

SB0078S01 compared with SB0078

~~text~~ shows text that was in SB0078 but was deleted in SB0078S01.

text shows text that was not in SB0078 but was inserted into SB0078S01.

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Senator Keith Grover proposes the following substitute bill:

NATUROPATHIC PHYSICIAN LICENSING AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Keith Grover

House Sponsor: _____

LONG TITLE

General Description:

This bill repeals and enacts provisions related to naturopathic physicians.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ repeals the prohibition on a naturopathic physician from having an ownership interest in certain entities;
- ▶ prohibits a naturopathic physician from referring an individual to entities where the naturopathic physician or the physician's immediate family member has an ownership interest unless certain requirements are met;
- ▶ requires a naturopathic physician to comply with relevant federal laws regarding patient referrals and kick-backs; and

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- ▶ 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 2022, Chapter 440

58-71-801, as last amended by Laws of Utah 2005, Chapter 17

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

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

58-71-102. Definitions.

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

- (1) "Acupuncture" means the same as that term is defined in Section 58-72-102.
- (2) "Administrative penalty" means a monetary fine imposed by the division for acts or omissions determined to constitute unprofessional or unlawful conduct, as a result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (3) "Board" means the Naturopathic Physicians Licensing Board created in Section 58-71-201.
- (4) "Controlled substance" means the same as that term is defined in Section 58-37-2.
- (5) "Diagnose" means:
 - (a) to examine in any manner another individual, parts of an individual's body, substances, fluids, or materials excreted, taken, or removed from an individual's body, or produced by an individual's body, to determine the source, nature, kind, or extent of a disease or other physical or mental condition;
 - (b) to attempt to conduct an examination or determination described under Subsection (5)(a);
 - (c) to hold oneself out as making or to represent that one is making an examination or determination as described in Subsection (5)(a); or

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(d) to make an examination or determination as described in Subsection (5)(a) upon or from information supplied directly or indirectly by another individual, whether or not in the presence of the individual the examination or determination concerns.

(6) "Local anesthesia" means an agent, whether a natural medicine or nonscheduled prescription drug, which:

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

(b) has the ability to produce loss of sensation to a targeted area of an individual's body;

(c) does not cause loss of consciousness or produce general sedation; and

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

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

(8) (a) "Minor office procedures" means:

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

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

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

(iv) percutaneous injection into skin, tendons, ligaments, muscles, and joints with:

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

(B) natural substances.

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

(i) general or spinal anesthesia;

(ii) office procedures more complicated or extensive than those set forth in Subsection (8)(a);

(iii) procedures involving the eye; and

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(iv) any office procedure involving nerves, veins, or arteries.

(9) "Natural medicine" means any:

(a) food, food extract, dietary supplement as defined by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq., homeopathic remedy, or plant substance that is not designated a prescription drug or controlled substance;

(b) over-the-counter medication;

(c) other nonprescription substance, the prescription or administration of which is not otherwise prohibited or restricted under federal or state law; or

(d) prescription drug:

(i) the prescription of which is consistent with the competent practice of naturopathic medicine;

(ii) that is not a controlled substance except for testosterone; and

(iii) that is not any of the following as determined by the federal Food and Drug Administration's general drug category list:

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

(B) an anticonvulsant;

(C) an antineoplastic;

(D) an antipsychotic;

(E) a barbiturate;

(F) a cytotoxic;

(G) a sedative;

(H) a sleeping drug;

(I) a tranquilizer; or

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

(10) (a) "Naturopathic childbirth" means uncomplicated natural childbirth assisted by a naturopathic physician.

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

(i) natural medicines; and

(ii) uncomplicated episiotomy.

(c) "Naturopathic childbirth" does not include the use of:

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- (i) forceps delivery;
- (ii) general or spinal anesthesia;
- (iii) caesarean section delivery; or
- (iv) induced labor or abortion.

(11) (a) "Naturopathic mobilization therapy" means manually administering mechanical treatment of body structures or tissues for the purpose of restoring normal physiological function to the body by normalizing and balancing the musculoskeletal system of the body[;].

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

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

(12) (a) "Naturopathic physical medicine" means the use of the physical agents of air, water, heat, cold, sound, light, and electromagnetic nonionizing radiation, and the physical modalities of electrotherapy, acupuncture, diathermy, ultraviolet light, ultrasound, hydrotherapy, naturopathic mobilization therapy, and exercise.

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

(13) "Naturopathic physician" means an individual licensed under this chapter to engage in the practice of naturopathic medicine.

~~[(13)]~~ (14) "Practice of naturopathic medicine" means:

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

(i) using naturopathic childbirth, but only if:

(A) the licensee meets standards of the American College of Naturopathic Obstetricians (ACNO) or ACNO's successor as determined by the division in collaboration with the board; and

(B) the licensee follows a written plan for naturopathic physicians practicing naturopathic childbirth approved by the division in collaboration with the board, which

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includes entering into an agreement with a consulting physician and surgeon or osteopathic physician, in cases where the scope of practice of naturopathic childbirth may be exceeded and specialty care and delivery is indicated, detailing the guidelines by which the naturopathic physician will:

- (I) refer patients to the consulting physician; and
- (II) consult with the consulting physician;
 - (ii) using naturopathic mobilization therapy;
 - (iii) using naturopathic physical medicine;
 - (iv) using minor office procedures;
 - (v) prescribing or administering natural medicine;
 - (vi) prescribing medical equipment and devices, diagnosing by the use of medical equipment and devices, and administering therapy or treatment by the use of medical devices necessary and consistent with the competent practice of naturopathic medicine;
 - (vii) prescribing barrier devices for contraception;
 - (viii) using dietary therapy;
 - (ix) taking and using diagnostic x-rays, electrocardiograms, ultrasound, and physiological function tests;
 - (x) taking of body fluids for clinical laboratory tests and using the results of the tests in diagnosis;
 - (xi) taking of a history from and conducting of a physical examination upon a human patient; and
 - (xii) administering local anesthesia during the performance of a minor office procedure;
- (b) to maintain an office or place of business for the purpose of doing any of the acts described in Subsection [~~(13)(a)~~] (14)(a), whether or not for compensation; or
- (c) to use, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human diseases or conditions, in any printed material, stationery, letterhead, envelopes, signs, or advertisements, the designation "naturopathic physician," "naturopathic doctor," "naturopath," "doctor of naturopathic medicine," "doctor of naturopathy," "naturopathic medical doctor," "naturopathic medicine," "naturopathic health care," "naturopathy," "N.D.," "N.M.D.," or any combination of these designations in any manner that

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might cause a reasonable person to believe the individual using the designation is a licensed naturopathic physician.

~~[(14)]~~ (15) "Prescribe" means to issue a prescription:

- (a) orally or in writing; or
- (b) by telephone, facsimile transmission, computer, or other electronic means of communication as defined by division rule.

~~[(15)]~~ (16) "Prescription device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, and any component part or accessory, which is required under federal or state law to be prescribed by a practitioner and dispensed by or through a person licensed under this chapter or exempt from licensure under this chapter.

~~[(16)]~~ (17) "Prescription drug" means a drug that is required by federal or state law or rule to be dispensed only by prescription or is restricted to administration only by practitioners.

~~[(17)]~~ (18) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501 and 58-71-501.

~~[(18)]~~ (19) "Unprofessional conduct" means the same as that term is defined in Sections 58-1-501 and 58-71-502, and as may be further defined by division rule.

Section 2. Section **58-71-801** is amended to read:

58-71-801. Disclosure of financial interest by licensee.

(1) ~~[Except as provided in Subsections (2) and (5), licensees under this chapter may not own, directly or indirectly]~~ Except as provided in Subsection (2), a naturopathic physician may not refer an individual to any of the following entities where the naturopathic physician or a member of the naturopathic physician's immediate family has an ownership interest:

(a) ~~[any]~~ a pharmacy as defined in Section 58-17b-102 or pharmaceutical facility as defined in Section 58-17b-102; or

(b) a retail store, wholesaler, distributor, manufacturer, or facility of any other kind located in this state that is engaged in the sale, dispensing, delivery, distribution, or manufacture of homeopathic remedies, dietary supplements, or natural medicines.

(2) ~~[A licensee may own or control less than 5% of the outstanding stock of a corporation whose ownership is prohibited under Subsection (1), if the stock of the corporation is publicly traded.]~~ ~~{}~~

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(a) A naturopathic physician may refer an individual to an entity described in Subsection (1)(a) or (b) if:

(~~f~~a)i) the entity's stock is publicly traded and the naturopathic physician owns less than 5% of the entity's outstanding stock; or

(~~f~~b)ii) at the time of the referral, the naturopathic physician discloses in writing that the naturopathic physician or a member of the naturopathic physician's immediate family has an ownership interest in the entity.

(b) A disclosure described in Subsection (2)(a)(ii) shall include a statement informing the patient that the patient may choose to obtain a good or service from another entity.

(c) A naturopathic physician shall comply with any applicable federal laws regarding patient referrals and kick-backs.

(3) [~~Licensees under this chapter~~] A naturopathic physician may not refer patients, clients, or customers to any clinical laboratory, ambulatory or surgical care facilities, or other treatment or rehabilitation services such as physical therapy, cardiac rehabilitation, or radiology services in which the licensee or a member of the licensee's immediate family has any financial relationship as that term is described in 42 U.S.C. 1395nn, unless the licensee at the time of making the referral discloses that relationship, in writing, to the patient, client, or customer.

(4) The written disclosure under Subsection (3) shall also state the patient may choose any facility or service center for purpose of having the laboratory work or treatment service performed.

(5) [~~Licensees under this chapter~~] A naturopathic physician may sell from [~~their offices~~] the naturopathic physician's office homeopathic remedies or dietary supplements as defined in the Federal Food Drug and Cosmetic Act consistent with division rule.