

Approved: May 10, 2002
Date

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE.

The meeting was called to order by Chairperson Senator Susan Wagle at 1:30 p.m. on February 25, 2002 in Room 231-N of the Capitol.

All members were present except: Ms. Emalene Correll, Kansas Legislative Research Department

Committee staff present: Ms. Lisa Montgomery, Revisor of Statutes
Ms. Margaret Cianciarulo, Administrative Assistant

Conferees appearing before the committee: Mr. Chip Wheelen, Executive Director,
KS Assoc. of Osteopathic Medicine
Mr. Jerry Slaughter, Kansas Medical Society

Others attending: See attached guest list.

Hearing on SB610 - an act concerning naturopathy; providing for licensure and regulation of practitioners thereof; providing for administration by the Board of Healing Arts

Upon calling the meeting, Chairperson Susan Wagle announced that information has been placed before the Committee from a request made last week regarding the technical committee findings and a packet stating the Attorney General's opinion of relating to the credentialing process that the naturopaths went through. A copy of the technical committee findings and the Attorney General's packet is (Attachment 1) attached hereto and incorporated into the Minutes as referenced. She then stated that since the Committee has already heard the explanation of the bill, the hearing would start with the opponents.

Mr. Chip Wheelen, Executive Director, Kansas Association of Osteopathic Medicine, was the first opponent conferee to testify. Mr. Wheelen stated that the bill contains technical flaws as well as unacceptable public policy objectives, but most importantly, it authorizes the practice of medicine and surgery in addition to the practice of naturopathy.

He went on to say that the members are somewhat divided regarding:

- 1) the training and education of persons with a doctor of naturopathy, saying it could not be as rigorous as the academic and clinical training requirements for a doctor of osteopathy or doctor of medicine degree;
- 2) why it is necessary to enact additional laws, other members already have a complementary relationship with a naturopathic practitioner and do not understand the original meaning; and
- 3) naturopaths already practicing in Kansas unlawfully and that they pose a genuine threat of potential harm to the public. (This group would agree that the naturopathic practitioners should be regulated and be held to a level of responsibility similar to the responsibility of persons licensed under the Healing Arts Act.

He continued stating the bill appears to be drafted using two different sources;

- 1) administrative features delegating responsibility to the Board of Healing Arts are similar to the recently enacted Kansas laws governing licensure of respiratory therapists. (These sections of the bill are generally acceptable.); and
- 2) other sections appear to be copied from previous bills which were originally borrowed from other states and if passed without scrutiny the Committee would be adopting the mistakes of other states (ex. Vague references, confusing mixed subjects, and questionable public policy.)

And lastly, he stated, in order to point out the flaws and policy questions, he had drafted some amendments, that are attached to his testimony, employing the following principles in the drafting:

- 1) the bill should adhere to commonly accepted rules of the English language;
- 2) it should be clearly understandable and make sense;
- 3) it should not allow naturopathic doctors to order or administer prescription-only medication;
- 4) it should not allow naturopathic doctors to perform surgery or other invasive procedures; and,
- 5) it should not allow naturopathic doctors to deliver infants.

A copy of his testimony and attachments are (Attachment 2) attached hereto and incorporated into the Minutes by reference.

The next opponent conferee was Mr. Jerry Slaughter, Kansas Medical Society, who stated that although the society did not support this bill as it is currently written, they would support a bill that grants legal recognition to naturopaths with certain restrictions on their authorized scope of practice, which is where they did have a problem with the bill in that it describes a scope of practice for naturopaths that is overly broad and not clear enough about what is being authorized.

Mr. Slaughter pointed out there are at least three groups of individuals who identify themselves as naturopathic practitioners:

- 1) those who are graduates of the few colleges of naturopathy;
- 2) those who obtain a naturopathic degree or certificate through limited or non-accredited training programs; and,
- 3) some who simply utilize the term with little or no formalized training, so the effect of the above bill would be to restrict the practice of naturopathy exclusively to those individuals who have graduated from one of the colleges of naturopathy approved by the Board of Healing Arts.

He also stated while the KDHE credentialing process did make findings about the level of regulation, it did not make specific findings about the scope of practice that is appropriate for naturopaths and to get a picture of the scope of practice authorized under the bill, he referred to New Section 13 and New Section 2 of the bill citing examples if read together.

And lastly, he offered a balloon with several suggested amendments which he felt would clear up some of the ambiguity in the bill regarding scope of practice. A copy of his testimony and his attachments are (Attachment 3) attached hereto and incorporated into the Minutes as referenced.

As there were no other opponent conferees, Chairperson Wagle asked for questions or comments from the Committee. A discussion ensued among Senators Wagle, Haley, Harrington, Barnett, Praeger, Salmans, and Steineger, Mr. Wheelen and Mr. Slaughter involving such issues as: inconsistent language, sharing opponents suggestions with the naturopaths, "on-the-surface" non-prescription topical drugs, distinction between naturopathic and physician's education for testing, safety concerns, if bill cleaned up would separate the "quacks", who licenses osteopaths, is laceration/suturing well defined in osteopathic and chiropractic arena, removal of formal bodies, EMT's in radio contact with physicians, health stores not being regulated (ex. GNC stores), and naturopaths have been trying to compromise at least over the last six years.

As there was no further discussion, Chairperson Wagle thanked the conferees for their testimony. She believes there are things they have done that have helped clean up this legislation, and from her understanding and working with both groups she is sure the naturopaths have already agreed to no surgery and obstetric. She stated she thinks the Committee will find is the problem is going to be specifically what kind of compounds that they want to use intravenously and specific language on prescription which will address tomorrow maybe leading to some very specific cleanup language offered by the naturopaths.

Adjournment

Adjournment time was at 2:30 p.m.

The next meeting is scheduled for February 26, 2002.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

GUEST LIST

DATE: Monday, February 25

NAME	REPRESENTING
George F Paley	Naturopathic Doctors
Farhang Khosh	Naturopathic Doctors
Mehdi Khosh	/
Jeanne A. Drisko MS	private citizen
Elise Nelson, N.D.	naturopath
KEITH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Hannie Ann Lower	KATP
STEVE KEARNEY	KPTA
Chris Collins	KMS
Stephanie Sharp	ACS
Vicki Sparks	private citizen
LARRY BUENINGA	BR OF HEALING ARTS
Lesia Roberts	KDHE - Credentialing
Rebecca Rice	Ks Chiropractic Assn.
Julie Hein	HE Hein Law Firm

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

Final Findings and Conclusions of the Technical Committee on the Review of the Application to License Naturopathic Physicians

November 29, 2001

On June 12, 2001, the Kansas Naturopathic Physicians Association (KNPA), cited in this report as the applicant, submitted a credentialing application to the Kansas Department of Health and Environment. The applicant desired the State of Kansas to provide for the licensure of naturopathic physicians.

This application was reviewed by a technical committee in accordance with the Kansas Credentialing Act (KSA 65-5001, *et seq.*). The purposes of the review are: (1) to provide the legislature with a thorough analysis of the application and information gathered at the technical committee meetings, (2) to make recommendations as to whether the statutory criteria are met, and (3) to determine whether there is a need for credentialing. All criteria must be found met before the technical committee makes a recommendation for credentialing. The applicant has the burden of bringing forth clear, convincing evidence that each of the criteria are met. Such evidence must be more than hypothetical examples or testimonials, according to KSA 65-5003.

This report describes the technical committee's final findings and conclusions about the first nine statutory criteria as well as a recommendation regarding Criterion X.

SUMMARY OF APPLICATION

The applicant desires to make it unlawful for anyone to practice naturopathic medicine unless he/she is licensed as a naturopathic physician. Only licensed persons would then be able to practice in the field and use any or all of the following titles or terms: doctor of naturopathy, doctor of naturopathic medicine, naturopath, naturopathic medical doctor and the abbreviations N.D. or N.M.D. (Proposed Legislation, 2001 Senate Bill No. 276, Sec. 5(b))

The applicant proposes to adopt entry level education and continuing education requirements for licensure at the state level as defined by the Council on Naturopathic Medical Education (CNME) and the Kansas Naturopathic Physicians Association (KNPA) and testing requirements as prescribed by the North American Board of Naturopathic Examiners (NABNE). (Application, pp. 5-6) The Kansas Board of Healing Arts would be the regulatory body responsible for implementing licensure.

Senate Public Health & Welfare Committee
Date: February 25, 2002
Attachment 1

CRITERIA TO DETERMINE THE NEED FOR CREDENTIALING

The statutes require the technical committee to determine if the statutory criteria have been met by analyzing the application and information obtained at the meetings and public hearing. The following is a summary of the information provided to date and the preliminary findings and conclusions on whether each criterion is met.

CRITERION I

The unregulated practice of the occupation or profession can harm or endanger the health, safety or welfare of the public, and the potential for such harm is recognizable and not remote.

Information Provided

The applicant posits that the public is not protected from potential harm because naturopathic physicians in Kansas are not responsible to any state governmental body (Meeting Minutes-September 6, 2001, p. 5).

Examples of potential harm by a person not formally trained, or inadequately trained, in the occupation who provides naturopathic medical services:

There is a potentially dangerous nature in the functions and procedures performed by naturopathic physicians or the devices and substances used by them. Naturopathic manipulative therapy, naturopathic obstetrics, minor surgery, venipuncture for the purpose of drawing blood or injecting nutrients, electrical current physiotherapy, herbs and nutritional supplements with possible reactions, drug interactions or physiological contraindications, high dose nutritional supplements, and the use of limited legend drug privileges are all potentially harmful to the public's health, safety, and welfare...

Incidents of harm to the consumer by Naturopathic physicians are not currently tabulated in Kansas. To the best of our knowledge, there have been no incidents of harm done to the public in Kansas by Naturopathic physicians. There are, however, statistics kept in licensed states that demonstrate the necessity of having Naturopathic Physicians accountable to professional review...

An example of harm done to the public by an unlicensed person claiming to be a Naturopathic Doctor occurred in Asheville, N.C. in October of 1999. An 8 year old girl named Helena Rose Kolutwezaw, who was an insulin dependent diabetic, died because her mother was convinced by a practitioner that he was providing safe and effective care for her daughter. This person, who displayed a diploma from a correspondence school selling so-called doctoral degrees in Naturopathy, was apparently not well enough educated to understand that an insulin dependent child cannot be taken off insulin and treated with herbs. The mother assumed that because he presented himself as a doctor, that this meant he had a four year medical

program as his training. North Carolina did not have licensing for Naturopathic physicians in 1999.

An often unrecognized aspect of harm done to the public is the economic fraud perpetrated upon them by persons with no training, comprehensive education or defined scope of practice. When the public entrusts their health to an individual with the title of doctor, they assume that person has the qualifications of a legitimate health practitioner. Consumer payment to unqualified practitioners violates the basic perception of the public that value of service should be received in return for their money. (Application, pp. 1-4)

From minutes of September 6, 2001 meeting, p. 11, Dr. Jeanne Drisko:

...It's anecdotal, we don't have the documented evidence...The dean of students at KU Med Center called and said there is a person in Wichita practicing as an ND, not trained, who told a friend of hers not to take chemo because it would not be good for her. The young woman had the notion to check around on this ND and was told this person is not qualified.

From "Applicant Response to Questions Regarding Criteria I," submitted 10/29/01:

The Detroit News 7/14/2000, Pontiac, MI. A woman accused of pushing vitamins as cures to cancer and using electronic rays to diagnose patients has escaped criminal charges because of a vague law...Rebecca Rogers...hung out a shingle, invented an impressive medical background, called herself a doctor and used something called a Phase X Body Scan to identify mysterious ailments plaguing patients...

Also presented is the case of an unlicensed naturopath from Reno, NV using intravenous Laetrile, which is not allowed by the FDA to be used in the U.S...A Reno, Nev., clinic owner falsely claiming to be a medical doctor was sentenced and ordered to stop practicing medicine last July.

A cancer patient at the Global Alternative Medicine Clinic in Reno, Nev., collapsed three years ago, after receiving an IV infusion of vitamin C and possibly, according to a relative of the patient, the unproved cancer drug Laetrile. The infusion was administered by clinic owner Vera J. Allison. After the patient collapsed, Allison gave him two injections—one of epinephrine, the other, an unknown substance. When these failed to revive the patient, she suggested to those present—the patient's wife and clinic personnel, that they call 911. The patient was declared dead on arrival at a local hospital.

A judge sentenced Allison to five years' probation last July and ordered her to stop practicing medicine and naturopathy...According to the Reno Police Department, Allison was not a medical doctor but a unlicensed naturopath who for almost six years ran a clinic that specialized in treating patients with cancer and AIDS. (The Nevada law licensing naturopaths expired in 1987.)...

Also presented is the case of Hulda Clark, a self-proclaimed Naturopath and author of the book, *Cure for All Cancers*, who was charged in Indiana with practicing medicine without a license. Charges were dismissed because she did not receive a prompt and timely trial.

...The former Brown County woman's case has drawn national and international attention in the world of alternative medicine, with some of her defenders suggesting Indiana's law on medical licensing is overly broad. But James Oliver, the Brown County prosecutor who asked to have Clark returned to Indiana to face trial, said the issue is whether Clark violated state law. "This case is not about alternative medicine or whether Hulda Clark's treatments are effective," Oliver said Tuesday. "This case is about an unlicensed individual diagnosing and treatment patients. Only licensed physicians are permitted to diagnose and treat patients in Indiana."...

Clark, who has a doctorate in physiology but hasn't claimed to be a medical doctor, lived in Brown County for about six years, friends said. She was well known in the Bloomington-Nashville alternative health community as a nutritional consultant...

Steve Dillin, an Indianapolis attorney who represents Clark...said Indiana's medical licensing law, which prohibits anyone but a physician from maintaining an office to receive people suffering from disease, pain "or other conditions of body or mind" would appear to allow prosecution of all sorts of people...

Findings of harm may be complicated by several factors. Confidentiality often precludes the documentation, outside of court, of harm by unlicensed practitioners. The American Association of Naturopathic Physicians (AANP) and the Hawaii Board of Examiners in Naturopathy both claimed to have received reports concerning unlicensed practitioners that victims were unwilling to document because "they did not want to get involved" and were embarrassed they had been deceived by a person with fraudulent credentials. Most complaints of harm do not warrant criminal charges or are not a priority of prosecuting attorneys. The State of Kansas Attorney Generals office had no record of harm caused by alternative medical practitioners. Nationwide, the legal databases normally contain only cases that are reported in appellate or state supreme courts. Municipal and district court cases are not readily available to investigators.

Dr. Drisko addressed cases of harm during rebuttal testimony at the public hearing:

Dr. Drisko knows of four undocumented cases of harm at KU, two cases which involved non-trained NDs and two which involved self-care. (Meeting Minutes, November 1, 2001, p. 11)

From testimony presented by Mark Stafford, General Counsel for the Kansas Board of Healing Arts, on November 1, 2001:

...K.S.A. 65-2872a...was passed in 1982, allowing persons who had graduated from a school approved by the state naturopath association to practice naturopathy if they were in practice in this state as of January 1, 1982. The Board was not given regulatory authority, though the Kansas Supreme Court ruled in 2000 that the Board was a proper party to investigate complaints and to bring a civil action against a naturopath to obtain an injunction against the unlicensed practice if it was alleged that the individual exceeded the statutory authority. Thus, complaints involving naturopaths were considered as allegations of unlicensed practice, without regard to the quality of care or ethics in practice. Following adoption of the 1982 statute, the association provided a list of persons who were believed to fit the criteria...

Retrieving the complete information requested by the committee proved to be difficult for a variety of reasons...Finally, there has been no uniform definition of naturopathy. Some narrative reports identify the subject of the complaint as a naturopath, others refer to natural treatments, and still others are silent and simply allege unlicensed practice...

I have been able to identify approximately 34 complaints filed that appear to involve persons who identify themselves as naturopaths or persons who use natural treatments, homeopathic therapies, or acupuncture. These complaints are relatively evenly spread between fiscal year 1987 to the present. There are currently two open cases. Eleven of those complaints relate to a single person. No other person accounts for more than two complaints, though there have been occasions where new complaint information was simply filed with an old complaint rather than assigning a new complaint number.

Of the complaints received, many were filed by other health care providers. A motive of competition is not presumed. In at least two of those instances a physician filed the complaint after seeing a patient who had been given questionable treatment. In all, 8 of the complaints were filed by other licensed health care providers. Eleven appear to have been filed by patients, twelve by other members of the public or by organizations, and 3 were from an unknown source.

Most of the complaints do not allege patient harm. However, one case involved a serious burn injury to a patient who had been diagnosed by the unlicensed person as having skin cancer and treated with blood root concocted into a yellow and black salve. The Board obtained a judgment by consent, enjoining the individual from diagnosing or treating a human disease or from otherwise practicing the healing arts without a license. A second case involved a naturopath who ordered a prescription-only drug, an IV solution of dextrose, water and some trace elements, to be provided to a

hospice patient with a brain tumor. () preparation caused alarm to the pharmacist who received the prescription order because the potassium in the mixture was to be infused at a lethal rate. The pharmacist refused to fill the order, and then filed a complaint with the Board. Ultimately, the Board determined that the naturopath had been providing prescription-only drugs to patients, a practice for which the naturopath was not licensed. This case resulted in an injunction against prescribing drugs or practicing surgery. A third complaint was received from a physician who was concerned a naturopath had convinced a grandmother to withhold prescribed drugs from the grandchild. This case was apparently handled by SRS, and the conclusion is not determined. At least one other complaint alleges that a naturopath prescribed or dispensed prescription-only drugs. That case remains open.

The vast majority of the complaints were closed without a description of the conclusion being recorded. In recent years, complaints have been closed with an informal agreement that the unlicensed person would not cross the boundary into the practice of the healing arts. Two persons agreed that they would only provide treatments under the supervision of a person duly licensed by the Board. Several of the cases were closed when attempts to locate either the naturopath or a material witness were unsuccessful.

In conclusion, the Board has shown restraint in considering complaints against naturopaths. When there was actual or reasonably foreseeable patient harm the Board has instituted legal action to protect the public. Informal resolution was appropriate in other cases.

Committee Discussion

From the information provided, does harm to the public exist? Was enough information provided to make a decision on whether the cause of harm has anything to do with the unlicensed practice of naturopathic medicine? Was the harm documented by expert or consumer testimony, and by research findings, legal precedents, financial awards, or judicial rulings? Is the potential for harm recognizable? Is the potential for harm not remote?

Findings

The technical committee recognizes this criterion as asking that the applicant demonstrate that the "unlicensed practice" of the occupation can harm the public and the potential for harm is recognizable and not remote.

The technical committee found that the unlicensed practice of naturopathic medicine has the potential to harm the public.

Final Conclusions

It has been demonstrated that the unlicensed practice of naturopathic medicine can harm the public and the potential for harm is recognizable and not remote; therefore, Criterion

, met. (On the motion to accept Criterion I et, Dr. Douglass and Ms. Londene voted no, with all other members of the technical committee voting affirmatively; the motion carried.)

CRITERION II

The practice of the occupation or profession requires an identifiable body of knowledge or proficiency in procedures, or both, acquired through a formal period of advanced study or training, and the public needs and will benefit by assurances of initial and continuing occupational or professional ability.

Information Provided

The applicant has stated that the educational, professional and ethical standards defined by the Kansas Naturopathic Physicians Association (KNPA) as well as those developed by the accrediting agency, the Council on Naturopathic Medical Education (CNME) at the national level would be adopted into licensure law (Application, pp. 5-7). Thus, to be licensed, one must have successfully: 1) graduated from an accredited program (accredited by CNME); and 2) successfully completed all Basic Science and all Clinical Board Examinations of the Naturopathic Physician Licensing Exam (NPLEX) prescribed or endorsed by the North American Board of Naturopathic Examiners (NABNE). (Application, pp. 5-7)

A Naturopathic physician is required to have a four-year undergraduate degree (BA or BS) and then to graduate from a four-year, post-graduate, residential, CNME accredited Naturopathic medical school. Per standards established by the Council on Naturopathic Medical Education (CNME), requirements for completion of the ND degree include a minimum of 4100 clock hours, devoted to the study of Naturopathic medicine and clinical training relevant to the preparation of Naturopathic physicians. The clinical practicum must be a minimum of 1200 clock hours, with students practicing aspects of Naturopathic medicine in a clinical setting, under the supervision of licensed Naturopathic physicians. Students are required to have both secondary and primary care responsibilities in the student training clinic, as well as preceptorship experience in practicing physicians' offices. Naturopathic medical schools are four-year postgraduate schools with admissions requirements comparable to those of conventional medical schools. The degree of Doctor of Naturopathic Medicine requires study in the medical sciences...

Naturopathic students attend a four-year graduate level naturopathic medical school and are educated in all of the same basic sciences as an M.D. but also study holistic and nontoxic approaches to therapy with a strong emphasis on disease prevention and optimizing wellness. In addition to a standard medical curriculum, the naturopathic physician is required to complete four years of training in clinical/therapeutic nutrition, acupuncture, homeopathic medicine, naturopathic manipulative therapy, botanical medicine, psychology, hydrotherapy and counseling (to encourage people to make lifestyle changes in support of their personal health). Other therapies may be included in the supervised clinical experience.

After graduation, a Naturopathic Physician must pass all Basic Science and all Clinical Board Examinations of the Naturopathic Physician Licensing Exam (NPLEX) prescribed or endorsed by the North American Board of Naturopathic Examiners (NABNE) in order to qualify as a licensed Naturopathic Physician by a state or jurisdiction...

Each state or jurisdiction has different continuing education requirements, averaging 20-35 hours per year in order to maintain the Naturopathic license. The Kansas Naturopathic Physicians Association (KNPA) will require members to take at least 25 hours of continuing education. (Application, pp. 5-6)

The 25 hours of continuing education is required per year. (Meeting minutes, October 4, 2001)

Currently, there are no institutions in Kansas offering training in naturopathic medicine. There are four colleges of naturopathic medicine accredited by the CNME in North America: 1) Bastyr University, Kenmore, WA; 2) National College of Naturopathic Medicine, Portland, OR; 3) Southwest College of Naturopathic Medicine, Tempe, AZ; and 4) Canadian College of Naturopathic Medicine, North York, ON. (Application, pp. 8-9)

Committee Discussion

From the information provided, is the body of knowledge required to function as a naturopathic physician identifiable? Is this body of knowledge acquired through a formal period of study and training? Can this advanced study or training be obtained? Are there changes in the occupation requiring skills of the practitioners to undergo continuing education? Are there mechanisms to provide for continuing education?

Final Findings and Conclusions

Evidence presented shows that the practice of naturopathic medicine requires an identifiable body of knowledge acquired through a formal period of advanced study that can be obtained, and the public needs, and does benefit by, assurances of initial and continued education. Thus, Criterion II is met (by unanimous affirmative vote of the technical committee).

CRITERION III

If the practice of the occupation or profession is performed, for the most part, under the direction of other health care personnel or inpatient facilities providing health care services, such arrangement is not adequate to protect the public from persons performing noncredentialed functions and procedures. (The Secretary recognizes this criterion as asking for documentation on why such arrangements are not adequate to protect the public.)

Information Provided

Naturopathic physicians don't perform under the direction of other health care personnel. Naturopathic physicians are primary care givers. Excluding Naturopathic physicians engaged in full time research and teaching, almost all Naturopathic physicians are in private practice, self-employed or are employed by other doctors in associate relationships. The number of Naturopathic physicians working with integrative medicine teams in inpatient facilities in the United States probably number less than 10-12. This number is expected to increase as Naturopathic physicians become more involved in integrative medicine. (Application, p. 10)

Committee Discussion

Does the information provided show whether naturopathic physicians are for the most part under the direction of inpatient facilities? If so, is this arrangement adequate or not to protect the public from harm? Was information provided to demonstrate that the rendering of services through a physician's order is an adequate arrangement to protect the public from harm?

Final Findings and Conclusions

From the information provided, it appears that a very small percentage of naturopathic physicians practice under the direction of inpatient facilities; most provide primary care. Because of the lack of oversight through regulation, and the independent nature of the provision of Naturopathic medical services, this arrangement is not adequate to protect the public from harm. Thus, Criterion III is met (by unanimous affirmative vote of the technical committee).

CRITERION IV

The public is not effectively protected from harm by certification of members of the occupation or by means other than credentialing. (The Secretary recognizes this criterion as asking for documentation on why certification—nongovernmental or federal—or other means are not effective in protecting the public from harm.)

Information Provided

There is no nationally accepted mechanism for certification of Naturopathic physicians that is approved in states where they are presently officially recognized. There is no certification for Naturopathic physicians available from the state of Kansas.

Certification is not sufficient to protect the public from harm. Certification suggests to the public a seal of approval by an authority who is assumed to have the public welfare at heart. Because certification suggests an authoritative review and approval, it is often assumed that the certified professional is safe. Certification does not carry with it the scrutiny of a licensing board nor regulation of any sort, save that of the certifying

organization itself. In actuality, certification may mean nothing more than acceptance into a like minded body of members after paying a certification fee. Unlike licensing boards, the certifying organization usually does not have any members other than those they have certified. They also do not have the weight of law should the need arise. Professional organizations such as those which oversee doctors, lawyers and veterinarians are not certified, as certification would have no recourse in the event of public harm or professional misconduct. Certification, at its best, merely alerts the public that the person who has been certified has completed a course of study. It says nothing about the quality of that course of study. And there is no ongoing system of adherence to standards of practice...

With licensure, protection from harm, including false representations of skill, ability, or scope of practice, impersonation, dishonorable conduct, gross malpractice, felony, intemperance, illegal drug, moral and ethical violations, poor judgment, is insured by administrative regulation, granted by state mandate. Administrative action includes the ability of the state to discipline, sanction, warn, deny, suspend, revoke, limit or otherwise restrict the license of any professional whose conduct is sub-standard, especially when that conduct causes or may cause harm to the public... (Application, pp. 11-12)

There are no federal, state or non-governmental programs available for the certification of Naturopathic physicians. While certification may suffice for technician level occupations, performing limited range of services, under the supervision of licensed professionals, we believe it is not adequate to insure public safety for physician level professions.

Registration offers a little more control over that which is registered, but does not imply conformity to standards and guidelines, other than to the act of registration. There is no precedent for the registration of Naturopathic physicians, or any type of physician or doctor, that regulates education, competency, or ethics.

Devices and substances that are used by Naturopathic physicians may be regulated by the Food and Drug Administration (FDA). Homeopathic substances are covered under the United States Homeopathic Pharmacopoeia. Therapeutic devices, such as electrical current physiotherapy machines are regulated as to safety and use by the FDA.

Supplements and botanical medicines are covered under the Dietary Supplement and Health Education Act (DSHEA), and while this regulation is not as strict as those for prescription drugs, the FDA retains the right to remove any unsafe substance from the market. The FDA, however, does not in any way regulate the education or competency of practitioners, including Naturopathic physicians. (Application, pp. 15-16)

Committee Discussion

How is certification at the national level inadequate to protect the public from the harm illustrated in Criterion I?

Final Findings and Conclusions

There is no nationally accepted mechanism for certification of naturopathic physicians that is approved in states which recognize the occupation, and there is no certification available from the state of Kansas; therefore, Criterion IV is found to be met (by unanimous affirmative vote of the technical committee).

CRITERION V

The effect of credentialing of the occupation or profession on the cost of health care to the public is minimal. (The Secretary stipulates that the applicant, in determining if the cost of health care to the public is minimal, shall consider fees-for-services, salaries and wages, and payments to members and services covered by public and private insurance programs.)

Information Provided

The initial impact of credentialing would be the cost of licensing itself. According to Duane A. Goosen, Kansas Director of the Budget, there would be significant cost differences depending on the type of licensing board that is set up. A Naturopathic licensing board could have minimal cost if board members were all volunteer Naturopathic physicians and one of them served as an unpaid executive director. Expenses would be limited to cost of paperwork, telephone, and postage.

The cost of a paid executive director would be approximately \$20,000 and a small number of licensees would make the agency unable to support itself.

If the profession were regulated by the existing Kansas Board of Healing Arts, the additional duties would only be minimal for a small number of practitioners. Increased revenue and expenditures would be offsetting and a licensing bill could be implemented within currently approved staffing and operating expenditure levels (fiscal notes regarding HB 2776 and SB 593).

Usual, customary, and reasonable fees-for-service for the profession are not regulated at the present time by any method other than supply and demand. Fees currently range from \$30 to \$150, depending on length of visit, therapeutic modalities used, and whether the patient is new or returning. Without regulatory mandates or insurance guidelines, it is anticipated fees-for-service will continue to depend primarily on supply and demand. Increased visibility, credibility, and potential insurance reimbursement may positively affect practitioners total income if Naturopathic physicians are licensed.

The profession in Kansas currently is reimbursed on a cash-only basis. Since Hawaii, Alaska, Connecticut, and Washington are the only states with mandatory insurance equity, reimbursement methods would not necessarily be affected. Although insurance reimbursement would be potentially increased, any increase would be with recommendation and approval of individual insurance companies and in agreement with individual practitioners. There are over 90 healthcare plans that have covered Naturopathic medical services (see Appendix D). Some Insurance companies have sought Naturopathic physicians, anticipating lowered costs through preventive care and effective, less costly therapeutic modalities (i.e. American Complementary Care Network; American Western Life Insurance Co.). Some have advocated federal recommendations that states license specific groups of complementary and alternative medicine (CAM) providers, notably acupuncture, massage, and Naturopathic medicine, so that their subscribers would benefit from more comprehensive coverage (George DeVries, American Specialty Health, Inc., testimony before the White House Commission on Complementary and Alternative Health, May 14-15, 2001). (Application, pp. 17-18)

Committee Discussion

Has enough information been provided? From the information provided, is the effect of licensing the occupation on the cost of health care (fees, salaries, and third-party reimbursement) to the public minimal?

Final Findings

Evidence provided indicates that the effect of licensing naturopathic physicians on the cost of health care to the public would be minimal.

Final Conclusions

Criterion V is found to be met (by unanimous affirmative vote by the technical committee).

CRITERION VI

The effect of credentialing of the occupation or profession on the availability of health care personnel providing services provided by such occupation or profession is minimal.

Information Provided

It is expected that credentialing would have a significant impact on availability of Naturopathic physicians in the urban and rural areas in the State of Kansas. Credentialing/licensing would very likely increase the number of the existing doctors in the state of Kansas. Current shortages of Naturopathic physicians in states which are unlicensed are directly attributable to lack of financial incentive, lack of legal support, and lack of perceived welcome or appreciation. At the present moment there are not enough naturopathic doctors in Kansas to serve in many parts of the state because of the fact that

Kansas does not license naturopathic doctors.

Based on a report of a public opinion survey conducted on the campus of Wichita State University by the WSU Department of Public Health Sciences which was prepared for Health Committees and Subcommittees of the Kansas Legislature, it was shown that 87% of Kansas residents (with 16% coming from rural area and 52% from large cities and 32% from mid-sized towns) answered "yes" when asked whether they would be in favor of a policy to allow for the practice of Naturopathic doctors in state of Kansas (Appendix E). Licensure would only increase the supply of Naturopathic physicians to both urban and rural areas where there is a perceived business need for natural medicine.

It is likely that if Kansas becomes a licensed state for Naturopathic physicians, there will be an increased number of doctors willing to serve in under-served areas of the state. This has been proven based on the other licensed states and their demographic studies on urban and rural areas within the states. For example, Oregon has 461 licensed Naturopathic physicians and Washington has 469 licensed Naturopathic physicians. While the majority tend to remain in large population centers, a significant number have chosen smaller cities to set up their practice. In both states almost everyone has access to a Naturopathic doctor... (Application, pp. 21-22)

Attached (Appendix A) is a list of the 11 states which currently license naturopathic physicians, which outlines the licensing history and fee schedules of those states (requested by technical committee on 10/4/01; provided by applicant 10/25/01).

Committee Discussion

From the information provided, can the effects of licensing naturopathic physicians on the availability of current practitioners be speculated? If so, are the effects minimal?

Final Findings

The applicant anticipates that the effects of licensing naturopathic physicians on the availability of current practitioners would be significant by providing increased access to naturopathic practitioners in both urban and rural areas of the state. It is not clear from the information provided what the impact would be as to availability of current practitioners.

Technical Review Committee members Jim Wilson and Larry Salmans asked that it be noted for the record that they believe Criterion VI is in conflict with Criterion I, that is, if Criterion I is met (based upon documented harm to the public that is recognizable and not remote), then the anticipated effect of credentialing upon the availability of current practitioners should not be minimal, as is the requirement for Criterion VI to be found met. They request that the Department of Health and Environment review Criterion VI for possible revision/rewording.

1a1 Conclusions

At this time, Criterion VI is found to be met. (Dr. Douglass, Ms. Londene and Mr. Wilson voted no on the motion to accept Criterion VI, with all other technical committee members voting affirmatively; the motion carried.)

CRITERION VII

The scope of practice of the occupation or profession is identifiable.

Information Provided

The applicant defines the practice of naturopathic medicine as a combination of conventional medicine with natural medicine:

Naturopathic physicians diagnose and treat human health conditions, injuries and diseases using education, natural medicines and therapies to support and stimulate the individual's intrinsic self-healing process...Like conventional physicians, Naturopathic physicians are trained, licensed and skilled in the conventional tools of diagnosis such as physical and orificial exams, phlebotomy, laboratory testing, and the ordering of electrocardiograms and diagnostic imaging. Unlike conventional physicians, Naturopathic physicians are also trained in the use of natural therapeutics. Diagnostic and therapeutic methods are applied according to the unique demands of each situation...Each of the major therapies used by Naturopathic physicians has considerable scientific literature devoted to it, and long traditions of clinical use. Modern Naturopathic medicine has incorporated advances in science into its traditional body of knowledge. (Application, p. 23)

Naturopathic physicians are currently licensed in Alaska, Hawaii, Washington, Oregon, Arizona, Montana, Utah, Maine, New Hampshire, Vermont, Connecticut, and Puerto Rico. Basic scope of practice varies somewhat from state to state and usually includes the following:

Doctors of Naturopathic medicine may use for preventive and therapeutic purposes the following natural medicines and therapies: food, food extracts, vitamins, minerals, enzymes, digestive aids, whole gland thyroid, plant substances, all homeopathic preparations, topical medicines, counseling, hypnotherapy, biofeedback, dietary therapy, naturopathic physical medicine, therapeutic devices, and barrier devices for contraception.

Doctors of Naturopathic medicine may use for diagnostic purposes physical and orificial examinations, X-rays, electrocardiograms, ultrasound, phlebotomy, clinical laboratory tests and examinations, and physiological function tests.

Doctors of Naturopathic medicine may recommend nonprescription medications and therapeutic devices or use noninvasive diagnostic

procedures commonly used by medical practitioners in general practice.

In certain states determined by statute and regulation:

Doctors of Naturopathic medicine may prescribe, dispense, or administer any legend or controlled naturally based substance allowed by rules and regulations of each state formulary. Doctors of naturopathic medicine with specialty certification in naturopathic childbirth may be authorized to use oxytocin and pitocin. In accordance with state formulary, Naturopathic physicians in Oregon, Montana, and Arizona are allowed to apply for and receive DEA numbers for prescribing certain controlled substances.

Doctors of naturopathic medicine do not:

Perform surgical procedures, except for minor surgical techniques as defined by state rules and regulations.

Practice emergency medicine, except as a good samaritan rendering gratuitous services in the case of emergency and except for the care of minor injuries.

Practice or claim to practice medicine and surgery, osteopathy, dentistry, podiatry, optometry, chiropractic, physical therapy, or any other System or method of treatment not authorized by statute.
(Application, pp. 27-28)

Committee Discussion

From the information provided, is the scope of practice of the occupation identifiable?

Final Findings and Conclusions

Evidence has been provided to conclude that the scope of practice of naturopathic physicians is identifiable. Criterion VII is met (by unanimous affirmative vote of the technical committee).

CRITERION VIII

The effect of credentialing of the occupation or profession on the scope of practice of other health care personnel, whether or not credentialed under state law, is minimal.

Information Provided

Other health professions that perform the same type of functions as Naturopathic physicians, but at a different level of skill or training are: Medical Doctors (MDs), Doctors of Osteopathy (DOs), Chiropractors (DCs), and to a limited extent Physician's Assistants (PAs), and Nurse Practitioners.

The common scope of practice is the diagnosis and treatment of human disease and conditions. No other profession has education and training centered on the practice of natural medicine.

Other health professions that perform different, but related, functions in association with Naturopathic Physicians are: Medical Doctors (MDs), Doctors of Osteopathy (DOs), and Chiropractors (DCs). While the general scope of practice is related, Naturopathic physicians practice a distinctly different form of medicine.

Health professions that perform the same functions as Naturopathic Physicians, but in a different setting or employment situation are: Medical Doctors (MDs), Doctors of Osteopathy (DOs), and Chiropractors (DCs). These are the only professionals that perform similar functions in potentially different settings.

...There is a degree of overlap in the functions performed by Naturopathic physicians, MDs, DOs, and DCs. Practitioners of all four professions diagnose and treat human illnesses that are not confined to a specific anatomical region of the body (as are the conditions which podiatrists, dentists and optometrists treat). Chiropractors diagnose and treat patients by methods that don't involve the use of drugs and surgery. Medical and osteopathic doctors are permitted, by law, to practice all branches of medicine and surgery.

We believe that, in fact, these other professions do not, in actual practice, utilize clinical nutrition, clinical ecology and preventive health counseling in their approach to patient care to the same extent as naturopathic physicians. The Naturopathic profession is the only healing art, which as a whole, approaches patient care with an emphasis on educating patients in nutrition and the role of the various environmental substances that may cause or contribute to illness and preventive health care in general. It is our belief that the medical and osteopathic professions are oriented toward providing crisis care, whereas the naturopathic profession places a strong emphasis on providing preventive health care. Naturopathic physicians diagnose and treat patients by means that do not involve the use of major surgery or radiation for therapeutic purposes. However, Naturopathic physicians refer patients to other health care providers when use of radiation therapy, legend drugs, or major surgery is indicated... (Application, pp. 30-31)

Committee Discussion

Is there a clear understanding of the working of the exemption clause of the licensure law and, thus, its impact? From the information provided, is the effect of licensure for naturopathic physicians on the scope of practice of other health care personnel minimal?

Final Findings and Conclusions

Information has been provided that the effect of licensure for naturopathic physicians on the scope of practice of other health care personnel would be minimal. Evidence has also been provided that there is a clear understanding of the working of the exemption clause of the licensure law and its impact. Therefore, Criterion VIII is found to be met. (Dr. Douglass voted no on the motion to accept Criterion VIII, with all other technical committee members voting affirmatively; the motion carried.)

CRITERION IX

Nationally recognized standards of education or training exist for the practice of the occupation or profession and are identifiable.

Information Provided

Standards of education have been developed by the Council on Naturopathic Medical Education (CNME), which is the accrediting body for Naturopathic medicine (application, pp. 34-35). There are five accredited schools: four naturopathic medical schools in the United States offer a four-year residential program of study leading to the degree of Doctor of Naturopathic Medicine (Bastyr University, Kenmore, WA; National College of Naturopathic Medicine, Portland, OR; Southwest College of Naturopathic Medicine, Tempe, AZ; University of Bridgeport, College of Naturopathic Medicine, Bridgeport, CT), as does one in Canada (Canadian College of Naturopathic Medicine, Toronto, Ontario, Canada). (Application, p. 34)

Naturopathic medical schools are four year postgraduate schools with admission requirements comparable to those of conventional medical schools. The degree of Doctor of Naturopathic Medicine requires four years of graduate level study in the medical sciences in addition to training in Naturopathic therapeutics.

In order to receive a Doctor of Naturopathic Medicine Degree a person must:

1. Complete an undergraduate degree in premedical study courses from an accredited school.
2. Complete a graduate degree in Naturopathic medicine from a four-year graduate level residential Naturopathic medical college or university accredited by the Council on Naturopathic Medical Education (CNME), which is the accrediting body for Naturopathic medicine...This includes four thousand one hundred hours leading to the degree of Doctor of Naturopathic Medicine and completion of one thousand two hundred hours of clinical experience prior to graduation. Clinical experience includes direct patient care under the direction of licensed Naturopathic physicians or other licensed physicians. Students at Naturopathic colleges obtain clinical experience at the colleges' clinical facilities and preceptoring with licensed Naturopathic physicians.
3. Passing the Naturopathic Physician Licensing Exam (NPLEX) Basic Science Board after the second year before entering to the clinical setting.

In addition the following are necessary before practicing as a Naturopathic doctor in licensed states:

4. Taking and passing NPLEX...Clinical Boards...administered by North American Board of Naturopathic Examiners (NABNE) after graduation... (Application, pp. 34-35)

There are no colleges of Naturopathic Medicine in Kansas. (Application, p. 34)

Committee Discussion

From the information provided, are there recognizable national educational standards for naturopathic physicians? Are these standards identifiable?

Final Findings and Conclusions

Evidence demonstrates that nationally recognized standards of education exist for naturopathic physicians and are identifiable. Criterion IX is met. (Ms. Londene voted no on the motion to accept Criterion IX, with all other members of the technical committee voting affirmatively; the motion carried.)

CRITERION X

All recommendations of the technical committee and the secretary, which relate to the level or levels of credentialing regulations of a particular group of health care personnel, shall be consistent with the policy that the least regulatory means of assuring the protection of the public is preferred.

Option 1 - Statutory Regulation: The statutes direct that statutory regulation, other than registration or licensure, by the creation or extension of statutory causes of civil action, the creation or extension of criminal prohibitions or the creation or extension of injunctive remedies is the appropriate level when this level will adequately protect the public's health, safety or welfare.

Information Provided

No information was provided by the applicant as to whether other regulatory actions have been pursued or are being considered by other states in the form of criminal or civil law or injunctive remedies to address the issue of harm.

Testimony by Mark Stafford, Kansas Board of Healing Arts, at the public hearing on November 1, 2001:

...history of K.S.A. 65-2872a. That statute was passed in 1982, allowing persons who had graduated from a school approved by the state naturopath association to practice naturopathy if they were in practice in this state as of January 1, 1982. The Board was not given regulatory authority, though the Kansas Supreme Court ruled in 2000 that the Board was a proper party to investigate complaints and to bring a civil action against a naturopath to

obtain an injunction against the unlicensed practice if it was alleged that the individual exceeded the statutory authority. Thus, complaints involving naturopaths were considered as allegations of unlicensed practice, without regard to the quality of care or ethics in practice. Following adoption of the 1982 statute, the association provided a list of persons who were believed to fit the criteria...

...the Board has shown restraint in considering complaints against naturopaths. When there was actual or reasonably foreseeable patient harm the Board has instituted legal action to protect the public. Informal resolution was appropriate in other cases.

Testimony by Charles Wheelen, representing the Kansas Association of Osteopathic Medicine, at the public hearing on November 1, 2001:

...In this context it is important to acknowledge that several years ago the Legislature enacted K.S.A. 65-2872a. This section of Kansas law says that any naturopath who graduated from a nationally recognized naturopathic college and who was practicing in Kansas as of January 1, 1982 would not be required to obtain approval from the Board of Healing Arts. In other words, they were made exempt from regulation. As a result, there were unregulated naturopaths practicing in Kansas for several years without evidence of harm to the public.

This "grandfather clause" stipulated that those unregulated naturopaths could not perform surgery, practice obstetrics, or prescribe prescription-only drugs. When one naturopath used invasive techniques that appeared to violate the unauthorized practices, exposure to potential harm occurred, and the Board of Healing Arts intervened.

Testimony by Jerry Slaughter, Kansas Medical Society, at the public hearing on November 1, 2001:

...Our view is that the potential for harm is remote, as long as those practicing naturopathy are doing so according to the limitations of current law, which does not allow a scope of practice such as that described above. If a naturopath is practicing today in Kansas in a manner such as that described above, he or she would be doing so in violation of law. In such a case, the Health Arts Board has ample statutory authority to bring an action to enforce the law...

Option 2 - Registration: The statutes direct that registration is the appropriate level when statutory regulation is not adequate to protect the public's health, safety or welfare and when registration will adequately protect the public health, safety or welfare by identifying practitioners who possess certain minimum occupational or professional skills so that members of the public may have a substantial basis for relying on the services of such practitioners.

Information Provided

No information was provided by the applicant as to other states which regulate naturopathic physicians through registration.

With regard to registration, the applicant maintains the following (application, p. 15):

Registration offers a little more control over that which is registered, but does not imply conformity to standards and guidelines, other than to the act of registration. There is no precedent for the registration of Naturopathic physicians, or any type of physician or doctor, that regulates education, competency, or ethics.

Option 3 - Licensure: The statutes direct that licensure is the appropriate level when statutory regulation and registration is not adequate to protect the public and when the naturopathic physicians perform functions not ordinarily performed by persons in other occupations or professions.

Information Provided

Eleven states license naturopathic physicians. A licensure law would restrict the scope of practice to individuals who demonstrate competency (meet qualifications) and are licensed by the state. Licensure also protects the title of the occupation.

With licensure, protection from harm, including false representations of skill, ability, or scope of practice, impersonation, dishonorable conduct, gross malpractice, felony, intemperance, illegal drug, moral and ethical violations, poor judgment, is insured by administrative regulation, granted by state mandate. Administrative action includes the ability of the state to discipline, sanction, warn, deny, suspend, revoke, limit or otherwise restrict the license of any professional whose conduct is sub-standard, especially when that conduct causes or may cause harm to the public. (Application, p. 12)

Recommendations Related to the Level or Levels of Credentialing to Protect the Public

The technical committee finds the criteria to be met and that there is a significant need shown for credentialing naturopathic physicians. The technical committee concludes that the scope of practice of naturopathic physicians should be restricted to qualified personnel. Therefore, the technical committee recommends that licensure for naturopathic physicians is the appropriate level of credentialing to protect the public from the documented harm.



KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Clyde D. Graeber, Secretary

**FINAL REPORT TO THE LEGISLATURE
FROM THE SECRETARY ON THE APPLICATION
OF KANSAS NATUROPATHIC PHYSICIANS ASSOCIATION
FOR LICENSURE**

February 7, 2002

The Kansas Naturopathic Physicians Association (KNPA) submitted a credentialing application requesting licensure for naturopathic physicians. The application has been reviewed in accordance with the Kansas Act on Credentialing by a technical review committee and the Secretary of Health and Environment. The technical committee conducted four fact-finding meetings, including a public hearing, to investigate the issues. According to K.S.A. 65-5005, within 120 days of receiving the technical committee's report the Secretary is to issue a final report to the Legislature. The technical committee's report was submitted to the Secretary on January 28, 2002. (Attached is the technical committee's report.) This is the final report of the Secretary to the Legislature.

The statutes state that the Secretary is not bound by the recommendations of the technical committee, nor is the Legislature bound by the Secretary's recommendations.

K.S.A. 65-5005 requires that **all** of the criteria are to be found met and a need for credentialing established prior to the technical committee or Secretary making a recommendation that the application be approved. The technical committee concluded that all criteria were met. The technical committee determined that there was sufficient need shown for licensing of naturopathic physicians in order to protect the public from the documented harm, therefore, the technical committee recommends that the application be approved.

In summary, the technical committee findings and conclusions are:

- ▶ The unlicensed practice of the occupation can harm the public and the potential for harm is recognizable and not remote. Criterion I is met.
- ▶ The practice of the occupation requires an identifiable body of knowledge acquired through a formal period of advanced study that can be obtained in Kansas; and the public needs, and does benefit, from assurances of initial and continued education. Criterion II is met.

Signature Building
1000 SW Jackson, Suite 330
Topeka, KS 66612-1365

Phone: (785)296-0056
Fax: (785)296-3075

- ▶ From the information provided, it appears that a very small percentage of naturopathic physicians practice under the direction of inpatient facilities; most provide primary care. Evidence was provided which indicates that this arrangement is not adequate to protect the public from harm. Therefore, Criterion III is met.
- ▶ Criterion IV is recognized as asking for documentation on why registration and certification or other, less regulatory means, are not effective in protecting the public from harm. Evidence was provided which indicates there are no federal, state or non-governmental programs available for the certification or registration of naturopathic physicians. Thus, Criterion IV is found to be met.
- ▶ Licensing the occupation appears to have minimal impact on the cost of health care. Criterion V is met.
- ▶ Licensing the occupation appears to have minimal impact on the availability of health care personnel providing services. Thus, Criterion VI is met.
- ▶ The scope of practice of the occupation is identifiable. Criterion VII is met.
- ▶ From the information provided, it appears that licensure of naturopathic physicians would have minimal effect on the scope of practice of other health care personnel. Therefore, Criterion VIII is met.
- ▶ Nationally recognized standards of education for providing naturopathic physician services exist and are identifiable. Criterion IX is met.
- ▶ With the first nine criteria having been found to be met, credentialing of the profession to protect the public from the documented harm is appropriate. Licensure was determined to be the least regulatory means of ensuring that the public is protected from the documented harm.


The Secretary of Health and Environment's Findings, Conclusions and Recommendations Are:

- ▶ After consideration of the technical committee's report and the evidence and testimony presented to the committee, I concur with the technical committee's findings and conclusions. I find that the first nine criteria have been met.
- ▶ I concur that sufficient evidence was presented to warrant credentialing of naturopathic physicians in order to protect the public, and that licensure of naturopathic physicians is the appropriate level of credentialing to ensure protection from the documented harm.

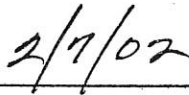
Signature Building
1000 SW Jackson, Suite 330
Topeka, KS 66612-1365

Phone: (785)296-0056
Fax: (785)296-3075

- ▶ While I concur with the Technical Committee's recommendation for credentialing, it is important to note that during its deliberations, it was determined that signatures of two members of the Committee appear on a signature sheet submitted by the applicant group as supporting the credentialing of naturopathic physicians. I investigated this situation by requesting an opinion from Attorney General Carla Stovall. My letter requesting the opinion and the Attorney General's response is attached to this Final Report. After considering the Attorney General's opinion, I determined that there was no violation of the law governing this application.
- ▶ I concur that the Kansas Board of Healing Arts is the appropriate regulatory body.
- ▶ I recommend that legislative action be taken on the credentialing application.



Clyde D. Graeber, Secretary



Date



KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Clyde D. Graeber, Secretary

November 14, 2001

Carla Stovall
Attorney General
Memorial Building
120 W. 10th
Topeka, Kansas 66603

RE: Request for Opinion of the Attorney General
What constitutes a "personal interest" pursuant to K.S.A. 65-5003


Dear Attorney General Stovall:

It has come to the Department's attention that in the administration of the Kansas Credentialing Act, there are members of the Technical Review Committee who may have demonstrated a "personal interest" in the applicant group pursuant to K.S.A. 65-5003. Following are questions concerning the interpretation and application of K.S.A. 65-5003 as it applies to the term "personal interest" as used in this statute.

- 1) Does a person who is a member of the Technical Review Committee that reviews applications for credentialing demonstrate a personal interest if they had signed a signature sheet in support of a credentialing application prior to becoming a member, and when at the time of signing, the person was not aware they would be appointed as a member?
and
- 2) Does a state legislator who is a member of the Technical Review Committee that reviews applications for credentialing demonstrate a personal interest if they author or sponsor legislation in support of a credentialing applicant?

We are requesting an opinion of the Attorney General as to what constitutes a "personal interest" pursuant to K.S.A. 65-5003. Thank you for all your consideration and service to our agency.

Sincerely,



Clyde D. Graeber
Secretary

cc: Yvonne Anderson
Lesla Roberts



RECEIVED

JAN 02 2002

SECRETARY OF
DEPT. OF HEALTH & ENVIRONMENT

State of Kansas

Office of the Attorney General

120 S.W. 10TH AVENUE, 2ND FLOOR, TOPEKA, KANSAS 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

MAIN PHONE: (785) 296-2215
FAX: (785) 296-6296

December 31, 2001

ATTORNEY GENERAL OPINION NO. 2001- 56

Clyde D. Graeber, Secretary
Kansas Department of Health and Environment
1000 SW Jackson, Suite 560
Topeka, Kansas 66612

Re: Public Health--Credentialing--Credentialing Health Care Personnel;
Appointment of Technical Committee; Meaning of "Personal Interest"

Synopsis: After the Secretary of the Kansas Department of Health and Environment receives a credentialing application, he must appoint a technical committee to make findings regarding the application. No member of the technical committee may have a personal interest in the credentialing or noncredentialing of the health care personnel whose application for credentialing will be reviewed by the technical committee. A person has a "personal interest" if credentialing will benefit a blood relative or a close friend in a non-financial way, but in a matter of great importance, or if that person's judgment may be affected because of membership in some organization and a desire to help that organization further its policies. The Secretary must determine facts and circumstances concerning the apparent support of credentialing expressed by persons appointed to a technical committee and then, using his discretion, determine for himself whether a "personal interest" exists. Cited herein: K.S.A. 65-5001; 65-5002, as amended by L. 2001, Ch. 5, § 260; 65-5003.

*

*

*

Clyde D. Graeber
Page 2

Dear Secretary Graeber:

As Secretary for the Kansas Department of Health and Environment, you direct our attention to a provision within the Kansas Credentialing Act¹ requiring you to appoint a technical committee that will make findings regarding a credentialing application. This seven person technical committee must be comprised of three currently credentialed health care personnel and four consumers of health care.² In relation to your questions, the Act provides:

"No member of the technical committee shall have a direct economic or personal interest in the credentialing or noncredentialing of health care personnel whose application for credentialing will be reviewed by the technical committee."³

The statute further provides that if a member of the technical committee has a direct economic or personal interest or otherwise has a conflict of interest concerning the credentialing or noncredentialing of health care personnel, the Secretary must replace such member.⁴

You ask whether, in either of the following two scenarios, a "personal interest" is demonstrated by a subsequently appointed member of a technical committee:

- a person who signed a signature sheet in support of a credentialing application,⁵ or
- a state legislator who authored or sponsored legislation in support of a credentialing applicant.

The issues you raise concern the realm of "conflict of interest" which, in general, arises when a public official has an interest not shared in common with the other members of the public. A conflict of interest has also been expressed as contradictory desires tugging the official in opposite directions.⁶ A "personal interest" is one type of a conflict of interest.

¹K.S.A. 65-5001 *et seq.*

²K.S.A. 65-5003(a).

³*Id.*

⁴*Id.*

⁵"The secretary shall not accept a credentialing application unless such application is accompanied by the application fee and is signed by 100 or more Kansas resident proponents of credentialing the health care occupation or profession seeking to be credentialed." K.S.A. 65-5002(a), as amended by L. 2001, Ch. 5, § 260.

⁶63C Am.Jur.2d *Public Officers and Employees* § 252 (1997).

Because the term "personal interest" is not statutorily defined, we turn to common law and find guidance concerning conflicts of interest within a 1972 Kansas case:

"We, of course, recognize the common law principle that a public officer owes an undivided duty to the public whom he serves and is not permitted to place himself in a position that will subject him to conflicting duties or cause him to act other than for the best interests of the public. If he acquires any interest adverse to those of the public, without a full disclosure it is a betrayal of his trust and a breach of confidence.

.....
"The difficult problem which is often presented in conflict of interest cases is in determining whether or not the personal interest of the commissioner or board member is of a nature justifying disqualification to act. Usually this is a question to be determined under the peculiar facts and circumstances of the particular case presented to the court for determination."⁷

In a very helpful case from New Jersey, the Court quoted a commentator who distilled varying conflict of interest circumstances into four types of situations that would require disqualification:

"(1) 'Direct pecuniary interest' when an official votes on a matter benefitting the official's own property or affording a direct financial gain;

"(2) 'Indirect pecuniary interest' when an official votes on a matter that financially benefits one closely tied to the official, such as an employer, or family member;

"(3) 'Direct personal interest' when an official votes on a matter that benefits a blood relative or close friend in a non-financial way, but a matter of great importance;

"(4) 'Indirect personal interest' when an official votes on a matter in which an individual's judgment may be affected because of membership in some organization and a desire to help that organization further its policies."⁸

Based on the information presented, we cannot say as a matter of law that either the person who signed a signature sheet indicating support for the credentialing of a particular health care profession or the state legislator who sponsored legislation in support of the

⁷ *Anderson v. City of Parsons*, 209 Kan. 337, 341-42 (1972).

⁸ *Wyzykowski v. Rizas*, 626 A.2d 406, 414 (N.J. 1993) quoting Michael A. Pane, *Conflict of Interest: Sometimes a Confusing Maze, Part II, New Jersey Municipalities* at 8,9 (March 1980).

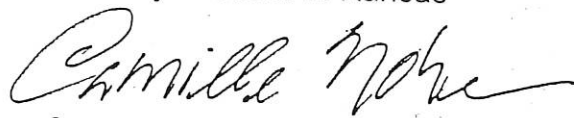
credentialing of a particular health care profession has a "personal interest" in such credentialing. However, neither can we say that either of these persons does not have a "personal interest." The reasons for supporting credentialing may be neutral, such as supporting a public policy of providing a choice for health care consumers, or may indicate a personal interest, such as supporting a benefit that would flow to a particular person or constituency. The Secretary must obtain additional information from these persons regarding why each supports credentialing and his or her relationship to those benefiting from credentialing then, using his discretion, determine for himself whether a "personal interest" exists.

In conclusion, after the Secretary of the Kansas Department of Health and Environment receives a credentialing application, he must appoint a technical committee to make findings regarding the application. No member of the technical committee may have a personal interest in the credentialing or noncredentialing of the health care personnel whose application for credentialing will be reviewed by the technical committee. A person has a "personal interest" if credentialing will benefit a blood relative or a close friend in a non-financial way, but in a matter of great importance, or if that person's judgment may be affected because of membership in some organization and a desire to help that organization further its policies. The Secretary must determine facts and circumstances concerning the apparent support of credentialing expressed by persons appointed to a technical committee and then, using his discretion, determine for himself whether a "personal interest" exists.

Very truly yours,



CARLA J. STOVALL
Attorney General of Kansas



Camille Nohe
Assistant Attorney General

CJS:JLM:CN;jm



Testimony on Senate Bill 610
Senate Public Health and Welfare Committee

By Charles L. Wheelen
February 25, 2002

Thank you for this opportunity to express our opposition to SB610. This bill contains technical flaws as well as unacceptable public policy objectives. Most important, it authorizes the practice of medicine and surgery in addition to the practice of naturopathy.

Our members are somewhat divided on the general question of statutory credentialing of naturopathic practitioners. Some of them insist that the education and training of persons with a doctor of naturopathy degree could not possibly be as rigorous as the academic and clinical training requirements for a doctor of osteopathy or doctor of medicine degree. And for that reason, we should oppose any naturopathy credentialing based on qualifications alone. Other members already have a complementary relationship with a naturopathic practitioner and don't understand why it is necessary to enact additional laws. And finally, there are members who believe there are naturopaths practicing in Kansas unlawfully and that they pose a genuine threat of potential harm to the public. This last group would agree with the Secretary of Health and Environment that naturopathic practitioners should be regulated and be held to a level of responsibility similar to the responsibility of persons licensed under the Healing Arts Act.

Senate Bill 610 appears to be drafted using two different sources. The administrative features delegating responsibility to the Board of Healing Arts are similar to the recently enacted Kansas laws governing licensure of respiratory therapists. These sections of the bill are generally acceptable. But other sections of SB610 appear to be copied from previous bills which were originally borrowed from other states. If the Legislature were to pass these sections without scrutiny, you would be adopting the mistakes of other states including misspelled words, poorly structured sentences, confusing mixed subjects, and vague references, as well as questionable public policy.

In order to point out the flaws and policy questions that I identified in SB610, I drafted some amendments that are attached to this testimony. I employed the following principles in drafting the amendments: (1) The bill should adhere to commonly accepted rules of the English language, (2) it should be clearly understandable and make sense, (3) it should not allow naturopathic doctors to order or administer prescription-only medication, (4) it should not allow naturopathic doctors to perform surgery or other invasive procedures, and (5) it should not allow naturopathic doctors to deliver infants.

On page one:

The definition contained in subsection (b) of section 2 is, in part, a statement of one of the principles of osteopathic philosophy. By deleting superfluous language and connecting the sentences, the definition would be more specific to naturopathy. The amendment in subsection (e) of section 2 makes it clear that the homeopathic pharmacopoeia must be recognized by the U.S. Food and Drug Administration.

*Senate Public Health & Welfare Committee
Date: February 25, 2002
Attachment 2*

On page two:

The changes in subsection (g) of section 2 are editorial improvements which address drugs in one sentence and surgical procedures in another sentence, rather than mixing terms in the wrong context. The change in subsection (h) corrects a misspelled word. It is important to delete subsection (j) of section 2 entirely. This language would authorize ordering, administering, and dispensing prescription-only drugs. The change in subsection (b) of section 3 is an editorial improvement.

On page 5:

The change in paragraph (3) under subsection (a) of section 8 would make this bill consistent with the Healing Arts Act. The Board should not be required to prove that a felony conviction is directly related to the ability to practice a licensed profession. The current language would allow a convicted criminal to enjoy the privilege of a license to practice as a naturopathic doctor.

On page 7:

The changes in subsection (b) of section 13 are extremely important. These changes would clarify that naturopathic doctors may not authorize or administer prescription-only drugs but may recommend or administer non-prescription drugs as well as natural remedies, vitamins, and foods. These changes also separate the counseling and dietary therapy functions to make it clear that those services may be provided to patients independent of recommended non-prescription remedies.

On page 8:

The new language in subsections (e) and (f) of section 13 differentiate between the types of examinations that may be performed by naturopathic doctors versus those types of tests that may be ordered by them. These distinctions would make it clear that they may perform physical examinations and applications as well as minor procedures in the office, but anything requiring an invasive procedure or the use of prescription-only drugs would have to be ordered from another source such as a laboratory or an "appropriate licensed health care professional." The change in section 14 corrects a misspelled word.

On page 9:

This amendment to current law would correct an existing flaw in section 65-2872 of the Healing Arts Act. The list of exemptions contains language in subsection (o) that does not describe an exemption. This wording should be relocated to the general heading in order to be meaningful, or should be deleted altogether.

In the general context of whether naturopathic doctors should be allowed to recommend or administer prescription-only drugs or perform invasive procedures, it is important to keep in mind that nothing in current law prevents them from applying for a license to practice medicine and surgery.

Kansas Statutes Annotated 65-2873 outlines the basic requirement for a license to practice the healing arts in our State. The applicant must: (1) Present evidence of proficiency in the basic sciences based on passage of an examination conducted by an examining body approved by the Board of Healing Arts, (2) prove that he or she graduated from an accredited healing arts school or college, (3) pass an examination prescribed by the Board of Healing Arts, and for a license to practice medicine and surgery, (4) present proof that he or she has completed acceptable postgraduate study. The Healing Arts Act does not necessarily require that an applicant possess a doctor of medicine degree, but instead says that an accredited school of medicine is one that the Board determines "to have a standard of education substantially equivalent to the university of Kansas school of medicine." The statutory criteria that the Board must use to make that determination do not include awarding a specific type of academic degree.

For the past few years we have all been told on different occasions that individuals who have obtained a doctor of naturopathy or doctor of naturopathic medicine degree from an accredited college have received substantially the same kind of education and training as doctors of medicine or doctors of osteopathy. If indeed that is the case, these individuals are eligible to apply for a license to practice medicine and surgery, and SB610 is entirely unnecessary.

Thank you for considering our concerns and comments. We respectfully request that you **recommend SB610 not be passed.**

Session of 2002

SENATE BILL No. 610

By Committee on Public Health and Welfare

2-15

2-4

AN ACT concerning naturopathy; providing for the licensure and regulation of practitioners thereof; providing for administration by the board of healing arts; amending K.S.A. 65-2872 and repealing the existing section; also repealing K.S.A. 65-2872a.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. Sections 1 to 17, inclusive, shall be known and may be cited as the naturopathic doctor licensure act.

New Sec. 2. As used in sections 1 to 17, inclusive and amendments thereto:

(a) "Naturopathic doctor" means a doctor of naturopathic medicine who is authorized and licensed pursuant to this act.

(b) "Naturopathic medicine," or "naturopathy" means a system of health care practiced by naturopathic doctors for the prevention, diagnosis and treatment of human health conditions, injury and disease. ~~Its purpose is to promote or restore health by the support and stimulation of the individual's inherent self-healing processes. This is accomplished through education of the patient by a naturopathic doctor and through the use of natural therapies and therapeutic substances.~~

(c) "Board" means the state board of healing arts.

(d) "Approved naturopathic medical college" means a college and program granting the degree of doctor of naturopathy or naturopathic medicine that has been approved by the board under this act and which college and program requires at a minimum a four-year, full-time resident program of academic and clinical study.

(e) "Homeopathic preparations" means substances and drugs prepared according to the official homeopathic pharmacopoeia of the United States, which is the standard homeopathic text recognized by the United States food and drug administration.

(f) "Naturopathic acupuncture" means the insertion of fine metal needles through the skin at specific points on or near the surface of the body with or without the palpation of specific points on the body and with or without the application of electric current or heat to the needles or skin or both to treat human disease and impairment and to relieve pain.

2-4

1 (g) "Minor office procedures" means care incidental to superficial
 2 lacerations and abrasions, superficial lesions and the removal of foreign
 3 bodies located in the superficial tissues, except eyes, and not involving
 4 blood vessels, tendons, ligaments or nerves. "Minor office procedures" ~~includes~~ may include
 5 ~~use of antiseptics in connection with the methods, but shall not~~ use of anesthesia
 6 ~~include the alteration or removal of tissue.~~ Minor office procedures does
 7 not include ~~the use of anesthetics or surgery.~~ or alteration or removal of tissue.

8 (h) "Naturopathic physical applications" means the therapeutic use
 9 by naturopathic doctors of the actions or devices of electrical muscle ~~stimulation,~~ ultraviolet
 10 stimulation, galvanic, diathermy, ultrasound, ~~ultraviolet~~ light, constitu-
 11 tional hydrotheraphy, naturopathic manipulative therapy and therapeutic
 12 exercise.

13 (i) "Topical drugs" means topical analgesics, antiseptics, scabicides,
 14 antifungals and antibacterials.

15 ~~(j) "Legend drugs" means those for prescribing, administration and~~
 16 ~~dispensing by naturopathic doctors, consistent with naturopathic philos-~~
 17 ~~ophy, practice and education.~~

18 New Sec. 3. (a) The board, as hereinafter provided, shall administer
 19 the provisions of this act. ~~judge~~

20 (b) The board shall ~~pass upon~~ the qualifications of all applicants for
 21 examination and licensure, provide for all examinations, determine the
 22 applicants who successfully pass the examination, duly license such ap-
 23 plicants and adopt rules and regulations as may be necessary to administer
 24 the provisions of this act.

25 (c) The board shall issue a license as a naturopathic doctor to an
 26 individual who prior to the effective date of this act (1) graduated from
 27 a school of naturopathy that required four years of attendance and was
 28 at the time of such individual's graduation accredited or a candidate for
 29 accreditation by the council on naturopathic medical education and (2)
 30 passed the naturopathic physician's licensing examination covering ap-
 31 propriate naturopathic subjects including basic and clinical sciences.

32 (d) The board shall keep a record of all proceedings under this act
 33 and a roster of all individuals licensed under this act. Only an individual
 34 may be licensed under this act.

35 New Sec. 4. (a) An applicant applying for licensure as a naturopathic
 36 doctor shall file a written application on forms provided by the board,
 37 showing to the satisfaction of the board that the applicant meets the
 38 following requirements:

39 (1) Education: The applicant shall present evidence satisfactory to the
 40 board of having successfully completed an educational program in natur-
 41 opathy from an approved naturopathic medical college.

42 (2) Examination: The applicant shall pass an examination as provided
 43 for in section 5 and amendments thereto.

5-6

5-8

2-6

1 (2) being guilty of unprofessional conduct as defined by rules and
2 regulations adopted by the board;

3 (3) being convicted of a felony ~~if the acts for which such person was~~
4 ~~convicted are found by the board to have a direct bearing on whether~~
5 ~~such person should be entrusted to serve the public in the capacity of a~~
6 ~~naturopathic doctor;~~

7 (4) violating any lawful order or rule and regulation of the board; and

8 (5) violating any provision of this act.

9 (b) Such denial, refusal to renew, suspension or revocation of a li-
10 cense may be ordered by the board after notice and hearing on the matter
11 in accordance with the provisions of the Kansas administrative procedure
12 act. Upon the end of the period of time established by the board for the
13 revocation of a license, application may be made to the board for rein-
14 statement. The board shall have discretion to accept or reject an appli-
15 cation for reinstatement and may hold a hearing to consider such rein-
16 statement. An application for reinstatement shall be accompanied by the
17 licensing reinstatement fee established under section 7 and amendments
18 thereto.

New Sec. 9. Foreign trained naturopaths shall satisfy the examina-
tion requirements of section 4 and amendments thereto. The board shall
21 require foreign trained applicants to furnish proof of completion of ed-
22 ucational requirements, substantially equal to those contained in section
23 4 and amendments thereto prior to taking the examination.

24 New Sec. 10. (a) Licenses issued under this act shall be effective for
25 a period of one year and shall expire at the end of such period of time
26 unless renewed in the manner prescribed by the board, upon the payment
27 of the license renewal fee established under section 7 and amendments
28 thereto. The board may establish additional requirements for license re-
29 newal which provide evidence of continued competency. The board shall
30 require completion of at least 25 hours of continuing education annually
31 for licensure renewal. The board may provide for the late renewal of a
32 license upon the payment of a late fee established under section 7 and
33 amendments thereto, but no such late renewal of a license may be granted
34 more than five years after its expiration.

35 (b) A person whose license is suspended shall not engage in any con-
36 duct or activity in violation of the order or judgment by which the license
37 was suspended. If a license revoked on disciplinary grounds is reinstated,
38 the licensee, as a condition of reinstatement, shall pay the license renewal
fee and any late fee that may be applicable.

2-2
41 New Sec. 11. The board shall remit all moneys received by or for it
42 from fees, charges or penalties to the state treasurer in accordance with
43 the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt
of each such remittance, the state treasurer shall deposit the entire

2-7

1 ing in one or more functions included in this act pursuant to established
2 educational protocols, or both.

3 (9) Students while in actual attendance in an approved naturopathic
4 medical college and under the supervision of a qualified instructor.

5 (10) Self-care by a patient or gratuitous care by a friend or family
6 member who does not represent or hold oneself out to the public to be
7 a naturopathic doctor or other term specified under subsection (a).

8 (11) The practice by a doctor of naturopathic medicine authorized to
9 practice naturopathy in another state, territory or the District of Columbia
10 when incidentally called into this state for consultation with a licensed
11 physician.

12 (c) No statute granting authority to licensees of the state board of
13 healing arts shall be construed to confer authority upon naturopathic doc-
14 tors to engage in any activity not conferred by this act.

15 New Sec. 13. (a) A naturopathic doctor may not:

16 (1) Prescribe, dispense or administer any prescription or controlled
17 drugs except for whole gland thyroid, homeopathic preparations, the nat-
18 ural therapeutic substances, drugs and therapies described in this act.

19 (2) administer ionizing radioactive substances for therapeutic pur-
20 poses;

(3) perform surgical procedures;

21 (4) claim to practice any licensed health care profession or system of
22 treatment other than naturopathic medicine unless holding a separate
23 license in that profession;

24 (5) practice obstetrics;

25 (6) practice emergency medicine, except as a good samaritan ren-
26 dering gratuitous services in the case of emergency and except for the
27 care of minor injuries; or

28 (7) practice or claim to practice allopathic medicine and surgery, os-
29 teopathic medicine and surgery, dentistry, podiatry, optometry, chiro-
30 practic, physical therapy or any other system or method of treatment not
31 authorized in this act.

32 authorized in this act. _____ recommend or
33 (b) Naturopathic doctors may ~~prescribe and~~ administer for preven-
34 tive and therapeutic purposes the following natural therapeutic sub-
35 stances ~~and therapies~~:

36 (1) Food, food extracts, vitamins, minerals, enzymes, whole gland thy-
37 roid, botanical ~~medicines~~, homeopathic preparations, ~~natural hormones~~ _____ remedies
38 ~~and legend substances approved by the board;~~ _____ and

39 (2) ~~topical drugs, health care counseling, nutritional counseling and~~ _____ (c) Naturopathic doctors may recommend or
40 ~~dietary therapy, naturopathic physical applications, therapeutic devices~~ administer
41 ~~and nonprescription drugs;~~ (d) Naturopathic doctors may provide health
42 care counseling and dietary therapy.

43 (3) ~~intramuscularly or intravenously any vitamins, minerals, botani-
cals, amino acids, D5W, saline solutions, isotonic solutions and glandulars;~~

L-2

1 ~~(4) immunizations; or~~
 2 ~~(5) noncontrolled legend drugs to the extent authorized by the board.~~
 3 ~~(c) Naturopathic doctors may perform or order for diagnostic pur-~~
 4 ~~poses a physical or orificial examination, ultrasound, phlebotomy, pap~~
 5 ~~smear, clinical laboratory test or examination, physiological function test~~
 6 ~~and any other noninvasive diagnostic procedure commonly used by phy-~~
 7 ~~sicians in general practice. Naturopathic doctors may perform minor of-~~
 8 ~~fice procedures.~~

9 ~~(d)~~ Naturopathic doctors have the same authority and responsibility
 10 as persons licensed to practice medicine and surgery with regard to public
 11 health laws, reportable diseases and conditions, communicable disease
 12 control and prevention, recording of vital statistics, health and physical
 13 examinations and local boards of health, except that the authority and
 14 responsibility are limited to activities consistent with the scope of practice
 15 described in this act.

16 New Sec. 14. In order to practice naturopathic acupuncture, a natu-
 17 ropathic doctor shall obtain a naturopathic acupuncture ~~specialty cer-~~
 18 ~~tification~~ from the board. The board may issue this specialty certification
 19 to a naturopathic doctor who has:

- 20 (a) Submitted an application and paid certification fee to be deter-
 21 mined by the board;
 22 (b) completed basic oriental medicine philosophy in a federally ac-
 23 credited college or university approved by the board and 500 hours of
 24 supervised clinical training under a trained naturopathic acupuncturist's
 25 supervision.

26 New Sec. 15. (a) There is established a naturopathic advisory council
 27 to advise the board in carrying out the provisions of this act. The council
 28 shall consist of five members, all citizens and residents of the state of
 29 Kansas appointed as follows: Three members shall be naturopathic doc-
 30 tors appointed by the state board of healing arts; one member shall be
 31 the president of the state board of healing arts or a person designated by
 32 the president; and one member shall be from the public sector who is
 33 not engaged, directly or indirectly, in the provision of health services
 34 appointed by the governor. Insofar as possible persons appointed to the
 35 council shall be from different geographic areas. If a vacancy occurs on
 36 the council, the appointing authority of the position which has become
 37 vacant shall appoint a person of like qualifications to fill the vacant posi-
 38 tion for the unexpired term, if any. The members of the council appointed
 39 by the governor shall be appointed for terms of three years and until a
 40 successor is appointed. The members appointed by the state board of
 41 healing arts shall serve at the pleasure of the state board of healing arts.
 42 If a member is designated by the president of the state board of healing
 43 arts, the member shall serve at the pleasure of the president.

(e) Naturopathic doctors may perform physical or orificial examinations, naturopathic physical applications, and minor office procedures.

(f) Naturopathic doctors may order for diagnostic purposes noninvasive examinations including phlebotomy, clinical laboratory tests, speculum examinations and physiological function tests but shall not order endoscopies or physiological function tests requiring infusion, injection, inhalation, or ingestion of medications to perform the test. Naturopathic doctors may order ultrasound, x-ray, and electrocardiogram tests but must refer to an appropriate licensed health care professional for performing the test and interpreting the results.

(g) specialty

2-8

8-2

29

1 (b) Members of the council attending meetings of the council, or
2 attending a subcommittee meeting thereof authorized by the council,
3 shall be paid amounts provided in subsection (e) of K.S.A. 75-3223 and
4 amendments thereto from the healing arts fee fund.

5 New Sec. 16. When it appears to the board that any person is vio-
6 lating any of the provisions of this act, the board may bring an action in
7 a court of competent jurisdiction for an injunction against such violation
8 without regard to whether proceedings have been or may be instituted
9 before the board or whether criminal proceedings have been or may be
10 instituted.

11 New Sec. 17. All state agency adjudicative proceedings under the
12 naturopathic doctor licensure act shall be conducted in accordance with
13 the provisions of the Kansas administrative procedure act and shall be
14 reviewable in accordance with the act for judicial review and civil enforce-
15 ment of agency actions.

16 Sec. 18. ~~K.S.A. 65-2872 is hereby amended to read as follows: 65-~~
17 ~~2872. The practice of the healing arts shall not be construed to include~~
18 ~~the following persons:~~

Every act or practice falling
in the field of the healing arts,
not specifically excepted herein,
shall constitute the practice thereof.

(a) Persons rendering gratuitous services in the case of an emergency.

(b) Persons gratuitously administering ordinary household remedies.

21 (c) The members of any church practicing their religious tenets pro-
22 vided they shall not be exempt from complying with all public health
23 regulations of the state.

24 (d) Students while in actual classroom attendance in an accredited
25 healing arts school who after completing one (1) year's study treat diseases
26 under the supervision of a licensed instructor.

27 (e) Students upon the completion of at least three (3) years study in
28 an accredited healing arts school and who, as a part of their academic
29 requirements for a degree, serve a preceptorship not to exceed ninety
30 (90) days under the supervision of a licensed practitioner.

31 (f) Persons who massage for the purpose of relaxation, muscle con-
32 ditioning, or figure improvement, provided no drugs are used and such
33 persons do not hold themselves out to be physicians or healers.

34 (g) Persons whose professional services are performed under the su-
35 pervision or by order of or referral from a practitioner who is licensed
36 under this act.

37 (h) Persons in the general fields of psychology, education and social
38 work, dealing with the social, psychological and moral well-being of in-
individuals and/or groups provided they do not use drugs and do not hold
themselves out to be the physicians, surgeons, osteopathic physicians or
chiropractors.

41
42 (i) Practitioners of the healing arts in the United States army, navy,
43 air force, public health service, and coast guard or other military service

6-9

2-10

1 when acting in the line of duty in this state.

2 (j) Practitioners of the healing arts licensed in another state when and
3 while incidentally called into this state in consultation with practitioners
4 licensed in this state, or residing on the border of a neighboring state,
5 duly licensed under the laws thereof to practice a branch of the healing
6 arts, but who do not open an office or maintain or appoint a place to
7 regularly meet patients or to receive calls within this state.

8 (k) Dentists practicing their professions, when licensed and practicing
9 in accordance with the provisions of article 14 of chapter 65 of the
10 Kansas Statutes Annotated, or amendments thereto, and any interpreta-
11 tion thereof by the supreme court of this state.

12 (l) Optometrists practicing their professions, when licensed and prac-
13 ticing under and in accordance with the provisions of article 15 of chapter
14 65 of the Kansas Statutes Annotated, or amendments thereto, and any
15 interpretation thereof by the supreme court of this state.

16 (m) Nurses practicing their profession when licensed and practicing
17 under and in accordance with the provisions of article 11 of chapter 65
18 of the Kansas Statutes Annotated, or amendments thereto, and any in-
19 terpretation thereof by the supreme court of this state.

(n) Podiatrists practicing their profession, when licensed and practicing
under and in accordance with the provisions of article 20 of chapter
22 65 of the Kansas Statutes Annotated, or amendments thereto, and any
23 interpretation thereof by the supreme court of this state.

24 (o) ~~Every act or practice falling in the field of the healing art, not~~
25 ~~specifically excepted herein, shall constitute the practice thereof.~~

26 ~~(p)~~ Pharmacists practicing their profession, when licensed and prac-
27 ticing under and in accordance with the provisions of article 16 of chapter
28 65 of the Kansas Statutes Annotated, or amendments thereto, and any
29 interpretation thereof by the supreme court of this state.

30 ~~(q)~~ A dentist licensed in accordance with the provisions of article 14 (p)
31 of chapter 65 of the Kansas Statutes Annotated who administers general
32 and local anesthetics to facilitate medical procedures conducted by a per-
33 son licensed to practice medicine and surgery if such dentist is certified
34 by the board of healing arts under K.S.A. 65-2899 *and amendments*
35 *thereto* to administer such general and local anesthetics.

36 ~~(r)~~ A naturopathic doctor when licensed and practicing in accordance (q)
37 with the provisions of the naturopathic doctor licensing act.

38 Sec. 19. K.S.A. 65-2872 and 65-2872a are hereby repealed.

39 Sec. 20. This act shall take effect and be in force from and after
40 January 1, 2003, and its publication in the statute book.

01-2
41
42
43

is certified by the board of healing arts under K.S.A. 65-2899 to administer such general and local anesthetics.

History: L. 1957, ch. 343, § 72; L. 1976, ch. 273, § 33; L. 1976, ch. 276, § 2; July 1.

Research and Practice Aids:

Physicians and Surgeons ⇌ 6(1).

C.J.S. Physicians, Surgeons and Other Health-Care Providers §§ 2 to 5, 14, 15, 28.

Law Review and Bar Journal References:

"Guideline for Joint Policy Statement on Nursing Service," 69 J.K.M.S. 66, 67 (1968).

"Physician's Assistant and Nurse Practitioner Laws: A Study of Health Law Reform," Philip C. Kissam, 24 K.L.R. 1, 12, 22, 23, 26, 27 (1975).

"Recent Legislation: The Kansas Approach to Medical Malpractice," Nancy Neal Scherer and Robert P. Scherer, 16 W.L.J. 395, 407 (1977).

Attorney General's Opinions:

Persons deemed engaged in the practice of healing arts. 85-92.

Tests for alcohol or drugs; who may administer. 87-64.

Master level psychologists; supervision; limitations on practice. 87-184.

Mobile intensive care technicians; authorized activities. 90-134.

CASE ANNOTATIONS

1. Mentioned; terms "physician" and "qualified medical technician" as used in 8-1003 interpreted. *State v. Carter*, 202 K. 63, 66, 446 P.2d 759.

2. Cited; practice of healing arts does not include those whose services are performed under supervision of a licensed practitioner. *State, ex rel., v. Doolin & Shaw*, 209 K. 244, 257, 262, 497 P.2d 138.

3. Cited; ambulance services as professional services and exempt from bidding requirements in home rule statute (19-214) examined. *Curtis Ambulance v. Shawnee Cty. Bd. of Cty. Com'rs*, 811 F.2d 1371, 1381 (1987).

65-2872a. Practice of certain naturopaths permitted without approval by board; certain activities prohibited. Any naturopath who is a graduate of a nationally recognized naturopathic college as approved by the state naturopath association and practicing in the state of Kansas as of January 1, 1982, shall be permitted to practice in Kansas without approval by the board of healing arts. No naturopath shall be permitted to practice surgery, obstetrics or write prescriptions for prescription drugs.

History: L. 1982, ch. 378, § 6; July 1.

65-2873. License to practice healing arts by examination; prerequisites; postgraduate study; use of title and degree. (a) Each applicant for a license by examination to practice any branch of the healing arts in this state shall:

(1) Present to the board evidence of proficiency in the basic sciences issued by the national board of medical examiners, the board of examiners of osteopathic physicians and sur-

geons or the national board of chiropractic examiners or such other examining body as may be approved by the board or in lieu thereof pass such examination as the board may require in the basic science subjects;

(2) present proof that the applicant is a graduate of an accredited healing arts school or college; and

(3) pass an examination prescribed and conducted by the board covering the subjects incident to the practice of the branch of healing art for which the applicant applies.

(b) Any person seeking a license to practice medicine and surgery shall present proof that such person has completed acceptable postgraduate study as may be required by the board by regulations.

(c) The board may authorize an applicant who does not meet the requirements of paragraph (2) of subsection (a) to take the examination for licensure if the applicant:

(1) Has completed three years of postgraduate training as approved by the board;

(2) is a graduate of a school which has been in operation for not less than 15 years and the graduates of which have been licensed in another state or states which has standards similar to Kansas; and

(3) meets all other requirements for taking the examination for licensure of the Kansas healing arts act.

(d) In addition to the examination required under paragraph (3) of subsection (a), if the applicant is a foreign medical graduate the applicant shall pass an examination given by the educational commission for foreign medical graduates.

(e) No person licensed to practice and actively engaged in the practice of the healing arts shall attach to such person's name any title, or any word or abbreviation indicating that such person is a doctor of any branch of the healing arts other than the branch of the healing arts in which such person holds a license but shall attach to such person's name the degree or degrees to which such person is entitled by reason of such person's diploma.

History: L. 1957, ch. 343, § 73; L. 1969, ch. 299, § 16; L. 1976, ch. 273, § 34; L. 1985, ch. 216, § 2; July 1.

Research and Practice Aids:

Physicians and Surgeons ⇌ 5(2).

C.J.S. Physicians and Surgeons §§ 13, 23.

Law Review and Bar Journal References:

"Use of Medical Expert Testimony on Standard Care for Chiropractors," Timothy Short, Vol. VIII, No. 5, J.K.T.L.A. 19 (1985).

65-2873a. Board authorized to grant license in particular circumstances; exceptions; requirements. Notwithstanding the provisions of K.S.A. 65-2873, the state board of healing arts may grant a license to practice medicine and surgery and renew the same annually as provided in K.S.A. 65-2809 to any person who meets all of the requirements of K.S.A. 65-2873, except the requirements of clause (2) of subsection (a) of such section, if such person is a citizen of the United States, a resident of Kansas, has a fellowship license, has been employed as a physician or by the state of Kansas for twenty (20) years or more, has been the head of a state hospital for five (5) years or more and has successfully completed the licensing examinations given by the state board of healing arts.

History: L. 1978, ch. 248, § 1; Feb. 4.

65-2874. Accredited school of medicine defined; rules and regulations establishing criteria; questionnaire developed by board; authority to contract for assistance in obtaining information about schools. (a) An accredited school of medicine for the purpose of this act shall be a school or college which requires the study of medicine and surgery in all of its branches, which the board shall determine to have a standard of education substantially equivalent to the university of Kansas school of medicine. All such schools shall be approved by the board.

(b) The board shall adopt rules and regulations establishing the criteria which a school shall satisfy in meeting the standard established under subsection (a). The criteria shall establish the minimum standards in the following areas:

- (1) Admission requirements;
- (2) basic science coursework;
- (3) clinical coursework;
- (4) qualification of faculty;
- (5) ratio of faculty to students;
- (6) library;
- (7) clinical facilities;
- (8) laboratories;
- (9) equipment;
- (10) specimens;
- (11) financial qualifications; and
- (12) accreditation by independent agency.

(c) The board may send a questionnaire developed by the board to any school for which the board does not have sufficient information to determine whether the school meets the requirements of this statute or rules and reg-

ulations adopted pursuant to this statute. The questionnaire providing the necessary information shall be completed and returned to the board in order for the school to be considered for approval.

(d) The board is authorized to contract with investigative agencies, commissions or consultants to assist the board in obtaining information about schools. In entering such contracts the authority to approve schools shall remain solely with the board.

History: L. 1957, ch. 343, § 74; L. 1985, ch. 216, § 3; July 1.

Research and Practice Aids:

Physicians and Surgeons ⇨ 4.

C.J.S. Physicians, Surgeons and Other Health-Care Providers §§ 19, 20.

CASE ANNOTATIONS

1. Provision in 65-1631 restricting approval for examination and registration is unlawful delegation of legislative authority. *Gumbhir v. Kansas State Board of Pharmacy*, 228 K. 579, 586, 618 P.2d 837.

65-2875. Accredited schools of osteopathic medicine defined. An accredited school of osteopathic medicine for the purpose of this act shall be a school or college which requires the study of osteopathic medicine and surgery in all of its branches which the board shall determine to have a standard of education not below that of the Kirksville college of osteopathy and surgery. All such schools shall be approved by the board.

History: L. 1957, ch. 343, § 75; L. 1976, ch. 273, § 35; Feb. 13.

65-2876. Accredited school or college of chiropractic, defined. An accredited school or college of chiropractic for the purpose of this act shall be a school or college teaching chiropractic which the board shall determine to have a standard of education not below that required for a recognized or accredited status with the council on chiropractic education. All such schools shall be approved by the board.

History: L. 1957, ch. 343, § 76; L. 1976, ch. 273, § 36; L. 1978, ch. 251, § 1; July 1.

Law Review and Bar Journal References:

"Should You Take A Chiropractor To Court?," Steven M. Dickson, J.K.T.L.A., Vol. XIII, No. 3, 19, 20 (1990).

CASE ANNOTATIONS

1. Healing arts act held constitutional. *Sutherland v. Ferguson*, 194 K. 35, 38, 397 P.2d 335.


2. Provision in 65-1631 restricting approval for examination and registration is unlawful delegation of legislative authority. *Gumbhir v. Kansas State Board of Pharmacy*, 228 K. 579, 584, 618 P.2d 837.

65-2877. Approval of healing arts schools; inspection. No school of the healing



623 SW 10th Avenue
 Topeka KS 66612-1627
 785.235.2383
 800.332.0156
 Fax 785.235.5114
 kmsonline.org

To: Senate Public Health and Welfare Committee

From: Jerry Slaughter
 Executive Director 

Date: February 25, 2002

Subject: SB 610; concerning the licensure of naturopaths

The Kansas Medical Society appreciates the opportunity to appear today as you consider SB 610, which would license naturopaths for the first time in our state. Although we do not support this bill as it is currently written, we would support a bill that grants legal recognition to naturopaths with certain restrictions on their authorized scope of practice. Our problem with this bill is that it describes a scope of practice for naturopaths that is overly broad and not clear enough about what is being authorized.

The credentialing study conducted by KDHE concluded that regulation by the state was the preferred means to protect the public from the potential harm that could be caused by unqualified naturopathic practitioners. While we believe that registration would be an appropriate method of regulation, KDHE felt differently. It is clear that there are at least three groups of individuals who identify themselves as naturopathic practitioners: those who are graduates of the few colleges of naturopathy, those who obtain a naturopathic degree or certificate through limited or non-accredited training programs, and some who simply utilize the term with little or no formalized training. The effect of the bill before you would be to restrict the practice of naturopathy exclusively to those individuals who have graduated from one of the colleges of naturopathy approved by the Board of Healing Arts.

While the KDHE credentialing process did make findings about the level of regulation, it did not make specific findings about the scope of practice that is appropriate for naturopaths. This area is our major problem with this bill. To get a picture of the scope of practice authorized under the bill one must read New Section 13, which contains most of the language about scope of practice, in conjunction with the definitions found in New Section 2 of the bill. Read together, the two sections are somewhat contradictory and vague. In other words, an act that seems to be prohibited in New Section 13, then is apparently authorized because it is included in the definitions on New Section 2, or authorized later in New Section 13.

An example can be found on page 7, line 19, where naturopaths are prohibited from administering ionizing radioactive substances for therapeutic purposes, then on page 8, lines 3-7,

*Senate Public Health & Welfare Committee
 Note: February 25, 2002*

att 3

- ▶ From the information provided, it appears that a very small percentage of naturopathic physicians practice under the direction of inpatient facilities; most provide primary care. Evidence was provided which indicates that this arrangement is not adequate to protect the public from harm. Therefore, Criterion III is met.
- ▶ Criterion IV is recognized as asking for documentation on why registration and certification or other, less regulatory means, are not effective in protecting the public from harm. Evidence was provided which indicates there are no federal, state or non-governmental programs available for the certification or registration of naturopathic physicians. Thus, Criterion IV is found to be met.
- ▶ Licensing the occupation appears to have minimal impact on the cost of health care. Criterion V is met.
- ▶ Licensing the occupation appears to have minimal impact on the availability of health care personnel providing services. Thus, Criterion VI is met.
- ▶ The scope of practice of the occupation is identifiable. Criterion VII is met.
- ▶ From the information provided, it appears that licensure of naturopathic physicians would have minimal effect on the scope of practice of other health care personnel. Therefore, Criterion VIII is met.
- ▶ Nationally recognized standards of education for providing naturopathic physician services exist and are identifiable. Criterion IX is met.
- ▶ With the first nine criteria having been found to be met, credentialing of the profession to protect the public from the documented harm is appropriate. Licensure was determined to be the least regulatory means of ensuring that the public is protected from the documented harm.

The Secretary of Health and Environment's Findings, Conclusions and Recommendations Are:

- ▶ After consideration of the technical committee's report and the evidence and testimony presented to the committee, I concur with the technical committee's findings and conclusions. I find that the first nine criteria have been met.
- ▶ I concur that sufficient evidence was presented to warrant credentialing of naturopathic physicians in order to protect the public, and that licensure of naturopathic physicians is the appropriate level of credentialing to ensure protection from the documented harm.

Signature Building
1000 SW Jackson, Suite 330
Topeka, KS 66612-1365

Phone: (785)296-0056
Fax: (785)296-3075

relationship with a naturopathic practitioner and don't understand why it is necessary to enact additional laws. And finally, there are members who believe there are naturopaths practicing in Kansas unlawfully and that they pose a genuine threat of potential harm to the public."

Earlier in the month, Mr. Wheelen drafted an amendment to KSA 65-2872a which included:

"(c) Persons who have received a doctor of naturopathy degree or doctor of naturopathic medicine degree from one of the colleges listed in the registry created pursuant to subsection (b) of this section shall be permitted to practice in Kansas without approval by the board of healing arts provided such person does not: (1) perform surgery or other invasive procedures, (2) practice obstetrics or otherwise assist in the delivery of infants, or (3) order prescriptions for, administer, or furnish prescription only drugs;" and,

"(e) It shall be prima facia evidence of a violation of the healing arts act if a person who has not received a doctor of naturopathy degree or doctor of naturopathic medicine degree from one of the colleges listed in the registry created pursuant to subsection (b) of this section attaches to their name the title N.D., D.N.M., naturopath, doctor of naturopathy, naturopathic healer or any other word or abbreviation indicating they are engaged in the practice of naturopathy."

QUESTION: Why, if members of the KAOM has a complementary relationship with a "naturopathic practitioner", would the KAOM seek to eliminate language "indicating . . . (engagement) in the practice of naturopathy", or contrarily, why, if members believe "there are naturopaths practicing, . . . (who) pose a genuine threat of potential harm to the public" would the KAOM seek to permit these persons "to practice in Kansas without approval by the board of healing arts"?

Honorable Representatives of the Subcommittee, do you see the kind of confusing tactics and suggestions that are being waged and proposed to distract you from the opinion of the Secretary of Health and the Environment, as printed in his Final Report to the Legislature on February 7, 2002?:

- ◇ "I concur that sufficient evidence was presented to warrant credentialing of naturopathic physicians in order to protect the public, that licensure of naturopathic physicians is the appropriate level of credentialing to ensure protection from the documented harm."

Please vote yes on SB610.

Elise Nelson, N.D.
PO Box 1225
Lawrence, KS 66044

785-842-3654
phone & fax

ADDENDUM TO:
REMARKS PREPARED FOR
THE HOUSE SUBCOMMITTEE, RE: SB610

re: The KMS

On January 24, 2002 Mr. Jerry Slaughter of the KMS sat down with KNPA members and Mr. John Federico and outlined "the consistent opinion of KMS" -- that "physicians have the broadest and deepest training", and that therefore, naturopaths are not to be called physicians, nor engage in "obstetrics", "surgery", or the "prescribing" of drugs.

On February 25, 2002, in his testimony before the Senate Public Health and Welfare Committee, Mr. Slaughter writes: "Our problem with this bill is that it describes a scope of practice for naturopaths that is overly broad and not clear enough about what is being authorized."

He then goes on to say, "It is clear that there are at least three groups of individuals who identify themselves as naturopathic practitioners: those who are graduates of a few colleges of naturopathy, those who obtain a naturopathic degree or certificate through limited or non-accredited training programs, and some who simply utilize the term with little or not formalized training. The effect of the bill . . . would be to restrict the practice of naturopathy exclusively to those individuals who have graduated from one of the colleges of naturopathy approved by the Board of Healing Arts."

QUESTION: Why is the KMS insistent that physicians belong to an exclusive group with the broadest and deepest training, while construing that licensure of naturopaths is exclusionary and wrongly so?

re: The KAOM

On February 25, 2002, in his testimony before the above cited committee, Mr. Chip Wheelen representing the interests of osteopathic physicians writes: "Our members are somewhat divided on the general question of statutory credentialing of naturopathic practitioners. Some of them insist that the education and training of persons with a doctor of naturopathy degree could not possibly be as rigorous as the academic and clinical training requirements for a doctor of osteopathy or doctor of medicine degree. . . Other members already have a complementary

- ▶ From the information provided, it appears that a very small percentage of naturopathic physicians practice under the direction of inpatient facilities; most provide primary care. Evidence was provided which indicates that this arrangement is not adequate to protect the public from harm. Therefore, Criterion III is met.
- ▶ Criterion IV is recognized as asking for documentation on why registration and certification or other, less regulatory means, are not effective in protecting the public from harm. Evidence was provided which indicates there are no federal, state or non-governmental programs available for the certification or registration of naturopathic physicians. Thus, Criterion IV is found to be met.
- ▶ Licensing the occupation appears to have minimal impact on the cost of health care. Criterion V is met.
- ▶ Licensing the occupation appears to have minimal impact on the availability of health care personnel providing services. Thus, Criterion VI is met.
- ▶ The scope of practice of the occupation is identifiable. Criterion VII is met.
- ▶ From the information provided, it appears that licensure of naturopathic physicians would have minimal effect on the scope of practice of other health care personnel. Therefore, Criterion VIII is met.
- ▶ Nationally recognized standards of education for providing naturopathic physician services exist and are identifiable. Criterion IX is met.
- ▶ With the first nine criteria having been found to be met, credentialing of the profession to protect the public from the documented harm is appropriate. Licensure was determined to be the least regulatory means of ensuring that the public is protected from the documented harm.

The Secretary of Health and Environment's Findings, Conclusions and Recommendations Are:

- ▶ After consideration of the technical committee's report and the evidence and testimony presented to the committee, I concur with the technical committee's findings and conclusions. I find that the first nine criteria have been met.
- ▶ I concur that sufficient evidence was presented to warrant credentialing of naturopathic physicians in order to protect the public, and that licensure of naturopathic physicians is the appropriate level of credentialing to ensure protection from the documented harm.

Signature Building
1000 SW Jackson, Suite 330
Topeka, KS 66612-1365

Phone: (785)296-0056
Fax: (785)296-3075

amendments that are attached to this testimony. I employed the following principles in drafting the amendments: (1) The bill should adhere to commonly accepted rules of the English language, (2) it should be clearly understandable and make sense, (3) it should not allow naturopathic doctors to order or administer prescription-only medication, (4) it should not allow naturopathic doctors to perform surgery or other invasive procedures, and (5) it should not allow naturopathic doctors to deliver infants.

On page one:

The definition contained in subsection (b) of section 2 is, in part, a statement of one of the principles of osteopathic philosophy. By deleting superfluous language and connecting the sentences, the definition would be more specific to naturopathy. The amendment in subsection (e) of section 2 makes it clear that the homeopathic pharmacopoeia must be recognized by the U.S. Food and Drug Administration.

Natural Medical Care

786-749-7455

02/20/02 10:55A P.004

Drafted by C. Wheelen, KAOM
February 2002

Sec. []. K.S.A. 65-2872a is hereby amended to read as follows: 65-2872a. (a) Any naturopath who is a graduate of a nationally recognized naturopathic college as approved by the state naturopath association and practicing in the state of Kansas as of January 1, 1982, shall be permitted to practice in Kansas without approval by the board of healing arts. No naturopath shall be permitted to practice surgery, obstetrics or write prescriptions for prescription drugs.

(b) On and after July 1, 2002 the board of healing arts shall create and maintain a registry of accredited naturopathic colleges located in the United States that award a doctor of naturopathy degree or doctor of naturopathic medicine degree.

(c) Persons who have received a doctor of naturopathy degree or doctor of naturopathic medicine degree from one of the colleges listed in the registry created pursuant to subsection (b) of this section shall be permitted to practice in Kansas without approval by the board of healing arts provided such person does not: (1) perform surgery or other invasive procedures, (2) practice obstetrics or otherwise assist in the delivery of infants, or (3) order prescriptions for, administer, or furnish prescription-only drugs.

(d) It shall be prima facie evidence of a violation of the healing arts act if a person who has not received a doctor of naturopathy degree or doctor of naturopathic medicine degree from one of the colleges listed in the registry created pursuant to subsection (b) of this section publicly professes to be a naturopath, doctor of naturopathy, or naturopathic healer, or publicly

has not received a doctor of naturopathy degree or doctor of naturopathic medicine degree from one of the colleges listed in the registry created pursuant to subsection (b) of this section publicly professes to be a naturopath, doctor of naturopathy, or naturopathic healer, or publicly professes to assume the duties incident to the practice of naturopathy.

(e) It shall be prima facie evidence of a violation of the healing arts act if a person who has not received a doctor of naturopathy degree or doctor of naturopathic medicine degree from one of the colleges listed in the registry created pursuant to subsection (b) of this section attaches to their name the title N.D., D.N.M., naturopath, doctor of naturopathy, naturopathic healer, or any other word or abbreviation indicating that they are engaged in the practice of naturopathy.

definitions on New Section 2, or authorized later in New Section 13.

An example can be found on page 7, line 19, where naturopaths are prohibited from administering ionizing radioactive substances for therapeutic purposes, then on page 8, lines 3-7,

Kansas Association of



Osteopathic Medicine

1260 SW Topeka Boulevard
Topeka, Kansas 66612

Phone (785) 234 5563
Fax (785) 234 5564

Testimony on Senate Bill 610
Senate Public Health and Welfare Committee
By Charles L. Wheelen
February 25, 2002

Thank you for this opportunity to express our opposition to SB610. This bill contains technical flaws as well as unacceptable public policy objectives. Most important, it authorizes the practice of medicine and surgery in addition to the practice of naturopathy.

Our members are somewhat divided on the general question of statutory credentialing of naturopathic practitioners. Some of them insist that the education and training of persons with a doctor of naturopathy degree could not possibly be as rigorous as the academic and clinical training requirements for a doctor of osteopathy or doctor of medicine degree. And for that reason, we should oppose any naturopathy credentialing based on qualifications alone. Other members already have a complementary relationship with a naturopathic practitioner and don't understand why it is necessary to enact additional laws. And finally, there are members who believe there are naturopaths practicing in Kansas unlawfully and that they pose a genuine threat of potential harm to the public. This last group would agree with the Secretary of Health and Environment that naturopathic practitioners should be regulated and be held to a level of responsibility similar to the responsibility of persons licensed under the Healing Arts Act.

Senate Bill 610 appears to be drafted using two different sources. The administrative features delegating responsibility to the Board of Healing Arts are similar to the recently enacted Kansas laws governing licensure of respiratory therapists. These sections of the bill are generally acceptable. But other sections of SB610 appear to be copied from previous bills which were originally borrowed from other states. If the Legislature were to pass these sections without scrutiny, you would be adopting the mistakes of other states including misspelled words, poorly structured sentences, confusing mixed subjects, and vague references, as well as questionable public policy. -

In order to point out the flaws and policy questions that I identified in SB610, I drafted some amendments that are attached to this testimony. I employed the following principles in drafting the amendments: (1) The bill should adhere to commonly accepted rules of the English language, (2) it should be clearly understandable and make sense, (3) it should not allow naturopathic doctors to order or administer prescription-only medication, (4) it should not allow naturopathic