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Fisher
2/8/20

CS FOR HOUSE BILL NO. 91()

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES JOHNSTON, Tarr, Spohnholz

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the practice of naturopathy; establishing the Naturopathy Advisory**
2 **Board; relating to the licensure of naturopaths; relating to disciplinary sanctions for**
3 **naturopaths; relating to the Department of Commerce, Community, and Economic**
4 **Development; and providing for an effective date."**

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** AS 08.02.010(a) is amended to read:

7 (a) An acupuncturist licensed under AS 08.06, an audiologist or speech-
8 language pathologist licensed under AS 08.11, a behavior analyst licensed under
9 AS 08.15, a person licensed in the state as a chiropractor under AS 08.20, a
10 professional counselor licensed under AS 08.29, a dentist under AS 08.36, a dietitian
11 or nutritionist licensed under AS 08.38, a naturopath licensed under AS 08.45, a
12 massage therapist licensed under AS 08.61, a marital and family therapist licensed
13 under AS 08.63, a medical practitioner or osteopath under AS 08.64, a direct-entry
14 midwife certified under AS 08.65, a registered or advanced practice registered nurse

1 under AS 08.68, an optometrist under AS 08.72, a licensed pharmacist under
2 AS 08.80, a physical therapist or occupational therapist licensed under AS 08.84, a
3 psychologist under AS 08.86, or a clinical social worker licensed under AS 08.95,
4 shall use as professional identification appropriate letters or a title after that person's
5 name that represents the person's specific field of practice. The letters or title shall
6 appear on all signs, stationery, or other advertising in which the person offers or
7 displays personal professional services to the public. In addition, a person engaged in
8 the practice of medicine or osteopathy as defined in AS 08.64.380, or a person
9 engaged in any manner in the healing arts who diagnoses, treats, tests, or counsels
10 other persons in relation to human health or disease and uses the letters "M.D." or the
11 title "doctor" or "physician" or another title that tends to show that the person is
12 willing or qualified to diagnose, treat, test, or counsel another person, shall clarify the
13 letters or title by adding the appropriate specialist designation, if any, such as
14 "dermatologist," "radiologist," "audiologist," "naturopath," or the like.

15 * **Sec. 2.** AS 08.45 is amended by adding a new section to read:

16 **Sec. 08.45.015. Naturopathy Advisory Board.** (a) The Naturopathy Advisory
17 Board is established in the department.

18 (b) The board shall meet at least once each year as requested by the
19 commissioner and provide recommendations to the commissioner on public policy, the
20 adoption of regulations, and other matters related to the exercise of the functions of the
21 department under this chapter.

22 (c) The board consists of five members, who are appointed by and serve at the
23 pleasure of the commissioner, and shall include two public members and three
24 naturopaths licensed under this chapter. The board shall elect a chair from among its
25 membership.

26 (d) Members of the board are appointed for three-year terms and serve until a
27 successor is appointed. A member of the board serves without compensation or
28 reimbursement of expenses.

29 (e) In this section, "commissioner" means the commissioner of commerce,
30 community, and economic development.

31 * **Sec. 3.** AS 08.45.020 is amended to read:

1 **Sec. 08.45.020. Application for license.** A person desiring to practice
2 naturopathy shall

3 **(1) apply in writing to the department on a form provided by the**
4 **department;**

5 **(2) submit to the department the person's fingerprints and the fees**
6 **required by the Department of Public Safety under AS 12.62.160 for the**
7 **department to forward to the Department of Public Safety to obtain a report of**
8 **criminal justice information under AS 12.62.160 and a national criminal history**
9 **record check under AS 12.62.400; and**

10 **(3) pay the application fee established by the department.**

11 * **Sec. 4.** AS 08.45.030 is amended to read:

12 **Sec. 08.45.030. Issuance of license.** The department shall issue a license to
13 practice naturopathy to an applicant who

14 **(1) provides proof satisfactory to the department that the applicant**

15 **(A) has received a doctoral degree from an accredited**
16 **naturopathic medical school;**

17 **(B) has [ACCREDITED FOUR-YEAR COLLEGE OR**
18 **UNIVERSITY, AND**

19 (1) ON OR BEFORE DECEMBER 31, 1987, HAS GRADUATED
20 FROM A SCHOOL OF NATUROPATHY THAT REQUIRED FOUR YEARS OF
21 ATTENDANCE AT THE SCHOOL AND AFTER GRADUATION HAS
22 RECEIVED A LICENSE IN ANOTHER STATE AFTER PASSING AN
23 EXAMINATION FOR LICENSURE IN THAT STATE AND IS LICENSED BY A
24 STATE AT THE TIME OF APPLICATION; OR

25 (2) AFTER DECEMBER 31, 1987, HAS

26 (A) GRADUATED FROM A SCHOOL OF NATUROPATHY
27 THAT REQUIRED FOUR YEARS OF ATTENDANCE AT THE SCHOOL
28 AND AT THE TIME OF GRADUATION THE SCHOOL WAS
29 ACCREDITED OR A CANDIDATE FOR ACCREDITATION BY THE
30 COUNCIL ON NATUROPATHIC MEDICAL EDUCATION OR A
31 SUCCESSOR ORGANIZATION RECOGNIZED BY THE UNITED

1 STATES DEPARTMENT OF EDUCATION; AND

2 (B)] passed the Naturopathic Physicians Licensing
3 Examination;

4 (2) is not subject to an unresolved disciplinary action against a
5 license to practice naturopathy in this or another jurisdiction;

6 (3) complies with the requirements of AS 08.45.020; and

7 (4) has not been convicted of, or pled guilty or no contest to, a
8 crime that adversely reflects on the applicant's ability or competency to practice
9 as a naturopath or that jeopardizes the safety or well-being of a patient.

10 * **Sec. 5.** AS 08.45 is amended by adding a new section to read:

11 **Sec. 08.45.032. Documentation of license refusals and revocations.** If the
12 department refuses to issue or revokes a license, the department shall issue a concise
13 written statement describing the reasons for the department's decision.

14 * **Sec. 6.** AS 08.45.035(a) is amended to read:

15 (a) The department shall issue a temporary license to practice naturopathy to
16 an applicant who

17 (1) has applied for and is qualified to take the next Naturopathic
18 Physicians Licensing Examination offered after the date of application; and

19 (2) [AND PROVIDES PROOF SATISFACTORY TO THE
20 DEPARTMENT THAT THE APPLICANT (1)] meets the requirements of
21 AS 08.45.030(1)(A) and (2) - (4) [AS 08.45.030(2)(A); AND

22 (2) HAS NOT PREVIOUSLY FAILED THE NATUROPATHIC
23 PHYSICIANS LICENSING EXAMINATION].

24 * **Sec. 7.** AS 08.45 is amended by adding a new section to read:

25 **Sec. 08.45.038. Standards for license renewal.** The department shall renew a
26 license issued under this chapter to a licensee who

27 (1) applies on a form provided by the department and pays the required
28 fee;

29 (2) meets the continuing education requirements established by the
30 department;

31 (3) has not been convicted of, or pled guilty or no contest to, a crime

1 that adversely reflects on the applicant's ability or competency to practice as a
2 naturopath or that jeopardizes the safety or well-being of a patient;

3 (4) has a current cardiopulmonary resuscitation certification; and

4 (5) has, at least once in the six years immediately preceding the
5 application, submitted to the department fingerprints and the fees required by the
6 Department of Public Safety under AS 12.62.160 for the department to forward to the
7 Department of Public Safety to obtain a report of criminal justice information under
8 AS 12.62.160 and a national criminal history record check under AS 12.62.400.

9 * **Sec. 8.** AS 08.45 is amended by adding a new section to read:

10 **Sec. 08.45.045. Practice of naturopathy.** (a) A naturopath licensed under this
11 chapter may

12 (1) only provide naturopathic services that are consistent with the
13 standards and scope of naturopathic education, naturopathic training, and the
14 naturopath's experience, as established by regulations adopted by the department;

15 (2) prescribe and administer for preventive and therapeutic purposes

16 (A) natural therapeutic substances, including food, extracts of
17 food, vitamins, minerals, enzymes, whole gland substances, botanical
18 medicines, and homeopathic preparations;

19 (B) natural therapies, including health care counseling,
20 nutritional counseling and dietary therapy, naturopathic manipulation,
21 naturopathic physical applications, and therapeutic devices;

22 (C) devices for contraception; and

23 (D) drugs, except as provided in AS 08.45.050, if the
24 naturopath has passed the elective pharmacology examination portion of the
25 Naturopathic Physicians Licensing Examination;

26 (3) perform procedures in the office using operative, electrical, or other
27 methods, including the use of antiseptics and local anesthetics, for the surgical repair
28 and care of superficial lacerations, abrasions, and lesions and the removal of foreign
29 bodies located in the superficial tissues of the human body; the procedures may not
30 include general or spinal anesthetics, major surgery, surgery of the body cavities,
31 plastic surgery, surgery involving the eyes, or surgery involving tendons, ligaments,

1 nerves, or blood vessels; and

2 (4) perform or order for diagnostic purposes a physical or orificial
3 examination, an ultrasound, phlebotomy, a clinical laboratory test or examination, or a
4 physiological function test.

5 (b) In this section, "naturopathic physical application" means the therapeutic
6 use by a naturopath of the actions or devices of electrical muscle stimulation, galvanic
7 treatment, diathermy, ultrasound, ultraviolet light, constitutional hydrotherapy, and
8 naturopathic manipulative therapy.

9 * **Sec. 9.** AS 08.45.050 is amended to read:

10 **Sec. 08.45.050. Restrictions on practice of naturopathy.** A person who
11 practices naturopathy may not [(1)] give, prescribe, or recommend in the practice

12 **(1)** [(A) A PRESCRIPTION DRUG; (B)] a controlled substance; **or**

13 **(2) a cancer chemotherapeutic agent** [(C) A POISON;

14 (2) ENGAGE IN SURGERY;

15 (3) USE THE WORD "PHYSICIAN" IN THE PERSON'S TITLE].

16 * **Sec. 10.** AS 08.45 is amended by adding new sections to read:

17 **Sec. 08.45.053. Public health duties.** A naturopath, consistent with the scope
18 of practice provided under this chapter, has the same duty as a physician licensed
19 under AS 08.64 regarding public health laws, reportable diseases and conditions,
20 communicable disease control and prevention, recording of vital statistics, health and
21 physical examinations, and municipal boards of health.

22 **Sec. 08.45.055. Duty of naturopaths to report.** (a) A naturopath who
23 professionally treats a person licensed to practice naturopathy in this state for
24 alcoholism or drug addiction, or for mental, emotional, or personality disorders, shall
25 report the treatment to the department if the treating naturopath reasonably believes
26 that the person may constitute a danger to the health and welfare of the patients of the
27 person or the public if that person continues in practice. The report must state the
28 name and address of the person and the condition found.

29 (b) Upon receiving a report under (a) of this section, the department shall
30 investigate the matter and, upon a finding that there is reasonable cause to believe that
31 the naturopath who is the subject of the report is a danger to the health or welfare of

1 the public or to the naturopath's patients, the department may appoint a committee of
2 health care professionals to examine the naturopath and report its findings to the
3 department. Notwithstanding the provisions of this subsection, the department may
4 summarily suspend a license under AS 08.45.070(c) before appointing an examining
5 committee or before the committee makes or reports its findings.

6 (c) If the department finds that a naturopath is unable to continue in practice
7 with reasonable safety to the naturopath's patients or to the public, the department
8 shall initiate action to suspend, revoke, limit, or condition the naturopath's license to
9 the extent necessary for the protection of the naturopath's patients and the public.

10 (d) A naturopath may not refuse to submit a report under this section or
11 withhold from the department or its investigators evidence related to an investigation
12 under this section on the grounds that the report or evidence

13 (1) concerns a matter that was disclosed in the course of a confidential
14 naturopath-patient or psychotherapist-patient relationship or during a meeting of a
15 hospital medical staff, governing body, or committee that was exempt from the public
16 meeting requirements of AS 44.62.310; or

17 (2) is required to be kept confidential under AS 18.23.030.

18 (e) An action may not be brought against a person for damages resulting from
19 a report made in good faith to a public agency by the person or participation by the
20 person in an investigation by a public agency or an administrative or judicial
21 proceeding relating to the report if the report relates to a naturopath licensed under this
22 chapter.

23 **Sec. 08.45.058. Naturopaths to report certain injuries.** (a) A naturopath who
24 initially treats or attends to a person with an injury described in (b) of this section shall
25 promptly make an oral report of the injury to the Department of Public Safety, a local
26 law enforcement agency, or a village public safety officer. The naturopath shall submit
27 a written report of an injury described in (b)(1) of this section to the Department of
28 Public Safety within three business days after the naturopath provides treatment. A
29 report filed under this subsection must be on a form provided by the Department of
30 Public Safety.

31 (b) The following injuries shall be reported under (a) of this section:

1 (1) second or third degree burns to five percent or more of a patient's
2 body;

3 (2) a bullet wound, powder burn, or other injury apparently caused by
4 the discharge of a firearm;

5 (3) an injury apparently caused by a knife, axe, or other sharp or
6 pointed instrument, unless the injury was clearly accidental; and

7 (4) an injury that is likely to cause the death of the patient, unless the
8 injury was clearly accidental.

9 (c) A person who, in good faith, makes a report under this section, or who
10 participates in a judicial proceeding related to a report under this section, is immune
11 from any civil or criminal liability that might otherwise be incurred as a result of
12 making the report or participating in the judicial proceeding.

13 * **Sec. 11.** AS 08.45.060 is amended to read:

14 **Sec. 08.45.060. Grounds for suspension, revocation, or refusal to issue a**
15 **license.** The department may, after a hearing, impose a disciplinary sanction on a
16 person licensed under this chapter when the department finds that the licensee

17 (1) secured a license through deceit, fraud, or intentional
18 misrepresentation;

19 (2) engaged in deceit, fraud, or intentional misrepresentation in the
20 course of providing professional services or engaging in professional activities;

21 (3) advertised professional services in a false or misleading manner;

22 (4) has been convicted, **including conviction based on a guilty plea**
23 **or a plea of nolo contendere,** of a

24 **(A) class A or unclassified** felony or **a [OTHER] crime in**
25 **another jurisdiction with elements similar to a class A or unclassified**
26 **felony in this jurisdiction;**

27 **(B) class B or class C felony or a crime in another**
28 **jurisdiction with elements similar to a class B or class C felony in this**
29 **jurisdiction if the felony or other crime is substantially related to the**
30 **qualifications, functions, or duties of the licensee; or**

31 **(C) crime involving the unlawful procurement, sale,**

1 **prescription, or dispensing of drugs** [THAT AFFECTS THE LICENSEE'S
2 ABILITY TO CONTINUE TO PRACTICE COMPETENTLY AND
3 SAFELY];

4 (5) failed to comply with this chapter, with a regulation adopted under
5 this chapter, or with an order of the department;

6 (6) continued to practice after becoming unfit due to

7 (A) professional incompetence;

8 (B) addiction or severe dependency on alcohol or a drug that
9 impairs the licensee's ability to practice safely;

10 (C) physical or mental disability;

11 (7) engaged in **unprofessional conduct, in sexual misconduct, or in**
12 lewd or immoral conduct in connection with the delivery of professional service to
13 patients; **in this paragraph, "sexual misconduct" includes sexual contact, as**
14 **defined by the department in regulations adopted under this chapter, or**
15 **attempted sexual contact with a patient outside the scope of generally accepted**
16 **methods of examination or treatment of the patient, regardless of the patient's**
17 **consent or lack of consent, during the term of the naturopath-patient**
18 **relationship, as defined by the department in regulations adopted under this**
19 **chapter, unless the patient was the licensee's spouse at the time of the contact or,**
20 **immediately preceding the naturopath-patient relationship, was in a dating,**
21 **courtship, or engagement relationship with the licensee;**

22 (8) **has procured, sold, prescribed, or dispensed drugs in violation**
23 **of a law, regardless of whether there has been a criminal action or harm to a**
24 **patient;**

25 (9) **intentionally or negligently permitted the performance of**
26 **patient care by a person under the licensee's supervision that does not conform to**
27 **minimum professional standards even if the patient was not injured;**

28 (10) **has demonstrated professional incompetence, gross**
29 **negligence, or repeated negligent conduct; the department may not make a**
30 **finding of professional incompetence solely on the basis that a licensee's practice**
31 **is unconventional or experimental in the absence of demonstrable physical harm**

1 **to a patient;**

2 **(11) has violated AS 18.16.010;**

3 **(12) has violated a code of ethics adopted by regulation by the**
 4 **department;**

5 **(13) has denied care or treatment to a patient or person seeking**
 6 **assistance from the licensee if the only reason for the denial is the failure or**
 7 **refusal of the patient to agree to arbitrate as provided in AS 09.55.535(a);**

8 **(14) has had a license or certificate to practice naturopathy in**
 9 **another state or territory of the United States, or a province or territory of**
 10 **Canada, denied, suspended, revoked, surrendered while under investigation for**
 11 **an alleged violation, restricted, limited, conditioned, or placed on probation**
 12 **unless the denial, suspension, revocation, or other action was caused by the**
 13 **failure of the licensee to pay fees to that state, territory, or province;**

14 **(15) has violated any federal law pertaining to medical practice**
 15 **and drugs.**

16 * **Sec. 12.** AS 08.45.060 is amended by adding a new subsection to read:

17 (b) In a case involving (a)(14) of this section, the final findings of fact,
 18 conclusions of law, and order of the authority that suspended or revoked a license or
 19 certificate constitutes a prima facie case that the license or certificate was suspended
 20 or revoked and the grounds under which the suspension or revocation was granted.

21 * **Sec. 13.** AS 08.45.070(a) is amended to read:

22 (a) When **the department** [IT] finds that a licensee under this chapter has
 23 violated **a provision of this chapter** [AS 08.45.040 - 08.45.050] or is guilty of an
 24 offense under AS 08.45.060, the department may impose the following sanctions
 25 singly or in combination:

26 (1) permanently revoke the license to practice;

27 (2) suspend the license for a determinate period of time;

28 (3) censure the licensee;

29 (4) issue a letter of reprimand to the licensee;

30 (5) place the licensee on probationary status and require the licensee to

31 (A) report regularly to the department **on** [UPON] matters

1 involving the basis of probation;

2 (B) limit practice to those areas prescribed;

3 (C) continue professional education until a satisfactory degree
4 of skill has been attained in areas determined by the department to need
5 improvement;

6 (6) impose limitations or conditions on the practice of the licensee; or

7 (7) impose a civil penalty of not more than \$25,000.

8 * **Sec. 14.** AS 08.45.070 is amended by adding new subsections to read:

9 (d) The department may reinstate a license that has been suspended or revoked
10 if, after a hearing, the department finds that the applicant is able to practice
11 naturopathy with reasonable skill and safety.

12 (e) The department may suspend a license upon receiving a certified copy of
13 evidence that a license to practice naturopathy in another state or a province of Canada
14 has been suspended or revoked. The suspension remains in effect until a hearing is
15 held by the department.

16 (f) The department shall promptly report to the National Practitioner Data
17 Bank maintained by the United States Department of Health and Human Services for
18 inclusion in the data bank license refusals under this chapter and actions taken by the
19 department under this section, including the imposition of a fine and the suspension or
20 surrender of a license.

21 * **Sec. 15.** AS 08.45 is amended by adding new sections to read:

22 **Sec. 08.45.0105. Automatic suspension for mental incompetency.**
23 Notwithstanding AS 44.62, if a person holding a license to practice naturopathy under
24 this chapter is adjudged mentally incompetent or insane by a final order or
25 adjudication of a court of competent jurisdiction or by voluntary commitment to an
26 institution for the treatment of mental illness, the person's license shall be suspended
27 by the department. The suspension shall continue in effect until the court finds or
28 adjudges that the person has been restored to reason or until a licensed psychiatrist
29 approved by the department determines that the person has been restored to reason.

30 **Sec. 08.45.110. Voluntary surrender.** The department may accept the
31 voluntary surrender of a license. A license may not be reinstated unless the department

1 determines, under regulations adopted by the department, that the person is competent
2 to resume practice. However, a license may not be reinstated if the voluntary surrender
3 resulted in the dropping or suspension of civil or criminal charges against the licensee.

4 **Sec. 08.45.115. Medical and psychiatric exams.** For the purposes of an
5 investigation under this chapter, the department may require a person to whom the
6 department has issued a license to submit to drug or alcohol testing or a medical or
7 psychiatric examination by a practitioner appointed by the department. An
8 examination shall be at the department's expense.

9 **Sec. 08.45.120. Reports relating to malpractice actions and claims.** A
10 naturopath licensed under this chapter shall report in writing to the department
11 concerning the outcome of each medical malpractice claim or civil action in which
12 damages have been or are to be paid by or on behalf of the licensee to the claimant or
13 plaintiff, whether by judgment or under a settlement. This report shall be made within
14 30 days after resolution of the claim or termination of the civil action.

15 **Sec. 08.45.125. Penalty for practicing without a license.** Except for a person
16 licensed or authorized under another chapter of this title who engages in practices for
17 which that person is licensed or authorized under that chapter, a person practicing
18 naturopathy in the state without a valid license is guilty of a class A misdemeanor.
19 Each day of illegal practice is a separate offense.

20 **Sec. 08.45.130. Prohibited use of title.** A person may not use in connection
21 with the person's name or otherwise assume or advertise a title or description tending
22 to convey the impression that the person is a naturopath licensed under this chapter
23 unless the person is licensed under this chapter.

24 * **Sec. 16.** AS 08.45.200(3) is repealed and reenacted to read:

25 (3) "naturopathy" means a system of health care practiced by a
26 naturopath for the prevention, diagnosis, and treatment of human health conditions,
27 injury, and disease for the purpose of promoting or restoring health by the support and
28 stimulation of an individual's inherent self-healing processes through education of the
29 individual and the use of natural therapies, therapeutic devices and substances, and
30 other therapeutic interventions consistent with naturopathic medical training.

31 * **Sec. 17.** AS 08.45.200 is amended by adding new paragraphs to read:

1 (4) "accredited naturopathic medical school" means a college or
2 university and program granting a degree of doctor of naturopathy or naturopathic
3 medicine that is accredited by or is a candidate for accreditation with the Council on
4 Naturopathic Medical Education or another accrediting agency recognized by the
5 United States Department of Education;

6 (5) "naturopath" means a person licensed and authorized to practice
7 naturopathy in the state who, because of specialized education from an accredited
8 naturopathic medical school, is capable of performing acts of medical diagnosis and
9 prescription of therapeutic substances and procedures that are consistent with
10 naturopathic medical education.

11 * **Sec. 18.** AS 12.62.400(a) is amended by adding a new paragraph to read:

12 (21) licensure as a naturopath under AS 08.45.

13 * **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 TRANSITION: EFFECT ON CURRENT LICENSEES. On and after the effective
16 date of secs. 1 - 18 of this Act, a person who holds a valid license to practice naturopathy on
17 the effective date of secs. 1 - 18 of this Act may continue to engage in the practice of
18 naturopathy under the license until the license expires normally under AS 08.45, as AS 08.45
19 existed before the effective date of secs. 1 - 18 of this Act, but shall otherwise comply with
20 AS 08.45, as amended by secs. 1 - 18 of this Act.

21 * **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

23 TRANSITION: REGULATIONS. The Department of Commerce, Community, and
24 Economic Development may adopt regulations necessary to implement the changes made by
25 this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
26 before the effective date of the law implemented by the regulation.

27 * **Sec. 21.** Section 20 of this Act takes effect immediately under AS 01.10.070(c).

28 * **Sec. 22.** Except as provided in sec. 21 of this Act, this Act takes effect January 1, 2021.