ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 8672

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lawfully licensed to practice naturopathy in the State or to persons holding diplomas or attending legally chartered naturopathic schools, universities, or colleges on such date. [L 1925, c 77, pt of §1; RL 1935, §1302; am L 1935, c 221, §2; RL 1945, §2653; am L 1949, c 214, §1; RL 1955, §66-3]

Hawaii Bar Journal

For discussion of residence qualification, see The New Resident: Hawaii's Second-Class Citizen, Steven K. Christensen, 5 HBJ 77.

§455-4 State board of examiners in naturopathy. The governor shall appoint in the manner prescribed by section 26-34 the state board of examiners in naturopathy, consisting of three members. Each member shall serve until his successor is appointed and qualified. All members of the board shall, before appointment, have been licensed to practice naturopathy in the State under the laws thereof in force at the date of the issuance of the license. [L 1937, c 221, §3; RL 1945, §2654; RL 1955, §66-4; am L Sp 1959 2d, c 1, §5]

Cross References

Boards, generally, see §26-34 and notes thereto.
Departmental administration, see §§26-9 and 26-35.

§455-5 Organization of the board. The board of examiners in naturopathy may elect a president, a vice-president, and a secretary who shall each serve one year or until a successor is elected. The board may make such rules as it deems expedient to carry this chapter into effect. Two members of the board constitute a quorum for the transaction of business. The board shall serve without pay, provided, that the expenses of conducting examinations shall be paid out of the office expenses of the department of regulatory agencies upon vouchers signed by a majority of the board. [L 1937, c 221, §4; RL 1945, §2655; RL 1955, §66-5; am L Sp 1959 2d, c 1, §15; am L 1963, c 114, §3]

Cross References

Rulemaking, see chapter 91.

§455-6 Powers and authority of the board. The state board of examiners in naturopathy may:

(1) Adopt and use a seal to be affixed to all official acts of the board;
(2) Make rules and regulations to determine the means, terms, translations, and definitions relating to the practice of naturopathy in the State;
(3) Revoke or suspend any license issued to any person to practice naturopathy upon any of the following causes:
    (A) Procuring or aiding or abetting in the procuring of a criminal abortion;
    (B) Obtaining of or any attempt to obtain a license to practice naturopathy through fraud, misrepresentation, bribery, or deceit;
    (C) Continued practice by a person knowingly having an infectious or contagious disease;

(D) Advertising by means of knowingly false or deceptive statements;

(E) Advertising, practicing, or attempting to practice under a name other than one's own;

(F) Habitual drunkenness, or addiction to the use of morphine, cocaine, or other habit-forming drugs;

(G) Professional misconduct, gross carelessness, neglect, or manifest incapacity; any one or more of the causes having been proved to the satisfaction of the board.

The board may not suspend or revoke a license, however, for any of these causes unless the person accused has been given at least twenty days' notice, in writing, and a public hearing in conformity with chapter 91.

The board may compel the attendance of witnesses and the production of relevant books and papers for the investigation of matters that may come before them and the presiding officer of the board may administer the requisite oaths.

In case any license is revoked for any of the causes named in this section, the holder thereof shall be immediately notified of the revocation, in writing, by the board. Licenses to practice naturopathy may be restored by the board. [L 1949, c 214, §2; RL 1955, §66-6; am L Sp 1959 2d, c 1, §19; HRS §455-6; am L 1969, c 106, §2; am L 1974, c 205, §2(16)]

§455-7 Examinations. The state board of examiners in naturopathy shall conduct examinations at such times and places as it deems best, in the following subjects: anatomy; histology and embryology; chemistry and toxicology; physiology; bacteriology; hygiene and sanitation; pathology; diagnosis or analysis, including clinical, physical, x-ray, symptomatology, dermatology, and mental diseases; naturopathic theory and practice; obstetrics and gynecology; jurisprudence; clinical practice; biochemistry; therapeutics, including physiotherapy, hydrotherapy, electrotherapy, heliotherapy, phytotherapy, orthopaedics; and such other subjects as the board may require. The examination shall be conducted in writing, but it may be supplemented by oral examinations, and by demonstrations or other practical tests as the board may require. If the applicant receives a general average of seventy-five per cent and does not fall below sixty per cent in more than two branches of the examination, he shall be considered as having passed the examination. [L 1937, c 221, §5; RL 1945 §2656; RL 1955, §66-7; am L Sp 1959 2d, c 1, §19; HRS §455-7, am L 1969, c 106, §3]

Cross References

Disposal of examination papers, see §94-5.

§455-8 License to practice; biennial registration. Licenses to practice naturopathy shall be issued by the board in such form as the board determines, to those who qualify according to this chapter. Naturopathy physicians licensed under this chapter shall observe and be subject to all state regulations relative to reporting births and deaths and all matters pertaining to the public health with equal rights and obligations as physicians, surgeons, and practitioners of other schools of medicine. Every person holding a license to practice in the State shall reregister with the state board of examiners in naturopathy on or before December 31 of each odd-numbered year and shall pay a reregistration fee of $15. The failure to so reregister and pay the reregistration fee constitutes a forfeiture of

license; provided that the license shall be reinstated upon written application therefor together with payment of all delinquent fees and the sum of $75. [L 1925, c 77, pt of §1; RL 1935, §1303; am L 1937, c 221, §6; RL 1945, §2657; RL 1955, §66-8; am L 1957, c 316, §7; am L Sp 1959 2d, c 1, §19; HRS §455-8; am L 1969, c 106, §4; am L 1975, c 118, §18]

§455-9 Penalty. Any person except a licensed naturopath who practices or attempts to practice naturopathy, or any person who buys, sells, or fraudulently obtains any diploma or license to practice naturopathy whether recorded or not, or any person who uses the title "natureopath", "naturopath", or "N.D.", or any word or title to induce the belief that he is engaged in the practice of naturopathy without complying with this chapter, or any person who violates this chapter, shall be fined not more than $200, or imprisoned not more than one year, or both. [L 1925, c 77, pt of §1; RL 1935, §1304; RL 1945, §2658; RL 1955, §66-9]

CHAPTER 456
NOTARIES PUBLIC

SECTION

§456-1 Appointment; tenure. The attorney general may, in his discretion, appoint and commission such number of notaries public for each of the several judicial circuits of the State as he deems necessary for the public good and convenience.

The term of office of a notary public shall be four years from the date of his commission, unless sooner removed by the attorney general for cause after due hearing; provided, that after due hearing the commission of a notary public may be revoked by the attorney general in any case where any change occurs in the notary's office, occupation, or employment which in his judgment renders the holding of such commission by the notary no longer necessary for the public good and convenience. Each notary shall, upon any change in his office, occupation, or employment, forthwith report the same to the attorney general. [CC 1859, §1266; am L 1887, c 11, §1; RL 1925, §3174; am L 1929, c 3, §1; RL 1935, §5200; am L 1941, c 322, §1; am L 1943, c 173, pt of §1; RL 1945, §7661; am L 1953, c 30, §1; RL 1955, §168-1; am L 1959, c 4, §1]

Hearings, see chapter 9
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§456-3 Seal.
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1955, §168-4]

§456-5 Official
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bond shall run to the State to the benefit of
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The bond shall remain in full force and
the surety, and shall by its terms provide
ation shall not be effective unless written
ty to the director of commerce and con-
r the date of termination or cancellation.
in addition to any other bond required by
d shall not preclude or preempt any addi-
rvicing agent may, in the discretion of such
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y servicing agent need not themselves ob-
yer's bond covers the acts of such employ-

d by this section an irrevocable letter of
ector of commerce and consumer affairs
n association in the amount of the bond as
tituted. The beneficiary of such letter of
e and consumer affairs to the benefit of any
gment against the servicing agent or an
ded that the aggregate liability of the letter
[L 1982, c 287, pt of §2; am L 1983, c 42,

ment Note

s (a) and (b) and added subsection (c).

No servicing agent may engage in
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rds. Every servicing agent shall maintain
insured depository institution for funds
d shall keep at its principal office in this
this State permanent records of all of its
stomer. Such records shall be kept, as to
or a period of at least six years following
pursuant to such agreement. [L 1982, c

lity. Every servicing agent shall be con-
stomers and shall keep and disburse funds
ance with any agreement made with such
applicable laws. [L 1982, c 287, pt of §2]

[§454D-7] **Remedies not exclusive.** The remedies provided for in this chapter are in addition to and not exclusive of any other remedies provided by law. [L 1982, c 287, pt of §2]

[§454D-8] **General penalty.** Any persons who willfully or knowingly violates any provision of this chapter for which there is no other penalty specifically provided herein, shall be fined not less than $100 nor more than $1,000 for each violation. [L 1982, c 287, pt of §2]

[§454D-9] **False entry, destruction of records; penalty.** Any person who willfully or knowingly makes any false certificate, entry, or memorandum upon any of the books or records of any servicing agent, or who knowingly alters, destroys, mutilates, or conceals such books or records, shall be fined not more than $1,000 or imprisoned not more than six months, or both. [L 1982, c 287, pt of §2]

[§454D-10] **Commingling of funds; penalty.** Any person who willfully or knowingly causes the commingling of the funds of a servicing agent with customer trust funds shall be fined not more than $1,000 or imprisoned not more than six months or both. [L 1982, c 287, pt of §2]

[§454D-11] **Embezzlement, misappropriation; penalty.** Any person who embezzles or misapplies customer trust funds received by a servicing agent shall be fined not more than $5,000 or imprisoned not more than five years, or both. [L 1982, c 287, pt of §2]

CHAPTER 455
NATUROPATHY

Effect of Sunset Law. Subject to reassessment, this chapter is repealed, effective December 31, 1985. See chapter 26H.

SECTION

§455-2 AMENDED. "Department of regulatory agencies" changed to "department of commerce and consumer affairs". L 1982, c 204, §8.

§455-4 State board of examiners in naturopathy. The governor shall appoint in the manner prescribed by section 26-34 the state board of examiners in naturopathy, consisting of three members. Each member shall serve until his successor is appointed and qualified. Two members of the board shall, before appointment, have been licensed to practice naturopathy in the State under the laws thereof in force at the date of the issuance of the license and one shall be a public member [L 1937, c 221, §3; RL 1945, §2654; RL 1955, §66-4; am L Sp 1959 2d, c 1, §5; HRS §455-4; am L 1978, c 208, §6]

Amendment Note

L 1978 amended last sentence

§455-5 AMENDED. "Department of regulatory agencies" changed to "department of commerce and consumer affairs". L 1982, c 204, §8.

§455-6 Powers and authority of the board. The state board of examiners in naturopathy may:

(1) Adopt and use a seal to be affixed to all official acts of the board

(2) Revoke or suspend any license issued to any person to practice naturopathy upon any of the following causes:

(A) Procuring, or aiding or abetting in procuring, a criminal abortion;

(B) Employing any person to solicit patients for him;

(C) Obtaining a fee on the assurance that a manifestly incurable disease can be permanently cured;

(D) Wilfully betraying a professional secret;

(E) Making any untruthful and improbable statement in advertising one's naturopathic practice or business;

(F) False, fraudulent, or deceptive advertising;

(G) Being habituated to the excessive use of drugs or alcohol; or being addicted to, dependent on, or an habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, or other drug having similar effects;

(H) Practicing naturopathic medicine while the ability to practice is impaired by alcohol, drugs, physical disability, or mental instability;

(I) Procuring a license through fraud, misrepresentation, or deceit or knowingly permitting an unlicensed person to perform activities requiring a license;

(J) Professional misconduct or gross carelessness or manifest incapacity in the practice of naturopathy;

(K) Conduct or practice contrary to recognized standards of ethics of the naturopathic profession;

(L) Consistently utilizing medical service or treatment which is inappropriate or unnecessary.

The board may not suspend or revoke a license, however, for any of these causes unless the person accused has been given at least twenty days' notice, in writing, and a public hearing in conformity with chapter 91.

The board may compel the attendance of witnesses and the production of relevant books and papers for the investigation of matters that may come before them and the presiding officer of the board may administer the requisite oaths.

In case any license is revoked for any of the causes named in this section, the holder thereof shall be immediately notified of the revocation, in writing, by the board. Licenses to practice naturopathy may be restored by the board.

The board shall adopt, pursuant to chapters 91 and 92, rules setting forth standards of ethics of the naturopathic profession and may adopt such other rules as are reasonably necessary to implement this chapter. [L 1949, c 214, §2; RL 1955, §66-6; am L Sp 1959 2d, c 1, §19; HRS §455-6; am L 1969, c 106, §2; am L 1974, c 205, §2(16); am L 1978, c 162, §2]

Amendment N

L 1978 amended first paragraph generally and adde

§455-7 Examinations. The state b shall conduct examinations not less than t subjects: anatomy; histology and embryology ogy; bacteriology; hygiene and sanitation; p cluding clinical, physical, x-ray, symptom. diseases; naturopathic theory and practice; c dence; clinical practice; biochemistry; therap drotherapy, electrotherapy, heliotherapy, ph other subjects as the board may require. The writing, but it may be supplemented by oral ex or other practical tests as the board may r general average of seventy-five per cent he sh the examination. [L 1937, c 221, §5; RL 194 1959 2d, c 1, §19; HRS §455-7; am L 1969,

Amendment No

L 1978 amended first and last sentences.

§455-8 License to practice; biennial r naturopathy shall be issued by the board in su those who qualify according to this chapter under this chapter shall observe and be subject reporting births and all matters pertaining to and obligations as physicians, surgeons, and medicine. Every person holding a license to p with the state board of examiners in naturop each odd-numbered year and shall pay a rereg so reregister and pay the reregistration fee provided that the license shall be reinstated together with payment of all delinquent fees an of §1; RL 1935, §1303; am L 1937, c 221, §6; R L 1957, c 316, §7; am L Sp 1959 2d, c 1, §19; am L 1975, c 118, §18; am L 1978, c 162, §

Amendment No

L 1978 substituted "$200" for "$15".
L 1982 deleted the reporting requirements for deaths

§455-9 Penalty. Any person except a or attempts to practice naturopathy, or any p lently obtains any diploma or license to practic not, or any person who uses the title "naturop any word or title to induce the belief that naturopathy without complying with this chap chapter, shall be fined a sum of not less than $5 violation, which sum shall be collected in a ci general or the director of the office of consume

mendment Note

rtment of regulatory agencies" changed to sumer affairs". L 1982, c 204, §8.

y of the board. The state board of examiners

be affixed to all official acts of the board;
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following causes:
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rson to solicit patients for him;
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r deceptive advertising;
the excessive use of drugs or alcohol; or dependent on, or an habitual user of a e, amphetamine, hallucinogen, or other drug ts;
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through fraud, misrepresentation, or deceit tting an unlicensed person to perform activi-nse;
duct or gross carelessness or manifest inca-e of naturopathy;
contrary to recognized standards of ethics profession;
g medical service or treatment which is in-cessary

revoke a license, however, for any of these been given at least twenty days' notice, in formity with chapter 91.
ndance of witnesses and the production o estigation of matters that may come before board may administer the requisite oaths. any of the causes named in this section, the otified of the revocation, in writing, by the hy may be restored by the board.
to chapters 91 and 92, rules setting forth profession and may adopt such other rules ent this chapter. [L 1949, c 214, §2; RL ; HRS §455-6; am L 1969, c 106, §2; am L 2, §2]

Amendment Note

1 1978 amended first paragraph generally and added last paragraph.

§455-7 Examinations. The state board of examiners in naturopathy shall conduct examinations not less than twice in each year in the following subjects: anatomy; histology and embryology; chemistry and toxicology; physiology; bacteriology; hygiene and sanitation; pathology; diagnosis or analysis, including clinical, physical, x-ray, symptomatology, dermatology, and mental diseases; naturopathic theory and practice; obstetrics and gynecology; jurisprudence; clinical practice; biochemistry; therapeutics, including physiotherapy, hydrotherapy, electrotherapy, heliotherapy, phytotherapy, orthopedics; and such other subjects as the board may require. The examination shall be conducted in writing, but it may be supplemented by oral examinations, and by demonstrations or other practical tests as the board may require. If the applicant receives a general average of seventy-five per cent he shall be considered as having passed the examination. [L 1937, c 221, §5; RL 1945, §2656; RL 1955, §66-7; am L Sp 1959 2d, c 1, §19; HRS §455-7; am L 1969, c 106, §3; am L 1978, c 162, §3]

Amendment Note

1 1978 amended first and last sentences.

§455-8 License to practice; biennial registration. Licenses to practice naturopathy shall be issued by the board in such form as the board determines, to those who qualify according to this chapter. Naturopathy physicians licensed under this chapter shall observe and be subject to all state regulations relative to reporting births and all matters pertaining to the public health with equal rights and obligations as physicians, surgeons, and practitioners of other schools of medicine. Every person holding a license to practice in the State shall reregister with the state board of examiners in naturopathy on or before December 31 of each odd-numbered year and shall pay a reregistration fee of $200. The failure to so reregister and pay the reregistration fee constitutes a forfeiture of license; provided that the license shall be reinstated upon written application therefor together with payment of all delinquent fees and the sum of $75. [L 1925, c 77, pt of §1; RL 1935, §1303; am L 1937, c 221, §6; RL 1945, §2657; RL 1955, §66-8; am L 1957, c 316, §7; am L Sp 1959 2d, c 1, §19; HRS §455-8; am L 1969, c 106, §4; am L 1975, c 118, §18; am L 1978, c 162, §4; am L 1982, c 112, §5]

Amendment Note

1 1978 substituted "$200" for "$15".
1 1982 deleted the reporting requirements for deaths by a naturopathy licensee.

§455-9 Penalty. Any person except a licensed naturopath who practices or attempts to practice naturopathy, or any person who buys, sells, or fraudulently obtains any diploma or license to practice naturopathy whether recorded or not, or any person who uses the title "natureopath", "naturopath", or "N.D.", or any word or title to induce the belief that he is engaged in the practice of naturopathy without complying with this chapter, or any person who violates this chapter, shall be fined a sum of not less than $500 nor more than $10,000 for each violation, which sum shall be collected in a civil action brought by the attorney general or the director of the office of consumer protection on behalf of the State.

h shall be as follows: Anatomy, vertebral palpation, principles of ygiene, pathology, dietetics and be filed with and preserved for a th services.

with the provisions of this chapter

ion 20-24, but shall not prescribe for r drug included in materia medica, ractice obstetrics or osteopathy;

human living body and its diseases, or any other general method of ight in any school or college of d approved by the state board of

mechanical, electrical or natural ling light, heat, water or exercise in r manipulation, and by the oral od extracts or vitamins;

o the care of the sick, advise and hygiene and sanitary measures as lic schools and colleges.

unds. The board of chiropractic orth in section 19-4s for any of the or deception in obtaining a license, irits, narcotics or stimulants to such erformance of professional duties, or regulations adopted hereunder, e course of professional services or nal disorder or loss of motor skill, rough the aging process, or illegal, ice of chiropractic. Any practitioner action under said section 19-4s are h a copy of the complaint and shall g shall be conducted in accordance miss[illegible] of health services. Said f such action, by a majority vote, ealth services may order a license ienta[illegible]amination if his physical or sub[illegible] of an investigation. Said cou[illegible] for the judicial district of or any action taken pursuant to

(1949 Rev., S. 4382; P.A. 77-614, S. 366, 610; P.A. 80-484, S. 22, 176.)

Secs. 20-29a to 20-31a. Reinstatement of lapsed registration. Renewal certificates; fee. Board to account to state treasurer. Fees to be credited to general fund. Sections 20-29a to 20-31a, inclusive, are repealed.

(1949 Rev., S. 4383, 4384; 1959, P.A. 616, S. 9–11; 1961, P.A. 467, S. 3; February, 1965, P.A. 85, S. 1; P.A. 80-484, S. 175, 176.)

Sec. 20-32. Use of names and titles. No licensee under the provisions of this chapter shall use the title "Doctor" or any abbreviation or synonym thereof unless he holds the degree of doctor of chiropractic from a chartered chiropractic school or college, in which event the title shall be such as will designate the licensee as a practitioner of chiropractic. No person shall practice as a chiropractor under any name other than the name of the chiropractor actually owning the practice or a corporate name containing the name or names of such chiropractors. Each licensed chiropractor shall exhibit his name at the entrance of his place of business or on his office door.

(1949 Rev., S. 4385.)

Cited 150 C. 302.

Sec. 20-33. Penalties. Any person, except a physician or surgeon licensed under the provisions of chapter 370, who practices or attempts to practice chiropractic, or any person who buys, sells or fraudulently obtains any diploma or license to practice chiropractic, whether recorded or not, or who uses the title "Chiropractor," "D.C.," or any word or title to induce the belief that he is engaged in the practice of chiropractic, without complying with the provisions of this chapter, or any person who violates any provision of this chapter, shall be fined not more than two hundred dollars or imprisoned not more than one year or both.

(1949 Rev., S. 4387; P.A. 76-83, S. 3.)

Cited 141 C. 288.

CHAPTER 373

NATUREOPATHY

Sec. 20-34. Practice defined. The practice of natureopathy shall mean the practice of the psychological, mechanical and material sciences of healing as follows: The psychological sciences, such as psychotherapy; the mechanical sciences, such as mechanotherapy, articular manipulation, corrective and orthopedic gymnastics, neurotherapy, physiotherapy, hydrotherapy, electrotherapy, thermotherapy, phototherapy, chromotherapy, vibrotherapy, concussion and pneumatotherapy, and the material sciences, such as dietetics, and external applications; but shall not mean internal medication or the administering of any substance simulating medicine or the form of medicine, except dehydrated foods.

(1949 Rev., S. 4394.)

To engage in natureopathy one must hold oneself out as a natureopath either by a series of acts or by advertising as such. 130 C. 544.

Sec. 20-35. Examining board. The state board of natureopathic examiners shall continue to consist of three members, two of whom shall be practicing natureopathic physicians of this state and one of whom shall be a public member. The governor shall appoint the members of said board subject to the provisions of section 4-9a. Said board shall meet at least once during each calendar quarter and at such other times as the chairman deems necessary. Special meetings shall be held on the request of a majority of the board after notice in accordance with the provisions of section 1-21. Members shall not be compensated for their services but shall be reimbursed for necessary expenses incurred in the performance of their duties. Any member who fails to attend three consecutive meetings or who fails to attend fifty per cent of all meetings held during any calendar year shall be deemed to have resigned from office. Minutes of all meetings shall be recorded by the board. No member shall participate in the affairs of the board during the pendency of any disciplinary proceedings by the board against such member. No professional member shall be an elected official of a professional society of natureopathic physicians or have been such an official during the year immediately preceding his appointment. Said board shall (1) hear and decide matters concerning suspension or revocation of licensure, (2) adjudicate complaints against practitioners and (3) impose sanctions where appropriate.

(1949 Rev., S. 4388; P.A. 77-614, S. 367, 610; P.A. 80-484, S. 170, 174, 176.)

See title 2c re termination under "Sunset Law."
See Sec. 4-9a for definition of "public member."
See Secs. 19-4b, 19-4[illegible]-19-4m, 20-43.

Sec. 20-36. Meetings. Powers and duties of examining board. Section 20-36 is repealed.

(1949 Rev., S. 4389, 4395; 1955, S. 2199d; 1959, P.A. 616, S. 12; P.A. 77-614, S. 73, 368, 610; P.A. 80-484, S. 175, 176.)

Sec. 20-37. Licensure. Examination. Fees. No person shall engage in the practice of natureopathy in this state until he has obtained a license. No person shall receive a license until he has passed an examination prescribed by the department with the advice and consent of the board. The examination shall be administered by the department of health services under the supervision of the board. Passing scores shall be established by the department with the consent of the board. Any person desiring to practice natureopathy shall make application to the department, upon such form as it adopts. Applications shall be in writing upon blanks furnished by said department, setting forth such facts concerning the applicant as said department requires and shall be signed by the applicant. Each applicant shall present to said department satisfactory evidence that he graduated from an approved high school, that he has completed a course of study of an academic year consisting of not less than thirty-two weeks' duration, or, if he begins the study of natureopathy after September 1, 1963, not less than sixty-four weeks' duration, in a college or scientific school approved by the board with the consent of the commissioner of health services or possessed educational qualifications equivalent to those required for graduation from such school before beginning the study of natureopathy and that he is a graduate of a legally chartered, reputable school or college of natureopathy, approved by said board with the consent of the commissioner of health services, which school shall require of such applicant a course of resident instruction of at least four years, and each year shall consist of thirty-six weeks of actual attendance. Said department shall issue a license to each applicant who passes the examination and who has met all other requirements of this chapter and any regulations adopted hereunder.

There shall be paid to the departm
dollars. Any person who has passe
said department a license, which l
named therein is qualified to pra
shall file annually with the depar
colleges or institutions recognized

(1949 Rev., S. 4390; 1949, S. 2198d; 1959, P.A. 61
77-614, S. 369, 610; P.A. 80-484, S. 23, 174, 176.)

See Secs. 19-45, 19-46, 20-44, 20-48, 20-49.

Duty of health commissioner in issuing certificate
hearing is invalid. 136 C. 84.

Commissioner has no discretion in issuing certificate
fraud. 15 CS 303. Authority to approve a school or colle

Sec. 20-38. Receipts to be
repealed.

(1949 Rev., S. 4395; 1955, S. 2199d; 1959, P.A. 616

Sec. 20-39. Subjects of exam
registration provided for in section
following subjects: Anatomy, ph
hygiene, public health, dietetic
diagnosis and theory and practice
and answers shall be filed with a
department of health services.

(1949 Rev., S. 4391; P.A. 77-614, S. 323, 610.)
Cited. 15 CS 468.

Sec. 20-40. Refusal of license
refuse to grant a license to practice
forth in section 19-4s for any of th
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the performance of professional du
or regulations adopted hereunder,
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Any applicant for a license to pra
whom any of the foregoing groun
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health services may order a license
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(1949 Rev., S. 4392; P.A. 77-614, S. 370, 610; P.A. 8

board of natureopathic examiners
two of whom shall be practicing
f whom shall be a public member.
board subject to the provisions of
during each calendar quarter and
cessary. Special meetings shall be
fter notice in accordance with the
be compensated for their services
s incurred in the performance of
ree consecutive meetings or who
during any calendar year shall be
f all meetings shall be recorded by
e affairs of the board during the
e board against such member. No
cial of a professional society of
ch an official during the year
board shall (1) hear and decide
on of licensure, (2) adjudicate
sanctions where appropriate.

76.)

f examining board. Section 20-36

614, S. 73, 368, 610, P.A. 80-484, S. 175, 176.)

. No person shall engage in the
as obtained a license. No person
examination prescribed by the
board. The examination shall be
ices under the supervision of the
e department with the consent of
eopathy shall make application to
plications shall be in writing upon
forth such facts concerning the
be signed by the applicant. Each
ctory evidence that he graduated
mpleted a course of study of an
y-two weeks' duration, or, if he
r 1, 1963, not less than sixty-four
l approved by the board with the
vices or possessed educational
aduation from such school before
t he is a graduate of a legally
eopathy, approved by said board
lth services, which school shall
truction of at least four years, and
tual attendance. Said department
the examination and who has met
regulations adopted hereunder.

There shall be paid to the department by such applicant a fee of one hundred fifty dollars. Any person who has passed the prescribed examination shall receive from said department a license, which license shall include a statement that the person named therein is qualified to practice natureopathy. The secretary of said board shall file annually with the department of health services a list of natureopathic colleges or institutions recognized by said board as legal and reputable.

(1949 Rev., S. 4390, 1949, S. 2198d; 1959, P.A. 616, S. 13; 1963, P.A. 241; 1969, P.A. 123, S. 1, June, 1971, P.A. 8, S. 45; P.A. 77-614, S. 369, 610, P.A. 80-484, S. 23, 174, 176.)

See Secs. 19-45, 19-46, 20-44, 20-48, 20-49.

Duty of health commissioner in issuing certificate is ministerial and not discretionary. 133 C. 520. Revocation without notice or hearing is invalid. 136 C. 84.

Commissioner has no discretion in issuing certificate of registration. 14 CS 199. The courts cannot aid one who was certified through fraud. 15 CS 303. Authority to approve a school or college of natureopathy rests with the board itself. Id., 468.

Sec. 20-38. Receipts to be credited to general fund. Section 20-38 is repealed.

(1949 Rev., S. 4395; 1955, S. 2199d; 1959, P.A. 616, S. 14; P.A. 80-484, S. 175, 176.)

Sec. 20-39. Subjects of examination. Each applicant for the certificate of registration provided for in section 20-37 shall take a written examination on the following subjects: Anatomy, physiology, histology, psychology, chemistry, hygiene, public health, dietetics, jurisprudence, natureopathic pathology, diagnosis and theory and practice of natureopathic therapeutics. Both questions and answers shall be filed with and preserved for a period of six years by the department of health services.

(1949 Rev., S. 4391; P.A. 77-614, S. 323, 610.)

Cited 15 CS 468.

Sec. 20-40. Refusal of license. Disciplinary grounds. Said department may refuse to grant a license to practice natureopathy or may take any of the actions set forth in section 19-4s for any of the following reasons: The employment of fraud or material deception in obtaining a license, habitual intemperance in the use of ardent spirits, narcotics or stimulants to such an extent as to incapacitate him for the performance of professional duties, violations of the provisions of this chapter or regulations adopted hereunder, engaging in fraud or material deception in the course of professional services or activities, physical or mental illness, emotional disorder or loss of motor skill, including but not limited to, deterioration through the aging process, or illegal, incompetent or negligent conduct in his practice. Any applicant for a license to practice natureopathy or any practitioner against whom any of the foregoing grounds for refusing a license or action under said section 19-4s are presented to said board shall be furnished with a copy of the complaint and shall have a hearing before said board in accordance with the regulations adopted by the commissioner of health services. The commissioner of health services may order a license holder to submit to a reasonable physical or mental examination if his physical or mental capacity to practice safely is the subject of an investigation. Said commissioner may petition the superior court for the judicial district of Hartford-New Britain to enforce such order or any action taken pursuant to section 19-4s.

(1949 Rev., S. 4392; P.A. 77-614, S. 370, 610; P.A. 80-484, S. 24, 176.)

Sec. 20-41. Renewal of licenses. Fee. Section 20-41 is repealed.

(1949 Rev., S. 4393, 1959, P.A. 616, S. 15.)

See Sec. 19-45(b).

Sec. 20-42. Penalties. Any person, except a licensed natureopath or a physician licensed to practice medicine as provided by chapter 370, who practices or attempts to practice natureopathy, or any person who buys, sells or fraudulently obtains any diploma or license to practice natureopathy whether recorded or not, or any person who uses the title "natureopath" or any word or title to induce the belief that he is engaged in the practice of natureopathy, without complying with the provisions of this chapter, or any person who violates any of the provisions of this chapter, shall be fined not more than two hundred dollars or imprisoned not more than one year or both.

(1949 Rev., S. 4397.)

Complaint of a single treatment, standing alone, was not a violation of the statute. 130 C. 546. Cited. 141 C. 288.

CHAPTER 374

MEDICAL EXAMINING BOARDS

Secs. 20-43 and 20-44. Appointment and removal of members of examining boards. Obtaining certificate by fraud; fraudulent acts; penalty. Sections 20-43 and 20-44 are repealed.

(1949 Rev., S. 4357, 4362; 1953, S. 2188d; 1959, P.A. 393, S. 2; P.A. 77-614, S. 371, 610; P.A. 80-484, S. 175, 176.)

Sec. 20-45. Suspension, revocation or annulment of license. Disciplinary proceedings. The license of any licensed practitioner of the healing arts in this state, except a physician as defined in section 20-13a, may be revoked, suspended or annulled, or such practitioner may be reprimanded or otherwise disciplined, after notice and hearing, on the recommendation of the examining board representing the branch of the healing arts practiced by such practitioner for any cause named below. Proceedings relative to the revocation, suspension or annulment of a license or certificate of registration or toward disciplinary action may be begun by the filing of written charges, verified by affidavit, by the commissioner of health services with the examining board representing the branch of the healing arts practiced by the practitioner. The causes for which a license or certificate of registration may be revoked, suspended or annulled or for which a practitioner may be reprimanded or otherwise disciplined are as follows: Conviction in a court of competent jurisdiction, either within or without this state, of any crime in the practice of his profession; fraudulent or deceptive conduct in the course of professional services or activities; illegal, incompetent or negligent conduct in the practice of the healing arts; habitual intemperance in the use of spirituous stimulants or addiction to the use of morphine, cocaine or other habit-forming drugs; aiding or abetting the unlawful practice of any branch of the healing arts; failure to record a license or certificate of registration as required by law; physical or mental illness, emotional disorder or loss of motor skill, including but not limited to deterioration through the aging process of the practitioner; fraud or material deception in obtaining a license or certificate of registration; or violation of any applicable statute or regulation. The clerk of any court in this state

in which a person practicing a
board for the healing arts h
section shall, immediately a
duplicate, of the information
health services, containing th
which he was convicted and
services may order a practit
examination if h physical or
investigation. S commissi
district of Ha -New Bi
pursuant to section 19-4s.

(1949 Rev., S. 4358, 1957, P.A. 196; Feb
80-484, S. 17, 176.)

See Secs. 7-49, 19-28, 53-341.

Cited. 130 C. 353. Board did not abuse its dis
C. 339. "Habitual negligence" is only form of
that which shows that either the party is intellec
to jeopardize the public interest. 141 C. 218. If
there was abuse of discretion. 142 C. 529.

License must be revoked or suspended unde
isolated instances not enough for "habitually
negligent" and "dishonorable" and "unprofes
which revocation of a license is based is both
administrative board, the sole function of the c

Secs. 20-46 to 20-49. H
or license. Appeal. Restor
revocation or suspension o
board. Registration of retir
are repealed.

(1949 Rev., S. 4359–4361, 4367, 1949, S.
2, 1971, P.A. 870, S. 55; 1972, P.A. 294, S. 37
373, 374, 587, 610; P.A. 78-280, S. 33, 127, 78

Sec. 20-50. Podiatry def
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prescription, administering a
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anesthetic other than a lo
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Accreditation of hospitals
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CHAPTER 14

NATUROPATHY

ARTICLE 1. NATUROPATHIC BOARD OF EXAMINERS

Sec.

ARTICLE 2. LICENSING

ARTICLE 3. REGULATION

ARTICLE 1. NATUROPATHIC BOARD OF EXAMINERS

§ 32-1501. Definitions

In this chapter, unless the context otherwise requires:

1. "Board" means the state naturopathic board of examiners.

2. "Naturopathy" includes all forms of physiotherapy and means a system of treating the abnormalities of the human mind and body by the use of drugless and nonsurgical methods, including the use of physical, electrical, hygienic and sanitary measures incident thereto

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Historical Note

Source:

§§ 1, 5, Ch. 105, L. '35; 67-1201 in part, 67-1205, C. '39 comb'd.

Notes of Decisions

1. In general

Sections 32-1401 et seq., 32-1421 et seq., and 32-1451 et seq. relating to medicine and surgery are not applicable to the practice of naturopathy or physical therapy. Sanfilippo v. State Farm Mut. Auto. Ins. Co. (1975) 24 Ariz.App. 10, 535 P.2d 38.

In suit for declaratory judgment brought by naturopathic board of examiners, where no issues of fact were raised but only questions of law concerning interpretation of statutes defining naturopathy and medicine, trial court properly considered case to be one for summary judgment. Kuts-Cheraux v. Wilson (1951) 71 Ariz. 161, 229 P.2d 713, opinion supplemented 72 Ariz. 37, 230 P.2d 512.

By statutory definition confining naturopathy to use of "drugless and nonsurgical methods" legislature intended to prevent naturopaths from doing two things for which by training they are not qualified, viz., prescribing drugs and performing surgical operations, and term "drugless method" was not used in a merely descriptive sense relating only to general practices but was intended to qualify and limit practice of naturopathy. Id.

2. Extent of permissible practice

Licensed naturopath can perform physical therapy. Sanfilippo v. State Farm Mut. Auto. Ins. Co. (1975) 24 Ariz.App. 10, 535 P.2d 38.

Under this section confining naturopathics to use of "drugless and nonsurgical methods," members of naturopathic profession are not barred from prescribing for their patients foods commonly used for nutritional purposes as distinguished from drugs. Kuts-Cheraux v. Wilson (1951) 72 Ariz. 37, 230 P.2d 512.

Under the Arizona statutes a practitioner of naturopathy or of chiropractic is limited to nonsurgical and nonmedical methods, while the osteopathic practitioner is placed more nearly on an equal with medical physician. Gates v. Kilcrease (1948) 66 Ariz. 328, 188 P.2d 247.

A licensed naturopath, intentionally and purposely applying electricity by means of diathermy machine used by surgeons to burn out lump on patient's foot after diagnosing it as cancer, was guilty of practicing medicine without license by performing surgical operation. Nethken v. State (1940) 56 Ariz. 15, 104 P.2d 159.

Drugs as defined in § 32-1901, are articles used in diagnosis for which standards are recognized in the official compendium, and where radiopaque contrast media constitute such drug when used for diagnostic purposes by chiropractor or naturopath, such use is beyond the extent of permissible practice under § 32-925. Op.Atty.Gen. No. 72-8.

Neither chiropractic doctors nor naturopathic doctors may draw blood by needle syringe. Op.Atty.Gen. No. 63-56-L.

A naturopath may treat infectious diseases so long as he uses drugless or nonsurgical methods. Op.Atty.Gen. No. 56-118.

3. Charges

Charges made for physical therapy treatments administered in a naturopathic office by unlicensed assistant under supervision of naturopath were as a matter of law not rendered for "reasonable medical expenses" under automobile policy and insurer was not liable for such charges since administration of such treatments was contrary to public

pouey and §§ 32-2011 and 32-2013. Sanfilippo v. State Farm Mut. Auto. Ins. Co. (1975) 24 Ariz.App. 10, 535 P.2d 38.

4. Reimbursement

Naturopath ordered or authorized by board of supervisors to render his services to the indigent sick would be entitled to reimbursement by board for such services. Op.Atty.Gen. No. 65-14-L.

Naturopath who voluntarily practiced his healing arts upon indigent county welfare recipients without prior authorization or direction from board of supervisors to render such aid and without providing the necessary sworn statements by the indigents would be unable to require board to reimburse him. Id.

5. Witnesses

Doctors with unlimited licenses are competent to give expert testimony in entire medical field, and chiropractor or naturopath is competent expert witness only in limited field in which he is licensed by the state. Chalupa v. Industrial Commission (1973) 109 Ariz. 310, 509 P.2d 610.

§ 32-1502. Naturopathic board of examiners

A. There shall be a state naturopathic board of examiners which shall consist of three members appointed by the governor. One member shall be appointed each year for a term of three years beginning July 1, and until his successor is appointed and qualified. The governor shall fill all vacancies in the membership of the board.

B. No person shall be appointed to the board who is not a citizen of the state, or who has not practiced naturopathy in this state continuously for five years immediately prior to the date of appointment. No two members of the board shall be graduates of the same school of drugless therapy.

Historical Note

Source:

§ 1, Ch. 105, L. '35; 67-1201, C. '39, in part.

Revisor's Note:

Laws 1935, Ch. 105, § 1 (67-1201, C. '39) provided for appointment of the first members of the board. The provision is deleted as executed.

§ 32-1503. Compensation

Each member of the board except the secretary shall receive compensation as determined pursuant to § 38-611 for each day actually engaged in the performances of his duties. The compensation to be paid the secretary shall be as determined pursuant to § 38-611.

As amended Laws 1962, Ch. 98, § 44; Laws 1970, Ch. 204, § 110.

Historical Note

Source:

§ 1, Ch. 105, L. '35; 67-1201, C. '39.

Prior to the 1962 amendment, this section read:

"Each member of the board except the secretary shall receive ten dollars per day for each day actually engaged in the performances of his duties, together with all expenses actually incurred. The board may fix the annual salary to be paid the secretary, and allow traveling expenses in addition thereto when incurred on business of the board."

The 1962 amendment substituted "twenty dollars" for "ten dollars" in the first sentence.

The 1970 amendment substantially rewrote this section.

§ 32-1504. Organization; powers and duties; annual report

A. The board shall carry the provisions of this chapter into effect and shall adopt rules and regulations for its administration.

B. The board shall annually elect a president, vice president and secretary, who may summon witnesses, administer oaths, take testimony and affidavits and certify thereto under the seal adopted by the board. A majority of the board shall constitute a quorum. The board shall make an annual report to the governor on the first Monday in December each year in which there shall be a detailed statement of all monies received and disbursed by the board during the preceding year.

Historical Note

Source:

§ 2, Ch. 105, L. '35; 67-1202, C. '39, in part.

Reviser's Note:

Laws 1935, Ch. 105, § 2 (67-1202, C. '39) provided for the first organizational meeting of the board. The provision is deleted as executed.

§ 32-1505. Licensing powers of board

The board is authorized to issue, suspend or revoke licenses to practice naturopathy.

Historical Note

Source:

§ 3, Ch. 105, L. '35; 67-1203, C. '39, in part.

Notes of Decisions

1. In general

By statutory definition confining naturopathy to use of "drugless and non-surgical methods" legislature intended to prevent naturopaths from doing two things for which by training they are not qualified, viz., prescribing drugs and performing surgical operations, and term "drugless method" was not used in a merely descriptive sense relating only to general practices but was intended to qualify and limit practice of naturopathy. Kuts-Cheraux v. Wilson (1951) 71 Ariz. 161, 229 P.2d 713, opinion supplemented 72 Ariz. 37, 230 P.2d 512.

In suit for declaratory judgment brought by naturopathic board of examiners, where no issues of fact were raised but only questions of law concerning interpretation of statutes defining naturopathy and medicine, trial court properly considered case to be one for summary judgment. Id.

§ 32-1506. Secretary of board; duties

The secretary shall keep a record of all actions of the board, including a detailed register of applicants for licenses.

As amended Laws 1971, Ch. 125, § 42.

Historical Note

Source:

§ 2, Ch. 105, L. '35; 67-1202, C. '39, in part.

The 1971 amendment deleted a subsec. "A" designation preceding the present text and deleted a former subsec. B, which prior thereto read:

"B. The secretary of the board shall be bonded for not less than one thousand dollars payable to the state for the faithful performance of his duties and the accounting for all monies that come into his possession. The premium for the bond shall be paid from the naturopathic board fund."

§ 32-1507. Naturopathic board fund

All monies from whatever source which come into the possession of the board shall be paid to the secretary who shall, at the end of each calendar month, deposit them with the state treasurer who shall transfer ten per cent of such monies in the general fund of the state and the remaining ninety per cent to the naturopathic board fund for use of the board. Disbursements from the fund shall be paid on warrants drawn by the department of administration assistant director for finance after having been presented with a claim or voucher signed by the president and secretary of the board and bearing the seal of the board. The board may spend amounts necessary for the proper administration of this chapter, but all expenditures shall be paid from monies remaining in the naturopathic board fund.

As amended Laws 1970, Ch. 190, § 42; Laws 1976, Ch. 163, § 20.

Historical Note

Source:

§ 2, Ch. 105, L. '35; 67-1202, C. '39, in part.

The 1970 amendment substituted "commissioner of finance" for "state auditor" in the second sentence.

The 1976 amendment substituted "department of administration assistant director for" for "commissioner of" in the second sentence.

For purpose of Laws 1976, Ch. 163 see note following § 10-301.

ARTICLE 2. LICENSING

§ 32-1521. Application for examination; fee

A. A person desiring to practice naturopathy or any branch thereof in this state shall make application to the board for an examina-

tion not less than
forms furnished by
by a certificate of
board of examiners

B. All persons
license fee of fifty
application for ex
license is granted.
twenty-five dollars

C. Affidavits o
good moral charac
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Source:

§ 6, Ch. 105, L. '35;
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Reviser's Note:

Laws 1935, Ch. 10
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§ 32-1522.

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tion not less than fifteen days before the date of examination upon forms furnished by the board. The application shall be accompanied by a certificate of registration in the basic sciences, issued by the board of examiners in the basic sciences.

B. All persons licensed under this chapter shall pay to the board a license fee of fifty dollars. Twenty-five dollars shall accompany the application for examination, and the balance shall be paid when the license is granted. Under no condition shall the application fee of twenty-five dollars be returned to the applicant.

C. Affidavits of two reputable residents of the state attesting the good moral character of the applicant, two photographs of the applicant taken within thirty days of the application and other data and information as the board requires shall be filed with the application. At the time and place the board has previously designated, the applicant shall appear before the board for examination as to his fitness to practice naturopathy.

Historical Note

Source:

§ 6, Ch. 105, L. '35; 67-1206, C. '39, in part.

Reviser's Note:

Laws 1935, Ch. 105, § 6 (67-1206, C. '39) provided for an application fee of twenty-five dollars for persons practicing on the effective date of the act. The provision is deleted as executed. See also reviser's note to § 32-1524.

Library References

Physicians and Surgeons ⇨5(2).

C.J.S. Physicians and Surgeons §§ 13, 23.

Notes of Decisions

1. In general

By statutory definition confining naturopathy to use of "drugless and non-surgical methods" legislature intended to prevent naturopaths from doing two things for which by training they are not qualified, viz., prescribing drugs and performing surgical operations, and term "drugless method" was not used in a merely descriptive sense relating only to general practices but was intended to qualify and limit practice of naturopathy. Kuts Cheraux v. Wilson (1951) 71 Ariz. 361, 229 P.2d 713, opinion supplemented 72 Ariz. 37, 230 P.2d 512.

There exists in Arizona no such thing as right to practice medicine, and all that does exist is privilege to practice medicine as allowed and regulated by legislature. Id.

§ 32-1522. Educational qualifications of applicant

Except as provided in this section, the minimum educational requirements for license under the provisions of this chapter shall be a high school diploma, or the equivalent thereof, certified to by the su-

perintendent of public instruction or a county school superintendent, and subsequent graduation from a school or schools of drugless therapeutics, approved by the board, embracing residential studies of not less than four years of eight months each devoted to a study of the following subjects in the approximate number of hours assigned to each as follows:

1. Anatomy, including dissection, six hundred fifty hours.
2. Histology and embryology, one hundred fifty hours.
3. Physiology, two hundred fifty hours.
4. Chemistry, two hundred hours.
5. Bacteriology, one hundred hours.
6. Pathology, three hundred fifty hours.
7. Diagnosis, including physical, clinical, X-ray, symptomatology, dermatology and mental diseases, five hundred hours.
8. Orthopedics, one hundred hours.
9. Manipulative and adjustive technic, two hundred hours.
10. Dietetics, two hundred hours.
11. Drugless gynecology, one hundred fifty hours.
12. Nonsurgical obstetrics, one hundred fifty hours.
13. Toxicology, fifty hours.
14. First aid, fifty hours.
15. Ear, nose and throat, fifty hours.
16. Hygiene and sanitation, one hundred hours.
17. Jurisprudence, forty-five hours.
18. Drugless therapeutics, including electrotherapy, physiotherapy, hydrotherapy, massage and practice of naturopathy, seven hundred fifty hours.
19. Clinical practice, three hundred hours.
20. Such other subjects as the board requires, excepting materia medica and major surgery, totaling not less than forty-five hundred hours.

Historical Note

Source:

§ 7, Ch. 105, L. '35; '07-1207, C. '39.

Library References

Physicians and Surgeons ⇨4. C.J.S. Physicians and Surgeons § 17

Notes of Decisions

In general 1
Witnesses 2

1. In general

Educational requirements of naturopaths indicate that, as a group, they are likely to be relatively well schooled in medical matters. Chalupa v. Industrial Commission (1972), 17 Ariz.App. 386, 498 P.2d 228, modified on other grounds 509 P.2d 610, 109 Ariz. 340.

By statutory definition confining naturopathy to use of "drugless and nonsurgical methods" legislature intended to prevent naturopaths from doing two things for which by training they are unqualified, viz., prescribing drugs and performing surgical operations, and term "drugless method" was not used in a merely descriptive sense relating only to general practices but was intended to qualify and limit practice of naturopathy. Kuts-Cheraux v. Wilson (1951) 71 Ariz. 461, 229 P.2d 713, opinion supplemented 72 Ariz. 37, 230 P.2d 512.

2. Witnesses

Doctors with unlimited licenses are competent to give expert testimony in entire medical field, and chiropractor or naturopath is competent expert witness only in limited field in which he is licensed by the state. Chalupa v. Industrial Commission (1973) 109 Ariz. 340, 509 P.2d 610.

32-1523. Examination

A. For the purpose of determining the qualifications of applicants for license under the provisions of this chapter, the board shall hold meetings and conduct examinations of applicants for licenses at times and places and under rules and regulations the board determines. The time and place of holding the examination shall be published at least thirty days prior to the date of the examination.

B. The examination shall be in writing and shall embrace the subjects set forth in § 32-1522 and other subjects required by the board. If the applicant answers seventy-five per cent of the questions asked on each of the subjects of the examination correctly, a license to practice naturopathy shall be issued to the applicant.

C. If an applicant fails to pass the examination he shall, within one year after his failure to pass, without losing credit for subjects passed and without paying another fee, be permitted to take another examination at the convenience of the board. An applicant for reexamination shall, not less than fifteen days before the date of the examination, notify the board of his intention to take the examination.

Historical Note

Source

Laws 1965, Ch. 105, § 35; 67 1203, 67 [illegible] part compiled

Notes of Decisions

1. In general

There exists in Arizona no such thing as right to practice medicine, and all that does exist is privilege to practice medicine as allowed and regulated by legislature. Kuts-Cheraux v. Wilson (1951) 71 Ariz. 961, 229 P.2d 713, opinion supplemented 72 Ariz. 37, 230 P.2d 512.

§ 32-1524. Licensing out-of-state naturopaths

The board may, upon payment of a fee of one hundred dollars, grant a license to practice naturopathy without examination to a naturopathic physician licensed to practice in another state if the requirements in such state are not less than those required of applicants for license in this state and if such other state grants similar reciprocal privileges to naturopathic physicians licensed in this state.

Historical Note

Source:

§ 13, Ch. 105, L. '35; 67-1213, C. '39.

Reviser's Note:

Laws 1935, Ch. 105, § 8 (67-1208, C. '39) provided for the licensing of naturopaths practicing on the effective date of the act. The provision is omitted as executed.

§ 32-1525. Annual application and renewal of license; fee; restoration upon failure to renew

A. On or before January 1 each year every person holding a license under this chapter shall apply to the board for a certificate of renewal of his license, accompanying the application with a fee of twenty dollars. The application shall be made on a form furnished by the board, and shall contain information required by the board.

B. Upon receipt of an application for annual renewal of a license to practice naturopathy accompanied by the proper fee, the board shall issue a certificate of annual registration which shall at all times be displayed in the office of the licensee.

C. Failure, refusal or neglect of any licensee to pay the annual renewal fee shall, after thirty days from January 1 each year, automatically revoke the license of the licensee. A license so revoked shall not be restored except on written application therefor and payment of a restoration fee of fifteen dollars plus the annual renewal fee of twenty dollars, but an applicant for restoration of a license so revoked shall not be required to submit to an examination as to his qualifications. On or before December 1 each year, the secretary of the board shall notify each licensee under this chapter that the annual application and fee for renewal are due on or before January 1.

As amended Laws 1969, Ch. 93, § 1.

Historical Note

Source:

§ 10, Ch. 105, L. '35; 67-1210, C. '39.

The 1969 amendment substituted "twenty dollars" for "ten dollars" in the first sentence of subsec. A and in the second sentence of subsec. C.

ARTICLE 3. REGULATION

§ 32-1551. Use of title or abbreviation by licensee

Licensees under this chapter are authorized to use any or all of the terms or abbreviations, "doctor of naturopathy," "N.D.," "naturopath," "naturopathic physician" or "drugless physician," but none of such terms or abbreviations or any combination of them shall be used to convey the impression that the physician using them practices any healing art other than drugless therapy.

Historical Note

Source:

§ 14, Ch. 105, L. '35; 67-1214, C. '39.

Notes of Decisions

1. In general

Naturopathic physician who uses the abbreviations "Dr." and "N.D." must designate, on an advertisement, by words the particular type of practice he is licensed to do. Op.Atty.Gen. No. 68-88-L.

§ 32-1552. Recording of certificate

Before engaging in practice in any county in the state, the holder of a license under this chapter shall record the license with the county recorder of the county in which the licensee intends to practice. The recorder shall stamp or write on the back of the license such facts as are necessary to indicate that it has been recorded.

As amended Laws 1966, Ch. 63 § 11.

Historical Note

Source:

§ 11, Ch. 105, L. '35; 67-1211, C. '39.

The 1966 amendment, in the second sentence, deleted "shall receive a fee of one dollar for recording the license in a book kept for that purpose and" after "The recorder".

§ 32-1553. Observance of public health laws and regulations

Licensees under this chapter shall observe and be subject to all state, county and municipal laws and regulations relating to public

health in the same manner as physicians of other schools of healing; for it is not the intention of the legislature to grant any special favors or privileges to any particular system or method of healing.

Historical Note

Source:

§ 12, Ch. 105, L. '35; 67-1212, C. '39.

Cross References

Failure to report gunshot, knife or other wounds apparently due to illegal acts, punishment, see § 13-1206.

Practicing medicine while intoxicated, punishment, see § 13-1007.

Privileged communications, see §§ 12-2235 and 13-1802.

Revocation of license for secreting person having contagious disease, see § 36-630.

Waiver by patient of privileged communication, see § 12-2236.

§ 32-1554. Grounds for suspension, revocation or refusal to issue license; notice of action; appeal

A. The board may refuse to grant, or may suspend or revoke a license to practice naturopathy in this state for any of the following reasons:

1. Use of fraud or deception in obtaining a license.

2. Impersonation of another physician.

3. Practicing naturopathy under an assumed name.

4. Unprofessional conduct reflecting unfavorably upon the profession.

5. Conviction of a crime involving moral turpitude.

6. Any other reason that renders the licensee unfit to perform the duties of a naturopathic physician.

B. Within ten days after refusal to grant, or suspension or revocation of a license, the board shall furnish the applicant or licensee concerned with a detailed statement of the reasons for its action.

C. Within ninety days thereafter the applicant or licensee may appeal to the superior court of the county where the suspended or revoked license is recorded for reversal of the action of the board. The decision of the superior court may be appealed to the supreme court by either party.

D. It shall be the duty of the attorney general to defend the board in any action brought against it.

Historical Note

Source:

§ 9, Ch. 105, L. '35; 67-1209, C. '39.

Physicians and
(5).

1. In general

Administrative
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training instructor
directors, and em

§ 32-1555.

It is unlawfu
claim to practi
complying with

Source:

§ 15, Ch. 105, L.

§ 32-1556.

The county
charged with v
may retain its
torney general
tains legal assis
lation of this c
the naturopathi

Source:

§ 17, Ch. 105, L.

§ 32-1557.

A. A perso
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B. Seventy-
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Library References

Physicians and Surgeons ⇨11.2, 11.3 (5).

C.J.S. Physicians and Surgeons §§ 17, 18.

Notes of Decisions

1. In general

Administrative determination as to licenses is limited to judicial review in the superior court as to real estate brokers and salesmen, optometrists, driver training instructors or schools, funeral directors, and employment agencies but further appellate review exists as to dispensing opticians, osteopathic physicians, barbers, collection agencies, contractors, physicians, naturopathic physicians, and nurses. Meyer v. Campbell (1971) 13 Ariz.App. 601, 480 P.2d 22.

§ 32-1555. Unlawful practice

It is unlawful for any person to practice, attempt to practice or claim to practice naturopathy or any branch thereof without first complying with the provisions of this chapter.

Historical Note

Source:

§ 15, Ch. 105, L. '35, 67-1215, C. '39.

§ 32-1556. Prosecution for violations

The county attorney of each county shall prosecute all persons charged with violating this chapter within his county, but the board may retain its own attorney or request legal assistance from the attorney general to aid in prosecuting such a violator. If the board obtains legal assistance to prosecute or aid in the prosecution for a violation of this chapter, payment for such services shall be made from the naturopathic board fund.

Historical Note

Source:

§ 17, Ch. 105, L. '35; 67-1217, C. '39.

§ 32-1557. Violation; penalty; disposition of fines collected

A. A person who violates any provision of this chapter is guilty of a misdemeanor punishable as provided by law.

B. Seventy-five per cent of fines collected under this chapter shall be remitted to the naturopathic board fund and twenty-five per cent to the county treasurer of the county in which the prosecution is conducted.

C. Justice of the peace courts, municipal courts and superior courts shall have concurrent jurisdiction of offenses under this chapter.

Historical Note

Source:

§ 16, Ch. 105, L. '35; 67-1216, C. '39.

Reviser's Note:

Laws 1935, Ch. 105, § 18 (67-1218, C. '39) provided for severability of the act. The provision is omitted as unnecessary.

Library References

Physicians and Surgeons ⇨6(12).

C.J.S. Physicians and Surgeons § 30.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

March 5, 1984

MEMORANDUM

TO: Representative Furnace

FROM: Jay Livey
Legislative Analyst

RE: Regulation of Naturopaths in Other States
Research Request 84-055

Steve Levi of your staff asked that we compare the regulation and licensure of naturopaths in other states with the approach proposed by CSHB 374. There are currently six states, Washington, Arizona, Oregon, Hawaii, Nevada, and Connecticut, that license naturopaths. We were able to contact or obtain licensing laws for all of these states. The comparisons of the laws includes the following information:

- the entity responsible for the regulation;
- requirements for licensure as a naturopath;
- scope of naturopathic practice; and
- reciprocity arrangements with other states.

Responsibility for Naturopathic Regulation

CSHB 347 puts the responsibility for the regulation of naturopaths in Alaska within the authority of the Department of Commerce and Economic Development. The department would have the authority to evaluate the qualifications of applicants, prepare and administer examinations to applicants and revoke and suspend licenses for cause. The State of Washington uses a similar structure, giving these powers to the Department of Licensing.

In four states, Hawaii, Oregon, Nevada and Arizona, the authority to administer the licensure law is given to a Board of Naturopathic Examiners. These boards may discipline licensed naturopaths through revocation or suspension of licenses, establish and administer licensure examinations, evaluate the qualifications of applicants and generally administer the licensure law. Three of these states, Hawaii, Arizona

and Oregon, have a three-member board composed of licensed naturopaths. Nevada has a five-member Board of Examiners of which three members are required to be naturopaths; one member is required to be a physician and one member must be a layperson.

Connecticut has a structure that divides the licensing authority between a Board of Examiners and the Department of Health Services. The board, composed of 2 licensed naturopaths and one layperson, has the authority to discipline licensed naturopaths according to procedures established by the law and administrative code. The board is also responsible for developing the licensure examination. The Department of Health Services administers the licensure statute, and has final responsibility for licensing naturopaths under the statute.

Requirements for Licensure

In summary, to be licensed as a naturopathic physician in any of these states, the applicant must be a high school graduate, have graduated from an approved school of Naturopathy and pass an examination administered by either a state department or state board of examiners. As proposed in the Alaska law, Hawaii, Oregon and Connecticut require that applicants complete additional college work at an approved school. We also found the the standards used by the states to define approved schools of naturopathy were fairly similar to those proposed in the Alaska law. All states require a mix of classroom and clinical study, a course of study that occurs over four years and a minimum number of hours required for graduation. Each state's requirements are summarized below.

Alaska. To be eligible for a license as a naturopath in Alaska, CSHB 347 would require the applicant to be a high school graduate or equivalent, and to have completed two years of postsecondary education at an accredited college of liberal arts and sciences, have successfully completed an examination given by the Department of Commerce and Economic Development and not to have been licensed to practice naturopathic medicine in another state if the license has been revoked or suspended for disciplinary reasons. In addition, the applicant must have graduated from a legally chartered school of naturopathic medicine or a school of naturopathic medicine that meets specific curriculum requirements including a course of study of at least 4,000 hours of which 1,500 must be clinical.

Hawaii. In Hawaii, to be licensed as a naturopathic physician, an applicant must reside in the state for one year prior to application, be a high school graduate, have had two years liberal arts education at an accedited college and be a graduate of a legally chartered school of naturopathic medicine that meets specific curriculum requirements found in the law. In addition, the applicant must pass an examination prepared and administered by the Board of Naturopathic Examiners.

Arizona. Arizona law requires an applicant for a naturopathic license to be a high school graduate or the equivalent and to have graduated from a school of drugless therapeutics, approved by the Board of Naturopathic Examiners. The school must meet specific curriculum requirements specified in the law and provide a total of at least 4,500 hours of instruction. The applicant must also pass an examination prepared by the Board of Examiners.

Connecticut. Connecticut law requires an applicant for a naturpathic license to be a high school graduate, to have completed 64 weeks of study at a college or scientific school approved by the Board of Naturopathic Examiners and to have graduated from a legally chartered, reputable school or college of naturopathy approved by the board. To be approved, the school of naturopathy, must require a course of resident instruction of at least four years, with each year consisting of thirty-six weeks of actual attendance. The applicant must also successfully pass an examination given by the Department of Health Services.

Oregon. Minimum requirements to be eligible for a license of naturopathy in Oregon include a high school diploma, two years satisfactory study in an accredited college of liberal arts and sciences and graduation from a college of naturopathy approved by the Board of Naturopathic Examiners. To be accredited, the college of Naturopathy must provide at least 4,000 lecture or recitation hours. Applicants are also required to pass an examination administered by the board.

Washington. Washington requires applicants for a naturopathic license to be graduates of a school of naturopathic medicine approved by the Director of Licensing and to pass an examination prepared amd administered by the Director of Licensing. To be approved, the school must require a high school diploma as a condition of admission.

Nevada. To be licensed as a naturopath in Nevada, the applicant must be 21 years of age or older, a citizen of the United States or be legally entitled to work and live here, a graduate of a school of naturopathic medicine that is approved by the Board of Naturopathic Examiners and must have successfully completed an examination administered by the board.

Scope of Practice

The scope of naturopathic practice allowed by the proposed Alaska law is similar to the scope of practice allowed in Oregon, Arizona, and Connecticut. These states all allow naturopaths to perform childbirth, draw blood for diagnosis purposes, sign birth and death certificates and perform minor surgeries.

However, the states of Washington and Nevada restrict the scope of naturopathic practice more than the proposed Alaska law. These states do not allow naturopaths to perform surgeries of any kind or perform natural childbirth (except in Washington if a licensed midwife is present). Naturopaths in Nevada must work under the supervision of a physician; however, they are allowed to draw blood for diagnosis.

Alaska. The proposed Alaska law would allow naturopaths to perform physical exams, write prescriptions for noncontrolled substances, sign birth and death certificates, diagnose disease according to training, treat patients by stimulating normal functions of tissues and organs sensitized by disease, draw blood for laboratory purposes, use electrical or other methods for repair and care of superficial lacerations and abrasions, and practice natural childbirth in obsetrics. According to the proposed law, a naturopath may not perform surgery except as related to childbirth, use controlled substances, use radiation therapy or use drugs except antiseptics, local anesthetics, minerals and extracts, compounds or concentrates obtained from plants or animals.

Hawaii. Hawaii's naturopathic licensing law does not specify a scope of allowable practice. However, it does state that "naturopathic physicians licensed under this chapter shall observe and be subject to all state regulations relative to reporting births and deaths and all matters pertaining to the public health with equal rights and obligations as physicians, surgeons, and practitioners of other schools of medicine." Because we were unable to contact representatives of the Hawaii Board of Naturopathic Examiners, we were unable to make specific comparisons to the proposed Alaska law.

Arizona. The Arizona law does not specifically include the scope of services naturopaths can offer. According to Dr. Milburn Shelton, President of the State Naturopathic Licensing Board, the scope of services is determined by the definitions found in the statute.[1] For example, naturopathy means "a system for treating the abnormalities of the human mind and body by the use of drugless and nonsurgical methods including the use of physical, electrical, hygenic, and sanitary measures and all form of physiotherapy."

Nonsurgical is defined to be "a system of treating the abnormalities of the human mind and body without surgical invasion of the human body, but does not preclude the use of acupuncture, electrical or other methods for the repair and care of incident and superficial lacerations and abrasions, benign superficial lesions and the removal of foreign bodies

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[1]Dr. Milburne Shelton, President of the Arizona Board of Naturopathic Examiners, (602) 937-9125.

located in superficial structures, and the use of standard clincal procedures in connection therewith." This definition allows procedures that are similar to ones allowed in the proposed Alaska law.

Dr. Shelton stated that naturopaths in Arizona could also perform physical examinations, prescribe substances authorized in the statutes, sign both birth and death certificates, treat patients with acupuncture, draw blood for laboratory purposes and practice natural childbirth. He also noted that naturopaths in Arizona are prohibited from performing the activities also prohibited in CSHB 347.

Connecticut. As with Arizona, the Connecticut law is not very specific concerning the scope of practice naturopaths are allowed to perform. However, according to Dr. Charles Soderstrom, President of the Board of Naturopathic Examiners, the scope of practice is very similar to the proposed Alaska law.[2] He noted that Connecticut naturopaths can perform minor surgery, practice natural childbirth, sign both birth and death certificates, draw blood for laboratory tests, and perform diagnosis. However, as in the proposed Alaska law, naturopaths may not perform major surgery, use controlled substances, or use radiation therapy.

Oregon. The Oregon statutes allow naturopaths to "treat the human body by use of drugless methods, which has for its object the maintaining of the body in, or of restoring it to, a state of normal health." Although the full scope of allowed services is not detailed in the statute, it does specifically mention that antiseptics and anesthetics can be administered, birth and death certificates can be signed and minor surgery (as defined in the statute) can be performed.[3] Specific prohibitions mentioned in the law include the practice of optometry, performing chiropractic adjustments and prescribing drugs.

Washington. The Washington licensing law does not specifically detail the scope of naturopathic practice. According to Yvonne Braeme, Executive Secretary to the Drugless Examining Committee, the existing law in Washington, which was adopted in 1919, is outdated.[4] However, she did note that naturopathic practice in Washington may be more restricted than that proposed by the Alaska law. In Washington, naturopaths are

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[2]Dr. Charles Soderstrom, President, Connecticut Board of Naturopathic Examiners, (203) 633-5330.

[3]Minor surgery as defined in the Oregon law is very similar to the scope of services detailed in the proposed Alaska statute.

[4]Ms. Yvonne Braeme, Executive Secretary, Washington State Board of Drugless Medicine, (206) 753-3576.

not allowed to sign birth and death certificates, draw blood for laboratory uses, perform natural childbirth without the presence of a licensed midwife, do surgeries of any kind or prescribe medicine.

Nevada. Of all the states that we contacted, Nevada had the most restrictive law concerning naturopaths. In Nevada, naturopaths are required to work under the supervision of a licensed physician and are not authorized to "perform those functions and duties specifically delegated by law to physicians, dentists, nurses, osteopaths, chiropractors, practitioners of traditional oriental medicine, podiatrists, optometrists, hearing aid specialists or physical therapists."

Specifically, naturopaths may not use x-ray or radium treatments, perform major or minor surgery, perform obstetrics, prescribe drugs or draw blood for any reason other than diagnosis. Naturopaths may sign birth and death certificates if they are co-signed by the supervising physician.

Reciprocity in Licensing

Reciprocity refers to the granting of a license by one state based on the fact that a license has been granted to the applicant by another state that has similar licensing requirements. The proposed Alaska law gives this power to the Department of Commerce and Economic Development assuming that the law in the state in which the applicant currently has a license is equivalent to the requirements of Alaska law.

Currently, the states of Arizona and Oregon have the power in their statutes to grant naturopathic licenses based on reciprocity agreements. The states of Nevada, Washington, Connecticut and Hawaii do not allow reciprocity.

I hope that this information is helpful to you. If you would like copies of the naturopathic regulations from other states or require additional research, please let me know.

JL

MIDDLETON & TIMME
LAW OFFICES
SUITE 420
601 WEST FIFTH AVENUE
ANCHORAGE, ALASKA 99501

R. COLLIN MIDDLETON
WILLIAM H. TIMME
AVERIL LERMAN
JACQUELYN R. LUKE
D. JOHN McKAY

TELEPHONE
AREA CODE 907
276-3390

May 10, 1984

Ms. Nancy Dietrich
Administrative Assistant to
Senator Joe P. Josephson

Re: HB 347

Dear Ms. Dietrich:

I enjoyed talking with you. The basic problem confronting naturopaths is that the definition of the practice of medicine is so broad it encompasses the practice of naturopathy. Dr. Pettijohn received a cease and desist order from the Department of Occupational Licensing in December. We went to the Superior Court and the order has been stayed to give the legislature an opportunity to solve the problem. The solution so far is HB 347.

I feel we are less concerned with a naturopathic licensing board than with the over-restrictive definitions of the practice of medicine. You could, for instance, make naturopathy an unlicensed activity, or make it licensed with the licensing done by the Department of Occupational Licensing. I know Joe felt the Governor would veto any bill setting up a new licensing board. While HB 347 doesn't set one up now, it has the potential to later. The major changes we wish to have in the bill so that it is constitutional and allows naturopaths to practice the professions they have been extensively trained to practice are the following:

1. Page 4, line 13 - change "Naturopath" to "Naturopathic Physician." Naturopathic doctors are licensed as such in other states. A reference should be made to that effect in this legislation.

2. Page 4, line 18-19 - Omit "accupressure" and in its place put "including repair and care of superficial lacerations and lesions." Naturopaths are specifically trained in minor surgery. This clause is essential for perineal repairs associated with childbirth.

3. Page 4, line 26 - The words "diagnosis or" should be omitted. Naturopathic Physicians are trained in the use of X-Ray for diagnostic purposes.

4. Page 6, line 27 - "Without prescription drugs" should be amended by "other than those substances authorized under 08.45.160." Some natural occurring plant, animal, and nutritional substances are prescription. Naturopaths, however, are trained to prescribe them. Examples are: prescription vitamins, minerals, enzymes, glandulars, medical grade plant extracts, etc.

If I can be of any further help at all please let me know.

Sincerely,

MIDDLETON & TIMME

R. Collin Middleton

RCM/cmt

MAY 10, 1984

Senator Josephson,

I am in support of licensing naturopathic physicians in Alaska and I urge you to vote favorably to this end. House Bill 347 is now in the senate HESS Committee which you chair. I am generally in favor of this legislation but would urge you to support some changes which would allow naturopaths to practice their profession as trained without unjustifiable restrictions.

Please pass HB347 with the following amendments:

1. Page 4 Line 13 - change Naturopath to "Naturopathic Physician." Naturopathic doctors are licensed as such in other states. A reference should be made to that effect in this legislation.

2. Page 4 Line 18-19 - Omit accupressure and in its place put "including repair and care of superficial lacerations and lesions." Naturopaths are specifically trained in minor surgery. This clause is essential for perineal repairs associated with Childbirth.

3. Page 4 line 26 - The words "diagnosis or" should be omitted. Naturopathic Physicians are trained in the use of X-Ray for diagnostic purposes.

4. Page 6 line 27 - "Without prescription drugs" should be amended by "other than those substances authorized under 08.45.160." Some natural occurring plant, animal, and nutritional substances are prescription. Naturopaths, however, are trained to prescribe them. Examples are: prescription vitamins, minerals, enzymes, glandulars, medicial grade plant extracts etc.

Patton Pettijohn N.D.
Naturopathic physician

PATTON PETTIJOHN N.D.
915 W Northern Lights #4
ANCH. AK 99503
907 276 5077

(b) A temporary permit issued under (a)(1) of this section is valid until the date on which the results of the next examination that is offered under AS 08.45.120 are released. A temporary permit issued under (a)(2) of this section is valid for one year.

Sec. 08.45.140. LICENSE RENEWAL. A license issued under this chapter expires unless it is renewed every four years.

Sec. 08.45.150. FEES. The following fees are imposed under this chapter:

(1) application for examination	$ 50
(2) application for re-examination	10
(3) license issuance or renewal	200
(4) temporary permit issuance	50

Sec. 08.45.160. SCOPE OF NATUROPATHIC PRACTICE. (a) A ~~naturo-~~ naturopathic ~~path~~ physician in the course of the practice of naturopathy may

(1) use systems of diagnosis for which the naturopath has been trained;

(2) treat patients by physiological, nutritional, mechanical, manual, hydrotherapeutic and phytotherapeutic means, ~~with~~ including repair and care of superficial lacerations and lesions ~~pressure~~, and with minerals, and with extracts, compounds and concentrates obtained from plants or animals;

(3) practice natural childbirth in obstetrics.

(b) A naturopath may not

(1) perform surgery;

(2) use or prescribe controlled substances as defined in AS 11.81.900(b)(6); or

(3) use x-ray equipment, radium, or irradiation for [redacted] om. + [redacted] therapy.

Sec. 08.45.170. CONTINUING EDUCATION. (a) The department shall prescribe by regulation continuing education requirements for persons

safely;

(5) fails to comply with this chapter or a regulation adopted under this chapter;

(6) continued to practice after becoming unfit due to

(A) professional incompetence;

(B) addiction or severe dependency on alcohol or other drugs that impairs the person's ability to practice safely;

(C) physical or mental disability;

(7) engaged in lewd or immoral conduct in connection with the delivery of professional service to a patient.

Sec. 08.45.220. VIOLATIONS. (a) Except as provided in (b) of this section, a person is guilty of a class B misdemeanor if the person intentionally violates a provision of this chapter or a regulation adopted under this chapter.

(b) A person who practices naturopathy without a valid temporary permit or license issued under this chapter is guilty of a class A misdemeanor.

(c) Nothing in this chapter prohibits the practice of midwifery by persons other than practitioners of naturopathy.

Sec. 08.45.900. DEFINITIONS. In this chapter

(1) "department" means the Department of Commerce and Economic Development;

(2) "naturopathy" and "naturopathic" means a system of human health care that promotes good health through the prevention and treatment of illness by the use of educational, physical, nutritional, botanical, hygienic and other methods, and without the use of prescription drugs other than those substances authorized under 08.45.160 surgery, x-ray equipment or radium therapy.

* Sec. 3. LICENSING OF PRACTITIONERS OF NATUROPATHY WITHOUT EXAMINATION OR INTERNSHIP. (a) The Department of Commerce and Economic Development

shall issue a license to practice naturopathy to a person who, on the effective date of this Act,

(1) is residing and practicing naturopathy in the state;

(2) has passed an examination and is licensed to practice naturopathy in another state, territory, or province;

(3) has graduated from a school of naturopathy that has, as a requirement for graduation, successful completion of a course of resident instruction of at least nine months actual attendance in each of four years and successful completion of a course of study totaling at least 4,000 hours; and

(4) applies for a license under this section no later than June 30, 1985.

~~(b)~~ A temporary permit issued under this section is valid until the date on which the results of the ~~first~~ examination that is offered under AS 08.45.120, as enacted in sec. 2 of this Act, ~~are released~~.

omit ~~typo~~ clerical error

* Sec. 4. Notwithstanding AS 08.45.010 as enacted in sec. 2 of this Act, the first members of the Board of Naturopathic Examiners shall be appointed for the following terms; one member shall serve a one-year term, two members shall serve two-year terms, and two members shall serve three-year terms.

RECEIVED

MAY 2 - 1984

Josephson.

MSG 84-00048860 PRTY 1 05/25/84 19:39:09 ORIG: LA17 IN= 0010 OUT= 0117
FROM: KIM / ANCH LIO TO: JUNEAU INFO
TARGET: LJHK SUBJ: MESSAGE FOR SENATORS HALFORD & JOSEPHSON

---

* * MESSAGE * * * * * * * * * * *

TO: SENATORS HALFORD AND OSEPHSON

FROM: DR. JASPER, 2536 FOREST PARK DRIVE, ANCHORAGE 99503
H 276-4144

"IF YOU CARE TO CONSIDER SENATOR HALFORD'S SUGGESTION, PLEASE CONSIDER THIS WORDING.

THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT SHALL ISSUE A LICENSE TO PRACTICE NATUROPATHY TO ALL NATUROPATHIC PHYSICIANS PRACTICING AND RESIDING IN THE STATE PROVIDED THAT THE NATUROPATH HAS A VALID LICENSE TO PRACTICE NATUROPATHY IN SOME OTHER STATE OR PROVINCE AND HAS GRADUATED FROM A SCHOOL OF NATUROPATHIC MEDICINE REQUIRING AT LEAST 4,000 HOURS OF IN RESIDENCE STUDY.

THE PRACTICE OF NATUROPATHY BY LICENSED NATUROPATHS SHALL NOT BE CONSIDERED THE PRACTICE OF MEDICINE PROVIDED THAT THEY USE NO PRESCRIPTION DRUGS EXCEPT VITAMINS, MINERALS, AND HERBAL REMEDIES, PRACTICE NO SURGERY EXCEPT THE REPAIR OF SUPERFICIAL LACERATIONS AND LESIONS, USE NO TYPES OF RADIUM OR X-RAY THERAPY, AND DO NOT REPRESENT THEMSELVES AS PRACTICING ANYTHING OTHER THAN NATUROPATHY."

* * * * * * * * * * *

Originals

June 30, 1985

SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

WITNESS REGISTER

BILL NUMBER CSHB 347 Naturopaths DATE May 25, 1984

NAME	REPRESENTING	ADDRESS	PHONE NUMBER
David Sperre	DHSS	Pouch H-06B Juneau	465-3100
Joan Mathews	Rep. Martin		
Jerry Strickland	Occup Licensing		
Rick Urion	Medical Assoc		

COMMITTEE TAPE LOG 1984

tape no. 1

committee: Senate Health, Education & S.S. date 5/25/84 to

bill numbers: HB 347

other information: Members present: Sen. P. Fischer, Chair Josephson
Sen. Rick Halford, Sen. V. Fischer

Date/ Time	Tape Meter No.	Bill	Significant Information (Witness, Action)
3:10	000		Chair Josephson calls the meeting to order.
	022		Chair introduces bill
	055		Name that Naturopath would settle for
	099		(Sen. V Fischer joins meeting)
	120		Fiscal note
	148		Chair asks ?
	152		Dr. Spence - H & S.S. - position is neutral
	197		Chair - Sections - Internship
	220		Dr. Spence
	272		" continues - effects of tradition
	290		Sen. V. Fischer
	317		Dr Spence
	335		Sen V. Fischer
	343		Dr Spence
	351		Sen. V. Fischer
	369		Chair Josephson
	389		Dr Spence
	400		Chair
	425		Dr. Spence

COMMITTEE TAPE LOG 1984

tape no. 1

committee: SHE&S

date 5/25/84 to

bill numbers:

other information:

Date/ Time	Tape Meter No.	Bill	Significant Information (Witness, Action)
		448	Chair
		479	Dr. Spence
			Chair
			Dr. Spence answers
		558	V. Fischer
		555	Sen Holland
		605	Spence
		623	Chair
		622	Jeanne Stuick, D of Com. -
		637	V. Fischer
		646	Chair
		672	Rick - out
		676	V. Fischer
		687	Chair asks Mr. Union
		692	Rick Union
			Discussion continues
		732	Chair
		760	Jeanne Stuick
		769	Chair
		774	Stuick
3:40			Meeting adjourned.

HB

352

COMMITTEE REPORT

SENATE

FURTHER: JUDICIARY

5/30/83

Date: March 31, 1983

Mr. President:

The Committee on HESS has had CSHB 352 (HESS)

Relating to the definition of cosmetic kits, date.

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[✓] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

_____

_____

_____

_____

_____

_____

_____

_____

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

_____

_____

_____

_____

_____

_____

CHAIRMAN

DATE: 5/30/83 SPONSOR: Fritz

SUBJECT(S): HB 352 - Definition of Death

NAME	REPRESENTING	ADDRESS	PHONE		Observer	Witness		
E.J. Roleau	DHHSS	Pouch H-06	3090			X.		

STATE OF ALASKA
FISCAL NOTE | Revision Date , 1983 |

I. REQUEST
Bill/Resolution No.: HB 352
Title: Definition of death
Sponsor: Rep. Fritz by request
Requestor: House HESS

II. FISCAL DETAIL
Agency Affected: Health & Social Services
Program Category Affected: Health
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING	0	0	0	0	0	0
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LANDS & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Source)	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Dean Tirador Phone: 465-2113
Division: Public Health Date: 4-14-83
Approved by Commissioner: Robert Loudon Smith, Ph.D. Date: 4/18/83
Department: Health and Social Services

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

POSITION PAPER

HOUSE BILL NO. 352

"An Act relating to the definition of death; and providing for an effective date."

BACKGROUND

A Uniform Definition of Death has been endorsed by the National Conference of Commissioners on Uniform State Laws, the American Medical Association, the American Bar Association, the President's Commission for the Study of Ethical Problems in Medical and Biomedical and Behavioral Research as well as by the American Academy of Neurology and the American Electroencephalographic Society. The Uniform Definition is as follows:

> "An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards."

According to information received from the Commissioners on Uniform State Laws, 19 states have now adopted this definition, up from two states in 1981.

DISCUSSION

The definition proposed in this Bill, differs from the Uniform Definition in several respects:

1. In the Bill, "person" is substituted for "individual". The Uniform Definition purposely included the term "individual" to conform to the standard designation of a human being. The term "person" was not used because it is sometimes used by the law to include a corporation. Although that particular confusion would be unlikely to arise, the narrower term "individual" is more precise and thus avoids possibility of confusion.

2. In the Bill, the phrase "medically and legally dead" is used. The Uniform Definition prefers the phrase "is dead" since the broader provisions were considered to be misleading. The President's Commission stated, "A law setting a general standard without explicit limitations would be assumed to apply for all legal purposes; to say so in the statute, however, only raises needless questions (e.g., what does 'all legal purposes' leave out? For example, proceedings in equity?)"[1]

[1] Defining Death. Medical, Legal and Ethical Issues in the Determination of Death. President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research. Pg. 79. Government Printing Office, Washington, D.C., 1981.

3. The Bill sets the standard for establishing death as "ordinary standards of medical practice", while the Uniform Definition adopts "accepted medical standards". This difference is probably not important.

4. The Bill adds a provision that death may be pronounced "before artificial means of maintaining respiratory and cardiac function are terminated." The Uniform Definition avoids the necessity for such a provision by simply stating that an individual "is dead" when either "irreversible cessation of circulatory and respiratory function or irreversible cessation of all functions of the entire brain, including the brain stem" has occurred. When either of these circumstances prevails, the appropriateness of stopping medical intervention is apparent.

POSITION

While the Department considers the definition proposed in the Bill to be better than the current statutory definition, it would prefer that the Uniform Definition of Death be adopted.

Recommended by: E. S. Rabeau

E.S. Rabeau, M.D.
Director
Division of Public Health

Date: April 15, 1983

Approved by: Robert London Smith

Robert London Smith, Ph.D.
Commissioner
Department of Health and Social Services

Date: 4/18/83

SENATE HESS COMMITTEE OBSERVER/WITNESS SIGN-UP SHEET

DATE: 6/10/83 SPONSOR: FRITZ

SUBJECT(S): HB 352 - Def. of DEATH

NAME	REPRESENTING	ADDRESS	PHONE	Observer	Witness		
E. S. Rabeau	DHSS	Pouch H-06	3090		✓		
Milo Fritz							

STATE OF ALASKA
FISCAL NOTE

Revision Date ., 1983

I. REQUEST

Bill/Resolution No.: HB 403
Title: insurance trade practices
Sponsor: Furnace
Requestor: Labor & Commerce

II. FISCAL DETAIL

Agency Affected: Commerce & Ec. Dev.
Program Category Affected: Public Prot.
BRU, Program of Subprogram(s) Affected: Division of Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Kenneth C. Moore / Director
Phone: 465-2515
Division: Insurance
Date: 5/13/83

Approved by Commissioner: Richard A. Lvon
Date: 5/13/83
Department: Commerce & Economic Development

HB

354

COMMITTEE REPORT

SENATE

FURTHER:

2/26/84

Date: March 1st

Mr. President:

The Committee on HESS has had HB 354 am

relating to physicians' staff privileges in hospitals.

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for HB 354 am [✓] same title [ ] new title

and recommends do pass

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Peggy Miller

MEMBERS HAVING
OTHER RECOMMENDATIONS:

L. Dale

CHAIRMAN

SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

WITNESS REGISTER

BILL NUMBER HB 354 Physician Privileges DATE May 9, 1984

NAME	REPRESENTING	ADDRESS	PHONE NUMBER

Alaska State Legislature

Representative Niilo Koponen

HB 354

FAIRBANKS
Box 252
Fairbanks, Alaska 99707
479-6782

JUNEAU
Pouch V
Juneau, Alaska 99811
465-4992

April 25, 1983

SPONSOR & COSPONSOR STATEMENT ON HB 354

Subsequent testimony has shown that not all hospitals would be able to comply with the requirements of the original bill in all cases. Therefore, the following amendments would be acceptable to us:

page 1, line 11 - delete [seven days], insert ten working days, after "suspending", insert for more than thirty days

The line will now read:

"Within ten working days after suspending for more than thirty working days or revoking the staff privileges of a physician..."

Sponsor Niilo Koponen
Representative Niilo Koponen

Cosponsor _____
Representative Milo Fritz

Revisor's notes. — This section is derived from AS 11.15.060 and was renumbered by the revisor of statutes pursuant to § 22, ch. 166, SLA 1978 (revision of the criminal code).

Cross references. — For power of the State Medical Board to regulate abortion procedures, see AS 08.64.105.

Legislative history reports. — For report on ch. 103, SLA 1970 (CSSB 527 (HWE)), see 1970 Senate Journal Supplement No. 10; 1970 Journal Supplements Nos. 12 and 13. Also refer to the following relevant reports on abortion bills: 1970 Senate Journal Supplements Nos. 1 and 4 (re SB 411); 1970 House Journal Supplement No. 11 (re CSHB 776).

Chapter 20. Hospitals.

Article 1. Regulation of Hospitals.

Collateral references. — 40 Am. Jur. 2d, Hospitals and Asylums, § 1 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 4 et seq.

41 C.J.S., Hospitals, § 1 et seq.

Pesthouse or contagious disease hospital as nuisance. 4 ALR 995; 18 ALR 122; 48 ALR 518.

Liability of hospital maintained at expense of state or a political subdivision for torts of its officers or employees. 26 ALR2d 203.

Nonprofit charitable institutions as within operation of labor statutes. 26 ALR2d 1020.

Tax exemption of Blue Cross, Blue Shield, or other hospital or medical service corporation. 88 ALR2d 1414.

Applicability, to negligence action against hospital, of statute of limitations applicable to malpractice and related actions against physicians, surgeons, or the like. 89 ALR2d 1180.

Liability of hospital for refusal to admit or treat patient. 35 ALR3d 841.

Exclusion of or discrimination against physician or surgeon by hospital. 37 ALR3d 645.

Power of court or other public agency to order medical treatment over parental religious objections for child whose life is not immediately endangered. 52 ALR3d 1118.

Power of court to order or authorize discontinuation of extraordinary medical means of sustaining human life. 79 ALR3d 237.

What statute of limitations governs physician's action for wrongful denial of hospital privileges. 3 ALR4th 1214.

False imprisonment in connection with confinement in nursing home or hospital. 4 ALR4th 449.

Governmental tort liability for injuries caused by negligently released individual. 6 ALR4th 1155.

Propriety of hospital's conditioning physician's staff privileges on his carrying professional liability or malpractice insurance. 7 ALR4th 1238.

Sec. 18.20.010. Purpose. The purpose of AS 18.20.010 — 18.20.130 is to provide for the development, establishment, and enforcement of standards for (1) the care and treatment of individuals in hospitals, convalescent homes, nursing homes and public health centers, community mental health centers and facilities for the mentally retarded; and (2) the construction, maintenance, and operation of hospitals which will promote safe and adequate treatment of individuals in hospitals. (§ 40-6-2 ACLA 1949; am § 1 ch 112 SLA 1957; am § 1 ch 63 SLA 1964)

Collateral references. — Liability for injury by X-ray by hospital, 13 ALR 1414; 26 ALR 732; 57 ALR 268; 60 ALR 259.

Liability of private, noncharitable hospital or sanitarium for improper care of treatment of patients. 22 ALR 341; 39 ALR 1431; 124 ALR 186.

Hospital's liability for exposing patient to contagious disease. 22 ALR 352; 39 ALR 1434; 124 ALR 199.

Hospital's liability for mistake in diagnosis. 22 ALR 354; 39 ALR 1435; 124 ALR 202.

Liability for medical or surgical services rendered inmates of pesthouse or county hospitals. 44 ALR 1290.

Liability of hospital for personal injury due to slippery condition of floor. 118 ALR 434.

Applicability of res ipsa loquitur rule to injuries received by hospital patient. 173 ALR 535.

Exclusion of, or discrimination against, physician or surgeon by authorities of hospital. 24 ALR2d 850.

Liability of hospital for injury or death of patient through defective bed. 31 ALR2d 1128.

Liability of hospital to patient injured through defective wheel chair or similar furniture or appliance. 31 ALR2d 1148.

Hospital's liability for injury or death in obstetrical case. 37 ALR2d 1284.

Liability of hospital for injury by X-ray. 41 ALR2d 338.

Liability of hospital for injury or death from blood transfusions. 59 ALR2d 785.

Liability of hospital or sanitarium for negligence of physician or surgeon. 69 ALR2d 305.

Liability of hospital or sanitarium for injury or death of patient as result of escape or attempted escape. 70 ALR2d 347.

Hospital's liability to visitor injured as result of condition of exterior walks, steps or grounds. 71 ALR2d 427.

Hospital's liability to visitor injured by slippery, obstructed or defective interior floors or steps. 71 ALR2d 436.

Hospital's liability for injury to patient from heat lamp or pad or hot water bottle. 72 ALR2d 408.

Hospital's liability for exposing patient to extraneous infection or contagion. 96 ALR2d 1205.

Hospital's liability for personal injury or death of doctor, nurse, or attendant. 1 ALR3d 1036.

Malpractice in connection with intravenors or other forced or involuntary feeding of patient. 6 ALR3d 668.

Validity and construction of contract exempting hospital or doctor from liability for negligence to patient. 6 ALR3d 704.

Hospital's liability for negligence in connection with preparation, storage, or dispensing of drug or medicine. 9 ALR3d 579.

Hospital's liability for negligence in failing to review or supervise treatment given by individual doctor, or to require consultation. 14 ALR3d 873.

Hospital's liability to patient for injury sustained from defective equipment furnished by hospital for use in diagnosis or treatment of patient. 14 ALR3d 1254.

Hospital's liability to patient or prospective patient injured as result of physical condition of premiser. 16 ALR3d 1237.

Malpractice liability of physician or hospital where patient suffers heart attack or the like while undergoing unrelated medical procedure. 17 ALR3d 796.

Malpractice in diagnosis and treatment of diseases or condition of the heart or vascular system. 19 ALR3d 825.

Hospital's liability for injuries sustained by patient as a result of restraints imposed on movement. 25 ALR3d 1450.

Malpractice in diagnosis and treatment of tetanus. 28 ALR3d 1364.

Liability of hospital for negligence of nurse assisting operating surgeon. 29 ALR3d 1065.

Hospital's liability for injury or death to patient resulting from or connected with administration of anesthetic. 31 ALR3d 1114.

Liability of hospital for refusal to admit or treat patient. 35 ALR3d 841.

Attending physician's liability for injury caused by equipment furnished by hospital. 35 ALR3d 1068.

Hospital's liability to patient injured going to or using bathroom or toilet facilities. 36 ALR3d 1235.

Liability for negligence in diagnosing or treating aspirin poisoning. 36 ALR3d 1359.

Liability of one releasing institutionalized mental patient for harm he causes. 38 ALR3d 699.

Medical malpractice in connection with diagnosis, care, or treatment of diabetes. 42 ALR3d 482.

Hospital's liability for injury allegedly caused by improper diet or feeding of patient. 42 ALR3d 736.

Liability for injury allegedly resulting from negligence in making hypodermic injection. 45 ALR3d 731.

Liability for injury or death from blood transfusion. 45 ALR3d 1364.

Liability of hospital for injury caused through assault by a patient. 48 ALR3d 1288.

Hospital's liability to patient for injury allegedly sustained from absence of particular equipment used in diagnosis or treatment of patient. 50 ALR3d 1141.

Hospital's liability for negligence in selection or appointment of staff physician or surgeon. 51 ALR3d 981.

Liability for injuries or death resulting from physical therapy. 53 ALR3d 1250.

Liability of hospital, or medical practitioner, under doctrine of strict liability in tort, or breach of warranty, for harm caused by drug, medical instrument, or similar device used in treating patients. 54 ALR3d 258.

Liability of physician or hospital in the performance of cosmetic surgery upon the face. 54 ALR3d 1255.

Liability of hospital, other than mental institution, for suicide of patient. 60 ALR3d 880.

Validity and construction of contract between hospital and physician providing for exclusive medical services. 74 ALR3d 1268.

Tort liability of physician or hospital in connection with organ or tissue transplant procedures. 76 ALR3d 890.

Recovery for mental or emotional distress resulting from injury to, or death of, member of plaintiff's family arising from physician's or hospital's wrongful conduct. 77 ALR3d 447.

Malpractice in connection with diagnosis of cancer. 79 ALR3d 915.

Patient tort liability of rest, convalescent, or nursing homes. 83 ALR3d 871.

Arbitration of medical malpractice claim. 84 ALR3d 375.

Malpractice in connection with electroshock treatment. 94 ALR3d 317.

Application of rule of strict liability in tort to person or entity rendering medical services. 100 ALR3d 1205.

Sec. 18.20.020. License required. No person or government unit, except the federal government, acting severally or jointly with another person or governmental unit may establish, conduct or maintain a hospital in the state without a license. (§ 40-6-3 ACLA 1949; am § 3 ch 112 SLA 1957)

Cross references. — As to requirement for certificate of need to construct or alter a health care facility, see AS 18.07.011 — 18.07.111.

Opinions of attorney general. — A nursing home is considered a hospital for the purpose of the licensing provisions. 1963 Op. Att'y Gen., No. 7.

If a person establishes a hospital which gives general and medical treatment and in addition provides nursing service, both aspects of hospital operation are nonetheless within the same hospital, and there is no justification for breaking up the operations of one hospital into separable units for licensing purposes; therefore, one license should be required for the entire hospital operation. 1963 Op. Att'y Gen., No. 7.

Collateral references. — Licensing and regulation of nursing or rest homes. 97 ALR2d 1187.

Sec. 18.20.030. Application and fees. Application for a license shall be made to the department upon a form provided by it, and shall contain the information the department requires, which may include affirmative evidence of ability to comply with the reasonable standards, rules and regulations prescribed under AS 18.20.060 — 18.20.080. Each application for a license shall be accompanied by a license fee of $10. The department shall deposit all fees received in the state treasury. (§ 40-6-4 ACLA 1949)

Sec. 18.20.040. Issuance and renewal of license and posting. Upon receipt of an application for license and the license fee, the department shall issue a license if the applicant meets the requirements established under AS 18.20.060 — 18.20.080. If the applicant does not meet the requirements established under AS 18.20.060 — 18.20.080 but makes continued efforts to comply with them, the department may grant him a temporary or provisional license for a reasonable period of time. A license, unless suspended or revoked, is renewable annually without charge upon filing by the licensee, and approval by the department of an annual report on the uniform date and containing the information in the form the department prescribes by regulation. Each license issued is for the premises and person or governmental unit named in the application and is not transferable or assignable except with the written approval of the department. Licenses shall be posted in a conspicuous place on the licensed premises. (§ 40-6-5 ACLA 1949; am § 4 ch 112 SLA 1957)

Sec. 18.20.045. Insurance required.

Repealed by § 40 ch 177 SLA 1978.

Editor's notes. — The repealed section derived from § 39, ch. 102, SLA 1976.

As to purpose of repealing act, see § 1, ch. 177, SLA 1978 in the 1978 Temporary and Special Acts and Resolves.

Sec. 18.20.050. Denial, suspension or revocation of license. The department may deny, suspend or revoke a license in a case in which it finds that there has been a substantial failure to comply with the requirements established under AS 18.20.060 — 18.20.080. (§ 40-6-6 ACLA 1949)

Sec. 18.20.060. Regulations and standards. The department shall adopt, amend, and enforce rules, regulations and standards for all hospitals designed to further the accomplishment of the purposes of AS 18.20.010 — 18.20.130 in promoting safe and adequate treatment of individuals in hospitals in the interest of public health, safety and welfare. (§ 40-6-7 ACLA 1949)

Sec. 18.20.070. Compliance with regulations. Each hospital in operation at the time the department adopts rules and regulations or

minimum standards under AS 18.20.010 — 18.20.130 has a reasonable time, under the particular circumstances, not exceeding one year from the date of adoption within which to comply with them. (§ 40-6-8 ACLA 1949)

Sec. 18.20.075. Risk management. (a) To be eligible for a license each hospital shall have in operation an internal risk management program which shall

(1) investigate the frequency and causes of incidents in hospitals which cause injury to patients;

(2) develop and implement measures to minimize the risk of injury to patients; in developing these measures each hospital shall take into account recommendations of its medical staff, the Medical Indemnity Corporation of Alaska, private underwriters, industry standards, experience of other hospitals, and recommendations of licensing boards of other health care providers; and

(3) analyze patient grievances which relate to patient care.

(b) The department shall adopt by regulation standards for the risk management programs in hospitals in the state which may vary according to the size of the hospital, the type of care offered by the hospital, and other factors found relevant by the department. Regulations adopted under this subsection are subject to the Administrative Procedure Act (AS 44.62). (§ 39 ch 102 SLA 1976)

Cross references. — As to the Medical Indemnity Corporation of Alaska, see AS 21.88.020 et seq. As to constitutionality of ch. 102, SLA 1976, see notes to AS 09.55.536 and Alas. Const., art. II, § 14.

Sec. 18.20.080. Inspection and consultation for alterations. (a) The department shall make annual inspections and investigations of hospital facilities.

(b) The department may by regulation require that a licensee or applicant desiring to make a specified type of alteration or addition to its facilities or to construct new facilities shall, before commencing the alteration, addition or new construction, submit plans and specifications to the department for preliminary inspection and approval or recommendations with respect to compliance with its regulations and standards. (§ 40-6-9 ACLA 1949; am § 5 ch 112 SLA 1957)

Cross references. — As to requirement for certificate of need to construct or alter a health care facility, see AS 18.07.011 — 18.07.111.

Sec. 18.20.085. Hospital records retention. (a) Unless specified otherwise by the department a hospital shall retain and preserve records which relate directly to the care and treatment of a patient for a period of seven years following the discharge of the patient. However, the records of a patient under 19 years of age shall be kept until at least

two years after the patient has reached the age of 19 years or until seven years following the discharge of the patient, whichever is longer. Records consisting of X-ray film are required to be retained for five years.

(b) The department shall by regulation define the types of records and the information required to be included in the records retained and preserved under (a) of this section. The department may by regulation specify records and information to be retained for longer periods than those set out in (a) of this section.

(c) If a hospital ceases operation, it shall make immediate arrangements, as approved by the department, for the preservation of its records.

(d) In this section, "hospital" includes those facilities defined as hospitals under AS 18.20.130(1) and 18.20.210(3). (§ 1 ch 41 SLA 1970)

Collateral references. — Admissibility on issue of sanity of expert opinion based partly on medical, psychological or hospital reports. 55 ALR3d 551.

Admissibility under business entry statutes of hospital records in criminal cases. 69 ALR3d 22.

Admissibility under Uniform Business Records as Evidence Act or similar statute of medical report made by consulting physician to treating physician. 69 ALR3d 104.

Admissibility under state law of hospital record relating to intoxication or sobriety of patient. 80 ALR3d 456.

Discovery of hospital's internal records or communications as to qualifications or evaluations of individual physician. 81 ALR3d 944.

Sec. 18.20.090. Information confidential. The department may not publicly disclose information received by it in a manner identifying an individual or hospital except in a proceeding involving the question of licensing. (§ 40-6-11 ACLA 1949)

Sec. 18.20.100. Annual report of department. The department shall prepare and publish an annual report of its activities and operations under AS 18.20.020 — 18.20.130. (§ 40-6-12 ACLA 1949)

Sec. 18.20.110. Misdemeanor to establish or conduct hospital without license. A person establishing, conducting, managing, or operating a hospital without a license is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $500. (§ 40-6-14 ACLA 1949)

Cross references. — As to sentences for misdemeanors, see AS 12.55.135.

Sec. 18.20.120. Injunction or other process to prevent establishment or operation without a license. Upon the advice of the attorney general, the department may maintain an action for injunction or other process against a person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a hospital without a license. (§ 40-6-15 ACLA 1949)

Sec. 18.20.130. Definitions. In AS 18.20.010 — 18.20.130

(1) "hospital" means an institution or establishment, public or private, devoted primarily to providing diagnosis, treatment, or care over a continuous period of 24 hours each day for two or more nonrelated individuals suffering from illness, physical or mental disease, injury or deformity, or any other condition for which medical or surgical services would be appropriate;

(2) "governmental unit" means the state, a municipality, or other political subdivision, or a department, division, board or other agency of any of them;

(3) "department" means the Department of Health and Social Services. (§ 40-6-1 ACLA 1949; am § 2 ch 112 SLA 1957; am § 2 ch 63 SLA 1964; am § 6 ch 104 SLA 1971; am § 1 ch 72 SLA 1978)

Effect of amendments. — The 1978 amendment rewrote paragraph (1).

Article 2. Alaska Hospital and Medical Facilities Survey and Construction Act.

Collateral references. — 40 Am. Jur. 2d, Hospital and Asylums, §§ 3, 4.

41 C.J.S., Hospitals, § 5.

Depreciation of property by the erection of a hospital by a municipality as a "taking" or "damaging" within the constitutional provision. 4 ALR 1012.

Power of municipal corporation to provide hospital. 25 ALR 612.

Hospital as within tax exemption provision not specifically naming hospitals. 144 ALR 1483.

Licensing and regulation of nursing or rest homes. 97 ALR2d 1187.

Validity and construction of zoning regulations expressly referring to hospitals, sanitariums, nursing homes. 27 ALR3d 1022.

Validity and construction of statute requiring establishment of "need" as precondition to operation of hospital or other facilities for the care of sick people. 61 ALR3d 278.

Housing facilities for former patients of mental hospital as violating zoning restrictions. 100 ALR3d 876.

Sec. 18.20.140. Purpose. The purpose of AS 18.20.140 — 18.20.220 is to make an inventory of existing hospitals and medical facilities, community mental health centers and facilities for the mentally retarded, to survey the need for construction of hospitals and medical facilities, community mental health centers and facilities for the mentally retarded, and to develop a program and plan of construction for each. (§ 2 ch 87 SLA 1955; am § 3 ch 63 SLA 1964)

NOTES TO DECISIONS

The moneys used to construct the Ketchikan hospital were spent for a public purpose. Lien v. City of Ketchikan, Sup. Ct. Op. No. 146 (File No. 275), 383 P.2d 721 (1963).

And that purpose does not become nonpublic when the hospital is turned over to a charitable, nonprofit corporation for operation, rather than being operated by the city itself. The public purpose remains unchanged. Lien v. City of Ketchikan, Sup. Ct. Op. No. 146 (Fi No. 275), 383 P.2d 721 (1963).

As public purpose depends on cha acter of use. — The test of whether a pu lic purpose is being served does not depe on the religious or nonreligious nature the agency that will operate the leas property, but upon the character of the u to which the property will be put. Lien City of Ketchikan, Sup. Ct. Op. No. 14 (File No. 275), 383 P.2d 721 (1963).

Sec. 18.20.141. Department functions. The department shall b the sole agency for the administration of the plan as required by th federal act. The department shall develop and administer any pr grams necessary for compliance with the federal act. (§ 4 ch 63 SL 1964)

Sec. 18.20.150. Duties of department. The department shall

(1) for each of the following groups of facilities: Group 1. Hospital and medical facilities; Group 2. Community mental health center Group 3. Facilities for the mentally retarded;

(A) make a statewide inventory of existing public, nonprofit an proprietary facilities;

(B) survey the need for construction of these facilities;

(C) on the basis of the inventory and survey, develop a program fo the construction of public and other nonprofit facilities for each of thes groups which will, in conjunction with existing facilities, afford th necessary physical facilities for furnishing adequate facility services t all residents of the state;

(2) prepare and submit to the surgeon general a state plan, includin the hospital and medical facilities, community mental health center and facilities for the mentally retarded construction progra developed under (1) of this section. The plan will provide for the estab lishment, administration, and operation of hospital and medica facilities, community mental health centers and facilities for th mentally retarded, and construction activities in accordance with th requirement of the federal act and the regulations promulgated unde it; before the submission of the plan to the surgeon general, the depart ment shall give adequate publicity to a general description of the provi sions proposed to be included, and hold a public hearing where person or organizations with a legitimate interest in the plan may expres their views. After approval of the plan by the surgeon general, th department shall publish a brief summary of the provisions in at leas one newspaper of general circulation in the state, and shall mak copies of the plan available upon request to interested persons, an from time to time but not less often than annually, the commissione shall review the construction program and submit to the surgeon gen

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB No. 354
Title: "Physicians - staff privileges"
Sponsor: Rep. Koponen
Requestor: H.E.S.S.

II. FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
Program Category Affected: Pub. Prot.
BRU, Program of Subprogram(s) Affected: Occupational Licensing

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

No fiscal impact would be incurred with this bill.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Darrell Miller — Phone: 465-2535
Division: Occupational Licensing — Date: April 25, 1983

Approved by Commissioner: Richard A. Lyon — Date: 4/25/83
Department: Commerce and Economic Development

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sa...

HB

357

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

5/25/83

Date: June 10 1983

Mr. President:

The Committee on HHSS has had SSB 357(Rls)

Regulation of religious schools.

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

MEMORANDUM

TO: JOE
FROM: NANCY
RE: REGULATION OF RELIGIOUS SCHOOLS

FATHER STEVE MOORE CALLED ME YESTERDAY AFTERNOON AND SAID THAT THE ARCHDIOCESE WILL HAVE A FORMAL POSITION PREPARED BY MONDAY. THEY PLAN TO OPPOSE THE PRESENT FORM OF THE BILL AND WERE DISTRESSED TO FIND THAT THEY HAD NOT BEEN NOTIFIED OF THE HOUSE HESS TELECONFERENCE WHEN THEY HAD MADE A SPECIFIC REQUEST.

ALSO, THE CHANGES MADE IN HOUSE RULES REMOVES RELIGIOUS PRESCHOOLS AND NURSERIES FROM ALL REGULATION BY EDUCATION AND HEALTH AND SOCIAL SERVICES - THIS INCLUDES ALL FIRE/LIFE SAFETY, IMMUNIZATION, STAFF TINE TESTING ETC. WHICH IS INCONSISTENT WITH THE REST OF THE BILL. THE DEPT. OF EDUCATION WILL HAVE A POSITION ON THIS ISSUE.

IN YOUR FOLDER:

SECTION ANALYSIS OF THE BILL

A LEGAL OPINION ON THE CONSTITUTIONALITY OF THE BILL

HOUSE RESEARCH INFO ON REGULATION OF RELIGIOUS SCHOOLS IN OTHER STATES.

A MEMO FROM RANDY PHILLIPS WITH SUGGESTED AMENDMENTS

NEA POSITION PAPER

RELEVANT MEDIA ARTICLES

AN ISSUE REPORT FROM THE EDUCATION COMMISSION OF THE STATES ON COMPULSORY ED AND NONTRADITIONAL EDUCATION

BILL COMMENTS FROM PAUL GLOVER

BILL COMMENTS FROM CHERI JACOBUS

A COPY OF RELEMENTARY SCHOOL REGULATIONS

A POSITION PAPER PRESENTED TO THE HUMAN SERVICES REGULATORY ADMINISTRATION IN VIRGINIA ON RELIGIOUS EXEMPTIONS

A COPY OF THE BRIEF FROM THE ARKANSAS LAWSUIT ON EXEMPTIONS FROM PREELEMENTARY REGULATION.

Alaska State Legislature

IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4949

BOX 142
EAGLE RIVER, ALASKA
99577

Representative Randy Phillips

HOUSE DISTRICT 15

Joe — we would have to change the title to do this

MEMORANDUM

TO: Senator Joe Josephson
Chairman, Senate HESS Committee

FROM: Representative Randy Phillips

DATE: May 25, 1983

RE: CS HB 357 (RLS)

During the House floor debate on the captioned bill, Representative Koponen and I offered the attached amendments for consideration. These amendments failed the House.

The amendments were offered so that this bill would apply equally to all nonprofit private schools (to include religious schools). I have some real concern that the bill as is presently drafted could open the door to some lawsuits concerning the constitutionality of singling out religious schools for special treatment. It was my feeling that by extending the provisions to all nonprofit private schools, this problem could be avoided.

I would appreciate it if you and your committee would take the attached amendments into consideration when you review this legislation.

If you have any questions, please do not hesitate to contact me.

AMENDMENT #1

OFFERED IN THE HOUSE: BY: Koponen and Phillips

TO: CS HOUSE BILL No. 357 (RULES)

SENATE BILL No. _____

PAGE: _____ LINE: _____

PAGE 1, LINE 6

Delete: "religious"

Insert: "private"

PAGE 1, LINE 14, following "by a"

Delete: "church or other nonprofit religious"

Insert: "private nonprofit"

PAGE 2, LINE 6, following "by a "

Delete: "church or other nonprofit religious"

Insert: "private nonprofit"

PAGE 2, LINE 10, following "A"

Delete: "religious"

Insert: "private nonprofit"

PAGE 2, LINE 23, following "in a"

Delete: "religious"

Insert: "private nonprofit"

PAGE 2, LINE 25, following "in the"

Delete: "religious"

Insert: "private nonprofit"

PAGE 2, LINE 29, before "school"

delete: "religious"

insert: "private nonprofit"

AMENDMENT #1

OFFERED IN THE HOUSE: BY: Koponen and Phillips

TO: CS HOUSE BILL No. 357 (RULES)

SENATE BILL No. _____

PAGE: _____ LINE: _____

PAGE 1, LINE 6

Delete: "religious"

Insert: "private"

PAGE 1, LINE 14, following "by a"

Delete: "church or other nonprofit religious"

Insert: "private nonprofit"

PAGE 2, LINE 6, following "by a "

Delete: "church or other nonprofit religious"

Insert: "private nonprofit"

PAGE 2, LINE 10, following "A"

Delete: "religious"

Insert: "private nonprofit"

PAGE 2, LINE 23, following "in a"

Delete: "religious"

Insert: "private nonprofit"

PAGE 2, LINE 25, following "in the"

Delete: "religious"

Insert: "private nonprofit"

PAGE 2, LINE 29, before "school"

delete: "religious"

insert: "private nonprofit"

AMENDMENT #1 (continued)

OFFERED IN THE HOUSE: BY: _____

TO: _____ HOUSE BILL No. _____

SENATE BILL No. _____

PAGE: _____ LINE: _____

PAGE 3, LINE 1, following "The"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 3, following "the"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 4, following "a"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 12, before"school"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 14, following "the"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 18, following "A"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 22, following "A"

Delete: "religious"

Insert: "private nonprofit"

OFFERED IN THE HOUSE: BY: _____

TO: _____ HOUSE BILL No. _____

SENATE BILL No. _____

PAGE: _____ LINE: _____

PAGE 3, LINE 25, following "the"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 26, following "chapter"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 27, following "by a '

Delete: "church or other nonprofit religious"

Insert: "private nonprofit"

PAGE 4, LINE 8, following "by a"

Delete: "church or other nonprofit religious"

Insert: "private nonprofit"

AMENDMENT #2

OFFERED IN THE HOUSE: BY: KOPONEN AND PHILLIPS

TO: CS HOUSE BILL No. 357 (RULES)

SENATE BILL No. _____

PAGE: _____ LINE: _____

PAGE 1, LINE 15

Delete: "direct"

PAGE 2, LINE 8

Delete: "direct"

PAGE 3, LINE 29

Delete: "direct"

PAGE 4, LINE 10

Delete: "direct"

WAKE FOREST LAW REVIEW

VOLUME 16 FEBRUARY 1980 NUMBER 1

STATE REGULATION OF PRIVATE RELIGIOUS SCHOOLS IN NORTH CAROLINA — A MODEL APPROACH

INTRODUCTION

The growth of private Christian schools in the Southeast and the increase in the number of religious schools in general have generated controversy about whether and to what extent state governments will be allowed to regulate these schools. The present tension between state control and freedom of religion has a history dating from biblical times[1] as well as the revolutionary period.[2] Recently the battle has moved from the treatise and the pulpit to legislatures and the courtroom.

Seeking both to protect religious liberty and to satisfy the state's interest in education, the North Carolina General Assembly on April 24, 1979, enacted legislation that exempts private religious schools of North Carolina from state regulation of secondary and elementary schools.[3] This statute is the first in the nation to balance in this way state interests in education against the religious liberty of its citizenry and may serve as a model for other states as they confront the persistent issue of regulation of the rapidly emerging private religious schools.[4]

This comment reviews the new statute, examining its background and construction. The comment then considers whether the statute is constitutional under the free-exercise and establishment clauses of the first amendment, applicable to the states through the fourteenth.[5] Its

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1. *See Matthew* 22:21 ("Render unto Caesar the things that are Caesar's, and unto God the things that are God's.")

2. *See* Abington School Dist. v. Schempp, 374 U.S. 203, 206 (1963) (Goldberg, J., concurring) ("[M]any of our legal, political and personal values derive historically from religious teachings."); Engle v. Vitale, 370 U.S. 421, 435 n.21 (1962) ("[T]here are many manifestations in our public life of belief in God."); Zorach v. Clauson, 343 U.S. 306, 312-13 (1952) ("[W]e are a religious people whose institutions presuppose a Supreme Being."); Holy Trinity Church v. United States, 143 U.S. 457, 470 (1892) ("[T]his is a religious nation."). Indeed, the Declaration of Independence states, "All men are endowed by their Creator with certain inalienable rights . . . . " *See generally* B. GOTHARD, 6 INSTITUTE IN BASIC YOUTH CONFLICTS (1979).

3. N.C. GEN. STAT. § 115-257.6-.13 (Cum. Supp. 1979).

4. Private Christian schools have been sprouting up at a phenomenal rate across the country. One commentator has estimated, "[I]f the present rates of growth continue, Christian schools will outnumber public schools by 1990." *See* Raney, *Public School vs. Christian School—Which Is Right for Your Child?*, MOODY MONTHLY, Sept. 1978, at 42. Because of this phenomenal rate of growth, and because the bulk of litigation dealing with the issue raised in this comment has concerned Christian schools, the scope of this discussion will deal predominantly with Christian schools.

5. The first amendment's religion clauses prevent Congress from passing a law "respecting an establishment of religion or prohibiting the free exercise thereof." U.S. CONST. amend. I. Both prohibitions apply to the states through the fourteenth amendment. Everson

constitutionality under the North Carolina Constitution is also considered. The comment suggests that the statute reflects a proper compromise between the interests of church and state, whose representatives have been battling recently in the courts.

I. The North Carolina Statute

North Carolina in 1955 enacted an educational law that governed nonpublic as well as public schools.[6] Pursuant to this law, the state gradually expanded its regulatory powers by the State Board of Education promulgating so-called "minimum educational standards" that had to be met by all nonpublic schools.[7] These regulations required that all private schools have, among other things, approval by the state,[8] substantially equivalent textbooks[9] and courses of study,[10] identical teacher qualifications,[11] and the same health and safety standards[12] as those for public schools.

The 1979 North Carolina General Assembly amended article 32 of chapter 115 of the General Statutes to add two new articles, article 32A and article 32B.[13] Article 32A deals exclusively with private church schools and schools of religious charter. It establishes the requirements that must be met by each private religious school in order to ensure that parents comply with the State's compulsory attendance laws. The purpose of the statute is to protect the religious liberty of these schools and, at the same time, to ensure that each student attending a religious school is offered a quality education.[14]

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v. Board of Educ., 330 U.S. 1 (1947) (establishment clause); Cantwell v. Connecticut, 310 U.S. 296 (1940) (free-exercise clause).

6. N.C. Gen. Stat. § 115-225 (1955) (repealed 1969). This section provides in part: "The State Board of Education . . . shall always protect the right of every parent to have his children attend a non-public school by regulating and supervising all non-public schools serving children of secondary-school age." *Id.*

7. *See* 16 N.C. Admin. Code § 2C.0700-.0704 (1978).

8. *Id.* § 2C.0703.

9. *Id.* § 2C.073(b)(4) ("Materials of instruction, including textbooks, shall be substantially equal to materials provided for public schools.")

10. *Id.* § 2C.0703(b)(2) ("The course of study shall be equal to or substantially the same as that provided for children of corresponding age and grade in the public schools."). Former G.S. 115-256 provided in part: "[T]he instruction [given in the nonpublic schools] . . . shall have courses of study for each grade conducted therein substantially the same as those given in the public schools." N.C. Gen. Stat. § 115-256 (1955) (repealed 1969).

11. 16 N.C. Admin. Code 2C.0703(b)(3) (1978) ('Teachers shall be qualified "in accordance with the provisions of law governing public school teachers . . . .") Former G.S. 115-256 provided in part: "No person shall be employed to teach in a non-public school who has not obtained a teacher's certificate entitling such teacher to teach corresponding courses or classes in public schools." N.C. Gen. Stat. § 115-256 (1955) (repealed 1969).

12. 16 N.C. Admin. Code 2C.0703(e)(6) (1978) ("Health laws shall apply to children attending nonpublic schools in the same manner as they apply to children in public schools.")

13. Article 32B deals exclusively with private "secular" schools. This comment will deal only with the regulatory scheme imposed on private religious schools under article 32A.

14. The policy of the new statute is set out in G.S. 115-257.1, which reads:

The private religious schools must meet minimal requirements. Each religious school must make and maintain annual attendance and disease immunization records for each pupil.[15] The statute does not explicitly require that the school either furnish these records to the State or make them available for inspection. If a child attends a school which complies with the requirements of article 32A, he satisfies the requirements of compulsory school attendance.[16] The school must be in operation on a regular schedule for a minimum of nine calendar months per year[17] and is subject to reasonable fire, health, and safety inspections by governmental authorities as required by law.[18]

Each religious school is required to administer annually some nationally standardized test to students in the first, second, third, sixth, and ninth grades.[19] The chief administrative officer of the school may select, in his discretion, either a nationally standardized test or other nationally standardized equivalent measurement, provided that it measures achievement in English, grammar, reading, spelling, and mathematics.[20] The school must keep records of the results of the tests, subject to annual inspection by a duly authorized representative appointed by the governor.[21] In addition, every religious school must administer annually a competency test to all eleventh graders.[22] The chief administrative officer of the school may opt for either a nationally standardized test or other nationally standardized equivalent measure, provided that it measures verbal and quantitative competencies.[23] The private religious school must establish a minimum score for the test to be attained by a student before graduation from high school.[24] The records from these tests must be made available at all reasonable times for annual inspection by the governor's representative.[25]

The statute allows voluntary participation by any religious school in any state program that would otherwise be available to the religious

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In conformity with the Constitution of the United States and of North Carolina, it is the public policy of the State in matters of education that "No human authority shall, in any case whatever, control or interfere with the rights of conscience or with religious liberty and that religion, morality and knowledge being necessary to good government and the happiness of mankind . . . the means of education shall forever be encouraged.

The language is similar to that used in several state constitutions, including North Carolina's, and is adopted from "An Ordinance for the Government of the Territory of the United States north-west of the river Ohio," art. III, 1 Stat. 51 n.(-) (1787). *See* Meyer v. Nebraska, 262 U.S. 390, 400 (1923) (quoting the ordinance).

15. N.C. GEN. STAT. § 115-257.2 (Cum. Supp. 1979).
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.* § 115-257.3.
20. *Id.*
21. *Id.*
22. *Id.* § 115-257.4.
23. *Id.*
24. *Id.*
25. *Id.*

school.[26] Voluntary participation by the religious schools in the high school testing and statewide testing programs is expressly allowed.[27]

In order to qualify as a school under article 32A, an organization must send a notice to a duly authorized representative of the State indicating an intent to operate, the name and address of the school, and the name of the school's owner and chief administrator.[28] The school must notify the State upon its termination.[29] The private religious school that complies with the requirements set out in article 32A is not subject to any other provision of law relating to education except those requirements of law relating to fire, safety, sanitation, and immunization.[30]

II. The Constitutional Principles

The North Carolina statute symbolizes the culmination of a church-state conflict that has been addressed in both the federal and state courts. The right to impose minimum requirements on private religious schools is very limited because of the countervailing constitutional safeguards of the first amendment.[31] Since *Pierce v. Society of Sisters*,[32] the courts have recognized only a limited state authority to regulate nonpublic schools.[33] This authority is not the right to control, but only one to accomplish a few compelling state interests.[34] Constitutional protection is afforded parents who provide their children educational opportunities in private religious schools.[35] The first amendment also protects the free-

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26. *Id.* § 115-257.5.
27. *Id.*
28. *Id.* § 115-257.6(a).
29. *Id.* § 115-257.6(b).
30. *Id.* § 115-257.8.
31. *See* note 5 *supra*.
32. 268 U.S. 510 (1925).
33. The Court stated:

> No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare.

Id. at 534.

34. *See* Lemon v. Kurtzman, 403 U.S. 602, 613 (1970). The *Lemon* Court stated, "A state always has a legitimate concern for maintaining minimum standards in all schools it allows to operate." *Id.*

35. Pierce v. Society of Sisters, 268 U.S. 510, 534-35 (1925). *See also* Meyer v. Nebraska, 262 U.S. 390 (1923) (parents' right to control child's education). The Supreme Court spoke of *Pierce* as resting on the first amendment in Griswold v. Connecticut, 381 U.S. 479, 482-83 (1965). The Court also referred to *Pierce* as "a charter of the rights of parents to direct the religious upbringing of their children" in Wisconsin v. Yoder, 406 U.S. 205, 233 (1972). *Pierce* reflects a free exercise right. *See* Bird, *Freedom from Establishment and Unneutrality in Public School Instruction and Religious School Regulation*, 2 Harv. J.L. & Pub. Pol'y 125, 187 n.281 (1979) (citing E. Corwin, A Constitution of Powers in a Secular State 115 (1951)). *See also* Arons, *The Separation of School and State:* Pierce *Reconsidered*, 46 Harv. Educ. Rev. 76, 81 (1976) (the most frequent area in which subsequent

exercise right of churches to offer religion-centered education as an element of their ministries.[36] On the other hand, states have a legitimate interest in ensuring that all children receive a basic education.[37] The Supreme Court in *Board of Education v. Allen*[38] indicated that states have a proper interest in the manner in which nonpublic schools perform this basic educational function.[39] A state may require schools utilized to fulfill the state's compulsory education requirements to meet some minimal basic standards.[40] It is against this backdrop that states have attempted to impose minimum regulations on the nonpublic schools.

A. *Federal Law*

1. *The free-exercise clause of the United States Constitution*

The bulk of case law in the area of private religious school regulation has been devoted to treatment of free-exercise claims. The free-exercise clause of the first amendment protects religious schools.[41] Any state legislation that burdens parents', children's, or a church's exercise of religious beliefs is unconstitutional unless, as the Court in *Sherbert v. Verner*[42] stated, the state can demonstrate "a compelling state interest in the regulation of a subject within the state's constitutional power to regulate."[43] The Court illuminated the concept of "compelling state interest": "It is basic that no showing merely of a rational relationship to some colorable state interest would suffice; in this highly sensitive constitutional area, '[o]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation.' "[44] The state must also demonstrate that it is utilizing the least burdensome means to satisfy the compelling state interest.

The Supreme Court applied its compelling interest test in the landmark decision of *Wisconsin v. Yoder*.[45] *Yoder* involved Amish parents who wanted to keep their children out of the public schools because of religious objections. The Court held for the parents, stating:

> [O]nly those interests of the highest order and those not otherwise served can overbalance claims to the free exercise of religion. We can

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cases have cited *Pierce* is "religious freedom in schools").

36. *See* notes 190-91 *infra* and accompanying text.

37. Wolman v. Walter, 433 U.S. 229, 240 (1977) ("There is no question that the State has a substantial and legitimate interest in insuring that its youth receive an adequate education.") *See also* Levitt v. Committee for Pub. Educ., 413 U.S. 472, 479 n.7 (1973) (state claimed an interest in assuring "that its youth receive an adequate education.")

38. 392 U.S. 236 (1968).

39. *Id.* at 247.

40. Levitt v. Committee for Pub. Educ., 413 U.S. 472, 479 n.7 (1973); Board of Educ. v. Allen, 392 U.S. 236, 245-46 (1968).

41. *See* notes 50-55 *infra* and accompanying text.

42. 374 U.S. 398 (1963).

43. *Id.* at 403.

44. *Id.* at 406.

45. 406 U.S. 205 (1972).

> accept it as settled, therefore, that however strong the state's interest in universal compulsory education, it is by no means absolute to the exclusion or subordination of all other interests.[46]

In giving approval to the Amish's alternative vocational educational program, the Court recognized that the form of the particular religious education need not be similar to that of the public schools.[47]

Since *Yoder* widespread attacks have been launched against burdensome regulation of private religious schools. State regulation has tended to concentrate on health and safety requirements, textbook approval, teacher certification, mandatory testing, participation in community programs, and the overall licensing of the schools themselves. One commentator, Wendell Bird, has suggested that state regulation in most of these cases abridges the free-exercise clause.[48] Many state courts have relied on

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46. *Id.* at 215. The Court implicitly followed the compelling-interest test. Note, *Freedom of Religion and Science Instruction in Public Schools*, 87 YALE L.J. 515, 540 n.121 (1978). The *Yoder* Court sustained the burdened religious exercise, and so it did not find a compelling interest in compulsory education after the eighth grade. *See* Wisconsin v. Yoder, 406 U.S. 205, 211-12, 221-22 (1972). The state is not constitutionally required to provide public education, and there is no fundamental right to such education. San Antonio Indep. School Dist. v. Rodriguez, 411 U.S. 1, 35-37 (1973). Hence the state does not have any compelling interest in creating and implementing public education, Johnson v. New York State Educ. Dep't, 449 F.2d 871, 879 (2d Cir. 1971) (existence of compelling interest involved in issue of mootness), *vacated on other grounds*, 409 U.S. 75 (1972), at least other than in the basic subjects of reading, writing, arithmetic, and patriotic citizenship. *See* Hirschoff, *Parents and the Public School Curriculum: Is There a Right to Have One's Child Excused from Objectionable Instruction?*, 50 S. CAL. L. REV. 871, 957 (1977). Therefore, the state does not have any compelling interest in regulating the operation of private religious schools, at least outside of these basic secular subjects.

47. 406 U.S. at 211 (sustaining vocational training required by religious exercise as sufficient education to satisfy compulsory attendance although not held in public schools, not held in approved educational institutions, and not conformed to state minimum educational standards). The Vermont Supreme Court in a subsequent decision overturned prosecution of students at a religious school that did not comply with the requirement that educational quality and teacher qualifications in nonpublic schools be "equivalent" to those in public schools, and said that *Yoder* had required that regulation accompanying compulsory attendance laws must "yield to First Amendment concerns." State v. LaBarge, 134 Vt. 276, 280, 357 A.2d 121, 124 (1976). The New Hampshire Supreme Court similarly applied *Yoder* to religious schools different from informal Amish education but equally burdened by state regulation. *See also* City of Concord v. New Testament Baptist Church, 382 A.2d 377, 379 (N.H. 1978); Bird, *supra* note 35, at 183 (citing sources).

48. In summary, regulation of religious schools abridges free religious exercise of parents, students, and churches if it burdens provision of religious-centered instruction by an accreditation requirement that compels compliance with intrusive standards to operate as a school and to satisfy the compulsory education law; by a textbook approval requirement that forces use of objectionable texts approved by state officials; or by a teacher certification requirement that prevents securing instructors with the requisite religious-based education and disqualifies teachers with the requisite theological convictions. Regulation of religious schools also abridges free exercise if it restrains provision of religious-centered education by a minimum curriculum standard that compels instruction in objectionable subjects or allocates excessive time away from religious instruction; by intrusive periodic reports that demand disclosure of nonessential infor-

Yoder in striking down comprehensive regulatory systems. The following sections deal with these discrete areas of regulation.

a. The approval power. The broadest attack by the states upon private religious schools' free exercise has been in the broad area of "licensing," "approval," or "accreditation" requirements. Religious schools have been forced to meet state-mandated regulations before they could be granted approval to operate as a school. Denial of licensing or approval may render parents of children remaining in unlicensed religious schools subject to criminal prosecution.

The assertion of a comprehensive licensing or approval power by the states has been struck down in three different state courts of last resort.[49] A unanimous Vermont Supreme Court in *State v. LaBarge*[50] held that parents were not subject to truancy violations for sending their children to a private Christian school that was not "approved."[51] The court said, "In light of what was involved in 'approval' the state would be hard put to constitutionally justify limiting the right of normal, unhandicapped youngsters to attendance at 'approved' institutions."[52] In a case presenting an almost identical factual situation, the Ohio Supreme Court in *State v. Whisner*[53] held unanimously that imposition of state "minimum standards" on private church schools was unconstitutional as violative of both the free-exercise clause and the due process clause of the fourteenth amendment.[54] The court found that the minimum-standard scheme was "so pervasive and all-encompassing that total compliance with each and every standard by a non-public school would effectively eradicate the distinction between public and nonpublic education."[55] Furthermore, a recent unanimous Kentucky Supreme Court decision in *Kentucky State Board for Elementary and Secondary Education v. Rudasill* overturned the state regulatory scheme imposed on private religious schools as violative of that state's constitution.[56]

An unreported North Carolina trial court decision which held in

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mation or that consume excessive amounts of administrative time; or by minimum facility requirements that inflict great expenses for nonessential structural surroundings.

Bird, *supra* note 35, at 194-95.

49. *E.g.*, Kentucky State Bd. for Elem. & Secondary Educ. v. Rudasill, 589 S.W.2d 877 (Ky. 1979), *cert. denied*, 48 U.S.L.W. 3731 (U.S. May 13, 1980); State v. Whisner, 47 Ohio St. 2d 181, 351 N.E.2d 750 (1976); Vermont v LaBarge, 134 Vt. 276, 357 A.2d 121 (1976).

50. 134 Vt. 276, 357 A.2d 121 (1976).

51. *Id.* at _, 357 A.2d at 125.

52. *Id.* at _, 357 A.2d at 123.

53. 47 Ohio St. 2d 181, 351 N.E.2d 750 (1976).

54. *Id.* at _, 351 N.E.2d at 771.

55. *Id.* at _, 351 N.E.2d at 768; *cf.* Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925) (the Constitution "excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only").

56. 589 S.W.2d 877 (Ky. 1979), *cert. denied*, 48 U.S.L.W. 3731 (U.S. May 13, 1980). The court based its decision on section 5 of the Kentucky Constitution which states that "[no] man [shall] be compelled to send his child to any school to which he may be conscientiously opposed . . . ."

favor of the state regulatory scheme, *State v. Columbus Christian Academy*,[57] has been criticized as departing from the weight of authority. Commentator Bird pointed out that this decision was based on several "erroneous assumptions" by the court, notably: that "religious instruction does not pervade all subjects in religious schools," that a textbook-approval requirement does not "restrain or chill selection of religious-centered texts," that a teacher-certification requirement does not "hinder or prevent locating theologically acceptable instructors, and that extensive reporting requirements do not "demand unnecessary information."[58] Bird noted that the court's reasoning that "Fundamentalist Christianity contains no specific prohibition against doing any of the state requirements" was based on a misconception of the issues; while religious beliefs do not prohibit hiring certified teachers and the presentation of basic instruction, they do require "hiring theologically acceptable teachers" and "use of texts that were religiously acceptable and might not be substantially equivalent to public school texts;" thus, such beliefs were unconstitutionally burdened.[59] He also noted that the court erred in basing its holding upon any compelling interest, because "these regulations went well beyond basic educational courses in which the state possibly has a compelling interest.[60]

b. Teacher certification requirement. Perhaps the greatest controversy regarding the state's assertion of general approval power has been its requirement of teacher certification for instructors in the private church schools. The religious schools have objected to having to use only state-qualified teachers in their schools because teachers necessarily impart values to the students they teach[61] and religious schools object to a lessening of control over those values. Teacher-certification requirements for religious schools have been struck down as burdensome on the free exercise of religion.[62]

Teacher certification burdens the religious schools' free exercise of religion in two ways: first, the schools must locate teachers who are both theologically and "state" qualified; second, certification is not rationally related, much less related by the least burdensome means, to pedagogical quality.[63] At present, only five states, including North Carolina, require

57. No. 78-CVS-1678 (Wake County, N.C., Super. Ct. Sept. 5, 1978), *noted in* 47 U.S.L.W. 2212 (Oct. 3, 1978).

58. Bird, *supra* note 35, at 191 n.301.

59. *Id.*

60. *Id.*

61. Trial Transcript at 233, State v. Columbus Christian Academy, No. 78-CVS-1678 (Wake County, N.C., Super. Ct. Sept. 5, 1978).

62. Kentucky State Bd. for Elem. & Secondary Educ. v. Rudasill, 589 S.W.2d 877 (Ky. 1979), *cert. denied*, 48 U.S.L.W. 3731 (U.S. May 13, 1980); *see* State v. Whisner, 47 Ohio St. 2d 181, 351 N.E.2d 750 (1976). *See also* Michigan v. Nobel, No. S-75!-0114-A (Mich. Dist. Ct. Dec. 12, 1979).

63. *See, e.g.*, Brief for Defendants at 12, Hinton v. Kentucky State Bd. of Educ., No. 88314, slip op. at 3 (Franklin County, Ky., Cir. Ct. Oct. 4, 1978), *aff'd in part, rev'd in part sub nom.* Kentucky State Bd. for Elem. & Secondary Educ. v. Rudasill, 589 S.W.2d 877 (Ky. 1979), *cert. denied*, 48 U.S.L.W. 3731 (U.S. May 13, 1980).

state certification of teachers in private schools.[64]

There appears to be no compelling interest that justifies a state requirement of teacher certification for private religious schools.[65] In the recent state decision of *Michigan v. Nobel*[66] the court found that there was no compelling state interest or even a rational basis for a requirement of teacher certification in a home religious school.[67] One court found that "there is not the slightest connection between teacher certification and enhanced educational quality in state schools, nor is there generally any such requirement in private schools."[68] And should the state establish a compelling interest sufficient to override a first amendment claim, it would then have to establish that the teacher certification was the least burdensome means of meeting that interest.[69]

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64. *See, e.g.*, ALA. CODE tit. 16, §§ 16-23-1, 16-23-2 (1975) (instruction in private schools shall be by those holding certificates; requirements set by the state board of education in administrative regulations); MICH. STAT. ANN. § 15.1923 (1979) (same requirements as would qualify teachers to instruction in public schools); NEB. REV. STAT. § 79-1701 (1943) (certification of teachers in nonpublic schools is the same as for public schools); N.C. GEN. STAT. § 115-256 (1978) ("No person shall be employed to teach in a nonpublic school who has not obtained a teacher's certificate entitling such teacher to teach corresponding courses or classes in public schools."); S.D. COMP. LAWS ANN. § 13-4-2 (1975) ("[N]o person shall be permitted to teach in any non-public school any of the courses prescribed to be taught in the public schools unless such person shall hold a certificate entitling him to teach the same course in the public schools of this state."); *cf.* IND. STAT. § 20-1-19 (1971) (teacher certification required if a nonpublic school is to be accredited); ME. REV. STAT. tit. 20, § 1751 (Supp. 1979) (teacher certification required for nonpublic school teacher if school accepts public funds for tuition); MISS. CODE ANN. § 37-17-7 (1972) (nonpublic schools may request accreditation, and if so, standards for public schools govern); OR. REV. STAT. § 345.525 (1977) (private schools may register with the state and if so, they must demonstrate that teachers are qualified, "but such qualification shall not include the requirement that teachers be certified"); WIS. STAT. ANN. § 115.28(7)(b) (West 1973) (certification of nonpublic school teachers same as certification of public school teachers, except nonpublic school teachers may assert teaching experience in public or private schools if the private school offered an adequate educational program; private schools not obligated to employ only licensed or certified teachers).

> 65. The constitutional infirmity of teacher certification requirements . . . is not just that a religious school teacher without the requisite education courses or degree from an accredited university often is a better instructor than one without a natural talent for teaching, but also that a religious school has theological requirements for its teachers that may be contrary to the secularistic beliefs of most university education courses that may be met only by graduates of religious universities that do not seek accreditation.

Bird, *supra* note 35, at 193 n.311.

66. No. S-79:-9114-A, slip op. at 1 (Mich. Dist. Ct. Dec. 12, 1979).

67. *Id.* at 10.

68. Hinton v. Kentucky State Bd. of Educ., No. 88314, slip op. at 3 (Franklin County, Ky., Cir. Ct. Oct. 4, 1978), *aff'd in part, rev'd in part sub nom.* Kentucky State Bd. for Elem. & Secondary Educ. v. Rudasill, 589 S.W.2d 877 (Ky. 1979), *cert. denied*, 48 U.S.L.W. 3731 (U.S. May 13, 1980).

69. Bird, *supra* note 35, at 192; Note, *Freedom of Religion and Science Instruction in Public Schools*, 87 YALE L.J. 515, 539-40, 542 (1978); *see* Meek v. Pittenger, 374 F. Supp. 639, 652 (E.D. Pa. 1974), *aff'd in relevant part and rev'd in part*, 421 U.S. 349 (1975); *accord*, McCormick v. Hirsch, 460 F. Supp. 1337, 1356 (M.D. Pa. 1978). "[T]he state may regulate private religious schools only insofar as the regulation either involves the incidents

c. Textbook approval. A state-imposed textbook approval requirement is unconstitutional if the content of approved texts burdens the free religious exercise of parents and students as well as freedom of conscience.[70] The state has no compelling interest in a textbook-approval requirement.[71] As commentator Bird noted,

> The constitutional problem with textbook regulation is not just that some of the content of approved texts is objectionable to religious schools, such as evolutionary instruction in science texts or relativistic ethics in social studies material, but that the underlying premise of those texts is not pervasively biblical or theological as the parents' and students' religious exercise requires.[72]

The Kentucky Supreme Court in *Rudasill*, in overturning that state's textbook approval requirement, found no rational relationship, much less a compelling state interest, in requiring particular materials to be used in private religious schools.[73]

d. Compulsory attendance laws. The early common law recognized the duty to educate children as one belonging to parents.[74] The states began usurping some of this parental responsibility by adopting "compulsory attendance laws."[75] The United States Supreme Court gave tacit approval to these statutes in dictum in the case of *Prince v. Massachusetts*.[76] This dictum has been used by state courts in upholding particular state laws.[77] The Court relied primarily on the belief-action distinction espoused in *Reynolds v. United States*,[78] which has since been

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of *Pierce* rights [*i.e.*, not the right itself to nonpublic education] or is justified by a compelling state interest." Arons, *The Separation of School and State:* Pierce *Reconsidered*, 46 HARV. EDUC. REV. 76, 78 (1976).

70. *See* Hinton v. Kentucky State Bd. of Educ., No. 88314, slip op. at 1 (Franklin County, Ky., Cir. Ct. Oct. 4, 1978), *aff'd in part, rev'd in part sub nom.* Kentucky State Bd. for Elem. & Secondary Educ. v. Rudasill, 589 S.W.2d 877 (Ky. 1979), *cert. denied*, 48 U.S.L.W. 3731 (U.S. May 13, 1980).

71. *Id.*

72. Bird, *supra* note 35, at 193 n.311.

73. Kentucky State Bd. for Elem. & Secondary Educ. v. Rudasill, 589 S.W.2d 877 (Ky. 1979), *cert. denied*, 48 U.S.L.W. 3731 (U.S. May 13, 1980).

74. Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925) ("[T]hose who nurture [the child] and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."); Meyer v. Nebraska, 262 U.S. 390, 399 (1923) ("[I]t is the natural duty of the parent to give his children education suitable to their station in life . . . .") *See generally* Note, *One State's Struggle with* Wisconsin v. Yoder*: The Kansas Compulsory School Attendance Statute and the Free Exercise of Religion*, 17 WASHBURN L.J. 574 (1978).

75. That state compulsory attendance laws are not compulsory "education" laws should be noted. The term "compulsory education law" is a misnomer, and the courts use the term loosely. No school is required to educate. Schools are required only to make an education in basic subjects available to all students.

76. 321 U.S. 158, 166 (1944).

77. *See, e.g.*, Commonwealth v. Bey, 166 Pa. Super. Ct. 136, 141, 70 A.2d 693, 695 (1950).

78. 98 U.S. 145 (1878) (upholding federal conviction of Mormon for polygamy); *see, e.g.*, State v. Garber, 197 Kan. 567, 419 P.2d 896 (1966), *cert. denied*, 389 U.S. 51 (1967);

abandoned.[79]

Yoder eradicated much of the prior decisional law in this area. The Court found that if a compulsory attendance law interferes with the practice of a legitimate religious belief, definitional balancing will be used to determine if the state interest is compelling, as is necessary to overcome the first amendment infringement.[80] The court may not simply use ad hoc balancing of the state's interest against the constitutionally guaranteed first amendment right.[81] In establishing its compelling state interest, the state must show that harm to the physical or mental health of children or detriment to society would result if children are exempt under the particular statute.[82] Although the Supreme Court tacitly recognized, for the first time, the validity of general compulsory school attendance statutes for the first eight grades, the Court's decision in *Yoder* also reflects a deep deference to individual religious exercise.

Surprisingly, little specific judicial treatment has been afforded to compulsory attendance laws. Statutes describing age requirements and

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Commonwealth v. Renfrew, 332 Mass. 492, 494, 126 N.E.2d 109, 111 (1955); State v. Superior Court, 55 Wash. 2d 177, 185, 346 P.2d 999, 1004 (1959).

79. "The Supreme Court has abandoned the secular regulation rule that sustained general regulations dealing with non-religious matters regardless of their contrarity to religious tenets or burdens on religious exercise." Note, *Freedom of Religion and Science Instruction in Public Schools*, 87 YALE L.J. 515, 538 (1978) (citing sources). The rule effectively was rejected in West Virginia Board of Education v. Barnette, 319 U.S. 624 (1943), where the compulsory flag pledge and salute, which appeared not to be a religious exercise and applied uniformly to all students, was found unconstitutional. In so ruling the Court reversed its earlier decision in Minersville School District v. Gobitis, 310 U.S. 586 (1940), which had sustained a similar requirement as a secular regulation. *See also* Galanter, *Religious Freedoms in the United States: A Turning Point?*, 1966 WIS. L. REV. 217, 231-55.

80. 406 U.S. at 214. For an excellent discussion of this compelling state interest test, see Note, *Freedom of Religion and Science Instruction in Public Schools*, 87 YALE L.J. 515, 539-42 (1978). This commentator writes:

> Although courts have employed many approaches to accommodate these conflicting interests, it is not sufficient for the government merely to show a "reasonable relation" between the challenged program and a valid state concern. Nor is it adequate for a court simply to balance the free exercise right against the governmental interest. Free exercise cases generally require a compelling state interest to override an individual's First Amendment claim.

Id. at 539.

81. "An ad hoc balancing test reduces a constitutional guarantee to a mere weight on the scales and requires judicial assessment of legislative matters and individual imponderables." Note, *Freedom of Religion and Science Instruction in Public Schools*, 87 YALE L.J. 515, 539 n.115 (1978). Ad hoc balancing has been soundly criticized. *E.g.*, DuVal, *Free Communications of Ideas and the Quest for Truth: Toward a Teleological Approach to First Amendment Adjudication*, 41 GEO. WASH. L. REV. 161, 172-78 (1972); Frantz, *The First Amendment in the Balance*, 71 YALE L.J. 1424, 1441-45 (1962); Nimmer, *The Right to Speak from* Times *to* Time: *First Amendment Theory Applied to Libel and Misapplied to Privacy*, 56 CAL. L. REV. 935, 939-41 (1968). *See also* United States v. Robel, 389 U.S. 258, 268 n.20 (1967) ("[It is] inappropriate for this Court to label one [interest] as being more important or more substantial than the other."); T. EMERSON, THE SYSTEM OF FREEDOM OF EXPRESSION 718 (1970) ("In the hands of most judges the balancing test comes to be nothing more than a way of rationalizing preformed conclusions.")

82. *See* 406 U.S. at 230.

what actually constitutes a "school" vary considerably from state to state.[83] A state's interest in the enforcement of a particular statute is not absolute, and a sincere claim of religious infringement must also be considered.[84]

Yoder recognized some state interest, but not a compelling interest, in compulsory education; furthermore, it exempted a burdened religious group from many requirements. The state courts have viewed *Yoder* as most significant for its constitutional doctrine on parental rights and religious liberty. In *LaBarge*,[85] a unanimous Vermont Supreme Court held for the parents in a truancy action under the state compulsory attendance statute, stating: "As recently as *Wisconsin v. Yoder* . . . that court has also stated that compulsory school attendance, even in an equivalency basis, must yield to First Amendment concerns."[86] In a similar case, a unanimous Ohio Supreme Court in *State v. Whisner*[87] held that parents were not subject to truancy violations under the compulsory attendance statute where the private religious school did not meet "minimum standards" relative to the operation of all schools (including nonpublic schools).[88] The court stated: "[A]s required by *Wisconsin v. Yoder* . . . we must also determine whether '[a] regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement of government neutrality . . . [because] it unduly burdens the free exercise of religion.' "[89]

Religious schools which do not object to compulsory attendance itself nonetheless might find themselves in violation of other state-mandated requirements, such as licensing and textbook approval, and thus fail to constitute a "school" as required by the compulsory attendance law.

e. Mandatory testing. Perhaps the newest area of concern about regulation of the private religious schools has been the mandatory testing of children. This testing has fallen under the general category of "standardized" testing. The state uses these tests in evaluating the quality of education in the schools and the abilities of individual students. Christian schools have generally been willing to submit their "product" voluntarily to reasonable evaluation by the state through such achievement testing.[90]

Many religious schools in North Carolina and elsewhere, however, have grounds to object to much testing. The state may have a compelling interest in ensuring that reading, writing, and arithmetic are taught effec-

83. The courts should compare the different requirements of various state statutes to determine if the interest being advanced under the particular statute is compelling.

84. *See* note 46 *supra* and accompanying text.

85. 134 Vt. 276, 357 A.2d 121 (1976).

86. *Id.* at ___, 357 A.2d at 124.

87. 47 Ohio St. 2d 181, 351 N.E.2d 750 (1976).

88. *Id.* at ___, 351 N.E.2d at 764.

89. *Id.*

90. *See* Hinton v. Kentucky State Bd. of Educ., No. 88314, slip op. at 2 (Franklin County, Ky., Cir. Ct. Oct. 4, 1978), *aff'd in part, rev'd in part sub nom.* Kentucky State Bd. for Elem. & Secondary Educ. v. Rudasill, 589 S.W.2d 877 (Ky. 1979), *cert. denied*, 48 U.S.L.W. 3731 (U.S. May 13, 1980).

tively, but the state arguably has no compelling interest in testing beyond that basic level[91] or in requiring use of any particular test. Just as tests can be used to inculcate religious views so that funding might violate the establishment clause, state tests might subvert religious views or penalize those holding beliefs which conflict with prevailing beliefs. Moreover, if two recognized tests satisfy any state interest and one is religiously objectionable, the least-burdensome-means requirement mandates that religious schools be allowed to choose the unobjectionable test rather than being arbitrarily required to use an objectionable test.

f. Fire, health, and safety regulations. The state has a compelling interest in ensuring the safety of church schools, like other buildings, from fire and epidemic disease. This interest justifies safety and immunization requirements comparable to those of other public buildings. On the other hand, it does not justify regulations more strict than those of businesses, amusement locations, and other public buildings.

The private religious schools generally have been willing to submit their schools to reasonable fire, health, and safety regulations.[92] They feel these laws do not foster an ideological view.[93] The state has a compelling interest in these requirements[94] as long as the requirements are not unreasonably demanding but are the least burdensome means of ensuring safety. Unreasonable requirements that demand expensive alterations not essential to safety, however, burden free religious exercise through church-operated schools, just as they would if applied to other church ministries.

Health and safety laws generally have been understood to refer to sanitation and safety requirements, ensuring a healthy learning environment. There has been a tendency nationwide to include sex education, pregnancy avoidance, venereal disease protection, and other "personal" health aids under the general heading of "health law."[95]

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91. *See* note 46 *supra*.

92. The private Christian schools were willing to submit to regulation in *Hinton*, *Whisner*, and *LaBarge*. The schools in *Columbus Christian Academy* were not willing to submit to all "health" laws, contending that to do so would be writing the State a "blank check" for its future use in this area.

93. *See, e.g.*, Hinton v. Kentucky State Bd. of Educ., No. 88314, slip op. at 2 (Franklin County, Ky., Cir. Ct. Oct. 4, 1978), *aff'd in part, rev'd in part sub nom.* Kentucky State Bd. for Elem. & Secondary Educ. v. Rudasill, 589 S.W.2d 877 (Ky. 1979), *cert. denied*, 48 U.S.L.W. 3731 (U.S. May 13, 1980).

94. *See id.* slip op. at 2 ("overriding interest in maintaining reasonable health, fire and safety standards for all schools"). *See also* Jacobson v. Massachusetts, 197 U.S. 11, 27 (1905); Weidenfeller v. Kidulis, 380 F. Supp. 445, 450 & n.8 (E.D. Wis. 1974) (compelling state interest in requiring immunization in public schools).

95. *See, e.g.*, N.C. GEN. STAT. § 143B-422 (Cum. Supp. 1979). The enabling legislation, entitled "A Child Health Plan for Raising a New Generation," states: "Family planning services, including pregnancy testing, sex education, and contraceptives, should be available to all sexually active persons regardless of age." This includes assistance with abortion. The Act has received widespread criticism from Christian school leaders and educators. *See, e.g.*, The National Educator, Aug. 1979, at 13. *See also* State v. Whisner, 47 Ohio St. 2d 181, —, 351 N.E.2d 750, 763 (1976). Concerning the Ohio health provision, the court stated:

We share the concern of appellants that the philosophy espoused especially in

Many religious schools have refused to submit to these types of regulations, due to their ideological content.[96] The Supreme Court in *Wolman v. Walter*[97] gave limited approval to state funding of health services in the area of diagnostic speech, hearing, and psychological services,[98] where there is no risk of forcing objectionable ideological views on religious students,[99] but did not require that religious schools accept these services.

g. Mandatory participation in community programs. The Ohio Supreme Court has held that state regulation that requires a private religious school to cooperate with elements of the community infringes upon the free-exercise rights of parents, children, and church leaders of religious schools.[100] Christian educators have objected to this form of regulation in that it violates a basic tenet of their faith that Christians "be not conformed to this world."[101] It is for this very purpose that many parents send their children to private church schools.[102] The fact that some religious schools participate with the community programs on a limited voluntary basis is not a factor to be considered in deciding whether such a mandatory regulation burdens another religious group.

2. The establishment clause of the first amendment

Private religious schools are protected from intrusive or hostile state

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EDb-401-03(B), relating to the teaching of . . . health, may be interpreted as promoting "secular humanism," and, as such, may unconstitutionally be applied to these appellants to "unduly burden the free exercise of religion," and that section of the publication be interpreted as part of the "minimum standards."

Id. at _, 351 N.E.2d at 767. Section EDb-401-03(B) reads:

The health of the child is perhaps the greatest single factor in the development of a well-rounded personality. No individual is adequately prepared for effective living unless he has a well-functioning body and can make reasonably successful adjustments to his many problems. Both are essential for facilitating learning, promoting personal efficiency, and developing successful social and family living. For these reasons health education is considered an integral part of the total education program. Its place in the curriculum becomes increasingly important as automation, population growth, changing moral standards and values, mounting pressures, and other changes in our society create new or intensify existing health problems.

Id. at _, 351 N.E.2d at 763.

96. *See* State v. Whisner, 47 Ohio St. 2d 181, _, 351 N.E.2d 750, 767 (1976). *See also* Brief for Defendant at 40, State v. Columbus Christian Academy, No. 78-CVS-1678 (Wake County, N.C., Super. Ct. Sept. 5, 1978), *noted in* 47 U.S.L.W. 2212 (Oct. 3, 1978).

97. 433 U.S. 229, 244 (1977).

98. The private church schools asserted that communication between the psychological diagnostician and the pupil will provide an impermissible opportunity for the intrusion of religious influence. 433 U.S. at 241-42. The Court disagreed. While addressing the issues of diagnostic speech and hearing services, the Court paid only lip-service to the administration of psychological services to private school students. *Id.* at 242-44. The risk of fostering ideological views would undoubtedly be greater under such services, and the Court's decision appears inconsistent with its rationale.

99. *Id.* at 244.

100. State v. Whisner, 47 Ohio St. 2d 181, _, 351 N.E.2d 750, 767 (1976).

101. *See id.*

102. T. Smith, Christian Education 33 (1977).

regulation under the establishment clause of the first amendment.[103] The essential requirement of the establishment clause is neutrality of government toward religion.[104] This clause prohibits government hostility[105] and government aid[106] to churches and religious schools. Entanglement of

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103. For an excellent analysis of the establishment clause with respect to public and private schools, see Bird, *supra* note 35.

104. Epperson v. Arkansas, 393 U.S. 97, 104 (1968); *accord*, McDaniel v. Paty, 435 U.S. 618, 629 (1978) (plurality opinion) (command of the establishment clause is "neutrality"); Roemer v. Board of Pub. Works, 426 U.S. 736, 747 (1976) ("Neutrality is what is required. The State must . . . neither advance nor impede religious activity."); Gillette v. United States, 401 U.S. 437, 449 (1971) ("[T]he central purpose of the Establishment Clause [is] ensuring governmental neutrality in matters of religion."); Zorach v. Clauson, 343 U.S. 306, 314 (1952) ("[T]he government must be neutral when it comes to competition between sects."); Everson v. Board of Educ., 330 U.S. 1, 18 (1947) ("[The] First Amendment requires the state to be neutral in its relations with groups of religious believers and non-believers.") *See, e.g.*, W. KATZ, RELIGION AND AMERICAN CONSTITUTIONS 9, 12 (1964) ("[T]he impact of the First Amendment on religion is best understood in terms not of church-state separation but of government neutrality . . . ."). *See also* Americans United for Separation of Church & State v. Blanton, 433 F. Supp. 97, 100 (M.D. Tenn.) ("total separation between church and state is not necessary" and "neutrality is what is required"), *aff'd*, 434 U.S. 803 (1977). Bird has stated:

> The framers of the Constitution did not intend the establishment clause to require an "absolute wall of separation between church and state." Indeed, the eighteenth century meaning of the phrase differed significantly from its twentieth century connotations, and the early proponents of an absolute wall of separation were Jefferson who was not at the Constitutional Convention and Madison who did not author the establishment clause and who did not mention the concept at the Convention. The Supreme Court has repeatedly recognized that the establishment clause and its decisions "do not call for total separation of church and state" and that the necessary partial separation "far from being a 'wall,' is a blurred, indistinct, and variable barrier. . . . " The establishment clause requires not absolute separation but neutrality.

Bird, *supra* note 35, at 139-40.

105. Abington School Dist. v. Schempp, 374 U.S. 203, 225 (1963) ("affirmatively opposing or showing hostility to [theistic] religion" would prefer nontheists over theists); *accord*, McDaniel v. Paty, 435 U.S. 618, 636 (1978) (Brennan, J., concurring) ("[T]he exclusion manifests patent hostility toward . . . religion . . . and, in sum, has a primary effect which inhibits religion" in violation of the establishment clause.); Zorach v. Clauson, 343 U.S. 306, 314 (1952) ("[C]allous indifference to religious groups [would be] preferring those who believe in no religion over those who do believe."); McCollum v. Board of Educ., 333 U.S. 203, 211-12 (1948) ("[G]overnmental hostility to religion or religious teachings [would] be at war with . . . the free exercise of religion."); Everson v. Board of Educ., 330 U.S. 1, 18 (1947) (government must not be the "adversary" of religion or "handicap" religions any more than it favors them); United States v. Branigan, 299 F. Supp. 225, 231 (S.D.N.Y. 1969) ("The injunction of neutrality does not require hostility toward religion.") In Gaines v. Anderson, 421 F. Supp. 337 (D. Mass. 1976), the court upheld a public school requirement for a minute of silence for meditation or prayer at the beginning of each school day, an accommodation for free religious exercise and free ethical belief. The court noted, "The requirements of the First Amendment do not implicate hostility to religion or indifference toward religious groups." *Id.* at 443. If the establishment clause is to be read to prohibit not just creation of an official state church but advancement of any particular religion or religion generally, then that clause must be read to prohibit opposition or hostility toward any particular religion or religion generally. Bird, *supra* note 35, at 185.

106. Lemon v. Kurtzman, 403 U.S. 602, 621 (1971) ("The government cash grants . . . provide no basis for predicting that comprehensive measures of surveillance and controls

church and state can result from intrusive regulation of religious institutions just as it can result from intrusive aid.[107]

The historical intent behind the establishment clause was to require governmental neutrality towards religion,[108] not absolute separation between church and state. The framers of the American Constitution wanted to prohibit the creation of a national church.[109] Ironically, in perceiving this clause as requiring an "absolute wall of separation," the courts have allowed government programs that are not neutral in effect and are therefore violative of the first amendment.[110]

The Supreme Court has applied several different tests in determining whether the establishment clause has been violated.[111] The traditional test used by the Court has been to determine if the state action has a primary effect of advancement or opposition to religion, a predominant secular purpose of aid or hostility to religion, or excessive state entanglement with religion.[112] A proper test for construction of the establishment clause, in light of its historical intent, would be the substantial-neutrality test.[113]

Intrusive regulation of religious schools constitutes state hostility toward religion. As commentator Bird has noted,

> Intrusive state regulations of religious schools, through an accreditation requirement, textbook approval requirements, teacher certification requirements, minimum curriculum standards beyond very basic subjects, intrusive periodic reports beyond essential information, or minimum fa-

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will not follow.")

107. *See id.* at 620; Surinach v. Pesquera de Busquets, 604 F.2d 73, 79 (1st Cir. 1979) (government intrusion "upon decisions of religious authorities as to how much money should be expended and how funds should best be allotted to serve the religious goals of the school" is a "relationship pregnant with dangers of excessive government direction of church schools and hence of churches.")

108. *See* note 103 *supra*.

109. Bird, *supra* note 35, at 127-28 (citing sources). "The prohibition against congressional 'establishment' of religion referred to creation of a national church or financial and legal preference for one ecclesiastical institution over other churches. Hence Madison's initial proposal in the House of Representatives provided 'nor shall any religion be established,' and the first provision adopted in the Senate prohibited any 'law establishing articles of faith or a mode of worship' . . . ." *Id. See also* T. COOLEY, THE GENERAL PRINCIPLES OF CONSTITUTIONAL LAW 224 (3d ed. 1898) (establishment of religion means the setting up or recognition of a state church or conferring upon one church special favors and advantages which are denied to others); Kruse, *The Historical Meaning and Judicial Construction of the Establishment Clause of the First Amendment*, 2 WASHBURN L.J. 65, 85-87 (1962); 1 ANNALS OF CONGRESS 730-31 (Gales & Seaton eds. 1789), *quoted in* E. CORWIN, CONSTITUTIONAL LIMITATIONS 101 (1898).

110. For a discussion of how the establishment clause has been abridged by unneutral governmental programs, see Bird, *supra* note 35, at 174-204.

111. *See, e.g.*, Walz v. Tax Comm'n, 397 U.S. 664, 669 (1979) (benevolent neutrality); Abington School Dist. v. Schempp, 374 U.S. 203, 222 (1963) (strict neutrality); Zorach v. Clauson, 343 U.S. 306, 315 (1952) (accommodation); Everson v. Board of Educ., 330 U.S. 1, 15-16 (1947) (absolute separation of church and state).

112. Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971).

113. For an excellent discussion of the establishment clause and the substantial-neutrality test, see generally Bird, *supra* note 35.