VERMONT NATUROPATHIC PHYSICIANS, PATIENTS AND CONSUMERS OF HOMEOPATHY Action alert – Oppose H104. This bill seeks to:

- Eliminate the use of homeopathic medicines
- Remove protections against medical oversight of naturopathic medicine

THIS IS A BAD BILL! READ THE INTENT.

The following email is from the Vermont Office of Professional Regulation

The Naturopath chapter amendments are fairly straightforward. The substantive change is elimination of the naturopathic childbirth endorsement, which almost nobody holds. For 98% of the licensee population, nothing much should change. For those who want to provide obstetric or midwifery care, they'd need to become CNMs or licensed midwives. Here's a breakdown:

*I.** Homeopathy*

Reference to "[a]dminister[ing] or provid[ing] for preventative and therapeutic purposes … *homeopathic medicines*," is stricken because homeopathic medicines have no preventative or therapeutic utility. At best they are a placebo. At worst they are health-care fraud. Many providers find that statutory ties to a notorious form of quackery insult their profession and undermine efforts to develop NDs as evidence-based health-science practitioners. This is a topic former Director Benjamin, the advisors, and the Enforcement Unit discussed repeatedly over the years, and while the chapter is open, we should nip it.

"Homeopathy" is a vestige of a different time, when NDs were not broadly considered a part of the science-based, integrated healthcare system. Today, we're in a better place. Legal recognition of homeopathy as a therapy not only insults competent practitioners, but also contradicts multiple provisions of 3 V.S.A. § 129a(a) <https://legislature.vermont.gov/statutes/section/03/005/00129A>. Advertise it, and you've violated subsection (2). Sell it for a profit or bill for it, and you've violated subsections (12) & (18). Recommend it as a therapy or treatment for any substantive pathology, and you've violated subsection (17). This drives our Enforcement Unit nuts, because it contradicts everything they're trying to do to protect the public and deter consumer exploitation. And because a separate provision of Title 3 resolves conflicts of law in favor of the statute most protective of the public, the un-amended section is apt to encourage practitioners, who will focus on their profession-specific chapter, to believe they can do

something for which the agency can, would, and should discipline them. There is no good to be had from keeping this one, and its elimination is more in the nature of cleanup than a substantive change in anything any present-day practitioner should be doing under existing law.

*II.** Naturopathic Childbirth*

This is the primary reason for opening the chapter. The naturopathic-childbirth endorsement is held by four or fewer licensees, and I'm not sure any uses it. The concept of an endorsement through which an ND would provide obstetric care always has been deeply troubled. The State already licenses certified nurse midwives and lay midwives, where mature regulatory structures provide for the enforcement of clear standards of care, baseline training, continuing education, collection of birth data vital to VDH's public-health surveillance efforts, and provisions for peer review in case of a transport or adverse outcome. There's no similar structure for this credential, and creating such a structure to cover practitioners that can be counted on one hand, when two parallel and tested programs already exist to facilitate licensed homebirth, is irrational fundamentally. A naturopathic physician with training in obstetrics or midwifery should meet the requirements imposed upon lay midwives. But our legal requirements are upside-down so long as this endorsement exists in lieu of a midwifery license.

The amendment is provoked by longstanding concern punctuated by a tragedy. When I was a prosecutor, we had hospitals and physicians completely baffled when an ND-related transport did not result in the peer review to which they were accustomed. A structured peer review, with mandatory reporting to the Office and review by our advisors and other experts, would be standard in any midwife-related transport. No such protective mechanism is attached to naturopathic childbirth. In 2015, a Vermont infant whose gestation and birth were overseen by an ND with the endorsement died of Group-B Streptococcus following multiple and shocking lapses in care. OPR learned about this in a letter from the OCME. Not a transport report. Not a peer review. Not a report of unprofessional conduct. But a letter from the medical examiner, baffled at how an infant in Vermont could die under circumstances inconsistent with basic global health standards, attended by someone holding one of our professional licenses.

As a matter of basic responsibility to the public, we cannot issue a credential that implies assurances of competence at obstetrics, structure, and oversight that do not exist on the ground and cannot be established. This isn't a matter of tarring good practitioners with the misdeeds of a single peer. So deficient is the legal structure around the naturopathic-childbirth credential that the Office came very close to never learning of the tragedy I described

*III.** The Incoherent Section*

The third and final substantive amendment is a strikeout of § 4131, captioned “Supervision.” What to say about this one? It literally serves no purpose but to sow confusion and prolong enforcement litigation or complicate rulemaking. The section currently reads, “A naturopathic physician licensed pursuant to this chapter shall be authorized to work independently and shall not require supervision by any other health care professional; provided, however, that this section shall not be construed to limit the regulatory authority of the director or office of professional regulation.”

The first problem is that those are two self-cancelling sentences. If the section provides (1) that supervision can’t be required, but (2), it doesn’t prevent the Director doing anything, then what exactly happens when the Director tries to adopt a rule requiring, for example, that some high-risk procedure must be supervised by a board-certified expert, or that psychiatric prescribing must involve a psychiatrist or psychologist? At that point, I assume that smoke just starts coming out of the greenback.

To the extent the section does anything at all, it’s apt to make us have to revoke licenses instead of conditioning them or ban particular practices by rule instead of allowing them with appropriate expert consultation, just to avoid litigation or fights before LCAR. This is not a healthy incentive.

For every other profession in Title 26, the absence of a supervision requirement is accomplished by *not having a supervision requirement*. APRNs, PTs, dentists, psychologists, optometrists, engineers, architects, acupuncturists … you name it … all of those Title-26 professionals may practice independently, not because an incoherent section seems to say they can before saying the guy who could impose supervision can still do whatever he wants, but because nothing in law or rule requires supervision. TBH, we’re worried some other professional lobby is going to think this wacky language is the *sine qua non *of practice independence. In reality, practice independence exists presumptively and until a law or duly-adopted rule requires supervision of one thing or another. And when supervision is required, the General Assembly or adopting agency usually has a darn good reason. It is unclear who benefits from the hand-tying; and equally unclear any hands actually are tied. So that’s why § 4131 is on the chopping block.

I hope that explains what’s up. Give me a buzz tomorrow if you have questions. One of the ND advisors misunderstood the legal effect of striking § 4131 and interpreted it to mean the end of independent ND practice. That’s not at all the case.
Thanks,
Gabe