

Report of Final Findings and Recommendations

By the
Technical Committee for the Review of the
Application for Credentialing by the
Naturopathic Physicians of Nebraska

To the
Board of Health,
Director of Health,
and the
Nebraska Legislature

December 15, 1986

The members appointed by Gregg F. Wright, M.D., M.Ed., Director of Health, to serve on the Naturopathic Physicians Technical Committee are as follows:

Larry B. Bartels, R.P.T., (Chairman) Registered Physical Therapist (Lincoln)

Randall Bradley, N.D., Naturopathic Physician, and representative of the
Nebraska Naturopathic Physicians Association
(Lincoln)

Jerry E. Clark, Ph.D., Professor of Sociology, Creighton University
(Omaha)

Jack Crowley, Clothing Store Owner (Hastings)

Ronald Klutman, M.D., Physician, and representative of the Nebraska
Medical Association (Columbus)

Donald J. Kramper, Farmer (Dakota City)

Althea Rainge, Senior Creative Marketing Specialist (Omaha)

SUMMARY OF COMMITTEE FINDINGS
AND RECOMMENDATIONS ON THE PROPOSAL

The committee decided not to recommend the credentialing of naturopathic physicians. However, a majority of committee members agreed that there is harm to the public inherent in the current situation of not allowing naturopathic physicians to practice in Nebraska. A majority of the committee was convinced that a significant number of Nebraskans were not getting their health care needs satisfied within the context of current medical practice.

However, a majority of the committee did not believe that the credentialing of naturopathic physicians was the answer to this problem. Instead, some committee members suggested that medical schools do a better job of educating their students as regards matters of diet, nutrition, and natural medicines, and that greater emphasis be placed on these areas of practice by physicians.

INTRODUCTION

The Nebraska Credentialing Review Program, established by the Nebraska Regulation of Health Professions Act (LB 407) is a review process advisory to the Legislature which is designed to assess the necessity of the state regulation of health professions in order to protect the public health, safety, and welfare.

The law directs those health occupations seeking credentialing or a change in scope of practice to submit an application for review to the Director of Health. At that time, an appropriate technical committee is formed to review the application and make recommendations after a public hearing is held. The recommendations are to be made on whether the health occupation should be credentialed according to the three criteria contained within Section 71-6221 Nebraska State Statutes; and if credentialing is necessary, at what level. The relevant materials and recommendations adopted by the technical committee are then sent to the Board of Health and the Director of Health for their review and recommendations. All recommendations are then forwarded to the Legislature.

SUMMARY OF THE PROPOSAL

The Naturopathic Physicians of Nebraska seek licensure so that primary natural care and preventive natural health care can be made legally available to those who desire this type of service.

The applicants stated that their proposal for licensure will guarantee a minimal level of expertise in the field of naturopathic medicine. Under the terms of this proposal, the following conditions would have to be met before a candidate could become a licensed naturopathic physician: applicants must possess a doctoral degree from an accredited four-year naturopathic medical college; and they must pass a competency-based examination developed by the ACSI National Assessment Institute in conjunction with the American Association of Naturopathic Physicians and several state boards and licensing agencies. The educational requirements include two years of supervised clinical internship and preceptorships under licensed physicians. There are no experience requirements beyond the academic requirements and the examination.

Preceptorships would be limited to programs approved by accredited naturopathic medical colleges. Residencies would be limited to programs approved by the accredited colleges, national associations, or the Board of Naturopathic Examiners and only open to graduates of accredited naturopathic colleges. In the opinion of the applicants these requirements would serve to assure the public that naturopathic physicians in Nebraska would conform to minimum standards of competence. The proposal would prohibit anyone from practicing

naturopathic medicine unless he or she undergoes this process of training and passes the examination for licensure.

The application requests a limited scope of practice that is comparable to that traditionally practiced by naturopaths in the other states that currently license naturopathic physicians. This includes diagnosis using the standard exams and lab tests of general practice and the treatment of disease using natural medicines and therapies. It specifically excludes major surgery, therapeutic radiation and most pharmaceuticals.

A Board of Naturopathic Examiners would be created, and would function within the Bureau of Examining Boards of the Nebraska Department of Health. The Board would consist of four members, three of whom would be licensed as naturopathic physicians and a fourth who would be a lay person.

The proposal does provide for a grandfather clause in the form of a "limited license." These practitioners would be eligible for consideration for limited licensure if and only if they have been in practice in Nebraska since 1984 and if within ninety days after the proposal's operative date they submit their credentials to the Board for evaluation. If they meet minimum educational requirements, the Board may grant them a limited license. Their scope of practice would be established by the Board in terms commensurate with their level of training. (See below for the applicant's revisions on grandfathering.)

The proposal does provide for reciprocity. An applicant for licensure may be issued a license without examination, if within ninety days of the proposal's operative date he or she submits proof to the satisfaction of the Board of Naturopathic Examiners of 1) licensure in

naturopathy in another state which has similar standards to those of the proposal, 2) good moral character, and 3) the license has never been suspended or revoked. (See below for the applicant's revisions on reciprocity.)

To have his or her license renewed, each licensee must have complied with the Department of Health's rules and regulations, paid the renewal fee, and submitted to the Department of Health evidence of successful completion of the required hours of continuing education from approved programs. The Board will set the number of required hours of continuing education. (See below for the applicant's revisions on license renewal.)

Revisions to the Original Proposal

Grandfathering

A person would become eligible for licensure if he or she has passed the same examination prescribed by the Department for regular licensure and if within ninety days of the proposal's operative date that he or she submits proof to the satisfaction of the Department that:

- (a) he or she has a doctorate degree in naturopathic medicine from a college that is approved by the Department, with the recommendation of the Board; and
- (b) he or she was in Nebraska in practice before 1987, where practice shall mean providing health care services using naturopathic or natural therapies or medicines to patients in Nebraska on a regular ongoing basis.

Reciprocity

A person would be qualified to be licensed under this Act without examination if he or she has been duly licensed to practice naturopathic

medicine, naturopathy or drugless therapeutics in another state or territory of the United States of America or the District of Columbia under conditions and circumstances which the Board shall find to be comparable to the requirements of the State of Nebraska for obtaining a license to practice naturopathic medicine; provided:

- (a) Such state, territory or the District of Columbia requires the successful completion of a written professional examination for the issuance of such a license; and
- (b) The applicant has produced evidence satisfactory to the Department that:
 - (i) he or she is a graduate of a four-year naturopathic medical college approved by the Department with the recommendation of the Board;
 - (ii) his or her license has not been suspended or revoked;
 - (iii) he or she has been actively engaged in the practice of naturopathic medicine, naturopathy or drugless therapeutics for at least one of the last four years; and
 - (iv) he or she is of good moral character.

License Renewal

To have his or her license renewed each naturopathic physician would have to have complied with the requirements of the Section 71-110 of the Uniform Licensing Law for license renewal and have submitted to the Department evidence of successful completion of the required hours of continuing education from programs approved by the Department, with the recommendation of the Board, according to the standards set out in Section 71-161.10 of the Uniform Licensing Law. The Department, with

the recommendation of the Board, shall adopt rules as to what constitutes an approved program.

The total number of required continuing education hours for all naturopathic physicians shall be at least 30 approved hours biennially. The number and type of required continuing education hours for those naturopathic physicians certified in naturopathic obstetrics shall be 15 approved specialty hours in obstetrics or natural childbirth plus an additional 20 approved hours biennially for a total of 35 approved hours biennially.

OVERVIEW OF COMMITTEE PROCEEDINGS

The Naturopathic Physicians Technical Committee held its first meeting on August 27, 1986, in Lincoln at the State Office Building. An orientation session given by the staff focused specifically on the role, duties, and responsibilities of the committee under the credentialing review process. Other areas discussed were the three criteria for credentialing contained in the Nebraska Regulation of Health Professions Act, and the potential problems that the committee might confront while proceeding through the review.

The second meeting of the committee was held on September 22, 1986, in Lincoln at the State Office Building. After studying the proposal and relevant material compiled by the staff, the committee formulated a set of questions and issues it felt needed to be addressed at the public hearing. Contained within these questions and issues were specific requests for information that the committee felt was needed before any decisions could be made.

The committee reconvened on October 7, 1986, in Lincoln at the State Office Building for the public hearing. Proponents, opponents, and neutral parties were given the opportunity to express their views on the proposal, and to discuss the questions and issues raised by the committee at the second meeting. Interested parties were given ten days to submit final comments to the committee.

Written material submitted to the committee for consideration by the proponents included the application itself, research and studies, a sample of a textbook on naturopathic therapeutics, personal testimonials from doctors and citizens, and petitions containing 2,250 names and

approximately 200 letters from Nebraskans requesting licensure of naturopathic physicians. Written material submitted by the opponents included definitions of family practice and primary care and lists of educational requirements for medical physicians and family practice residents.

The fourth meeting of the committee convened on November 6, 1986, in Lincoln at the State Office Building. After studying all of the relevant information concerning the proposal, the committee formulated its recommendations. These recommendations were based upon the three criteria found in the Nebraska Regulations of Health Professions Act.

Questions and Issues Raised by the
Naturopathic Physicians Technical Committee
for the Applicants to Address
at the Public Hearing

1. The Committee wanted to see examples of clinical research being done in the field of Naturopathy, published studies if possible.
2. The Committee requested that the applicant provide them with a textbook of naturopathic medicine.
3. The Committee wanted to know what type of natural medicines were used, and where these could be acquired and at what cost.
4. The Committee wanted to know why some states have de-licensed naturopathic medicine.
5. What mechanism exists for the self-regulation of the profession, and what efforts have been made at self-regulation?
6. The Committee wanted evidence that the qualifying examination is derived independently from the colleges and Boards, and that there are independent methods of evaluating proficiency.
7. The Committee wanted to know how the applicant group was going to deal with the problem of current practitioners who fail to meet the standards of the application. Will a grandfather clause be used? Will there be provisions for reciprocity with other states?
8. The Committee wanted information on the academic qualifications of instructors at colleges of naturopathy.
9. The Committee wanted information on the amount of training in nutrition naturopaths receive, and how this training differs from that received by a nutritionist.
10. The Committee asked for information on the number of applicants that are accepted at schools of naturopathy each year, the proportion that graduate, and the proportion that pass the examination.
11. The Committee asked why there has been a resurgence of the philosophy of naturopathic medicine in the recent past, and whether this can be measured.
12. The Committee asked how insurance coverage for services would be handled.
13. The Committee asked for information on malpractice insurance.

14. The Committee asked for statistics on any cost differential between naturopathic medicine and traditional medicine.
15. The Committee asked why traditional medicine has not endorsed natural medicines if they are effective.
16. The Committee asked for information on they type of situation in which a naturopath would refer a patient to an allopathic practitioner. The Committee asked for evidence of referrals, both to and from naturopathic physicians.

SUMMARY OF EVIDENCE AND FINDINGS

Criterion 1

Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument.

Information Provided by the Applicant Group

The applicant group in their application for credentialing stated that the current practice situation prevents those members of the public who desire natural health care from getting this care. Many of these people are former patients of allopathic medical practitioners who did not get their health care needs satisfied. Naturopathic medicine offers these people alternative solutions to their health problems. However, because of the current practice situation prohibiting naturopaths from practicing medicine, these people are suffering needlessly. (The application, p. 24)

The applicant group stated that many people turn to untrained persons claiming knowledge of natural therapies. The current unregulated state of naturopathy prevents the public from being able to differentiate competent from incompetent naturopaths. Unqualified practitioners of naturopathy may improperly diagnose disease, not recognize conditions requiring referral, improperly dispense natural medicines or therapies, damage the reputation and good will of those professionals qualified to offer natural health care services, in particular, bona-fide naturopathic physicians. (The application, p. 23)

The applicant group identified other sources of harm to the public in the current situation. The applicants claim that the basic cost of natural health care is generally lower than the comparable cost of allopathic medical care. The cost of prescription drugs and surgical procedures, for example, are major factors in the high cost of allopathic health care. The applicants believe that natural medicines and therapies cost less than those of traditional medical practice. (The application, p. 24)

The applicants stated that there is potential harm to the public in the relative lack of primary preventive medicine practiced in Nebraska. The current practice situation, by suppressing those who specialize in preventive care, namely naturopathic physicians, inhibits the development of preventive medical techniques. The applicants state that allopathic physicians are not as well trained in primary prevention as are naturopathic physicians. (The application, p. 25)

Information from Other Sources

The opponents stated that there is no harm to the public inherent in the current practice situation. They stated that allopathic physicians have already learned to use noninvasive treatment methods. In their judgment there is no need for the state of Nebraska to license naturopaths. To do so would establish a separate medical profession parallel to the one already in existence. This would not only be unnecessary, but would be costly, inefficient, and potentially harmful to the public. (Transcript of the public hearing, p. 92)

The opponents argued that the wholistic approach to patient care is not unique to naturopathy. In their judgment, the expression "treat the whole person" is a naturopathic euphemism for common sense, and

licensing people to exercise common sense is not appropriate. Medical doctors are already capable of doing everything that a naturopath does, and more. (Transcript of the public hearing, pp. 139-140)

The opponents stated that the applicant group has consistently misrepresented the medical profession as being eager to use drugs. In fact, allopathic physicians prescribe drugs only as a last resort. They too seek to treat the patient without the use of what the applicants call "high tech drugs." The opponents also stated that the discrepancy between the cost of the medicines allopaths prescribe and those prescribed by naturopaths was greatly exaggerated by the proponents. Medicines obtained at health food stores are just as expensive as those obtained at a pharmacy. (Transcript of the public hearing, pp. 140, 144-145, and 146)

The opponents also discussed what they perceived as the potential harm of the application. One speaker stated that naturopaths are inadequately trained to do emergency care. This would be a very real problem in remote rural areas in Nebraska where primary care physicians must do emergency care themselves. No referral is possible. The opponents also stated that naturopaths are not well versed in the use of modern diagnostic devices such as electroencephalographs, and lack adequate training in the area of x-ray technology and obstetrics.

The opponents disputed the applicants' claim that natural medicines are inherently safer than other medicines. They pointed out that natural medicines can be toxic if taken in inappropriate amounts. They went on to question whether the term "natural medicine" is a meaningful one, anyway. The medicines used by naturopaths are not necessarily any

more natural than those used by allopaths. (Transcript of the public hearing, pp. 141, and 142-144)

Rebuttal to Opponents Testimony

The opponents testified that they are already capable of using natural and noninvasive medicines and therapies. On questioning it was admitted that they may use some nutrition but do not use other natural medicines. (Transcript of public hearing, pp. 133-134, 151) The proponents argued that if allopathic physicians were already supplying this kind of health care in the state there wouldn't so many Nebraskans wanting and seeking out naturopathic medicine, and it would not be in such demand in the states that licensed naturopathic medicine. (Transcript of public hearing, pp. 68, 70-73, 75, 78, 85, 87, 158, 161)

The opponents testified that licensing naturopathic physicians would harm the public. The opponents submitted no evidence to support this contention. The proponents submitted evidence that naturopathic medicine recently successfully completed "sunset review" in four states that currently license naturopaths. In all these states the state legislatures investigated the profession and found no evidence that the public was being harmed. In addition, it was stated that in these states the profession has a very low rate of malpractice. (Transcript of public hearing, p. 160 and "Final Testimony" submitted by the applicant group, p. 6)

The opponents testified that naturopaths have inadequate training compared to medical doctors. To support this contention the opponents submitted evidence of the extensive training of their board-certified specialists. The proponents agreed that naturopaths do not have the same training as allopathic board-certified specialists, but stated that

they have more than adequate training to practice naturopathic medicine and make any necessary referrals. They also discussed their own proposed limited scope of practice and favorably compared their minimum training to the minimum training that a medical doctor must have in order to be licensed to practice medicine in Nebraska. (Transcript of public hearing, pp. 157-158 and "Final Testimony" submitted by the applicant group, pp. 5-6.)

Analysis and Final Committee Findings

Clark moved that the unregulated condition of this practice can clearly harm or endanger the health, safety, or welfare of the public. Kramper seconded the motion. Voting aye were Clark, Bradley, Crowley, and Rainge. Voting nay were Kramper and Klutman. Chairperson Bartels abstained from voting. By this action, the committee agreed that there is harm to the public inherent in the current practice situation.

Prior to the voting, the committee agreed that the first criterion would have to be reinterpreted so as to be relevant to the particular application in question. This was necessitated by the fact that the first criterion is much more suited to the review of a practice that is permitted, although unregulated. This is not the case with naturopathy; because of the broad scope of their practice, naturopathic physicians who practice to the full extent of their training would be in violation of the Medical Practice Act. The committee reinterpreted the first criterion so as to require the committee to determine whether or not there is harm to the public inherent in the current practice situation of not allowing naturopathic physicians to practice in the state.

A majority of the committee was concerned that because of the current practice situation, some members of the public are not getting

their health care needs satisfied. The committee heard testimony to the effect that some people are not getting their health care needs met by allopathic physicians. The majority of committee members felt that consumers should have the right to choose a naturopathic physician for their primary care if they desire this type of care.

A majority of the committee was convinced that naturopathic medicine has helped some members of the public with their health care problems. The information presented at the public hearing played a large role in convincing the majority of committee members that naturopathy can be effective in treating some members of the public.

The opponents of the proposal questioned the scientific validity of naturopathic medicine, but some committee members disagreed and felt that there were adequate scientific studies supporting its practice. However, most committee members were more concerned that people have the freedom to choose the health care practitioner that they want. The majority felt that there was no persuasive evidence that the treatments and medicines of naturopathic physicians were ineffective or harmful.

Criterion 2

The public needs, and can reasonably be expected to benefit from an assurance of initial and continuing professional ability.

Information Provided by the Applicant Group

The applicant group stated that the current practice situation makes it difficult for the public to identify qualified practitioners. The applicants believe that this situation is harmful to that element of the public that is seeking the services of naturopathic physicians. The

applicants believe that these people need the state to provide them with a mechanism by which they can know who is qualified and who is not. The applicants believe that the credentialing of their occupation would provide the public with the assurance that licensed naturopaths would have the amount of formal training from an accredited school of naturopathy sufficient for them to practice naturopathic medicine in a competent manner. (The application, p. 28)

Information from Other Sources

The opponents stated that the public does not need the assurance of professional ability as concerns naturopathic physicians. They argue that there is no need for the services that the naturopaths provide, and thus no need for the public to have assurances as regards how well they are trained in their chosen profession. There is therefore no reason for the state of Nebraska to establish minimum educational requirements for naturopaths.

Analysis and Final Committee Findings

Bradley moved that the public needs and can reasonably benefit from an assurance of initial and continuing professional ability as regards naturopathic medicine. Rainge seconded the motion. Voting aye were Bradley, Clark, Crowley, Kramper, and Rainge. Voting nay was Klutman. Chairperson Bartels abstained from voting. By this action, the committee determined that the public would benefit from assurance of competence as regards naturopathic medicine.

A majority of the committee felt that the public was being harmed by untrained or incompetent practitioners of naturopathic medicine. The majority of the committee felt that something should be done to

establish minimum standards in this field so as to protect the public from unqualified practitioners.

Criterion 3

The public cannot be effectively protected by other means in a more cost-effective manner.

Information Provided by the Applicant Group

The applicant group stated that the problems associated with unqualified practitioners cannot be solved by any other means than by state regulation. Current laws prohibiting naturopaths from practicing medicine preclude the possibility of using current legal and administrative machinery to correct these problems. The only recourse for complaints against naturopaths are the civil courts or the attorney general's office where the patient can either sue the practitioner, or seek prosecution under criminal or consumer protection statutes, respectively.

The applicant group also stated that many of the problems associated with the current practice situation pertain directly to the legal restrictions placed on their occupation by the state. Current statutes have given the allopathic branch of the medical community a monopoly over the practice of medicine. In the opinion of the applicant group, this situation in and of itself has harmed the public. The only way to correct these problems is for the state to give naturopathic medicine legal recognition via the passage of a bill licensing naturopathic physicians in Nebraska. (The application, pp. 32-34)

Information from Other Sources

The opponents stated that there is no need whatsoever to alter the current practice situation as regards naturopathic medicine. In their judgment the applicant group has identified no actual problems with the current status of health care in Nebraska. Since there is no problem, there is no need to seek a solution. The public is already adequately protected by current laws, administrative procedures, and by the fact that medical doctors are required to have a license in order to practice medicine in Nebraska. In short, the current system provides a more cost-effective means of protecting the public than would the licensure of naturopathic physicians.

Analysis and Final Committee Findings

Clark moved that the public cannot be effectively protected by other means in a more cost-effective manner than the credentialing of naturopathic physicians. Kramper seconded the motion. Voting aye were Bradley and Clark. Voting nay were Crowley, Kramper, Rainge, and Klutman. Chairperson Bartels abstained from voting. By this action, the committee decided that there were other, more cost-effective, means of protecting the public.

The majority of the committee did not believe that the credentialing of naturopathic physicians was the appropriate means of addressing the problems previously identified. Several committee members stated that medical schools could do a better job of preparing physicians in the areas of diet, nutrition, and natural medicines.

Since the committee found that all three criteria were not satisfied, they were not able to recommend state regulation of naturopaths.

OTHER COMMITTEE CONSIDERATIONS

Some committee members stated that LB 407 should be revised so as to be more applicable to a proposal such as that of the naturopaths. Other committee members suggested that medical schools attempt to improve their curriculum as regards diet, nutrition, and natural medicines, and that practicing physicians pay more attention to these factors in patient care.

DISCUSSION OF THE APPROPRIATE LEVEL OF CREDENTIALING

In their application, the Naturopathic Physicians of Nebraska stated that licensure was the appropriate level of state regulation. Less restrictive levels would not give the public access to all of the services of naturopathic medicine, and without this, many Nebraskans will not get their health care needs satisfied.

The committee decided not to recommend the credentialing of naturopathic medicine in Nebraska at this time. As a result, no discussion of level of credentialing took place.

APPENDIX

Minority Report of the Technical Review Committee's Recommendation Regarding the Licensing of Naturopathy

While the majority of the Technical Committee did not recommend state regulation of naturopaths there is abundant evidence that the decision should have been otherwise. The majority of the Committee agreed that the current condition of not licensing naturopathic physicians to practice in Nebraska did cause harm or the potential for harm. There was also majority agreement that the public could be expected to benefit from an assurance of professional ability on the part of naturopaths. However, the majority of the Committee felt that the public could be effectively protected by other means in a more cost-effective manner.

This last position is difficult to understand in light of the first two votes. Since the majority of the Committee saw a harm in the present situation and saw a benefit in assuring the professional ability of naturopaths it is difficult to see how the public can be protected more effectively than licensing naturopaths. There are ample reasons for supporting all three questions.

The naturopaths did a commendable job of presenting their case to the Committee both in the written proposal and in the public hearing. Much of the written information was of a technical nature, but was overwhelmingly convincing in demonstrating the reliability and validity of naturopathy as a health care system. The "scientific proof" demanded by the opponents was abundantly presented in the written proposal. That

it was not published in the Journal of the American Medical Association and the New England Journal of Medicine is hardly surprising, since it is an alternative health care system to traditional allopathic medicine. Valid studies were presented which were published in reliable professional, scientific journals.

The opposition at the public hearing came from highly qualified members of the allopathic medical community. However, their opposition consisted almost entirely of presenting the qualifications of M.D.s. The credentials of current allopathic medical practitioners, however, is not in question. Few would deny the beneficial role allopathic medicine has played in contemporary society. They did not attempt to deal with the qualifications of the naturopaths as presented in the hearing and in the written proposal. One commented that it would be dangerous to license naturopaths but did not say why. A part of the problem lays in their assumption that naturopaths want to do what allopaths are already licensed to do. The proposal clearly indicates a very different treatment modality. Naturopathic education, as presented in the proposal, involves a thorough training in the kind of practice they intend to establish.

The licensure of naturopaths would be a cost effective way for the state of Nebraska to solve the problem of potential harm resulting from the current situation. Naturopathy offers an alternative mode of primary health care with proven efficacy. At present allopathic medicine has a monopoly on primary care in the state of Nebraska. To obtain primary care one must go to an M.D.

A significant number of Nebraskans desire an alternative in the form of naturopathy. While the state has the right and the obligation to protect its citizens it should not be in the business of protecting a monopoly. Allopathic medicine is a monopoly. They have developed a deserved reputation in our society as an effective health care system. But, it is the goal of the state to provide the best health care it can to all of societies citizenry. This means allowing people to chose the system which best serves their needs. For most Nebraskans this will be traditionally trained allopaths, for some it would be naturopaths. Nebraskans have a right to that choice.

