



Dora

Department of Regulatory Agencies

Office of Policy, Research and Regulatory Reform

2008 Sunrise Review: Naturopathic Physicians

January 4, 2008



However, title protection schemes offer only minimal consumer protection and, given the breadth of Complementary Alternative Medicine (CAM) and naturopathic practice, the credentials and titles would, necessarily, be overly broad so as to be comprehensive.

Conclusion

The traditional reasons given for the regulation of health care professions are to prevent non-diagnosis, misdiagnosis, non-treatment and mistreatment by unqualified medical providers. In general, the goals of a regulatory program are: 1) protect the public from the dangers of unskilled practitioners and unsound treatment or advice; and 2) protect the public from reliance on unskilled practitioners, as well as directing them to proper medical care.³⁰

There are several reasons to consider regulation of naturopathic physicians: it is possible that the public is confused by the common use of the various forms of the term "naturopath;" it is possible that the practice of some naturopaths who refer to themselves as "doctors" are in violation of the CPA; and the use of naturopathic care and CAM continues to be utilized by Colorado consumers; and the examples of harm discussed in this report may have been caused by negligent or incompetent practice. The potential regulation of any health profession has numerous implications for consumers, providers, and society as a whole.

According to one study, most users of alternative therapies believe they have explored the full utility of conventional Western approaches:

Most have chronic illnesses (e.g., cancer, [Human Immunodeficiency Virus] infection, or [Acquired Immune Deficiency Syndrome], arthritis, chronic pain, sinusitis, migraines) for which Western medicine can usually offer only symptomatic relief or palliation, not definitive treatment. [CAM is] often used in combination with the appropriate conventional approaches, as a way of enhancing and complementing them. Sometimes [CAM is] used instead of conventional therapies when the latter have proved ineffective or have produced deleterious side effects.³¹

As noted earlier in this sunrise review, a potential for public harm exists in the unregulated practice of naturopathy. What is more, this potential harm arises in the realm of public health, which is arguably more important than other areas of potential harm, such as pecuniary damage.

³⁰ M.H. Cohen, "Holistic Health Care: Including Alternative and Complementary Medicine in Insurance and Regulatory Schemes." *Arizona Law Review*. 38, 1 (Spring 1996):83-164.

³¹ J.S. Gordon, M.D. "Alternative Medicine and the Family Physician." *American Family Physician*. 54, 7 (1996):2205-2212.

Not everyone agrees that CAM represents an appropriate form of medical care. To some, many of the therapies considered to be CAM represent unscientific treatments that may at best be benign and at worst harmful. The argument made against CAM is that if these therapies were to be proven scientifically valid, they would be adopted by allopathic medicine, and would become mainstream. Although these opponents of CAM often admit that there are some CAM therapies that have been demonstrated to be effective, they maintain that supporting or validating all CAM allows unscrupulous practitioners to prey on unsuspecting patients who may be directed away from truly helpful medical treatments. Critics of CAM point to the relative lack of rigorous, controlled effectiveness studies, and call for caution in evaluating the usefulness of a therapy until more scientific evaluation can be conducted.

However, practices that were once considered alternative, such as massage therapy, acupuncture, chiropractic manipulation, and therapeutic application of nutrition, have become more accepted within mainstream medicine. Many acute care, long-term care, and ambulatory care clinics are beginning to offer CAM.

Importantly, the sunrise criteria do not require a finding that the occupation or profession for which regulation is sought prove that such practice is effective. Rather, the focus of the sunrise criteria is public harm. Without opining on whether CAM is effective, this review finds that absent regulation of at least some naturopathic practitioners, the public is at risk of harm. Therefore regulation is justified.

To be sure, there is considerable opposition to regulation, and this opposition comes from both the established medical community as well as the naturopathic community itself.

The naturopathic community encompasses a wide spectrum of practitioners, depending upon how one defines the practice. A broad definition could include a person stocking vitamins at a store, those purportedly represented by the Applicant, and everyone in between – from faith healers and herbalists, to nutritional consultants and those who sell supplements.

For the most part, the cases of harm reported in this sunrise report were perpetrated either by licensees in other states, or those engaging in similar scopes of practice. These are the practitioners most closely aligned, in terms of training and holding out to the public, as the Applicant.

As a result, it is reasonable to conclude that any legislation purporting to regulate naturopathic practitioners include a scope of practice that clearly delineates those practices that pose a risk to the public, thereby requiring regulation, and those that do not, thereby requiring no regulation.

Practices requiring regulation could include:

- Diagnosing and treating;
- Ordering and interpreting tests;
- Prescribing appropriate, natural remedies;
- Performing minor office procedures;
- Puncturing the skin; and
- Giving injections.

Additionally, since this review concludes that incompetent practice can harm the public, assurances of competency are appropriate. These encompass education and examinations.

Training and education are important issues in the naturopathic community. Not all safe, competent naturopathic practitioners have graduated from a school accredited by the Council on Naturopathic Medical Education, as is advocated by the Applicant. Regulation should be crafted to permit the regulatory authority the ability to determine which schools and programs are acceptable for practitioners in Colorado.

Which examination to use, too, could prove controversial. The Naturopathic Physicians Licensing Examinations are the most widely used examinations in the United States and Canada for this profession, yet they may not be the best suited for use in Colorado. Therefore, the regulatory authority should have the ability to select the competency examination to be used or, absent a commercially available examination, to create its own.

Finally, a Type 1 board should be created such that consumer protection is its primary mission. This could be accomplished by mandating that the board comprise licensed medical doctors, regulated naturopathic practitioners and public members. It may not be unreasonable for licensed medical doctors and the public members to comprise the majority of board members, to better ensure that the public interest remains paramount.

Alternatively, regulatory authority could be vested in the Colorado Board of Medical Examiners, under which an advisory committee could be created.

Finally, a title must be selected for the regulated practitioners of naturopathy. Many opposed to regulation also oppose the Applicant's use of the term "doctor of naturopathy" and its numerous derivatives, claiming that they, too, hold such degrees, yet do not engage in the same level of practice as do members of the Applicant, thereby possibly exempting them from any regulatory scheme.

While there may be some legitimacy to this line of reasoning, a more compelling argument lies in the idea of protecting a title that is also a degree. While this is done in some professions, it is generally inadvisable because in doing so, those who legitimately hold such degrees, yet are not authorized to practice, cannot, legally, claim to hold the degree.

Still other opponents of regulation oppose the use of the title “physician.” These opponents assert that this term is protected for use by licensed medical doctors only and that it serves to provide the public some distinction between practitioners. This argument, too, is reasonable.

Therefore, selecting the proper title to protect for the regulated naturopathic community will be challenging, but must be done in order to protect the public from even greater confusion.

In the end, regulation of a health profession could, at least in theory, have a number of benefits. First, the regulation might improve the quality of care consumers receive, as unqualified or unethical providers are eliminated. Consumers could be protected from unknowingly seeking care from an untrained or unskilled provider. Second, consumers may have access to more information on what type of training should be expected of a provider of a certain type of care. Consumers might have better ability to seek out providers with appropriate training and skills. In addition, regulatory programs create databases, which facilitate the monitoring of practitioner geographic distribution and specialty, which can assist public health agencies in planning. Third, providers who are regulated would not be subject to legal action for practicing within the scope of their profession.

A report from the Pew Commission³² articulates the following principles for a health care workforce regulatory system:

- Promoting effective health outcomes and protecting the public from harm;
- Holding regulatory bodies accountable to the public;
- Respecting consumers’ rights to choose their health care providers from a range of safe options;
- Encouraging a flexible, rational and cost-effective health care system that allows effective working relationships among health care providers; and
- Facilitating professional and geographic mobility of competent providers.

³² Christine M. Gagnola and Elizabeth Stone, MD, *Considering the Future of Health Care Workforce Regulation*, Pew Health Professions Commission, Center for the Health Professions, University of California, San Francisco, 1997.

The foundation principle that applies to the creation of new occupational regulation in Colorado is whether there is evidence that Colorado citizens are being harmed absent regulation, and that the imposition of new regulation will alleviate that harm in the most cost-effective manner.

The Applicant has demonstrated that Colorado citizens have been harmed at the hands of multiple practitioners, and the Applicant has established that the potential for future harm, as found across the nation, exists in Colorado.

Since this review concludes that harm can be caused by naturopathic practitioners engaging in certain types of practice, a licensing scheme, by any label, should be implemented, since it would offer the public the greatest level of regulatory protection. Only those individuals who have fulfilled the requirements for licensure should be allowed to engage in the scope of practice for naturopathic physicians, thus ensuring a minimum level of competency for those tasks deemed most risky.

Recommendation: Regulate those naturopathic practitioners whose practices/activities pose a risk of harming the public and require that competency be demonstrated to engage in regulated practice.