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SB-796 Uniform Standards: Naturopathic Doctors Act: Respiratory Care Practice Act. (2017-2018)

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Senate Bill No. 796

CHAPTER 600

An act to amend Sections 315, 2450.3, 3621, 3623, 3630, 3635, 3644, 3645, 3660, 3680, 3686, 3710, 3716, and 3772 of, and to add Sections 3635.1 and 3635.2 to, the Business and Professions Code, relating to healing arts.

[Approved by Governor October 08, 2017. Filed with Secretary of State October 08, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 796, Hill. Uniform Standards: Naturopathic Doctors Act: Respiratory Care Practice Act.

(1) The Department of Consumer Affairs is comprised of healing arts boards that are responsible for the licensure and regulation of healing arts licensees. Under existing law, the Substance Abuse Coordination Committee is created within the department and the committee is required to formulate uniform and specific standards in specified areas that each healing arts board is required to use in dealing with substance-abusing licensees. Existing law, by January 1, 2010, requires the committee to formulate uniform and specific standards in specified areas, including standards governing all aspects of required testing, that each healing arts board is required to use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program.

This bill, by January 1, 2019, would require the committee to review the existing criteria for those standards governing all aspects of required testing to determine whether the existing criteria should be updated to reflect recent developments in testing research and technology.

(2) Existing law, the Naturopathic Doctors Act, establishes the Naturopathic Medicine Committee within the Osteopathic Medical Board of California for the licensure and regulation of naturopathic doctors. Existing law requires the committee to consist of 9 members appointed by the Governor, including 2 public members. Existing law requires a public member to be a citizen of the state for at least 5 years preceding his or her appointment.

This bill would instead require 7 professional members to be appointed by the Governor, one public member to be appointed by the Senate Committee on Rules, and one public member to be appointed by the Speaker of the Assembly. The bill would instead require a public member to be a resident of the state for at least 5 years preceding his or her appointment.

Existing law repeals the act on January 1, 2018. Existing law also specifies that the committee is subject to review by the appropriate policy committees of the Legislature on January 1, 2018.

This bill would instead repeal the act and subject the committee to legislative review on January 1, 2022.

Existing law requires an applicant for a license as a naturopathic doctor to file a written application with the committee, as specified. Existing law requires the committee to establish the amount of the fee assessed to conduct activities of the committee, including the amount of fees for applicant licensure, licensure renewal, late renewal, and childbirth certification. Existing law

requires the committee to require the satisfactory completion of 60 hours of approved continuing education biennially, as specified, for licensure renewal.

This bill would remove the requirement that an application be written. The bill would specify the amount or maximum amount for each of the fees. The bill would require a licensee to retain certificates of continuing education course completion for 6 years. The bill would authorize the committee to audit licensees' continuing education records to ensure that continuing education requirements are met. The bill would specify that furnishing false or misleading information to the committee regarding continuing education constitutes unprofessional conduct.

Existing law requires the committee to approve a specified naturopathic medical education program. Existing law requires boards within the Department of Consumer Affairs to adopt rules and regulations to provide for methods of evaluating education, training, and experience obtained in the armed services, if applicable to the requirements of the business, occupation, or profession regulated, and to specify how this education, training, and experience may be used to meet the licensure requirements for the particular business, occupation, or profession regulated. Existing law also requires these boards to consult with the Department of Veterans Affairs and the Military Department before adopting these rules and regulations.

This bill would require that the naturopathic medical program, pursuant to those provisions, evaluate an applicant's education, training, and experience obtained in the armed services, and provide course credit where applicable.

Existing law requires the satisfactory completion of specified hours of approved continuing education biennially in order to renew a license. Existing law requires the continuing education to meet certain requirements and to be provided by an approved continuing education provider.

This bill would additionally require the course content to pertain to the practice of naturopathic, osteopathic, or allopathic medicine. The bill would require continuing education providers to comply with certain conflict-of-interest requirements. The bill would also require these providers to submit a related annual declaration to the committee. The bill would require the committee to maintain a list of these providers meeting those requirements on its Internet Web site.

Existing law does not prevent or restrict the practice, services, or activities of a person who makes recommendations regarding or is engaged in the sale of, among other things, food or vitamins.

This bill would authorize an unlicensed person to represent that he or she "practices naturopathy" if certain requirements related to restrictions on services provided and specified disclosures and acknowledgments are met.

(3) Existing law, the Respiratory Care Practice Act, establishes the Respiratory Care Board of California for the licensure and regulation of respiratory care practitioners. Existing law specifies that the board is subject to review by the appropriate policy committees of the Legislature upon repeal of the provision establishing the board. Existing law also authorizes the board to employ an executive officer. Existing law repeals these provisions on January 1, 2018.

This bill would instead repeal those provisions on January 1, 2022.

Existing law establishes the Respiratory Care Fund in the State Treasury to carry out the purposes of the act, and requires all collections from persons licensed or seeking to be licensed under the Respiratory Care Practice Act to be paid into the fund, as specified.

This bill would make the availability of the moneys in the fund contingent upon appropriation by the Legislature.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 315 of the Business and Professions Code is amended to read:

315. (a) For the purpose of determining uniform standards that will be used by healing arts boards in dealing with substance-abusing licensees, there is established in the Department of Consumer Affairs the Substance Abuse Coordination Committee. The committee shall be comprised of the executive officers of the department's healing arts boards established pursuant to Division 2 (commencing with Section 500), the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, and a designee of the State Department of Health Care Services. The Director of Consumer Affairs shall chair the committee and may invite individuals or stakeholders who have particular expertise in the area of substance abuse to advise the committee.

(b) The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Division 3 of Title 2 of the Government Code).

(c) By January 1, 2010, the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program:

(1) Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

(2) Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in paragraph (1) and any treatment recommended by the evaluator described in paragraph (1) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

(3) Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status and condition.

(4) Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

(5) Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

(6) Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

(7) Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

(8) Procedures to be followed when a licensee tests positive for a banned substance.

(9) Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

(10) Specific consequences for major violations and minor violations. In particular, the committee shall consider the use of a "deferred prosecution" stipulation similar to the stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency unless or until the licensee commits a major violation, in which case it is revived and the license is surrendered.

(11) Criteria that a licensee must meet in order to petition for return to practice on a full-time basis.

(12) Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

(13) If a board uses a private-sector vendor that provides diversion services, standards for immediate reporting by the vendor to the board of any and all noncompliance with any term of the diversion contract or probation; standards for the vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and standards for a licensee's termination from the program and referral to enforcement.

(14) If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

(15) If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

(16) Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

(d) Notwithstanding any other law, by January 1, 2019, the committee shall review the existing criteria for Uniform Standard #4 established pursuant to paragraph (4) of subdivision (c). The committee's review and findings shall determine whether the existing criteria for Uniform Standard #4 should be updated to reflect recent developments in testing research and technology. The committee shall consider information from, but not limited to, the American Society of Addiction Medicine, and other sources of best practices.

SEC. 2. Section 2450.3 of the Business and Professions Code is amended to read:

2450.3. There is within the jurisdiction of the Osteopathic Medical Board of California a Naturopathic Medicine Committee authorized under the Naturopathic Doctors Act (Chapter 8.2 (commencing with Section 3610)). This section shall become inoperative on January 1, 2022, and as of that date is repealed. Notwithstanding any other provision of law, the repeal of this section renders the Naturopathic Medicine Committee subject to review by the appropriate policy committees of the Legislature.

SEC. 3. Section 3621 of the Business and Professions Code is amended to read:

3621. (a) The committee shall consist of nine members, consisting of seven professional members appointed by the Governor, one public member appointed by the Senate Committee on Rules, and one public member appointed by the Speaker of the Assembly. Members of the committee shall include five members who are California licensed naturopathic doctors, two members who are California licensed physicians and surgeons, and two public members.

(b) A member of the committee shall be appointed for a four-year term. A person shall not serve as a member of the committee for more than two consecutive terms. A member shall hold office until the appointment and qualification of his or her successor, or until one year from the expiration of the term for which the member was appointed, whichever first occurs. Vacancies shall be filled by appointment for unexpired terms.

(c) (1) A public member of the committee shall be a resident of this state for at least five years preceding his or her appointment.

(2) A person shall not be appointed as a public member if the person or the person's immediate family in any manner owns an interest in a college, school, or institution engaged in naturopathic education, or the person or the person's immediate family has an economic interest in naturopathy or has any other conflict of interest. "Immediate family" means the public member's spouse, parents, children, or his or her children's spouses.

(d) Each member of the committee shall receive a per diem and expenses as provided in Section 103.

(e) The committee may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the committee and vested in him or her by this chapter.

SEC. 4. Section 3623 of the Business and Professions Code is amended to read:

3623. (a) The committee shall approve a naturopathic medical education program accredited by the Council on Naturopathic Medical Education or an equivalent federally recognized accrediting body for the naturopathic medical profession that has the following minimum requirements:

(1) Admission requirements that include a minimum of three-quarters of the credits required for a bachelor's degree from a regionally accredited or preaccredited college or university or the equivalency, as determined by the council.

(2) Program requirements for its degree or diploma of a minimum of 4,100 total hours in basic and clinical sciences, naturopathic philosophy, naturopathic modalities, and naturopathic medicine. Of the total requisite hours, not less than 2,500 hours shall consist of academic instruction, and not less than 1,200 hours shall consist of supervised clinical training approved by the naturopathic medical school.

(b) A naturopathic medical education program in the United States shall offer graduate-level full-time studies and training leading to the degree of Doctor of Naturopathy or Doctor of Naturopathic Medicine. The program shall be an institution, or part of an institution of, higher education that is either accredited or is a candidate for accreditation by a regional institutional accrediting agency recognized by the United States Secretary of Education and the Council on Naturopathic Medical Education, or an equivalent federally recognized accrediting body for naturopathic doctor education.

(c) To qualify as an approved naturopathic medical school, a naturopathic medical program located in Canada or the United States shall offer a full-time, doctoral-level, naturopathic medical education program with its graduates being eligible to apply to the committee for licensure and to the North American Board of Naturopathic Examiners that administers the naturopathic licensing examination.

(d) The naturopathic medical program shall evaluate an applicant's education, training, and experience obtained in the armed services, pursuant to Section 35, and provide course credit where applicable.

SEC. 5. Section 3630 of the Business and Professions Code is amended to read:

3630. An applicant for a license as a naturopathic doctor shall file an application with the committee on a form provided by the committee that shows, to the committee's satisfaction, compliance with all of the following requirements:

(a) The applicant has not committed an act or crime that constitutes grounds for denial of a license under Section 480, and has complied with the requirements of Section 144.

(b) The applicant has received a degree in naturopathic medicine from an approved naturopathic medical school where the degree substantially meets the educational requirements in paragraph (2) of subdivision (a) of Section 3623.

SEC. 6. Section 3635 of the Business and Professions Code is amended to read:

3635. (a) In addition to any other qualifications and requirements for licensure renewal, the committee shall require the satisfactory completion of 60 hours of approved continuing education biennially. This requirement is waived for the initial license renewal. The continuing education shall meet the following requirements:

(1) At least 20 hours shall be in pharmacotherapeutics.

(2) No more than 15 hours may be in naturopathic medical journals or osteopathic or allopathic medical journals, or audio or videotaped presentations, slides, programmed instruction, or computer-assisted instruction or preceptorships.

(3) No more than 20 hours may be in any single topic.

(4) No more than 15 hours of the continuing education requirements for the specialty certificate in naturopathic childbirth attendance shall apply to the 60 hours of continuing education requirement.

(5) Course content shall pertain to the practice of naturopathic, osteopathic, or allopathic medicine.

(b) The continuing education requirements of this section may be met through continuing education courses approved by the committee, the California Naturopathic Doctors Association, the American Association of Naturopathic Physicians, the California State Board of Pharmacy, the State Board of Chiropractic Examiners, or other courses that meet the standards for continuing education for licensed physicians and surgeons in California. All continuing education providers shall comply with Section 3635.2. Continuing education providers shall submit an annual declaration to the committee that their educational activities satisfy the requirements described in Section 3635.2 and the committee shall maintain a list of these providers on its Internet Web site.

SEC. 7. Section 3635.1 is added to the Business and Professions Code, to read:

3635.1. (a) A licensee shall retain certificates of continuing education course completion for six years.

(b) The committee may audit licensees' continuing education records to ensure that continuing education requirements are met.

(c) It shall be unprofessional conduct for a licensee to furnish false or misleading information to the committee regarding continuing education.

SEC. 8. Section 3635.2 is added to the Business and Professions Code, to read:

3635.2. In addition to complying with subdivision (b) of Section 3635, the following shall apply to providers of continuing education:

(a) The content of continuing education courses and related materials shall provide balance, independence, objectivity, and scientific rigor. All patient care recommendations from continuing education courses involving clinical medicine shall be based on evidence accepted by naturopathic doctors. All scientific research used to support patient care recommendations shall conform to generally accepted standards of experimental design, data collection, and analysis.

(b) A conflict of interest is created when an individual in a position to control the content of a continuing education course, or his or her spouse or partner, has a relevant personal financial relationship within the past 12 months with a commercial entity that produces, markets, resells, or distributes health care goods or services consumed by, or used on patients that benefits the individual in any financial amount and therefore, may bias his or her opinions and teachings with respect to the content of continuing education courses. This may include receiving a salary, royalty, intellectual property rights, consulting fee, honoraria, ownership interest such as stocks, stock options or other ownership interest, excluding diversified mutual funds, or other financial benefit. Financial benefits are generally associated with roles such as employment, a management position, or an independent contractor position, including contracted research and clinical trials, consulting, speaking and teaching, membership on advisory committees or review panels, board membership, and other activities for which remuneration is received or expected.

(c) Prior to a course being presented, continuing education providers shall identify, disclose, and resolve all conflicts of interest. Individuals who fail or refuse to disclose relevant financial relationships shall not be approved as a provider of continuing education as described in subdivision (b) of Section 3635.

(d) Conflicts of interests shall be resolved by one of the following mechanisms:

(1) Altering financial relationships. Individuals may change their relationships with commercial interests, such as discontinuance of contracted services, thereby eliminating any conflict of interest related to the continuing education content.

(2) Altering control over content. An individual's control of continuing education content may be altered in several ways to remove the opportunity to affect content related to the products and services of a commercial interest. These include the following:

(A) Choose someone else to control that part of the content. If a proposed presenter or planner has a conflict of interest related to the content, someone else who does not have a relationship to the commercial interests related to the content may present or plan that part of the content.

(B) Change the focus of the continuing education activity so that the content is not about products or services of the commercial interest that is the basis of the conflict of interest.

(C) Change the content of the individual's assignment so that it is no longer about products or services of the commercial interest. For example, an individual with a conflict of interest regarding products for treatment of a condition could address the pathophysiology or diagnosis of the condition, rather than therapeutics.

(D) Limit the content to a report without recommendations. If an individual has been funded by a commercial entity to perform research, the individual's presentation may be limited to the data and results of the research. Someone else may be assigned to address broader implications and recommendations.

(E) Limit the sources for recommendations. Rather than having a person with a conflict of interest present personal recommendations or personally select the evidence to be presented, limit the role of the person to reporting recommendations based on formal structured reviews of the literature with the inclusion and exclusion criteria stated "evidence-based."

(3) Conflict of interest may be resolved if the continuing education material is peer reviewed and both of the following are met:

(A) All the recommendations involving clinical medicine are based on evidence that is accepted within the profession of naturopathic medicine as adequate justification for indications and contraindications in the care of patients.

(B) All scientific research referred to, reported, or used in the continuing education activity in support or justification of patient care recommendations conforms to the generally accepted standards of experimental design, data collection, and analysis.

SEC. 9. Section 3644 of the Business and Professions Code is amended to read:

3644. This chapter does not prevent or restrict the practice, services, or activities of any of the following:

(a) A person licensed, certified, or otherwise recognized in this state by any other law or regulation if that person is engaged in the profession or occupation for which he or she is licensed, certified, or otherwise recognized.

(b) A person employed by the federal government in the practice of naturopathic medicine while the person is engaged in the performance of duties prescribed by laws and regulations of the United States.

(c) A person rendering aid to a family member or in an emergency, if no fee or other consideration for the service is charged, received, expected, or contemplated.

(d) (1) A person who makes recommendations regarding or is engaged in the sale of food, extracts of food, nutraceuticals, vitamins, amino acids, minerals, enzymes, botanicals and their extracts, botanical medicines, homeopathic medicines, dietary supplements, and nonprescription drugs or other products of nature, the sale of which is not otherwise prohibited under state or federal law.

(2) An unlicensed person described in this subdivision may represent that he or she "practices naturopathy" if he or she complies with Section 2053.6. However, an unlicensed person may not use the title "naturopathic doctor" unless he or she has been issued a license by the committee.

(e) A person engaged in good faith in the practice of the religious tenets of any church or religious belief without using prescription drugs.

(f) A person acting in good faith for religious reasons as a matter of conscience or based on a personal belief, while obtaining or providing information regarding health care and the use of any product described in subdivision (d).

(g) A person who provides the following recommendations regarding the human body and its function:

(1) Nonprescription products.

(2) Natural elements such as air, heat, water, and light.

(3) Class I or class II nonprescription, approved medical devices, as defined in Section 360c of Title 21 of the United States Code.

(4) Vitamins, minerals, herbs, homeopathics, natural food products and their extracts, and nutritional supplements.

(h) A person who is licensed in another state, territory, or the District of Columbia to practice naturopathic medicine if the person is incidentally called into this state for consultation with a naturopathic doctor.

(i) A student enrolled in an approved naturopathic medical program whose services are performed pursuant to a course of instruction under the supervision of a naturopathic doctor.

SEC. 10. Section 3645 of the Business and Professions Code is amended to read:

3645. (a) This chapter permits, and does not restrict, the use of the following titles by persons who are educated and trained as any of the following:

(1) "Naturopath."

(2) "Naturopathic practitioner."

(3) "Traditional naturopathic practitioner."

(b) This chapter permits, and does not restrict, the education of persons as described in paragraphs (1) to (3), inclusive, of subdivision (a). Those persons are not required to be licensed under this chapter.

SEC. 11. Section 3660 of the Business and Professions Code is amended to read:

3660. Except as provided in subdivision (h) of Section 3644, a person shall have a valid, unrevoked, or unsuspended license issued under this chapter to do any of the following:

(a) To claim to be a naturopathic doctor, licensed naturopathic doctor, doctor of naturopathic medicine, doctor of naturopathy, or naturopathic medical doctor.

(b) To use the professional designation "N.D." or other titles, words, letters, or symbols with the intent to represent that he or she practices, is authorized to practice, or is able to practice naturopathic medicine as a naturopathic doctor.

SEC. 12. Section 3680 of the Business and Professions Code is amended to read:

3680. (a) The application fee for a doctor of naturopathic medicine shall be no more than four hundred dollars (\$400).

(b) The initial license fee shall be no more than eight hundred dollars (\$800).

(c) The renewal fee for a license shall be no more than eight hundred dollars (\$800).

(d) The late renewal fee for a license shall be no more than one hundred fifty dollars (\$150).

(e) The fee for processing fingerprint cards shall be the current fee charged by the Department of Justice.

(f) The fee for a duplicate or replacement license shall be no more than twenty-five dollars (\$25).

SEC. 13. Section 3686 of the Business and Professions Code is amended to read:

3686. This chapter shall remain in effect only until January 1, 2022, and as of that date is repealed.

SEC. 14. Section 3710 of the Business and Professions Code is amended to read:

3710. (a) The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter.

(b) This section shall remain in effect only until January 1, 2022, and as of that date is repealed. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 15. Section 3716 of the Business and Professions Code is amended to read:

3716. (a) The board may employ an executive officer exempt from civil service and, subject to the provisions of law relating to civil service, clerical assistants and, except as provided in Section 159.5, other employees as it may deem necessary to carry out its powers and duties.

(b) This section shall remain in effect only until January 1, 2022, and as of that date is repealed.

SEC. 16. Section 3772 of the Business and Professions Code is amended to read:

3772. There is established in the State Treasury the Respiratory Care Fund. All collections from persons licensed or seeking to be licensed under this chapter shall be paid by the board into the fund after the report to the Controller at the beginning of each month of the amount and source of the collections. Moneys in the fund shall be available to the board, upon appropriation by the Legislature.