

Senator Michael S. Kennedy proposes the following substitute bill:

NATUROPATHIC PHYSICIAN AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael S. Kennedy

House Sponsor: James A. Dunnigan

LONG TITLE

General Description:

This bill modifies the prescribing authority of naturopathic physicians.

Highlighted Provisions:

This bill:

- ▶ describes what categories of prescription drugs a naturopathic physician may prescribe;
- ▶ allows the Division of Occupational and Professional Licensing to determine whether a naturopathic physician may prescribe newly created prescription drug categories;
- ▶ repeals the naturopathic formulary peer committee; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-71-102, as last amended by Laws of Utah 2014, Chapter 110



26 **58-71-804**, as last amended by Laws of Utah 2009, Chapter 42

27 ENACTS:

28 **58-71-203**, Utah Code Annotated 1953

29 REPEALS:

30 **58-71-202**, as last amended by Laws of Utah 2014, Chapter 110

31

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

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

34 **58-71-102. Definitions.**

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

36 (1) "Acupuncture" [~~has the same definition as~~] means the same as that term is defined
37 in Section **58-72-102**.

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

42 (3) "Board" means the Naturopathic Physicians Licensing Board created in Section
43 **58-71-201**.

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

45 [~~(4)~~] (5) "Diagnose" means:

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

50 (b) to attempt to conduct an examination or determination described under Subsection
51 [~~(4)~~] (5)(a);

52 (c) to hold oneself out as making or to represent that one is making an examination or
53 determination as described in Subsection [~~(4)~~] (5)(a); or

54 (d) to make an examination or determination as described in Subsection [~~(4)~~] (5)(a)
55 upon or from information supplied directly or indirectly by another [~~person~~] individual,
56 whether or not in the presence of the [~~person making or attempting the diagnosis or~~

57 ~~examination]~~ individual the examination or determination concerns.

58 [~~(5)~~] (6) "Local anesthesia" means an agent, whether a natural medicine or
59 nonscheduled prescription drug, which:

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

62 (b) has the ability to produce loss of sensation [~~at the site of minor office procedures;~~
63 ~~and]~~ to a targeted area of an individual's body;

64 (c) does not cause loss of consciousness or produce general sedation[-]; and

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

67 [~~(6)~~] (7) "Medical naturopathic assistant" means an unlicensed individual working
68 under the direct and immediate supervision of a licensed naturopathic physician and engaged in
69 specific tasks assigned by the licensed naturopathic physician in accordance with the standards
70 and ethics of the profession.

71 [~~(7)~~] (8) (a) "Minor office procedures" means:

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

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

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

78 (iv) [~~if approved by the United States Food and Drug Administration,]~~ percutaneous
79 injection into skin, tendons, ligaments, muscles, and joints with:

80 [~~(A) local anesthetics and nonscheduled prescription medications; and]~~

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

82 (B) natural substances.

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

84 (i) general or spinal anesthesia;

85 (ii) office procedures more complicated or extensive than those set forth in Subsection

86 [~~(7)~~] (8)(a);

87 (iii) procedures involving the eye; and

88 (iv) any office procedure involving ~~[tendons,]~~ nerves, veins, or arteries.
89 ~~[(8)]~~ (9) "Natural medicine" means any:
90 ~~[(a) food, food extracts, dietary supplements as defined by the federal Food, Drug, and~~
91 ~~Cosmetics Act, all homeopathic remedies, and plant substances that are not designated as~~
92 ~~prescription drugs or controlled substances;]~~
93 (a) food, food extract, dietary supplement as defined by the Federal Food, Drug, and
94 Cosmetic Act, 21 U.S.C. Sec. 301 et seq., homeopathic remedy, or plant substance that is not
95 designated a prescription drug or controlled substance;
96 (b) over-the-counter ~~[medications]~~ medication;
97 (c) other nonprescription ~~[substances]~~ substance, the prescription or administration of
98 which is not otherwise prohibited or restricted under federal or state law; or
99 ~~[(d) prescription drugs:]~~
100 ~~[(i) that, except as provided in Subsection (8)(e), are not controlled substances as~~
101 ~~defined in Section 58-37-2;]~~
102 ~~[(ii) the prescription of which is consistent with the competent practice of naturopathic~~
103 ~~medicine; and]~~
104 ~~[(iii) the prescription of which is approved by the division in collaboration with the~~
105 ~~naturopathic formulary advisory peer committee; and]~~
106 ~~[(e) testosterone, if the testosterone is:]~~
107 ~~[(i) bio-identical;]~~
108 ~~[(ii) designed to be:]~~
109 ~~[(A) administered topically, for transdermal absorption; or]~~
110 ~~[(B) absorbed across the mucosal membranes of the mouth; and]~~
111 ~~[(iii) prescribed or administered, in accordance with the requirements of federal and~~
112 ~~state law, solely for the purpose of treating a patient with a low testosterone level in order to~~
113 ~~restore the patient to a normal testosterone level.]~~
114 (d) prescription drug:
115 (i) the prescription of which is consistent with the competent practice of naturopathic
116 medicine;
117 (ii) that is not a controlled substance except for testosterone; and
118 (iii) that is not any of the following as determined by the federal Food and Drug

119 Administration's general drug category list:

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

121 (B) an anticonvulsant;

122 (C) an antineoplastic;

123 (D) an antipsychotic;

124 (E) a barbiturate;

125 (F) a cytotoxic;

126 (G) a sedative;

127 (H) a sleeping drug;

128 (I) a tranquilizer; or

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

131 ~~[(9)]~~ (10) (a) "Naturopathic childbirth" means uncomplicated natural childbirth assisted
132 by a naturopathic physician[~~and includes the use of~~].

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

134 (i) natural medicines; and

135 (ii) uncomplicated episiotomy.

136 ~~[(b)]~~ (c) "Naturopathic childbirth" does not include the use of:

137 (i) forceps delivery;

138 (ii) general or spinal anesthesia;

139 (iii) caesarean section delivery; or

140 (iv) induced labor or abortion.

141 ~~[(10)]~~ (11) (a) "Naturopathic mobilization therapy"~~[(a)]~~ means manually

142 administering mechanical treatment of body structures or tissues for the purpose of restoring
143 normal physiological function to the body by normalizing and balancing the musculoskeletal
144 system of the body;

145 (b) "Naturopathic mobilization therapy" does not mean manipulation or adjustment of
146 the joints of the human body beyond the elastic barrier; and

147 (c) "Naturopathic mobilization therapy" does not include manipulation as used in Title
148 58, Chapter 73, Chiropractic Physician Practice Act.

149 ~~[(11)]~~ (12) (a) "Naturopathic physical medicine" means the use of the physical agents

150 of air, water, heat, cold, sound, light, and electromagnetic nonionizing radiation, and the
151 physical modalities of electrotherapy, acupuncture, diathermy, ultraviolet light, ultrasound,
152 hydrotherapy, naturopathic mobilization therapy, and exercise.

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

155 ~~[(12)]~~ (13) "Practice of naturopathic medicine" means:

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

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

160 (A) the licensee meets standards of the American College of Naturopathic
161 Obstetricians (ACNO) or ~~[its]~~ ACNO's successor as determined by the division in collaboration
162 with the board; and

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

169 (I) refer patients to the consulting physician; and

170 (II) consult with the consulting physician;

171 (ii) using naturopathic mobilization therapy;

172 (iii) using naturopathic physical medicine;

173 (iv) using minor office procedures;

174 (v) prescribing or administering natural medicine;

175 (vi) prescribing medical equipment and devices, diagnosing by the use of medical
176 equipment and devices, and administering therapy or treatment by the use of medical devices
177 necessary and consistent with the competent practice of naturopathic medicine;

178 (vii) prescribing barrier devices for contraception;

179 (viii) using dietary therapy;

180 (ix) taking and using diagnostic x-rays, electrocardiograms, ultrasound, and

181 physiological function tests;

182 (x) taking of body fluids for clinical laboratory tests and using the results of the tests in
183 diagnosis;

184 (xi) taking of a history from and conducting of a physical examination upon a human
185 patient; and

186 [~~(xii) prescribing and administering natural medicines and medical devices, except a
187 naturopathic physician may only administer:]~~

188 [~~(A) a prescription drug, as defined in Section 58-17b-102, in accordance with
189 Subsection (8)(d); and]~~

190 [~~(B) local anesthesia that is not a controlled substance, and only in the performance of
191 minor office procedures;]~~

192 (xii) administering local anesthesia during the performance of a minor office
193 procedure.

194 (b) to maintain an office or place of business for the purpose of doing any of the acts
195 described in Subsection [~~(12)~~] (13)(a), whether or not for compensation; or

196 (c) to use, in the conduct of any occupation or profession pertaining to the diagnosis or
197 treatment of human diseases or conditions, in any printed material, stationery, letterhead,
198 envelopes, signs, or advertisements, the designation "naturopathic physician," "naturopathic
199 doctor," "naturopath," "doctor of naturopathic medicine," "doctor of naturopathy,"
200 "naturopathic medical doctor," "naturopathic medicine," "naturopathic health care,"
201 "naturopathy," "N.D.," "N.M.D.," or any combination of these designations in any manner that
202 might cause a reasonable person to believe the individual using the designation is a licensed
203 naturopathic physician.

204 [~~(13)~~] (14) "Prescribe" means to issue a prescription:

205 (a) orally or in writing; or

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

208 [~~(14)~~] (15) "Prescription device" means an instrument, apparatus, implement, machine,
209 contrivance, implant, in vitro reagent, or other similar or related article, and any component
210 part or accessory, which is required under federal or state law to be prescribed by a practitioner
211 and dispensed by or through a person [~~or entity~~] licensed under this chapter or exempt from

212 licensure under this chapter.

213 ~~[(15)]~~ (16) "Prescription drug" means a drug that is required by federal or state law or
214 rule to be dispensed only by prescription or is restricted to administration only by practitioners.

215 ~~[(16)]~~ (17) "Unlawful conduct" ~~[is as defined in]~~ means the same as that term is
216 defined in Sections 58-1-501 and 58-71-501.

217 ~~[(17)]~~ (18) "Unprofessional conduct" ~~[is as defined in]~~ means the same as that term is
218 defined in Sections 58-1-501 and 58-71-502, and as may be further defined by division rule.

219 Section 2. Section **58-71-203** is enacted to read:

220 **58-71-203. Drug category review.**

221 (1) As used in this section, "FDA" means the federal Food and Drug Administration.

222 (2) After April 1, 2022, if the FDA adds a new drug category to the FDA's general drug
223 category list, the division shall determine whether the drug category is consistent with the
224 practice of naturopathic medicine.

225 (3) To make the determination described in Subsection (2), the division shall consult
226 with:

227 (a) the board; and

228 (b) the board described in Section 58-67-201.

229 (4) In accordance with Title 63, Part 3, Utah Administrative Rulemaking Act, the
230 division shall make rules to implement this section.

231 Section 3. Section **58-71-804** is amended to read:

232 **58-71-804. Insurance coverage not mandated.**

233 (1) This chapter does not mandate health insurance coverage for naturopathic medical
234 services.

235 (2) This chapter does not establish a class of health care providers for the purposes of
236 Section 31A-22-618.

237 (3) This chapter does not mandate health insurance coverage for the prescription or
238 administration of testosterone~~[, as described in Subsection 58-71-102(8)(e),]~~ by a naturopathic
239 physician.

240 Section 4. **Repealer.**

241 This bill repeals:

242 Section **58-71-202, Naturopathic formulary peer committee.**