

ACT 76

S.B. NO. 1695-86

A Bill for an Act Relating to Naturopathy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Purpose. The purpose of this Act is to clarify the law on the practice of naturopathic medicine, to define terminology, to delete obsolete educational requirements and establish new examination requirements, to provide additional grounds for denial, revocation, and suspension of licenses, to provide grounds to refuse to renew or to deny licenses, and to clarify the process of appeal from a decision of the board of examiners in naturopathy.

This Act is expressly intended to maintain the existing scope of practice of naturopathy and not to expand the existing scope of practice of naturopathy.

Should this Act or any portion of this Act expand the existing scope of practice of naturopathy, this Act or any respective portion of this Act shall be invalid.

SECTION 2. Chapter 455, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§455- Discipline; grounds; proceedings; hearings. (a) The board shall have the power to deny, revoke, suspend, or refuse to renew any license to practice naturopathy applied for or issued by the board in accordance with this chapter, and to fine or otherwise discipline a licensee for any of the following causes:

- (1) Procuring, or aiding or abetting in procuring, a criminal abortion;
- (2) Employing any person to solicit patients;
- (3) Obtaining a fee on the assurance that a manifestly incurable disease can be permanently cured;
- (4) Betraying a patient's confidence;
- (5) Making any untruthful and improbable statement in advertising one's naturopathic practice or business;
- (6) False, fraudulent, or deceptive advertising;
- (7) Being habituated to the excessive use of drugs or alcohol; or being addicted to, dependent on, or an habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, or other drug having similar effects;
- (8) Practicing naturopathy while the ability to practice is impaired by alcohol, drug, physical disability, or mental instability;
- (9) Procuring a license through fraud, misrepresentation, or deceit or knowingly permitting an unlicensed person to perform activities requiring a license;
- (10) Professional misconduct or gross carelessness or manifest incapacity in the practice of naturopathy;
- (11) Conduct or practice contrary to recognized standard of ethics of the naturopathic profession;
- (12) Utilizing medical service or treatment which is inappropriate or unnecessary;
- (13) Submitting to or filing with the board any notice, statement, or other document required under this chapter which is false or untrue or contains any material misstatement of fact;
- (14) Failure to report to the board any disciplinary action taken against the licensee in another jurisdiction within thirty days after the disciplinary action becomes final;
- (15) Using the title "physician" without clearly identifying oneself as being a naturopathic physician; and
- (16) Violation of any provisions of this chapter or rules adopted under this chapter.

(b) In any proceeding to impose disciplinary sanctions against a licensee, the board shall give the person concerned notice and an opportunity for hearing in conformity with chapter 91.

In any such proceeding, the board shall have power to administer oaths, compel the attendance of witnesses and the production of documentary evidence, and examine witnesses.

(c) Any revocation or suspension of a license imposed by the board shall be in accordance with section 92-17(c).

(d) Any fine imposed by the board after a hearing in accordance with chapter 91 shall be no less than \$500 and no more than \$10,000 for each violation.”

SECTION 3. Chapter 455, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§455- Appeal to circuit court. An applicant who has been denied a license and every licensee whose license has been suspended, revoked, or refused to be renewed may appeal the board’s decision to the circuit court of the circuit in which the applicant or licensee resides in the manner provided in chapter 91.”

SECTION 4. Chapter 455, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§455- Remedies or penalties cumulative. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State.”

SECTION 5. Section 455-1, Hawaii Revised Statutes, is amended to read as follows:

“§455-1 [Defined. For the purpose of this chapter the practice of naturopathy means the scientific application of air, light, sunshine, water, earth, cold and heat, electricity, hygiene and dietetics, bio-chemic system, psychotherapy, mechanical movements, manipulations, and appliances, specifically to eliminate toxic conditions from the human body and to promote the quality, quantity and flow of the vital fluids without the use of drugs, aiding nature with natural and congenial agents or means either tangible or intangible to restore and maintain normal functioning; provided, that the practice of naturopathy shall not include the Hawaiian art of lomilomi or massage.] Definitions. As used in this chapter:

“Board” means the board of examiners in naturopathy.

“Department” means the department of commerce and consumer affairs.

“Diagnosis” means using all recognized and accepted physical and laboratory diagnostic procedures including the taking of blood for diagnostic purposes.

“Homeopathic” means minute doses of natural medicine.

“Natural medicine” encompasses substances of botanical, mineral, and animal origin including homeopathic preparations thereof.

“Naturopathic physician” means a person who holds a current license issued under this chapter to practice naturopathy.

“Naturopathy” means the practice of diagnosing, treating, and caring for patients using a system of practice that bases its treatment of physiological functions and abnormal conditions on natural laws governing the human body: utilizing physiological, psychological, and mechanical methods, such as air, water, light, heat, earth, phytotherapy, physiotherapy, mechano-therapy, naturopathic corrections and manipulation, and natural methods or modalities, together with natural medicines, natural processed foods and herbs, and nature’s remedies. The practice of naturopathy excludes surgery, application of x-rays, and the prescribing or dispensing of prescription drugs.”

SECTION 6. Section 455-2, Hawaii Revised Statutes, is amended to read as follows:

“§455-2 Application for examination; fee. Any person desiring to practice naturopathy shall apply in writing to the [state] board [of examiners in naturopathy] upon a [blank] form prepared and furnished by the board and shall include in the application [such] any facts concerning the applicant as the board shall require. [Each application shall be filed by the applicant and sworn to before an officer authorized to administer oaths.] At the time of the application each applicant shall pay an examination fee to the department [of commerce and consumer affairs which]. If the board contracts with a professional testing agency to prepare, administer, and grade the examination, the payment of the examination fee may be paid directly to the testing agency by the department or the examinee. The examination fee shall not be refunded if the applicant fails to pass the examination.

No person shall be licensed to practice naturopathy unless the person has been duly examined and has passed the examination.”

SECTION 7. Section 455-3, Hawaii Revised Statutes, is amended to read as follows:

“§455-3 Qualifications of applicants. Each applicant shall [have had a two-year liberal arts and science course from an accredited college or university and] be a graduate of a [legally chartered] school, university, or college of naturopathy [which requires a course of resident instruction of at least four years of nine months each of actual attendance, and includes in its course of study the subjects hereinafter listed for the minimum hours hereinafter listed:

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|---------------------------------------|------|
| Anatomy..... | 650 |
| Histology and embryology..... | 130 |
| Chemistry and toxicology..... | 250 |
| Physiology..... | 300 |
| Bacteriology..... | 130 |
| Hygiene and sanitation..... | 130 |
| Pathology..... | 350 |
| Diagnosis..... | 600 |
| Naturopathic theory and practice..... | 900 |
| Obstetrics and gynecology..... | 260 |
| Jurisprudence..... | 50 |
| Clinical practice..... | 400 |
| Biochemistry and dietetics..... | 240 |
| Therapeutics..... | 130 |
| Total..... | 4520 |

Each applicant shall have attended such school, university, or college for at least ninety per cent of the hours required. The addition of two years of liberal arts and science course shall not apply to persons who, on May 9, 1949, were lawfully licensed to practice naturopathy in the State or to persons holding diplomas or attending legally chartered naturopathic schools, universities, or colleges on such date.] which has received candidacy status with, or has been accredited by, a regional accrediting association of secondary schools and colleges or has been accredited by a national professional accrediting body approved by the board or the Commission on Accreditation of the Council of Naturopathic Medical Education, incorporated in Washington, D.C.”

SECTION 8. Section 455-4, Hawaii Revised Statutes, is amended to read as follows:

“§455-4 State board of examiners in naturopathy. The governor shall appoint in the manner prescribed by section 26-34 the [state] board of examiners

in naturopathy, consisting of three members. Each member shall serve until [his] the member's successor is appointed and qualified. Two members of the board shall, before appointment, have been licensed [to practice naturopathy] as a naturopathic physician in the State [under the laws thereof in force at the date of the issuance of the license] and one shall be a public member.”

SECTION 9. Section 455-5, Hawaii Revised Statutes, is amended to read as follows:

“§455-5 **Organization of the board.** The board [of examiners in naturopathy] may elect a chairman and a vice-chairman who shall each serve one year or until a successor is elected. [The board may make such rules as it deems expedient to carry this chapter into effect.] Two members of the board constitute a quorum for the transaction of business. The board shall serve without pay; provided that the expenses of conducting examinations shall be paid out of the office expenses of the department [of commerce and consumer affairs upon vouchers signed by a majority of the board].”

SECTION 10. Section 455-6, Hawaii Revised Statutes, is amended to read as follows:

“§455-6 **Powers and authority of the board.** The [state] board [of examiners in naturopathy] may:

- (1) Adopt and use a seal to be affixed to all official acts of the board;
- [(2) Revoke or suspend any license issued to any person to practice naturopathy upon any of the following causes:
 - (A) Procuring, or aiding or abetting in procuring, a criminal abortion;
 - (B) Employing any person to solicit patients for him;
 - (C) Obtaining a fee on the assurance that a manifestly incurable disease can be permanently cured;
 - (D) Wilfully betraying a professional secret;
 - (E) Making any untruthful and improbable statement in advertising one's naturopathic practice or business;
 - (F) False, fraudulent, or deceptive advertising;
 - (G) Being habituated to the excessive use of drugs or alcohol; or being addicted to, dependent on, or an habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, or other drug having similar effects;
 - (H) Practicing naturopathic medicine while the ability to practice is impaired by alcohol, drugs, physical disability, or mental instability;
 - (I) Procuring a license through fraud, misrepresentation, or deceit or knowingly permitting an unlicensed person to perform activities requiring a license;
 - (J) Professional misconduct or gross carelessness or manifest incapacity in the practice of naturopathy;
 - (K) Conduct or practice contrary to recognized standards of ethics of the naturopathic profession;
 - (L) Consistently utilizing medical service or treatment which is inappropriate or unnecessary.

The board may not suspend or revoke a license, however, for any of these causes unless the person accused has been given at least twenty days' notice, in writing, and a public hearing in conformity with chapter 91.

The board may compel the attendance of witnesses and the production of relevant books and papers for the investigation of matters that may come before them and the presiding officer of the board may administer the requisite oaths.

In case any license is revoked for any of the causes named in this section, the holder thereof shall be immediately notified of the revocation, in writing, by the board. Licenses to practice naturopathy may be restored by the board.

The board shall adopt, pursuant to chapters 91 and 92, rules setting forth standards of ethics of the naturopathic profession and may adopt such other rules as are reasonably necessary to implement this chapter.]

- (2) Adopt, amend, or repeal rules in accordance with chapter 91 to carry out the purposes of this chapter;
- (3) Develop standards for licensure;
- (4) Prepare and administer examinations;
- (5) Issue, renew, suspend, and revoke licenses and fine licensees;
- (6) Investigate and conduct hearings regarding any violation of this chapter and any rules of the board;
- (7) Maintain a record of its proceedings; and
- (8) Do all things necessary to carry out the functions, powers, and duties set forth in this chapter."

SECTION 11. Section 455-7, Hawaii Revised Statutes, is amended to read as follows:

"§455-7 Examinations. The [state] board [of examiners in naturopathy] shall conduct examinations not less than twice in each year in the following subjects: anatomy; histology and embryology; chemistry and toxicology; physiology; bacteriology; hygiene and sanitation; pathology; diagnosis or analysis, including clinical, physical, x-ray, symptomatology, dermatology, and mental diseases; naturopathic theory and practice; obstetrics and gynecology; jurisprudence; clinical practice; biochemistry; therapeutics, including physiotherapy, hydrotherapy, electrotherapy, heliotherapy, phytotherapy, orthopedics; and such other subjects as the board may require. [The examination shall be conducted in writing, but it may be supplemented by oral examinations, and by demonstrations or other practical tests as the board may require.] If the applicant receives a minimum score of seventy-five per cent on [all parts] each part of the examination, [he] the applicant shall be considered as having passed the examination. The board shall contract with a professional testing agency to prepare, administer, and grade examinations for licensure. Each applicant shall pass a written examination by the board or an examination prepared by a professional testing agency selected by the board. The board shall provide in its rules the passing scores for any examination given or approved by the board."

SECTION 12. Section 455-8, Hawaii Revised Statutes, is amended to read as follows:

"§455-8 License to practice; biennial registration[.]; continuing education. Licenses to practice naturopathy shall be issued by the board [in such form as the board determines,] to those who qualify according to this chapter. [Naturopathy] Naturopathic physicians licensed under this chapter shall observe and be subject to all state requirements relative to reporting births and all matters pertaining to the public health with equal rights and obligations as physicians, surgeons, and practitioners of other schools of medicine. Every [person holding a license to practice in the State] licensee shall [reregister with] renew the licensee's license on or before December 31 of each odd-numbered year and submit proof to the [state] board [of examiners in naturopathy on or

before December 31 of each odd-numbered year and shall pay a reregistration fee.] that the licensee has met the requirement of continuing education in programs as set and approved by the board in its rules. [The failure to so reregister and pay the reregistration fee constitutes] Failure to renew the license and submit proof of satisfying the required continuing education program requirements on or before December 31 of each odd-numbered year shall automatically constitute a forfeiture of license; provided that the license shall be [reinstated] restored upon written application therefor together with payment of the renewal fee, all delinquent fees, and a penalty fee[.], and upon submission of proof that the person whose license has been forfeited has satisfied all continuing education requirements for the period of time the license has been forfeited."

SECTION 13. Section 455-9, Hawaii Revised Statutes, is amended to read as follows:

"§455-9 Penalty. Any person except a licensed [naturopath] naturopath-ic physician who practices or attempts to practice naturopathy, or any person who buys, sells, or fraudulently obtains any diploma or license to practice naturopathy whether recorded or not, or any person who uses the title "natureopath", "naturopath", or "N.D.", or any word or title to induce the belief that [he] the person is engaged in the practice of naturopathy without complying with this chapter, or any person who violates this chapter, shall be fined a sum of not less than \$500 nor more than \$10,000 for each violation, which sum shall be collected in a civil action brought by the attorney general or the [director of the office of consumer protection] department on behalf of the State."

SECTION 14. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 15. This Act shall take effect upon its approval.

(Approved April 22, 1986.)

Note

1. Edited pursuant to HRS §23G-16.5.