

TITLE 16. CALIFORNIA NATUROPATHIC MEDICINE COMMITTEE

DEPARTMENT OF CONSUMER AFFAIRS

INITIAL STATEMENT OF REASONS

Hearing Date: No public hearing has been scheduled.

Subject Matter of Proposed Regulations: Notice to Consumers

Section(s) Affected: Division 40, Title 16, Section 4255 of the California Code of Regulations (CCR)

Introduction:

The Committee currently licenses just under one-thousand (1,000) naturopathic doctors (ND) throughout California. The Committee's highest priority is to protect consumers through its licensing, regulatory, and disciplinary oversight of the naturopathic medical profession.

During the last sunset review of the California Naturopathic Medicine Committee (Committee), the Legislature made a point of identifying regulations required by Section 138 of the Business and Professions Code (BCP), which requires all healing arts programs within the Department of Consumer Affairs to require their licensees to provide notice to their clients or customers that they are licensed by the state. This statute also requires that the process to adopt these regulations begin on or before June 30, 1999 and to date, the Committee had not done so. According to the Legislature, the purpose of this statute is to inform consumers of the appropriate regulatory body that regulates a particular licensee or practitioner.

During the 2016 review of the Committee by a joint hearing of the Senate Business, Professions and Economic Development and the Assembly Business, Professions and Consumer Protection Committees, they indicated that the Medical Board of California had promulgated regulations pursuant to BCP section 138 to require physicians and surgeons to inform their patients that they are licensed by the Medical Board including the Medical Board's contact information. The Committees encouraged the Committee to do the same. In its Sunset Review Report, the Committee noted, "The Committee intends to promulgate regulations to post such required notice."

By law, public protection is the Committee's highest priority, and the protection of the public is enhanced when patients and other interested parties are made aware of the Committee's existence at a time close to when naturopathic medical services are provided.

Specific Purpose of each adoption, amendment, or repeal:

The primary purpose of these proposed regulations is to implement, interpret, and make specific the provisions of BPC section 138 that require providing notification to consumers that naturopathic doctors are licensed and regulated by the Committee. The notice contains the Committee’s website address, where consumers can verify the status of a naturopathic doctor license or may file a complaint against a naturopathic doctor.

The regulation provides three options for providing notice:

- (1) signage with specific wording and font size;
- (2) written notice that the patient or patient’s representative signs acknowledging notice that is retained in the patient’s medical record; or
- (3) written notice that appears in discharge and similar paper work provided to the patient or their representative.

The proposed action is similar to other regulations adopted by boards/programs within the Department of Consumer Affairs. (See 16 CCR 1399.547.)

Problem being addressed:

Consumers may not know that their naturopathic doctor is licensed by a specific regulatory authority and that they can check the status of their naturopathic doctor’s license online to make sure they are licensed, that their license is current, and whether the naturopathic doctor has been or is currently being disciplined. Additionally, consumers may not know that the Committee has an easy access consumer complaint process online where they can file a complaint about their naturopathic doctor with the Committee.

Often, consumers are unaware of the existence and role of the Committee or the public services it offers. Although the information is already available online, the Legislature established additional consumer protections by requiring an affirmative consumer notification that naturopathic doctors are licensed by the Naturopathic Medicine Committee of California which provides the Committee’s contact information and website, where consumers can check the license status of their naturopathic doctor and file a complaint with the Committee. To solve this problem the Legislature adopted BPC section 138 to require the Committee adopt consumer notice regulations.

In response, the Committee created specific notice requirements, with which all licensed naturopathic doctors must comply. The information in the notice is intended to make consumers aware of the Committee’s website, where there are license look-up and enforcement tools the Committee provides.

Anticipated benefits from this regulatory action:

Public protection is the highest priority of the Committee and it is enhanced when

patients and other interested parties are made aware of the Committee's existence and how and where to contact the Committee. The vast majority of enforcement and disciplinary actions are the result of consumer complaints, so providing consumers with the Committee's website address where consumers can obtain information and file complaints will assist the Committee in its overall regulatory oversight of naturopathic doctors and protection of consumers. If consumers have a website address where they can learn about filing complaints online, they can protect themselves and others from naturopathic doctors who may violate the Naturopathic Doctors Act.

If consumers have the licensing status and disciplinary information, they may choose a different naturopathic doctor based on the results of this license search. They would find out whether the naturopathic doctor is current with their license or even licensed at all. They would find out whether the naturopathic doctor has been disciplined and the circumstances that resulted in the discipline.

Overall, the proposed regulation is intended to provide further protection of consumers through an awareness of the Committee and the website where there are consumer protection tools are available to assist consumers in making informed choices about the doctors who provide care and treatment. Adoption of this proposed language will promote better communication with the public by providing the Committee's contact information, purpose, and the website address where the Committee provides consumer protection tools for the public. The notice would also promote transparency in both the government and the profession by making information regarding the Committee's responsibility to regulate the profession and the website where the Committee provides tools for consumers more widely available.

Factual Basis/Rationale

BCP section 138 requires the Committee to adopt a consumer notice regulation. BPC section 138 specifies that every board/program within the Department of Consumer Affairs shall adopt regulations to require its licensees to provide notice to their patients or customers that the practitioner is licensed by the state. A board shall be exempt from the requirement to adopt regulations pursuant to this section if the board has in place, in statute or regulation, a requirement that provides for consumer notice of a practitioner's status as a licensee of this state. The Committee is not exempt from this requirement because it does not currently have such a requirement in statute or regulations. In the proposed regulation, the Committee chose to provide licensees with three options for providing such notice.

The proposed notice to consumers language includes a specifically worded statement that must be:

- contained in visible signage in the naturopathic doctor's office, or
- contained in a written document that is signed by the patient or patient's representative and included in their medical file, or

- contained in discharge and similar paperwork provided to the patient or patient's representative.

To comply with BPC section 138, and to ensure the required information of the notice is properly conveyed to consumers, the Committee created specific wording that must be contained in the notice to consumers. Thus, omitting any of this information would constitute a violation of this requirement. The wording of the notice includes the Committee's contact information, and the website where they can look up the status of the licensee and where consumers can file a complaint. The Committee provides three options for how the notice is provided to consumers in order to ensure that consumers receive the notice in a way that is not overly burdensome to licensees. The options reflect the most effective ways to reach consumers, requiring either signage, written disclosure, or a discharge notice.

The Committee felt that licensees should have some flexibility in how naturopathic doctors provide notice to their patients, while also ensuring that consumers would be effectively notified. Providing the three options, any of which are effective in providing notice to consumers, is, in the Committee's view, the best way to make consumers aware of the Committee and its consumer protection tools, while not being overly burdensome to licensees.

The first option, of posting the notice in an area most likely to be seen by affected individuals, is a simple and common method of communicating information. The Committee chose a 48-point font size as a widely accepted font size which is large enough to be read a short distance away. The Committee chose Arial font because that is the font chosen by government as a font that can be clearly read and wanted to preclude other fonts that may not be clear to a reader.

The second option is having a notice statement that is signed by the patient or patient's representative, that is then included in their medical file. The patients' or representatives' signature would provide added accountability that the notice was actually provided to the patient. Maintenance of the document will assist the Committee in ensuring compliance with the notice requirement.

The third option is adding the notice statement to the medical visit printout. Typically, after each visit, patients receive a printout of their visit details. This printout would be a good reference for patients or their representatives to have the required information. The medical record would also provide the Committee with a record that the information was given to the patient or patient's representative, as it is automatically included in the medical record printout provided to every patient.

The Committee is proposing to:

Adopt Section 4255 of Division 40 of Title 16 of the California Code of Regulations (CCR).

The proposed regulations require a licensed naturopathic doctor engaged in the practice of naturopathic medicine to provide notice to each patient of the fact that they are licensed and regulated by the Committee by at least one (1) of the three (3) methods specified. This proposal would require the notice to include a statement that naturopathic doctors are licensed and regulated by the Committee and contain the Committee's telephone number and website address.

Underlying Data

- March 5, 2019 Committee meeting agenda
- Committee's relevant meeting materials from the March 5, 2019 Committee meeting
- Committee's approved meeting minutes from the March 5, 2019 Committee meeting

Business Impact

The Committee has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the fact that the proposed regulation has an estimated expense of less than \$10 per office.

This minimal cost is outweighed by the benefits to the public of providing information about the regulatory agency responsible for regulating Naturopathic Medicine in the State of California, and the Committee's website address, where the Committee has provided useful tools that inform consumers about the license status of their naturopathic doctor and how to file a complaint against a naturopathic doctor.

Economic Impact Assessment

Creation or Elimination of Jobs within the State of California

This proposal will not create or eliminate jobs within the State of California because the proposed regulations will not cost licensees enough to have any effect of creating or eliminating jobs.

Creation of New or Elimination of Existing Businesses Within the State of California:

This proposal will not create new business or eliminate existing businesses within the State of California because the proposed regulations will not cost licensees enough to have any effect of creating or eliminating businesses.

Expansion of Businesses or Elimination of Existing Businesses Within the State of

California:

This proposal will not affect the expansion of businesses currently doing business within the State of California because the proposal will not cost licensees enough to have the effect of limiting or furthering the expansion of businesses.

Benefits for the Health and Welfare of California Residents:

This regulatory proposal benefits the health and welfare of California residents because it requires the Committee provide notice that naturopathic doctors are licensed and regulated by the Committee and provides multiple ways a consumer can contact the Committee directly should any problems arise.

Benefits for Worker's Safety:

The proposal does not affect worker safety because the proposed regulations do not address or impact worker safety.

Benefits for the State's Environment:

This regulatory proposal does not affect the state's environment because the proposed regulations do not address or impact the State's environment.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed regulations. The Committee is directed by statute to develop these regulations.