

**Sixty-second Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2011**

SENATE BILL NO. 2271
(Senators Sitte, Christmann, Mathern)
(Representatives Hofstad, R. Kelsch, J. Kelsh)

AN ACT to create and enact a new subsection to section 43-17-02 and chapters 43-57, 43-58, and 43-59 of the North Dakota Century Code, relating to creation of the state board of integrative health, regulation of naturopaths, and regulation of music therapists; to amend and reenact section 43-17-41 of the North Dakota Century Code, relating to duties of naturopaths; to provide a penalty; to provide an appropriation; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 43-17-02 of the North Dakota Century Code is created and enacted as follows:

A naturopath duly licensed to practice in this state pursuant to the statutes regulating such profession.

SECTION 2. AMENDMENT. Section 43-17-41 of the North Dakota Century Code is amended and reenacted as follows:

43-17-41. Duty of physicians and others to report injury - Penalty.

1. Any physician, physician assistant, naturopath licensed under chapter 43-58, or any individual licensed under chapter 43-12.1 who performs any diagnosis or treatment for any individual suffering from any wound, injury, or other physical trauma:
 - a. Inflicted by the individual's own act or by the act of another by means of a knife, gun, or pistol shall as soon as practicable report the wound, injury, or trauma to a law enforcement agency in the county in which the care was rendered; or
 - b. Which the individual performing diagnosis or treatment has reasonable cause to suspect was inflicted in violation of any criminal law of this state, shall as soon as practicable report the wound, injury, or trauma to a law enforcement agency in the county in which the care was rendered.
2. The report under subsection 1 must state the name of the injured individual and the character and extent of the individual's injuries.
3. When a report of domestic violence, as defined in section 14-07.1-01, or a report of physical injury resulting from a sexual offense, as defined in chapter 12.1-20, is made to a law enforcement agency as required by this section, the injured individual must be provided with information regarding a domestic violence sexual assault organization as defined in section 14-07.1-01 or other victims' assistance program by the physician, physician assistant, naturopath, or any individual licensed under chapter 43-12.1, unless it is known that the information has previously been provided to the injured individual.
4. The reports mandated by this section must be made as soon as practicable and may be either oral or in writing. Oral reports must be followed by written reports within forty-eight hours if so requested by the sheriff or state's attorney to whom the oral report is originally made.
5. Any individual required to report as provided by this section who willfully fails to do so is guilty of an infraction.

6. Any individual making or not making a report in good faith pursuant to this section is immune from liability for making or not making a report.

SECTION 3. Chapter 43-57 of the North Dakota Century Code is created and enacted as follows:

43-57-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Board" means the state board of integrative health care.
2. "Licensee" means an individual licensed by the board under this chapter and under chapter 43-58 or 43-59.

43-57-02. Board - Qualifications - Appointment - Term of office - Compensation.

1. The governor shall appoint the state board of integrative health care, which must consist of at least five members. Each profession regulated by the board must have one member on the board representing that profession. In addition, one member must be a doctor of medicine or osteopathy, one member must be a pharmacist, one member must be an advanced practice registered nurse, and at least one but no more than two members must be laypersons. If a doctor of medicine or osteopathy is not willing and able to serve, the governor may appoint an advanced practice registered nurse to fill this position. A board member must be a resident of this state. The professional members must be licensed to practice in this state, except the initial appointment for a newly regulated profession, who must be eligible for licensure. The layperson must be at least twenty-one years of age and may not be affiliated with any organization or profession that represents, provides, or regulates health care.
2. The term of office of each board member is three years with appointments distributed evenly from year to year. A member may not serve more than two consecutive full terms.
3. The governor may remove any board member for good cause after giving that member a written statement of the reasons for removal and after that member has had an opportunity for a hearing.
4. Each board member shall serve without compensation but is entitled to receive expenses as provided in section 54-06-09 and per diem as must be fixed by the board.
5. Annually, board members shall elect a chairman to preside at meetings of the board and a vice chairman to preside at meetings of the board in the chairman's absence.

43-57-03. Powers and duties of board.

1. The board shall adopt rules:
 - a. To administer and enforce this chapter and chapters 43-58 and 43-59;
 - b. That specify the scope of practice, which must be consistent with the required education for each profession regulated by the board;
 - c. That endorse equivalent licensure examinations of another state or foreign country and which may include licensure by reciprocity;
 - d. That establish educational standards for each profession regulated by the board as appropriate; and
 - e. That set fees for licensure, which may include:
 - (1) Application fee;

- (2) License fee;
 - (3) Renewal fee;
 - (4) Late fee;
 - (5) Administrative fees; and
 - (6) Continuing education fees.
2. The board shall produce an annual list of the names and level of licensure of all individuals licensed by the board and make the list available upon request.
 3. The board may employ staff and provide for staff compensation.
 4. The board shall receive all moneys collected under this chapter, chapter 43-58, and chapter 43-59 and shall deposit and disburse all fees and moneys collected in accordance with section 54-44-12.
 5. The board may establish continuing education requirements for license renewal.
 6. The board may adopt a code of ethics for each profession regulated by the board.

43-57-04. Board duties in regulating professions - Subgroups.

1. The board shall establish a subgroup for each profession regulated by the board. The board shall appoint at least three and no more than five members of the profession to serve as volunteer members of the subgroup. A subgroup member must be a licensed member of the profession, except in the case of a newly regulated profession in which case each subgroup member must be eligible for licensure. The board may appoint a board member to serve on a subgroup representing that board member's profession. The subgroup members serve at the pleasure of the board.
2. A subgroup established under this section shall serve in an advisory capacity to advise the board when requested by the board. The subgroup on its own motion may advise the board as the subgroup determines necessary.
3. The board may not take any action that impacts a profession regulated by the board as a whole or which impacts one or more licensees of that profession unless the board first consults with and requests the recommendation of the appropriate subgroup. If the board takes an action that is contrary to a subgroup's recommendation, the board shall articulate in writing why the subgroup's recommendation was not followed.

43-57-05. Petition to the board - Inclusion as a board-regulated profession - Consideration of additional health care professions.

1. An existing occupational or professional board of this state or agency of this state which regulates the practice of a health profession or a representative of a health profession that is not regulated by this state may submit to the board a petition and proposed bill draft requesting inclusion of that health profession as a profession regulated by the board. Upon receipt of a petition and proposed bill draft submitted under this section, the board shall review the petition and may work with the person submitting the petition to provide assistance in accomplishing this requested inclusion.
2. If a committee of the legislative assembly considers a measure to regulate a health care profession with fewer than fifty likely members, the committee shall consider whether it is desirable and feasible to have the state board of integrative health, some other existing board, or an existing state agency regulate that profession rather than create a new board.

3. If the membership of a board-regulated profession increases to at least one hundred licensees, the board may introduce legislation creating an independent board to regulate that profession.

43-57-06. Issuance of license.

If the board determines that an applicant possesses the qualifications required under this chapter and under chapter 43-58 or 43-59, the board shall issue a license to the applicant.

43-57-07. License renewal - Continuing education.

1. A license is effective when granted by the board.
2. A license expires on December thirty-first of every odd-numbered year.
3. A license may be renewed by payment of the renewal fee and completion of any continuing education requirements set by the board, provided the applicant's license is not currently revoked or grounds for denial do not exist.
4. If the application for renewal is not received on or before the expiration date, the license expires and the individual may not practice until a new application is made and a license is granted by the board.
5. At the time of renewal, the board shall require each applicant to present satisfactory evidence that the applicant has completed any continuing education requirements specified by the board.
6. If a license has not been renewed as a result of nonpayment of the renewal fee or the failure of the licensee to present satisfactory evidence of completion of any continuing education requirements, the licensee must reapply for licensure.
7. The board may extend the renewal deadline for an applicant having proof of medical or other hardship rendering the applicant unable to meet the renewal deadline.

43-57-08. Discipline.

1. The board may take disciplinary action against a licensee by any of the following means:
 - a. Revocation of license;
 - b. Suspension of license;
 - c. Probation;
 - d. Imposition of stipulations, limitations, or conditions relating to the licensee's practice;
 - e. Letter of censure;
 - f. Require the licensee to provide free public or charitable service for a defined period; and
 - g. Impose fines, not to exceed five thousand dollars for any single disciplinary action. Any fines collected by the board must be deposited in the state general fund.
2. Disciplinary action may be imposed against a licensee upon any of the following grounds:
 - a. The use of any false, fraudulent, or forged statement or document, or the use of any fraudulent, deceitful, dishonest, or immoral practice, in connection with any of the licensing requirements.

- b. The making of false or misleading statements about the licensee's skill or the efficacy of any medicine, treatment, or remedy.
- c. The conviction of any misdemeanor determined by the board to have a direct bearing upon the licensee's ability to serve the public or any felony. A license may not be withheld contrary to the provisions of chapter 12.1-33.
- d. Habitual use of alcohol or drugs.
- e. Physical or mental disability materially affecting the ability to perform the duties of the profession in a competent manner.
- f. The performance of any dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public.
- g. Obtaining any fee by fraud, deceit, or misrepresentation.
- h. Aiding or abetting the practice of the profession by an unlicensed, incompetent, or impaired person.
- i. The violation of any provision of the rules of the board, or any action, stipulation, condition, or agreement imposed by the board.
- j. The practice of the profession under a false or assumed name.
- k. The advertising for the practice of the profession in an untrue or deceptive manner.
- l. The representation to a patient that a manifestly incurable condition, sickness, disease, or injury can be cured.
- m. The willful or negligent violation of the confidentiality between licensee and patient, except as required by law.
- n. Gross negligence in the practice of the profession.
- o. Sexual abuse, misconduct, or exploitation related to the licensee's practice of the profession.
- p. A continued pattern of inappropriate care.
- q. The imposition by another state or jurisdiction of disciplinary action against a license or other authorization to practice based upon acts or conduct by the licensee which would constitute grounds for disciplinary action as set forth in this section. A certified copy of the record of the action taken by the other state or jurisdiction is conclusive evidence of that action.
- r. The lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients.

43-57-09. Disciplinary proceedings - Appeals.

1. Upon the filing of a written and signed complaint that alleges that a licensee practicing in this state has engaged in conduct identified as grounds for disciplinary action under this chapter, and which sets forth information upon which a reasonable and prudent person might believe that further inquiry should be made, the board shall cause the matter to be investigated.
2. The board may investigate a complaint on the board's own motion, without requiring the identity of the complainant to be made a matter of public record, if the board concludes that good cause exists for preserving the anonymity of the complainant.

3. If the investigation reveals no grounds to support the complaint, the board, three years following the date on which the complaint was filed, shall expunge the complaint from the licensee's individual record in the board's office.
4. If the investigation reveals grounds to support the complaint, the board shall initiate a disciplinary action by serving upon the licensee a notice of disciplinary action setting forth the allegations upon which the action is based, as well as a specification of the issues to be considered and determined.
5. If a written response contesting the allegations is not received by the board within twenty days of the date that the notice of disciplinary action was received or refused, the allegations may be deemed admitted and disciplinary sanctions deemed appropriate by the board must be imposed.
6. The board may at any time enter an informal resolution to resolve the complaint or disciplinary action.
7. An appeal from the board's final decision may be taken in accordance with chapter 28-32.

43-57-10. Disciplinary proceedings - Cost of prosecution.

In any order or decision issued by the board in resolution of a disciplinary proceeding in which disciplinary action is imposed against a licensee, the board may direct the licensee to pay the board a sum not to exceed the reasonable and actual costs, including reasonable attorney's fees, incurred by the board in the investigation and prosecution of the case. When applicable, the licensee's license may be suspended until the costs are paid to the board. A licensee may challenge the reasonableness of any cost item in a hearing under chapter 28-32 before an administrative law judge. The administrative law judge may approve, deny, or modify any cost item, and the determination of the administrative law judge is final. The administrative hearing must occur before the licensee's license may be suspended for nonpayment.

43-57-11. Enforcement - Penalty.

A person that violates this chapter, chapter 43-58, or chapter 43-59 is guilty of a class B misdemeanor. In addition to the criminal penalties provided under this section, the civil remedy of injunction is available to restrain and enjoin any violation of this chapter, chapter 43-58, or chapter 43-59 without proof of actual damages sustained by any person.

SECTION 4. Chapter 43-58 of the North Dakota Century Code is created and enacted as follows:

43-58-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Approved naturopathic medical college" means a college and program granting the degree of doctor of naturopathy or naturopathic medicine which must require as a minimum a four-year, full-time resident program of academic and clinical study and which:
 - a. Is accredited, or has the status of candidate for accreditation, by an organization approved by the board, such as the council on naturopathic medical education; or
 - b. Has been approved by the board after an investigation that determines that the college or program meets education standards equivalent to those established by the accrediting agency under subdivision a and complies with the board's rules.
2. "Board" means the state board of integrative health care created under chapter 43-57.

3. "Homeopathic preparations" means nonprescriptive substances prepared according to the official homeopathic pharmacopoeia of the United States. The term does not include prescriptive drugs.
4. "Licensee" means an individual licensed by the board under this chapter.
5. "Naturopath" means an individual licensed to practice naturopathic health care under this chapter.
6. "Naturopathic health care", "naturopathic medicine", or "naturopathy" means a system of primary health care practiced by naturopaths for the prevention, diagnosis, and treatment of human health conditions, injury, and disease. The purpose of naturopathic health care, naturopathic medicine, or naturopathy is to promote or restore health by the support and stimulation of the individual's inherent self-healing processes. This is accomplished through education of the patient by a naturopath and through the use of natural therapies and therapeutic substances.
7. "Naturopathic physical application" means the therapeutic use by a naturopath of the actions or devices of electrical muscle stimulation, galvanic, diathermy, ultrasound, ultraviolet light, hydrotherapy, and naturopathic manipulative therapy. The term does not include manipulation of the spine.

43-58-02. Exemptions.

Many of the therapies used by a naturopath, such as the use of nutritional supplements, herbs, foods, homeopathic preparations, and such physical forces as heat, cold, water, touch, and light, are not the exclusive privilege of naturopaths, and their use, practice, prescription, or administration by individuals not licensed to practice naturopathic medicine is not prohibited by this chapter. This chapter does not restrict or apply to the scope of practice of any other profession licensed, certified, or registered under the laws of this state.

43-58-03. License required - Title restrictions.

1. Effective January 1, 2012, a person may not practice naturopathy without a current naturopathic license issued by the board.
2. A naturopath may use the title "naturopath" or "doctor of naturopathic medicine" and the abbreviation "N.D." when used to reflect either of these titles. Effective January 1, 2012, a person that uses these terms or initials as identification without having received a naturopathic license under this chapter is engaging in the practice of naturopathy without a license.

43-58-04. Qualifications for licensure.

In order to obtain a license to practice naturopathic medicine in this state, an application must be made to the board. The application must be upon the form adopted by the board and must be made in the manner prescribed by the board.

43-58-05. Application for licensure.

1. An applicant for naturopathic licensure shall file an application on forms provided by the board showing to the board's satisfaction that the applicant is of good moral character and satisfied all of the requirements of this chapter and chapter 43-57, including:
 - a. Successful graduation of an approved naturopathic medical college;
 - b. Successful completion of an examination prescribed or endorsed by the board, such as part I and part II of the naturopathic physicians licensing examinations;

- c. Physical, mental, and professional capability for the practice of naturopathic medicine in a manner acceptable to the board; and
 - d. A history free of any finding by the board, any other state licensure board, or any court of competent jurisdiction of the commission of any act that would constitute grounds for disciplinary action under this chapter and chapter 43-57. The board may modify this restriction for cause.
2. The application must be accompanied by the board-established license fees and application fees and by the documents, affidavits, and certificates necessary to establish that the applicant possesses the necessary qualifications.

43-58-06. Initial applications - Education and testing exception.

Notwithstanding the education and examination requirements for licensure under subdivisions a and b of subsection 1 of section 43-58-05, if an applicant was a bona fide resident of the state from January 1, 2011, through December 31, 2011, was practicing naturopathic medicine in this state immediately preceding January 1, 2012, was required to apply for licensure under this chapter in order to continue that practice, and does not meet the educational or examination requirements or both, the board may issue a license or limited license to that applicant if, following an examination of the applicant's education and experience, the board determines the applicant has sufficient education and experience to prepare the applicant to practice naturopathic medicine.

43-58-07. Licensure granted without examination to individuals licensed in other states.

1. The board may issue a naturopathic license by endorsement to an applicant who has complied with licensure requirements and who has passed an examination given by a recognized certifying agency approved by the licensing agency if the board determines the examination was equivalent in every respect to the examination required under this chapter.
2. The board may enter reciprocal agreements with licensing agencies of other states providing for reciprocal waiver of further examination or any part of the examination.
3. If an applicant is exempt from the examination required under this chapter, the applicant shall comply with the other requirements for licensure. The board may adopt rules allowing for temporary and special licensure to be in effect during the interval between board meetings.

43-58-08. Practice of naturopathic health care.

1. A naturopath may practice naturopathic medicine as a limited practice of the healing arts as exempted under section 43-17-02. A naturopath may not:
 - a. Prescribe, dispense, or administer any prescription drug;
 - b. Administer ionizing radioactive substances for therapeutic purposes;
 - c. Perform a surgical procedure; or
 - d. Claim to practice any licensed health care profession or system of treatment other than naturopathic medicine unless holding a separate license in that profession. A naturopath may not hold out to the public that the naturopath is a primary care provider.
2. A naturopath may prescribe and administer for preventive and therapeutic purposes a prescriptive device and the following nonprescriptive natural therapeutic substances, drugs, and therapies:
 - a. Food, vitamins, minerals, dietary supplements, enzymes, botanical medicines, and homeopathic preparations;

- b. Topical drugs, health care counseling, nutritional counseling and dietary therapy, naturopathic physical applications, and therapeutic devices; and
 - c. Barrier devices for contraception.
3. A naturopath may perform or order for diagnostic purposes a physical or orificial examination, ultrasound, phlebotomy, clinical laboratory test or examination, physiological function test, and any other noninvasive diagnostic procedure commonly used by physicians in general practice and as authorized by the board.

43-58-09. Public health duties.

A naturopath has the same powers and duties as a licensed physician with regard to public health laws, reportable diseases and conditions, communicable disease control and prevention, recording of vital statistics, health and physical examinations, and local boards of health, except that the authority and responsibility are limited to activities consistent with the scope of practice established under this chapter and chapter 43-57.

43-58-10. Employment by hospitals.

A hospital may employ a naturopath in the same manner as provided under section 43-17-42.

SECTION 5. Chapter 43-59 of the North Dakota Century Code is created and enacted as follows:

43-59-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Board" means the state board of integrative health care created under chapter 43-57.
2. "Licensee" means an individual licensed by the board under this chapter.
3. "Music therapist" is an individual who practices music therapy.
4. "Music therapy" is the specialized use of music and the materials of music to restore, maintain, and improve the following areas of functioning: cognitive, psychological, social or emotional, affective, physical, sensory or sensorimotor, motor, communicative, and physiological functioning. Techniques used in the practice of music therapy include the use of music to provide participatory individual and group experiences; musical improvisation; therapeutic development of verbal skills and nonverbal behavior; receptive music learning; lyric discussions; memory recall; music and imagery; self-expression through composition and songwriting; socialization and enhancement of self-esteem through music performance; relaxation to music, including stress and pain management; learning through music; cultural and spiritual expression; development of fine and gross motor skills through responses to rhythm; respiratory and speech improvements through sound production; sensory integration and stimulation; increased awareness of music for development of recreation and leisure interests; and interactive verbal techniques to help facilitate, elicit, or summarize the techniques listed in this subsection and build the therapeutic relationship.

43-59-02. Music therapy - License required - Title restrictions - Exceptions.

1. Effective August 1, 2012, a person may not hold out as practicing music therapy, hold out as being a music therapist, or use a title or other designation indicating the person is a music therapist in this state unless that person is an individual licensed under this chapter and chapter 43-57.
2. The licensure provisions of this chapter do not prevent or restrict the practice, services, or activities of any individual licensed in another profession or any individual supervised by a

licensed professional from performing work incidental to the practice of that profession or occupation, if that individual does not represent the individual as a music therapist.

43-59-03. Qualifications for licensure.

1. In order to obtain a license to practice music therapy in this state, an application must be made to the board. The application must be upon the form adopted by the board and must be made in the manner prescribed by the board.
2. An applicant for licensure to practice music therapy shall file an application on forms provided by the board showing to the board's satisfaction that the applicant is an individual of good moral character, is at least eighteen years of age, and satisfied all the requirements established by the board which may include:
 - a. Successful graduation of a board-approved educational program;
 - b. Successful completion of a board-approved examination prescribed or endorsed by the board;
 - c. Hold in good standing a board-approved designation, such as:
 - (1) A music therapist board-certified credential from the certification board for music therapists; or
 - (2) A professional designation from the national music therapy registry, which may include registered music therapist, certified music therapist, and advanced certified music therapist.
 - d. Physical, mental, and professional capability for the practice of music therapy in a manner acceptable to the board;
 - e. A history free of any finding by the board, any other state licensure board, or any court of competent jurisdiction of the commission of any act that would constitute grounds for disciplinary action under this chapter or chapter 43-57. The board may modify this restriction for cause.
3. The application must be accompanied by the board-established license fees and application fees and by the documents, affidavits, and certificates necessary to establish that the applicant possesses the necessary qualifications.

SECTION 6. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$4,000, or so much of the sum as may be necessary, to the office of management and budget for the purpose of providing a grant to the state board of integrative health for assisting with costs associated with establishing the board, for the biennium beginning July 1, 2011, and ending June 30, 2013.

SECTION 7. APPLICATION. The terms of the initial state board of integrative health care may be for less than two years in order to establish staggered terms with no more than two members' terms expiring in any year.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2271.

Senate Vote: Yeas 46 Nays 0 Absent 1

House Vote: Yeas 80 Nays 10 Absent 4

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2011.

Approved at _____ M. on _____, 2011.

Governor

Filed in this office this _____ day of _____, 2011,

at _____ o'clock _____ M.

Secretary of State