

SB 1111 Proposed Changes through Regulations

1. **Committee delegation to Executive Officer regarding stipulated settlements to revoke or surrender license:** Permit the committee to delegate to the executive officer the authority to adopt a “stipulated settlement” if an action to revoke a license has been filed and the licensee agrees to surrender the license, without requiring the committee to vote to adopt the settlement.

Recommendation: Add section 4207:

4207. Delegation of Functions.

Except for those powers reserved exclusively to the "agency itself" under the Administrative Procedure Act Section 11500, et seq. of the Government Code, the committee delegates and confers upon the executive officer of the committee, or in his or her absence, the designee of the executive officer, all functions necessary to the dispatch of business of the committee in connection with investigative and administrative proceedings under the jurisdiction of the committee, including, but not limited to, the ability to approve settlement agreements for the revocation, surrender or interim suspension of a license.

NOTE: Authority cited: Sections 3620 and 3622, Business and Professions Code. Reference: Sections 3621, 3662 and 3663, Business and Professions Code; and Sections 11500 and 11415.60, Government Code.

2. **Revocation for sexual misconduct:** Require an Administrative Law Judge (ALJ) who has issued a decision finding that a licensee engaged in any act of sexual contact with a patient or who has committed or been convicted of sexual misconduct to order revocation which may not be stayed.

Recommendation: Add section 4261:

NOTE: The disciplinary guidelines must be developed.

4261. Uniform Standards Related To Substance Abuse and Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Naturopathic Medicine Committee shall comply with the “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines of 2011” [insert effective date of regulation], which are hereby incorporated by reference. Deviation from these disciplinary guidelines and orders, including the standard terms of probation, is appropriate where the Naturopathic Medicine Committee of California in its sole discretion determines that the facts of the particular case warrant such a deviation--for example: the presence of mitigating factors; the age of the case; evidentiary problems. Neither the committee nor an administrative law judge may impose any conditions or terms of probation that are less restrictive than the Uniform Standards Related to Substance Abuse.

Notwithstanding the disciplinary guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any act of sexual contact, as defined in subdivision (c) of Section 729 of the Code, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.

NOTE: Authority cited: Sections 3620 and 3622, Business and Professions Code; and Sections 11400.20 and 11400.21, Government Code. Reference: Sections 11400.20, 11400.21 and 11425.50(e), Government Code; Sections 726 and 729, Business and Professions Code; and Section 44010, Education Code.

3. **Denial of application for registered sex offender:** Require the committee to deny a license to an applicant or revoke the license of a licensee who is registered as a sex offender.

Recommendation: Add section 4213.

4213. Required Actions Against Registered Sex Offenders

(a) Except as otherwise provided, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the committee shall:

(1) Deny an application by the individual for licensure, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Promptly revoke the license of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license on probation.

(3) Deny any petition to reinstate or reissue the individual's license.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code, provided, however, that nothing in this paragraph shall prohibit the committee from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under section 314 of the Penal Code.

(3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license shall govern.

NOTE: Authority cited: Sections 3620 and 3622, Business and Professions Code. Reference: Section 3622, Business and Professions Code.

4. The proposed language includes provisions regarding the following:

Confidentiality agreements regarding settlements: Confidentiality agreements regarding settlements can cause delay and thwart a committee's effort to investigate possible cases of misconduct, thereby preventing the committee from performing its most basic function – protection of the public.

Failure to provide documents and Failure to comply with court order: Require a licensee to comply with a request for medical records or a court order issued in enforcement of a subpoena for medical records.

Failure to provide information or cooperate in an investigation: Make it unprofessional conduct for a licensee to fail to furnish information in a timely manner or cooperate in a disciplinary investigation.

Failure to report an arrest, conviction, etc.: Require a licensee to report to the committee any felony indictment or charge or any felony or misdemeanor conviction.

Recommendation: Amend section 4260

§ 4260. Unprofessional Conduct.

For the purpose of Sections 3662 and 3663 of the Code, unprofessional conduct includes:

(a) The obtaining of any fee by fraud or misrepresentation.

~~(b)~~1) The aiding or abetting of any unlicensed person to practice naturopathic medicine.

~~(c)~~2) The aiding or abetting of a licensed person to practice naturopathic medicine unlawfully.

~~(d)~~3) The practice of accepting or receiving any commission or the rebating in any form or manner of fees for professional services, radiograms or prescriptions supplied to patients. This subdivision shall not apply to other services or articles supplied to patients if written disclosure is provided prior to the supplying of the services or articles.

~~(e)~~4) Advertising in violation of Section 651 of the Code.

~~(f)~~5) The violation of any of the provisions of law regulating the procurement, dispensing, or administration of dangerous drugs, as defined in Article 7 (commencing with Section 4110) of Chapter 9 of the Code,

or controlled substances, as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code.

- (~~g~~6) The violation of any of the provisions of the Act or the regulations contained in this division.
- (~~h~~7) The clearly excessive prescribing or administering of drugs or treatment, or the clearly excessive use of diagnostic procedures, or the clearly excessive use of diagnostic or treatment facilities, as determined by the customary practice and standards of the naturopathic profession.
- (~~i~~8) The use of threats or harassment against any patient, licensee or certificate holder for providing evidence in any possible or actual disciplinary action, or other legal action; or the discharge of an employee primarily based on the employee's attempt to comply with the provisions of the Act or this division or to aid in the compliance.
- (~~j~~9) The suspension or revocation of a license issued, or discipline imposed, by another state or territory on grounds which would be the basis of discipline in this state.
- (~~k~~10) The alteration of a patient's record with intent to deceive.
- (~~l~~11) The presence of unsanitary or unsafe office conditions, as determined by the customary practice and standards of the naturopathic medical profession.
- (~~m~~12) The abandonment of the patient by the licensee, without written notice to the patient that treatment is to be discontinued and before the patient has ample opportunity to secure the services of another licensee.
- (~~n~~13) The willful misrepresentation of facts relating to a disciplinary action to the patients of a disciplined licensee.
- (~~o~~14) The use of fraud in the procurement of any license or certificate issued pursuant to the Act.
- (~~p~~15) Any action or conduct which would have warranted the denial of the license.
- (~~q~~16) The aiding or abetting of a licensed doctor of naturopathic medicine to practice naturopathic medicine in a negligent or incompetent manner.
- (~~r~~17) Gross negligence.
- (~~s~~18) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.
 - (~~1~~A) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.
 - (~~2~~B) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.
- (~~t~~19) Incompetence.
- (~~u~~20) The use of any controlled substance, as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 7 (commencing with Section 4110) of Chapter 9 of the Code, or alcoholic beverages or other intoxicating substances, to an extent or in a manner dangerous or injurious to the licensee, any person, or the public to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license or certificate.
- (~~v~~21) The conviction of a charge of violating any federal statute or rule, or any statute or rule of this state, regulating controlled substances, as defined in Division 10 (commencing with Section 11000) of the

Health and Safety Code, or any dangerous drug as defined in Article 7 (commencing with Section 4110) of Chapter 9 of the Code, or the conviction of more than one misdemeanor, or any felony, involving the use or consumption of alcohol or drugs, if the conviction is substantially related to the practice of naturopathic medicine. The record of conviction or certified copy thereof, certified by the clerk of the court or by the judge in whose court the conviction is had, shall be conclusive evidence of a violation of this section; a plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

~~(w22)~~ Performing or holding oneself out as being able to perform professional services beyond the scope of one's competence, as established by one's education, training, or experience.

~~(x23)~~ Permitting a student enrolled in an approved naturopathic medical under one's supervision or control to perform, or permitting the student to hold himself or herself out as competent to perform, professional services beyond the student's level of education, training, or experience.

(b) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice to which the licensee is or expects to be named as a party, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the committee.

(2) A provision that requires another party to the dispute to attempt to withdraw a complaint the party has filed with the committee.

(b) Failure to provide to the committee, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(c) Failure to cooperate and participate in any committee investigation pending against the licensee. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(d) Failure to report to the committee within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) The arrest of the licensee.

(3) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(4) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(e) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the committee.

(24) Misrepresenting of compliance with the continuing education of requirements of 3635 or misrepresentation of completion of continuing education.

NOTE: Authority cited: Sections 3620 and 3622, Business and Professions Code. Reference: Sections 650, 651, 3660, 3662, 3663, and 3635 Business and Professions Code.

5. **Psychological or medical evaluation of applicant:** Authorize the committee to order an applicant for licensure to be examined by a physician or psychologist if it appears that the applicant may be unable to safely practice the licensed profession due to a physical or mental illness; authorize the Committee to deny the application if the applicant refuses to comply with the order; and prohibit the Committee from issuing a license until it receives evidence of the applicant's ability to safely practice.

Recommendation: Amend section 4216:

4216. Review of License Application and Processing of Exam Applications.

(a) Within one hundred (100) working days after receipt of an application pursuant to Section 3630 of the Code for license as a naturopathic doctor, the ~~bureau~~ committee shall inform the applicant, in writing, whether the application is complete and accepted for filing or that it is deficient and what specific information or documentation is required to complete the application. An application is considered complete if it is in compliance with Sections 3630 through 3633.1 of the Code and Section 4212 of this article.

(b) Within one hundred (100) working days from the date of filing a complete application, the committee shall inform the applicant in writing of the decision regarding the application for licensure as a naturopathic doctor.

(c) In addition to any other requirements for licensure, whenever it appears that an applicant for a license may be unable to perform as an naturopathic doctor safely because the applicant's ability to perform may be impaired due to mental illness, or physical illness affecting competency, the committee may require the applicant to be examined by one or more naturopathic doctors, physicians and surgeons, or psychologists designated by the committee. The committee shall pay the full cost of such examination. An applicant's failure to comply with the requirement shall render his or her application incomplete. The report of the evaluation shall be made available to the applicant.

NOTE: Authority cited: Sections 3620 and 3622, Business and Professions Code. Reference: Sections 30, 144, 480, 700-704, 820, 3620, 3630, 3631, 3633, 3636, 3644 and 3681, Business and Professions Code; ; and Sections 4939-15376, Government Code.