

# MEMORANDUM

State of Alaska  
Department of Law

**To:** Don Habeger  
Director, Division of  
Corporations, Business and  
Professional Licensing  
DCCED

**Date:** March 3, 2011

**A.G.**  
**File No.:** JU2008200034

**Telephone:** 465-3605

  
**From:** Gayle Horetski  
Assistant Attorney General  
Commercial & Fair Business  
DOL

**Subject:** HB 122 (naturopathy)

## CONFIDENTIAL/ATTORNEY CLIENT COMMUNICATION

We have been discussing HB 122, a bill establishing an Alaska Naturopathic Medical Board and making various changes to AS 08.45. As we discussed, whether to amend AS 08.45 as provided in HB 122 is a public policy decision to be made by the legislature. I am concerned, however, about some technical problems in the bill that should be corrected if the new laws are to be effectively administered and enforced if HB 122 is adopted. These technical problems are summarized below.

1. In those professions regulated under AS 08 by a board (rather than the department), it is the board that determines to whom licenses should be granted. HB 122 proposes to amend AS 08.45.030 and 08.45.035 (sections 5 and 6 of the bill) to provide that the new board "shall request" and the department "shall issue" a license. This language is not consistent with that used for other boards under AS 08. The proposed language should be revised to indicate that it is the new board (not the department) that will issue licenses. (Under AS 08.01.050(a)(9), for those occupations regulated by a board, the department always performs the administrative duty of physically issuing a license "as authorized by the board.")

2. Under HB 122 as presently drafted, while the new board approves license applications, the authority to discipline licensees is left to the department. To be consistent with the other boards under AS 08, if there is going to be a new naturopathic board, it should have the authority to discipline naturopathic licensees as well as make initial licensing decisions. To place discipline authority under the new board, new sections should be added to HB 122 to amend existing AS 08.45.060 and 08.45.070 to substitute "the board" for references to "the department" in those sections.

3. Section 13 of HB 122 should be deleted. Existing AS 08.64.380(5) defines the practice of *medicine* (not naturopathy). AS 08.64.380(5) defines the practice of medicine to include diagnosing and treating people (subsection (A)) and using titles such as "M.D." or "physician" (subsection (B)). Section 13 amends AS 08.64.380(5)(B) to say "unless the word 'naturopathy' or 'naturopathic' also appears in the title". This does not make sense as an amendment to the definition of medicine, and would also appear to allow naturopaths to use the title "M.D. ", which stands for "medical doctor." Naturopaths are not medical doctors. Allowing them to claim to be medical doctors would be inherently misleading to the public.

Under existing law a naturopath licensed under AS 08.45 who practices within the scope of his or her license is practicing naturopathy, not medicine. The proposed amendments to AS 08.64.380(5)(B) included in section 13 of HB 122 are not needed to exempt naturopaths from the practice of medicine. If the purpose of section 13 of the bill is to require naturopaths to identify themselves as such, I direct your attention to the "Professional designation requirements" in existing AS 08.02.010(a), which provide in part (emphasis added):

a person engaged in any manner in the healing arts who diagnoses, treats, tests, or counsels other persons in relation to human health or disease and uses the letters "M.D." or the title "doctor" or "physician" or another title that tends to show that the person is willing or qualified to diagnose, treat, test, or counsel another person, shall clarify the letters or title by adding the appropriate specialist designation, if any, such as "dermatologist", "radiologist", "audiologist", "*naturopath*", or the like.

Please let me know if I can be of any further assistance to you during your review of HB 122.

GAH/eeh