregulated profession or occupation? Please give specific examples including complainant's names and addresses.

From time to time there have been complaints about unlicensed practice of medicine. Recently a clinic in the Asheville area was investigated but no criminal charges were filed. Other complaints have surfaced as part of the debate on Alternative Medical Practices currently before the Senate J-1 Committee. My office has received no formal written complaints as such.

II. A. In what ways has the public health, safety, or welfare sustained harm or is imminent danger of harm because of the lack of state regulation?

In no instance should one claim to be a healer or should member of the public be subjected to a healer without background checks and checks of credentials, character and training of that healer by an appropriate licensing Board. Currently to practice these professions, one may hang out a shingle and claim training that one does not have and go to work, the criminal prohibitions notwithstanding. There is no governmental guarantee of the reliability of these claims and no assurance that the practitioner has training and expertise claimed, nor is there any ongoing practice monitoring

B. Please give specific examples including names and addresses.

Weekly listings in the Independent Newspaper published in Durham contain testimonial ads soliciting patients for many of the professionals addressed in this ad. Alternative newspapers in other cities carry similar ads. Over the years I understand that reports of these practices are brought to the attention of local prosecutors but the complaints are rarely pursued. I do not have particulars regarding any specific complaint.

III. A. Is there potential for substantial harm or danger by the profession or occupation to the public health safety or welfare? How can this potential for substantial harm or danger be recognized?

There is a potential for harm to the public in the use of fraudulent or counterfeit means of healing by unscrupulous practitioners who have little or no training. This bill attempts to limit such activities in the fields noted.

B. Has this potential harm or danger to the public been recognized by other states or the federal government through the licensing or certification process? Please list the other states and give the relevant statutory citations.

Various medical practices are limited and licensed in all fifty states through their medical practice acts. Through ongoing practice monitoring by a licensing Board, worthless therapeutic claims can be reduced.

IV. A. What will be the economic advantage of licensing to the public?

This licensure statute will eliminate those whose claims of expertise do not meet their actual training and expertise and thus protect the public's health and pocketbook.

B. What will be the economic disadvantages of licensing to the public?

It might be argued that an economic disadvantage of licensure in this area is that burden of licensure fees on the practitioners may lead them to pursue practice opportunities in other areas. Also the increasingly hostile medical malpractice environment against particularly these practitioners may be exacerbated by the state sanctioning of the practices.

C. What will be the economic advantages of licensing to the practitioners?

The supply of practitioners will be depleted in the short run causing a boon to those who are well trained.

D. What will be the economic disadvantages of licensing to the practitioners?

The costs of proving one's integrity and training, and the threat that a Board may terminate one's practice if ethical codes are not followed.

E. Please give other potential benefits to the public of licensing that would outweigh the potential harmful effects of licensure such as a decrease in the availability of practitioners and higher cost to the public.

Licensure of these professions would lend to the public peace in resolving conflicts between alternative and traditional medical practices. Ultimately, because less training is needed for these health providers we may find more legitimate health care available in the hinterlands.

- V. A. Please detail the specific specialized skills or training that distinguish the occupation or profession from ordinary labor. How is each justified?

These occupations are medical practices and require an understanding of human cosmic and health needs.

- B. What are other qualities of the profession or occupation that distinguish it from ordinary labor?

These are healing occupations.

- VI. A. Will licensing requirements cover all practicing members of the occupation or profession? If any practitioners of the profession or occupation will be exempt, what is the rationale for the exemption?

The requirements enumerated in the bill will cover all members of these occupations.

B. What is the approximate number of persons who will be regulated and the number of persons who are likely to utilize the services of the occupation or profession?

We believe several hundred people will be covered as licensees and many thousands may appear as a result of licensing.

VII. What kind of knowledge or experience does the public need to have to be able to evaluate the services offered by the occupation or profession?

An individual member of the public would need to have medical training and experience to evaluate these professions adequately.

VIII. Does the occupational group have an established code of ethics, a voluntary certification program, or other measures to ensure a minimum quality of service? Please document.

A licensing board is needed to develop and enforce standards of ethics.

IX. Please cite and document the extent to which any other licensing board in North Carolina regulates similar or parallel functions to the profession or occupation.

All medical occupational licensing boards listed in Chapter 90 regulate related medical practices.

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