

# Department of Consumer Affairs



## Committee Meeting

Thursday, May 28, 2020  
8:00 a.m.

## TELECONFERENCE SITES

### *Main Meeting Location:*

Virtual Meeting – Various Locations

Naturopathic Medicine Committee  
Phone: (916) 928-4785

# TAB 1

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## Agenda



Rebecca Mitchell  
Executive Officer

**Committee Members:**

Dara Thompson, ND  
Greta D'Amico, ND  
Minna Yoon, ND  
Vera Singleton, ND  
Thomas Quinn, MD  
Bruce Davidson, PhD  
Shirley Worrels  
VACANT - ND  
VACANT - PHYS

**NATUROPATHIC MEDICINE COMMITTEE  
AGENDA AND NOTICE OF TELECONFERENCE MEETING**

**Thursday, May 28, 2020**  
**8:00 AM – 10:00 AM**  
(or until the conclusion of business)

**Meeting Location:**  
Naturopathic Medicine Committee  
1300 National Drive, Suite 150  
Sacramento, CA 95834

Call-in Line for Teleconferencing: 1-415-655-0003 (US TOLL)

Access Code: 280 859 395

WebEx Meeting Link:

<https://dca-ca-gov.webex.com/dca-ca-gov/j.php?MTID=mf2c37c9a7136eea187f15e0768ea4c34>

**NOTE:** Pursuant to the provisions of Governor Gavin Newsom's Executive Order N-29-20, dated March 17, 2020, neither Committee member locations nor a public meeting location are provided. Public participation may be through video or teleconferencing as provided above. If you have trouble getting on the call to listen or participate, please call 916-928-4785.

**AGENDA**

*Discussion and possible action may be taken on any items listed on the agenda, and items may be taken out of order to facilitate the effective transaction of business.*

1. Call to Order and Roll Call / Establishment of Quorum
2. Public Comment on Items Not on the Agenda  
*The Committee may not discuss or take action on any item raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting. (Gov. Code §§ 11125, 11125.7(a).)*
3. Executive Officer's Update:
  - a) Licensing Statistics
  - b) Enforcement Statistics
  - c) COVID-19
  - d) CURES Fee Increase
  - e) Staffing/Office
4. Review and Possible Approval of January 28, 2020 Committee Meeting Minutes

5. AB 2138 – Substantial Relationship and Rehabilitation Criteria
  - a) Discussion and Possible Action on Submitted Comments
6. Future Meeting Dates and Locations
7. Agenda Items for Future Meetings
8. Adjournment

**For further information about this meeting, please contact Rebecca Mitchell at (916) 928-4785 or in writing at 1300 National Drive, Suite 150, Sacramento, CA 95834-1991. This agenda and notice, as well as any available meeting materials, can be accessed on the Committee's website at [www.naturopathic.ca.gov](http://www.naturopathic.ca.gov).**

Discussion and action may be taken on any item on the agenda. Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion and consideration by the Committee or prior to the Committee taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the Committee, but the Committee Chair may, at his or her discretion, apportion available time among those who wish to speak. Individuals may appear before the Committee to discuss items not on the agenda; however, the Committee can neither discuss nor take official action on these items at the time of the same meeting. (Gov. Code, §§ 11125, 11125.7(a).)

In accordance with the Bagley-Keene Open Meeting Act, all meetings of the Committee are open to the public and all meeting locations are accessible to those with physical disabilities in accordance with the Americans with Disabilities Act. If you are a person who needs a disability-related accommodation or modification to participate in the meeting, including auxiliary aids or services, please contact Rebecca Mitchell, ADA Liaison, at (916) 928-4785 or via email at [Rebecca.Mitchell@dca.ca.gov](mailto:Rebecca.Mitchell@dca.ca.gov) or by written request to the Committee's office at 1300 National Drive, Suite 150, Sacramento, CA 95834-1991. You may also dial a TDD communications assistant at (916) 322-1700. Providing your request to our office at least five (5) business days before the meeting will help ensure availability of the requested accommodation(s).

## TAB 2

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### Public Comments

Name of Public Providing Comment	Comment Presented

## TAB 3

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### Executive Officer's Update

## MEMORANDUM

<b>DATE</b>	May 28, 2020
<b>TO</b>	Committee Members
<b>FROM</b>	Rebecca Mitchell Executive Officer
<b>SUBJECT</b>	<b>Executive Officer's Report – Agenda Item 3</b>

This report provides the Committee Members with information on the following topics:

- Licensing Statistics
- COVID-19
- CURES
- Staffing/Office

### **Licensing Statistics:**

The table below shows the NMC's total licensee count as of May 27, 2020. The table shows the number of licensees practicing under the Committee's jurisdiction. The total number of licensees under the NMC's jurisdiction is 1,033.

License Status	Number of Licensees
Active/Current	849
Inactive/Current	20
Delinquent	164
<b>Total:</b>	<b>1,033*</b>

\* Total licensees under the NMC's jurisdiction

### **COVID-19:**

On March 19, 2020, Governor Newsom issued Executive Order N-33-20. This Executive Order provided a stay at home order for the citizens of California, except as needed to maintain continuity of operations. Committee management determined that all Committee staff are considered essential at this time considering the nature of the profession. The Committee's office is operational but is closed to the public. Committee management set up a hybrid-telecommuting schedule for staff that doesn't compromise the Committee's workload. Staff is required to intermittently work from the office while maintaining the appropriate social distancing guidelines.

On March 30, 2020, Governor Newsom issued Executive Order N-39-20. This Executive Order authorized the Director of the Department of Consumer Affairs (DCA) to waive any of the professional licensing requirements and amend scopes of practice in Division 2 of the Business and Professions Code and regulations. The following waivers were issued on March 31, 2020:



- **DCA 20-01 Continuing Education** – Active licensees that expire between March 31, 2020 and June 30, 2020 are temporarily exempt from completing or demonstrating compliance with any continuing education requirements in order to renew a license. These licensees must satisfy any waived renewal requirements within six months, unless further extended. Additionally, these waivers do not apply to any continuing education required pursuant to a disciplinary order against a license.
- **DCA 20-02 Reinstatement of Licensure** – Inactive licensees who are seeking to reactivate their license are temporarily exempt from completing or demonstrating compliance with any continuing education requirements. Additionally, these licensees do not need to pay any fees in order to reactivate their license. These licenses are valid for a maximum of six months, or when the State of Emergency ceases to exist, whichever is sooner. Additionally, licenses that were surrendered or revoked pursuant to disciplinary proceedings or any licensee who entered an inactive status following an initiation of a disciplinary proceeding are not eligible for this waiver.

### **Staffing / Office:**

The Committee was understaffed for a three (3) month period while its sole analyst was out on an unplanned leave of absence. During this time period, all of the Committee's workload was diverted to the Executive Officer. Everything was processed within normal timelines and there were no backlogs during Ms. Oden's absence. On 05/11/2020, Ms. Oden was able to return to work and resume her full duties.

Due to the positive feedback from staff and the ease of being able to transition to a hybrid-telework system without any issues, the Executive Officer has decided to make this arrangement permanent. While all state agencies are being asked to reduce lease costs and office space requirements, the hybrid-telework option can do both; in addition to doing our part in reducing carbon footprints and allowing staff a better home-work life balance. Productivity has increased along with the general moral of staff.

### **CURES:**

Assembly Bill 528 (Controlled Substances: CURES database) was chaptered on October 9, 2019. This bill, among other things, does the following:

- Changes the required timeframe in which pharmacists are required to report dispensed prescriptions to CURES from seven days to the following working day
- Expands access to CURES for delegates acting on behalf of licensed prescribers
- Adjusts the timeline on which a prescriber must re-query the CURES database prior to renewing a prescription for Schedule II-IV drugs from once every four months to once every six months
- Authorizes physicians and surgeons licensed by the Board but do not possess a federal DEA registration to register for access to CURES

The Department of Justice (DOJ) is seeking additional funding to carry out the mandates of AB 528. DCA does not control CURES costs and all funding in the CURES fund is directed solely to DOJ to cover the cost of CURES. This is necessitating a CURES fee increase from \$6 - \$14 annually. The new fee will be collected from all individuals authorized to prescribe or dispense controlled substance beginning January 1, 2021.

## TAB 4

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Review and Approval of January 28, 2020  
Committee Meeting Minutes



## **Naturopathic Medicine Committee**

### **Meeting Minutes**

**January 28, 2020**

**DRAFT**

**MEMBERS  
PRESENT:**

Dara Thompson, ND, Chair  
Greta D'Amico, ND  
Minna Yoon, ND  
Vera Singleton, ND  
Bruce Davidson, PhD  
Shirley Worrels

**MEMBERS  
ABSENT:**

Gregory Quinn, MD

**STAFF  
PRESENT:**

Rebecca Mitchell, Executive Officer (EO)  
Sabina Knight, Esq., Legal Counsel, DCA  
Raquel Oden, Program Analyst

**MEMBERS OF  
THE AUDIENCE:**

None

### **Agenda Item 1                      Call to Order/Roll Call/Establishment of a Quorum**

Dara Thompson, ND, Chair, Naturopathic Medicine Committee (NMC), called the meeting of the NMC to order on January 28, 2020, at 10:11 a.m. A quorum was present and due notice was provided to all interested parties.

### **Agenda Item 2                      Public Comment**

There were no public comments for any items not on the agenda to discuss.

**Agenda Item 3****Review and Possible Adoption of Naturopathic Medicine Committee 2020 – 2024 Strategic Plan**

The Committee reviewed the 2020 – 2024 Strategic Plan and made some non-substantive changes. The Strategic Plan was adopted with amendments as noted below:

- Switch page 4 (Goal Area Summaries) with page 5 (Mission, Vision, and Values)
- Page 7 (2. Enforcement): 2.4 should read, “Educate licensees in verifying and confirming that any professional practitioner that they work with appropriately licensed, to prevent being in violation and further protect consumers.”
- Page 8 (3. Legislation and Regulation): 3.3 should read, “Advance scope of practice to meet legislative mandates of the Committee.”
- Page 8 (3. Legislation and Regulation): 3.5 should read, “Add North American Naturopathic Continuing Education Accreditation Council (NANCEAC) as a continuing education provider, to broaden continuing education opportunities.”
- Page 8 (3. Legislation and Regulation): 3.6 should read, “Clarify guidelines for naturopathic medical assistants and create regulations as needed.”
- Page 8 (3. Legislation and Regulation): 3.8 should change “statue” to “statute”
- Page 9 (4. Administration): 4.2 should read, “Identify and implement a resource to assist member in tracking the Committee’s work.”
- Page 10 (5. Outreach and Education): 5.1 should read, “Explore opportunities to educate legislators, health related boards, and professional associations about naturopathic medicine and the Naturopathic Medicine Committee in order to inform and foster relationships and support.”
- Page 11 (Strategic Planning Process): Insert online survey table
- Page 12 (Back Page): Correct Committee zip code

*Motion* – Davidson / Second – D’Amico, to adopt the 2020 – 2024 Strategic Plan with amendments. Roll call vote taken, motion carried 6-0-0. (YES – Thompson, D’Amico, Yoon, Davidson, Worrels, Singleton/ NO – none / Abstentions – none).

**Agenda Item 4****Executive Officer’s Update****a) Budget:**

Budget information was provided to the Committee during this meeting. The report was presented by the Dept. of Consumer Affairs, Budget Unit staff, Sarah Hinkle, Analyst. Items attached to meeting materials.

**b) Licensing Statistics:**

The Licensing statistics were provided by Ms. Mitchell during the license update and are as follows:

Total licensee population:

- 840 Current In-State/ Out-of-State
- 18 Inactive
- 159 Delinquent
- 1,017 total licensees under the Committee's jurisdiction.

**c) Enforcement Statistics:**

The Enforcement stats were provided by Ms. Mitchell during an Enforcement update and are as follows:

- 60 open cases in various stages of the enforcement process
- 42 Unlicensed Activity (70%)
- 18 Licensee Cases (26.6%)
- 2 Applicant Case (3.4%)

Case types against Licensees:

- 8 Advertising (44%)
- 1 Failure to update address (6%)
- 3 DUI/Controlled Substance violation (17%)
- 4 Unprofessional practice (22%)
- 2 Death or Serious Patient Harm (11%)

**d) Regulatory Package Updates:**

As of January 17, 2020, the regulatory package for AB 2138 for Substantial Relationship and Rehabilitation was sent to Agency for review. Once the package has been sent to the Office of Administrative Law (OAL), the members will be advised with an update.

**Agenda Item 5                      Recommendations and Possible Action on Legislative Proposals to Amend the Naturopathic Doctors Act**

The Committee discussed the possible legislative proposal for a scope modernization to allow ND supervision over nurses and LVNs, ability to perform minor office procedures, independent prescriptive authority, cannabis recommendations. In addition to requesting a modernization of scope to obtain parity with the other naturopathic licensing states, the Committee also want to request some technical changes be made during the Oversight (Sunset) Review. These items are allowing the use of Narcan (naloxone) and the ability to sign disability forms.

**Agenda Item 6                      Minor Office Procedures Subcommittee Update and Possible Action on Updated Recommendations to the Legislature**

Dr. Bruce Davidson, PhD, Chair of the Minor Office Procedures subcommittee provided an update. Dr. Davidson notified the Committee that the Subcommittee lost their physician member of the team. They are currently awaiting another physician member to be appointed to the Committee. Once the Subcommittee has a new member appointed, they will resume their business.

**Agenda Item 7                      Prescribing and Furnishing Authority of Naturopathic Doctors Subcommittee Update and Possible Action on Updated Recommendations to the Legislature**

Dr. Minna Yoon, ND, Chair of the Prescribing and Furnishing Authority of Naturopathic Doctors Subcommittee, provided the update to the Committee. Dr. Yoon advised that the Subcommittee has met on three (3) occasions.

- During the 5/9/2019 meeting, the Subcommittee members reviewed the original recommendation that was provided to the Legislature in 2007. They discussed that keeping the **exclusionary formulary** based on drug classifications would be easy to maintain moving forward. In addition, for independent prescribing ability there needs to be set standards for all NDs practicing in California whether they were trained in another state or country, if they have been practicing for a long time or a recent graduate, residency or not. The NPLEX Pharmacology elective examination or a minimum number of years with a physician supervision was considered as possible standards. Further, the Subcommittee agreed that additional training is needed for some categories of legend drugs such as Botox, etc.
- During the 7/18/2019 meeting, the Subcommittee members discussed a grandfathering clause and an appropriate time period of physician supervision that would ensure competency in the independent prescriptive rights for current licensees. After a thorough discussion, the members felt that in order to ensure that all licensees have met the same requirements for competency in pharmacology, that a grandfathering clause would not be allowed for NDs who want independent prescriptive rights. An exam would be needed to be passed in order to have independent prescriptive rights. All members agreed to the NPLEX pharmacology elective exam as being a minimum requirement for licensees wanting independent prescriptive authority.
- During the 10/24/2019 meeting, the Subcommittee recognized that not all pharmaceuticals are appropriate for the practice of naturopathic medicine and/or tested in the NPLEX Pharmacology elective exam. However, NDs should have access to pharmaceuticals that are generally used in primary care practices. The

Subcommittee is currently working on categorizing specific drug classifications into four (4) categories: 1) allow NDs to have full independent prescriptive authority; 2) drugs that are only allowed with physician supervision agreement; 3) prohibited (for referral to a specialist); and 4) unknown.

## **Agenda Item 8                      Discussion and Possible Action Regarding the Intravenous (IV) and Injection Therapy Subcommittee Recommendations**

Dr. Thompson, Chair of the Intravenous (IV) and Injection Therapy Subcommittee, provided an update on the recommendation of the Intravenous and Injection Therapy Subcommittee. Proposed language for the California Code of Regulations (CCR) (sections 4237.1, 4237.2, 4237.3, and 4237.4 was provided to the Committee members.

All recommendations were discussed. There were no changes to proposed language of CCR section 4237.1. There were some amendments made to the following CCR sections as shown below:

- CCR 4237.2 – Training Requirements for Certification, Injection Therapy:
  - (a) – add “outlined in subsection (b)”
  - (b)(1) – change to “For the use of IV Chelating agents, including EDTA, DMPS, and any other known IV chelating agents, a naturopathic doctor must have an additional twelve (12) hours of training for IV chelation as outlined in 3635 and 3635.2 of the Code.”
  - (4) – change “section” to “Code”
  - (5) – change “section” to “Code”
- CCR 4237.3 – Intravenous and Injection Therapy, Office Requirements:
  - (a) add – “outlined in 4237.1 and 4237.2”
  - (d) add – “Thermometer” to list. Had a non-substantive change request as well.
  - (d)(9)(E) change to – “Diphenhydramine: oral and injectable”
  - (f) – non-substantive change requested
  - (g) – change to “The office must have access to restrooms that are easily monitored by staff.”
  - (h) – remove this section.
- CCR 4237.4 – Intravenous and Injection Therapy, Staffing Requirements:
  - (a) – add “listed in section 4237.2(b)”
  - (b) – change to “There must be at least 2 personnel onsite (one of which must be an naturopathic doctor, during IV or infection therapies when there are one (1) to ten (10) patients present. An additional staff member or naturopathic doctor is required for every five (5) additional patients.”

*Motion* – Worrels / Second – Yoon, to approve the proposed text with amendments, start process for a 45-day comment period and give the Executive Officer (EO) the authority to make any non-substantive changes if needed. If no comments are received, the Committee further give the EO the authority to move forward with the



normal regulatory process. Roll call vote taken, motion carried 6-0-0. (YES – Thompson, D’Amico, Yoon, Davidson, Worrels, Singleton/ NO – none / Abstentions – none).

**Agenda Item 9                      California Naturopathic Doctors Association (CNDA) Update**

Ms. Kathy Konst, Executive Director of the California Naturopathic Doctors Association, was present and provided an update to the Committee. The CNDA recently moved from Culver City to Santa Monica and currently has approximately 500 members, which include several student members. This year the CNDA will hold their annual conference in Palm Springs, CA from February 28 through March 1, 2020.

The CNDA would like to work with the Committee to find out what pharmacology continuing education (CE) courses they should be offering. In addition, they would like to become one of the providers when the IV and Advanced Injection Therapy Certification regulations are in place, and work with the Committee to develop a more modern scope that will be in parity with other naturopathic regulatory states.

**Agenda Item 10                      Review and Possible Approval of July 25, 2019 Meeting Minutes**

The Committee reviewed the July 25, 2019 meeting minutes. The minutes were approved as submitted.

*Motion* – Thompson / Second – D’Amico, to approve the July 25, 2019 meeting minutes as submitted. Roll call vote taken, motion carried 6-0-0. (YES – Thompson, D’Amico, Yoon, Davidson, Worrels, Singleton/ NO – none / Abstentions – none).

**Agenda Item 11                      Establish Future Meeting Dates and Locations**

- 2<sup>rd</sup> Quarter Meeting – March 23 or March 26, 2020
- 3<sup>rd</sup> Quarter Meeting – June 11, 2020

**Agenda Item 12                      Agenda Items for Future Meetings**

The following are items that were requested to be added to future meetings:

- Scope Modernization Discussion
- Regulation Package Updates
- AB 5 – Independent Contractors
- RN/LVN scope change to include orders to nurses by NDs
- Subcommittee updates

**Agenda Item 13    Adjournment**

***There being no further business or public comment, Dr. Thompson adjourned the meeting at 3:10 p.m.***

## TAB 5

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**AB 2138 – Substantial Relationship and  
Rehabilitation Criteria: Comments/Responses**

**LEGAL AFFAIRS DIVISION**

1625 N. Market Blvd., Suite S 309, Sacramento, CA 95834  
 P (916) 574-8220 F (916) 574-8623 | www.dca.ca.gov



## MEMORANDUM

<b>DATE</b>	<i>Draft May 21, 2020</i>
<b>TO</b>	Naturopathic Medicine Committee Members
<b>FROM</b>	Karen Halbo, Attorney III Legal Affairs Division, Department of Consumer Affairs
<b>SUBJECT</b>	<b>Proposed Responses to Public Comments from CLSEPA and Root &amp; Rebound dated April 28, 2020 Regarding Proposed Amendments to Title 16, California Code of Regulations sections 4256, 4258, and 4259 (AB 2138 Implementation)</b>

### **Background**

At its March 5, 2019 meeting, the Committee approved regulatory language to implement AB 2138 (Chiu, Chapter 995, Statutes of 2018). Key provisions of that bill, which becomes effective on July 1, 2020, are as follows:

1. Only permits a board or committee to deny a license on grounds that an applicant has been convicted of a crime or has been subject to formal discipline if either of these are met (Business and Professions Code (BPC), § 480, subd. (a)):
2. The conviction was within 7 years of the date of the application and is substantially related to the qualifications, functions, or duties of the profession. The 7-year limit does not apply to convictions for a serious felony (defined in Penal Code, § 1192.7), or for those who must register as a sex offender as described in Penal Code section 290, subdivisions (d)(2) or (3).
3. The applicant has been subject to formal discipline by a licensing board or committee within the past 7 years for professional misconduct that would have been cause for disciplinary action by the board or committee and is substantially related to the profession. (The prior disciplinary action cannot be used to deny if it was based on a dismissed or expunged conviction.)
4. Prohibits a board or committee from requiring that an applicant for licensure disclose information about his or her criminal history. However, a board or committee is permitted to request it for the purpose of determining substantial relationship or evidence of rehabilitation. In such a case, the applicant must be informed that the disclosure is voluntary

## Naturopathic Medicine Committee Members

*Draft May 21, 2020*

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and failure to disclose will not be a factor in a board's or committee's decision to grant or deny an application. (BPC, § 480, subd. (f)(2).)

5. Requires each board or committee to develop criteria to determine whether a crime is substantially related to the qualifications, functions, or duties of the profession.

These criteria are required to be considered when considering the denial, suspension, or revocation of a license. By law, boards or committees are required to adopt regulations that include all of the following criteria (BPC, § 481):

1. The nature and gravity of the offense.
  2. The number of years elapsed since the date of the offense.
  3. The nature and duties of the profession in which the applicant seeks licensure or is licensed.
6. Prohibits a board or committee from denying a license based on a conviction without considering evidence of rehabilitation. (BPC, § 481)
  7. Requires each board or committee to develop criteria to evaluate rehabilitation when considering denying, suspending, or revoking a license. A showing of rehabilitation shall be considered if the applicant or licensee has been completed their criminal sentence without a violation of parole or probation, or if the board or committee finds its criteria for rehabilitation has been met. (BPC, § 482)

To successfully adopt, amend or repeal a regulation, the Committee is required to meet the following standards in the Administrative Procedure Act (APA): (1) necessity, (2) authority, (3) clarity, (4) consistency, (5) reference, and (6) nonduplication. (Gov. Code, § 11349.1)

### **Status of the Regulation Proposal**

The Committee noticed the regulation proposal on March 13, 2020, and gave the public forty-five (45) days to provide public comment ending on April 28, 2020. No public hearing was requested or conducted. A public comment was received on April 28, 2020 (see **Attachment A**).

### **Summary of Comments Received and Proposed Responses**

Faride Perez-Aucar of Root and Rebound Reentry Advocates and Vinuta Naik, of Community Legal Services of East Palo Alto, submitted a letter commenting on the Committee's implementation of Assembly Bill 2138, dated April 28, 2020 ("the letter" attached hereto as **Attachment A**). Perez-Aucar and Naik submitted all comments below on behalf of their respective organizations and A New Way of Life Reentry Project, Californians for Safety and Justice, Center for Employment Opportunities, Center for Living and Learning, Community Legal Services in East Palo Alto, Criminal Justice Clinic, UC Irvine School of Law, East Bay Community Center, Legal Aid at Work, Legal Services for Prisoners with Children, All of Us or None, Los Angeles Regional Reentry Project, National

Association of Social Workers, California Chapter, REDF, The Record Clearance Project, San Jose State University, Root and Rebound, Rubicon Programs, and Underground Scholars Initiative. Below is a summary of each comment and a recommended response. The responses were prepared in consultation with, and based upon, direction given by the Committee's Executive Officer.

## 1. Initial Comment: General Statement/ Purpose of the Letter

**Summary:** The letter states that the organizations supporting the letter believe the proposal should go further in order to fully implement the intention and spirit of the AB 2138 text. They believe there is a lack of clarity in the licensure process for individuals who have been impacted by the criminal justice system, coupled with the limited number of organizations that support low-income and indigent people seeking occupational licensure, leads many to give up. They believe the proposed regulations leave gaps and fail to implement Business and Professions Code (BPC) sections 480, 481, 482, and 493 and fall short of the intent of the bill to combat discrimination against people with records who have demonstrated rehabilitation and are seeking a professional career.

**Proposed Response:** The Committee rejects these comments about the general purpose of the proposed regulatory changes. The purpose of the proposed regulations is to clarify substantial relationship criteria and criteria for rehabilitation, as required by AB 2138 (BPC § 481). In particular, consistent with the requirements enacted by AB 2138, these regulations would adopt all of the following criteria, which would assist the Committee with a balanced approach to evaluating an applicant's eligibility for licensure:

1. The nature and gravity of the offense.
2. The number of years elapsed since the date of the offense.
3. The nature and duties of the profession in which the applicant seeks licensure or is licensed.

Further, clarifying how to determine whether a crime is substantially related and clarifying the factors that will be considered when evaluating rehabilitation should assist applicants and licensees with demonstrating their rehabilitation.

## 2. Comment #1

**Summary:** The letter says the proposed regulations should include the 7-year washout period for consideration of convictions or discipline which are not considered serious felonies under the Penal Code § 1192.7. (See BPC, § 480, subd. (a).)

**Proposed Response:** The Committee rejects this comment. The seven-year period during which a board or committee can deny a license for a conviction or formal discipline is fully described in BPC section 480, subdivision (a)(1). As this is already included in statute, adding this provision is duplicative of section 480 and therefore it is not necessary to repeat it in the regulations.

## 3. Comment #2

**Summary:** The letter asks that proposed regulations should provide that a person with a criminal history shall not be denied a license if the applicant has obtained a Certificate of Rehabilitation, dismissal per Penal Code section 1203.4, 1203.4a, 1203.41 or 1263.42, or an arrest which led to an infraction/citation or a disposition other than conviction, or juvenile adjudication. (See BPC, § 480, subd. (b) – (d).)

**Proposed Response:** The Committee rejects this comment. BPC section 480, subdivision (c) already clearly states that a license may not be denied based on a conviction, or its underlying acts, if it has been dismissed or expunged pursuant to Penal Code sections 1203.4, 1203.4a, 1203.41, or 1203.42. In addition, BPC section 480, subdivision (b) prohibits license denial if the applicant has obtained a certificate of rehabilitation, was granted clemency or a pardon, or has made a showing of rehabilitation per BPC section 482. BPC section 480, subdivision (d) prohibits license denial based on arrest that resulted in something other than a conviction, such as an infraction, citation, or juvenile adjudication. As noted above, Business and Professions Code section 480, subdivisions (b), (c), and (d) explicitly prohibit denial of a license in those specific circumstances. Since these provisions are already specifically covered in statute, adding them again in regulation would be duplicative. Therefore, it is not necessary to repeat them in regulations.

## 4. Comment #3

**Summary:** The letter states that the regulations fail to include that the Committee shall not require an applicant to disclose any information or documentation regarding the applicant's criminal history. (See BPC, § 480, subd. (f)(2).)

**Proposed Response:** The Committee rejects this comment. Business and Professions Code section 480, subdivision (f)(2) already covers this in detail. It would therefore be duplicative of the statute and not necessary to repeat this in the regulations.

#### 5. Comment #4

**Summary:** The letter states that the regulations fail to include that the Committee must notify the applicant in writing if the applicant is denied or disqualified from licensure. The letter states the Committee must have procedures in place for the applicant to challenge a decision or to request re-consideration, and that the applicant has a right to appeal the Committee's decision and the process of requesting a complete conviction history. (See BPC, § 480, subd(f)(3).)

**Proposed Response:** The Committee rejects this comment. Business and Professions Code sections 480(f)(3), 485 through 487, and the California Administrative Procedure Act commencing at Government Code sections 11500 and following already contains these requirements, including requirements for providing the legal and factual basis for the denial, service of the denial on the applicant, and notice to the applicant regarding the opportunity to request a hearing to challenge the decision. It would therefore be duplicative of these statutes and not necessary to repeat this in the regulations.

#### 6. Comment #5

**Summary:** The letter states that the intent of AB 2138 was not to incorporate mere probation or parole reports into the occupational licensing determinations. The letter states that merely looking to law enforcement will not adequately show how an applicant would do on the job. The letter further says rehabilitation can and does take many forms that extend beyond mere law enforcement supervision. The letter recommends that the Committee provide examples of evidence of mitigating circumstances and rehabilitation efforts to better define rehabilitation and to assist both the Committee and licensing applicants.

**Proposed Response:** The Committee rejects this comment. Business and Professions Code section 482 requires boards and committees to develop criteria to evaluate rehabilitation and to consider whether an applicant or licensee has made a showing of rehabilitation if either the criminal sentence has been completed without violation of probation or parole, or if the board or committee otherwise finds the applicant rehabilitated.



Therefore, sections 4256, 4258, and 4259 of the proposal would provide two-step rehabilitation guidance for the Committee in complying with this law:

- First, the Committee must determine if the completion of the criminal sentence with no violations constitutes rehabilitation. Consistent with the direction in AB 2138, to consider rehabilitation if an applicant completes the criminal sentence at issue without a violation of parole or probation, specific criteria are being added to sections 4256, 4258, and 4259 to help the Committee determine whether sentence completion demonstrates rehabilitation. Criteria the Committee is proposing include length of the parole or probation, whether it was shortened or lengthened and the reasons, and any modifications to the parole or probation that may have been made. This represents the first step and includes probation or parole reports, because these are an indication of how well compliance was achieved. However, if the Committee does not find rehabilitation based solely on sentence completion, there is still a second step that must be considered. An applicant can show rehabilitation as proposed in subdivision (b) of the regulations.
- The second step, if rehabilitation is not demonstrated solely based on the sentence completion, is that the Committee must consider certain other criteria to evaluate rehabilitation. This includes nature and severity of the crime, time elapsed since the crime, evidence of any subsequent crimes or conduct, compliance with probation or parole, and evidence of rehabilitation submitted by the applicant or licensee. A general category permitting submission of any rehabilitation evidence allows an applicant to demonstrate volunteer or charity work, furthered education, successful employment, or any other activities that they choose to submit to be considered by the Committee. The Committee can and already does give serious consideration to these factors when considering whether an applicant or licensee is rehabilitated.

There are many possible ways of showing rehabilitation, and many unique scenarios of mitigating circumstances. Attempting to specifically list some but not others may be limiting or misleading to the applicant and the staff of the Committee. In addition, the circumstances of each enforcement case are unique and what is sufficient evidence of rehabilitation for one case may not suffice for another or may not be relevant for all types of crimes (e.g., attendance at Alcoholics Anonymous is a common demonstration of rehabilitation for alcohol-related crimes but is not a good example of rehabilitation for a crime where alcohol was not involved). The Committee believes that the regulation adequately addresses the rehabilitation issues while allowing the applicant to provide evidence that specifically addresses their rehabilitative efforts relative to a crime or conduct on a case-by-case basis.

## 7. Comment #6

**Summary:** The letter states that the regulations fail to mention requirements to obtain statistical information on the number of applicants with a criminal record who apply and receive notice of denial or disqualification of licensure, provided evidence of mitigation or rehabilitation, and the final disposition of the application, and demographic information. (See BPC, § 480, subd. (g)(1), (2).)

**Proposed Response:** The Committee rejects this comment. These requirements are already stated in statute (BPC, § 480, subd. (g)(1) and (2)). It would therefore be duplicative of the statute and not necessary to repeat this in the regulations.

### **Recommendation**

The members should review the proposed responses and consider whether to accept or reject any of these comments. After review, the Committee may consider any of the following actions:

Option No. 1 (If the members agree with the proposed responses): Direct staff to reject the proposed comments, provide the responses to the comments as indicated in the meeting materials and complete the regulatory process as authorized by motion at the Committee's March 5, 2019, meeting.

Option No. 2: (If the members have any edits to the proposed responses or wish to accept any comments or make any text changes):

Direct staff to accept the following comments and make the following edits to the text:

[identify comments to accept and text to change here], but otherwise reject the comments as set forth in the meeting materials.

In addition, direct staff to take all steps necessary to complete the rulemaking process, including sending out the modified text with these changes for an additional 15-day comment period. If after the 15-day public comment period, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulation, and adopt the proposed regulation as described in the modified text notice.

**California Code of Regulations**  
**Title 16. Professional and Vocational Regulations**  
**Division 40. Naturopathic Medicine Committee**

Proposed amendments to the regulatory language are shown in single underline for new text and ~~striketrough~~ for deleted text.

Amend Section 4256 in Article 9 of Division 40 of Title 16 of the California Code of Regulations to read as follows:

**§ 4256. Substantial Relationship Criteria.**

(a) For the purposes of denial, suspension, or revocation of a license or certificate pursuant to section 141 or division ~~Division~~ 1.5 (commencing with Section 475) of the Business and Professions Code, a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions, or duties of a person holding a license or certificate under the Naturopathic Doctors Act if to a substantial degree it evidences ~~evinces~~ present or potential unfitness of a person holding such a license or certificate to perform the functions authorized by the license or certificate in a manner consistent with the public health, safety or welfare. ~~Such crimes or acts shall include but not be limited to the following:~~

~~(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Naturopathic Doctors Act.~~

~~(b) A conviction of child abuse.~~

~~(c) A conviction as a sex offender.~~

~~(d) The conviction of any crime involving the sale, gift, administration, or furnishing of narcotics, dangerous drugs or dangerous devices, as defined in Section 4022 of the Code.~~

~~(e) A conviction for assault and/or battery, lewd conduct, or driving under the influence of drugs or alcohol.~~

~~(f) A conviction of a crime involving fiscal dishonesty.~~

(b) In making the substantial relationship determination required under subdivision (a) for a crime, the Committee shall consider the following criteria:

(1) The nature and gravity of the offense;

(2) The number of years elapsed since the date of the offense; and

(3) The nature and duties of a naturopathic doctor.

(c) For purposes of subdivision (a), substantially related crimes, professional misconduct, or acts shall include, but are not limited to, the following:

(1) Any violation of Article 6, of Chapter 1 of Division 2 of the Business and Professions Code.

(2) Any violation of the provisions of Chapter 8.2 of Division 2 of the Business and Professions Code.

Note: Authority cited: Sections 481, and 3622, Business and Professions Code.  
Reference: Sections 141, 480, 481, 490, 493, 3660, and 3662, Business and Professions Code.

**California Code of Regulations  
Title 16. Professional and Vocational Regulations  
Division 40. Naturopathic Medicine Committee**

Proposed amendments to the regulatory language are shown in single underline for new text and ~~striketrough~~ for deleted text.

Amend Section 4258 in Article 9 of Division 40 of Title 16 of the California Code of Regulations to read as follows:

**§ 4258. Criteria For Rehabilitation – Denial of Licensure.**

~~(a) When considering the denial of a license under Section 480 of the Code, the Committee, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:~~

~~(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.~~

~~(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Code.~~

~~(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).~~

~~(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.~~

~~(5) Evidence, if any, of rehabilitation submitted by the applicant.~~

~~(b) When considering the suspension or revocation of a license on the grounds that a naturopathic doctor has been convicted of a crime, the Committee, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:~~

~~(1) Nature and severity of the act(s) or offense(s).~~

~~(2) Total criminal record.~~

~~(3) The time that has elapsed since commission of the act(s) or offense(s).~~

~~(4) Whether the licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the licensee.~~

~~(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.~~

~~(6) Evidence, if any, of rehabilitation submitted by the licensee.~~

(a) When considering the denial of a license or certification under Section 480 of the Business and Professions Code on the ground that the applicant was convicted of a crime, the Committee shall consider whether the applicant made a showing of rehabilitation and is presently fit for a license, if the applicant completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Committee shall consider the following criteria:

(1) The nature and gravity of the crime(s).

(2) The length(s) of the applicable parole or probation period(s).

(3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.

(4) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation.

(5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

(b) If subdivision (a) is inapplicable, or the Committee determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (a), the Committee shall apply the following criteria in evaluating the applicant's rehabilitation. The Committee shall find that the applicant made a showing of rehabilitation and is presently fit for a license if, after considering the following criteria, the Committee finds that the applicant is rehabilitated:

(1) Nature and gravity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under section 480 of the Business and Professions Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in paragraph (1) or (2).

(4) Whether the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) The criteria in subdivision (a)(1)-(5), as applicable.

(6) Evidence, if any, of rehabilitation submitted by the applicant.

Note: Authority cited: Sections 482 and 3622, Business and Professions Code.

Reference: Sections 475, 480, 481, 482, 488, 493, 3660, and 3662, Business and Professions Code.

**California Code of Regulations**  
**Title 16. Professional and Vocational Regulations**  
**Division 40. Naturopathic Medicine Committee**

Proposed amendments to the regulatory language are shown in single underline for new text and ~~strike through~~ for deleted text.

Adopt Section 4259 in Article 9 of Division 40 of Title 16 of the California Code of Regulations to read as follows:

**§ 4259. Criteria For Rehabilitation – Suspension or Revocation.**

(a) When considering the suspension or revocation of a license on the ground that the holder of the license has been convicted of a crime, the Committee shall consider whether the licensee made a showing of rehabilitation and is fit for a license, if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Committee shall consider the following criteria:

- (1) The nature and gravity of the crime(s).
- (2) The length(s) of the applicable parole or probation period(s).
- (3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
- (4) The terms or conditions of parole or probation and the extent to which they bear on the licensee's rehabilitation.
- (5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for the modification.

(b) If subdivision (a) is inapplicable, or the Committee determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivision (a), the Committee shall apply the following criteria in evaluating the licensee's rehabilitation. The Committee shall find that the licensee made a showing of rehabilitation if, after considering the following criteria, the Committee finds that the licensee is rehabilitated:

- (1) The nature and gravity of the act(s) or crime(s) under consideration as grounds for suspension or revocation.
- (2) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for suspension or revocation



(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) Whether the licensee has complied with any terms of probation, parole, restitution or any other sanctions lawfully imposed against such person.

(5) The criteria in subdivision (a)(1)-(5), as applicable.

(6) If applicable, evidence of dismissal proceedings pursuant to Section 1203.4 of the Penal Code.

(7) Evidence, if any, concerning the degree to which a false statement relative to application for licensure may have been unintentional, inadvertent, or immaterial.

(8) Efforts made by the applicant either to correct a false statement once made on an application or to conceal the truth concerning facts required to be disclosed.

(9) Evidence, if any, of rehabilitation submitted by the licensee.

(c) When considering a petition for reinstatement of a license or certification under the provisions of Section 11522 of the Government Code, the Committee shall evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in Section 4258 of this article.

Note: Authority cited: Section 3622, Business and Professions Code. Reference: Sections 141, 480, 481, 482, 488, 490, 493, 3660, and 3662, Business and Professions Code.

## TAB 6

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Establish Future Meeting Dates & Locations  
Agenda Items for Future Meetings

Naturopathic Medicine Committee  
Establish Future Meeting Dates and Locations

<b><i>Dates</i></b>	<b><i>Locations</i></b>

**NOTE:** *Please keep costs associated in mind when choosing locations for meetings.*

## TAB 7

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### Agenda Items for Future Meetings

## Naturopathic Medicine Committee

## Agenda Items for Future Meetings

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