

Report From Agency

**STATE OF WISCONSIN
NATUROPATHIC MEDICINE EXAMINING BOARD**

**IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
NATUROPATHIC MEDICINE : CR 23 - 074
EXAMINING BOARD :
:**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS: N/A

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA is attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

The objective of the proposed rules is to implement the statutory changes from 2021 Wisconsin Act 130, which created the Naturopathic Medicine Examining Board. The act allows for the licensure, discipline, and practice of naturopathic doctors and limited-scope naturopathic doctors. The board is creating all Administrative Code chapters necessary to establish provisions for the practice, licensing, and conduct of naturopathic doctors and limited-scope naturopathic doctors.

V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:

The Naturopathic Medicine Examining Board held a public hearing on February 16, 2024. The following statement was submitted by Dr. Timothy Birdsall:

“In the statute, 466.04 (1) (e) states:

b. For graduates of approved naturopathic medical programs prior to the existence of the Council on Naturopathic Medical Education, a competency-based state naturopathic medicine licensing examination or equivalent Canadian provincial licensing examination for the practice of naturopathic medicine approved by the board.

In the proposed regs, Nat Med 3.04 (1) (a) states:

2. For graduates of approved naturopathic medical programs prior to 1978, a competency-based state naturopathic medicine licensing examination or equivalent Canadian provincial licensing examination for the practice of naturopathic medicine approved by the board.

It is accurate that CNME (the US Department of Education recognized accrediting agency for naturopathic medical schools) was formed in 1978, but to the best of my knowledge, the first NPLEX exam was not administered until 1987. I believe it is possible that the statute and regulations unintentionally confuse the formation date of the CNME, the naturopathic accrediting agency, (1978) with the date of first availability of the NPLEX national licensing examination (1987). Leaving the 1978 date in place in the regulations would effectively disenfranchise graduates of all approved naturopathic medical programs graduating between 1978 and 1987, since the NPLEX exam was not in existence during that time, and the only examinations available were competency-based state naturopathic medicine licensing examinations.

Therefore, my recommendation would be to correct this in the regs as follows:

Nat Med 3.04 (1) (a) (2):

“For graduates of approved naturopathic medical programs prior to ~~1978~~ 1987, a competency-based state naturopathic medicine licensing examination or equivalent Canadian provincial licensing examination for the practice of naturopathic medicine approved by the board.”

The Naturopathic Medicine Examining Board made the following changes prompted by public comments:

- The Board added a provision in s. Nat Med 3.04 (1) (a) 2. that reads: “For graduates of approved naturopathic medical programs prior to the first administration of the NPLEX, a competency-based state naturopathic medicine licensing examination or equivalent Canadian provincial licensing examination for the practice of naturopathic medicine approved by the board.”
- The Board amended the Council on Naturopathic Medical Education provision in s. Nat Med 3.04 (1) 3. to read: “For graduates of approved naturopathic medical programs prior to the creation of the Council on Naturopathic Medical Education, a competency-based state naturopathic medicine licensing examination or equivalent Canadian provincial licensing examination for the practice of naturopathic medicine approved by the board.”

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment: 2.h. In s. Nat Med 5.01, the note should also state that the standard is on file at the office of the agency, in addition to the Legislative Reference Bureau. [s. 1.14 (3) (b), Manual.]

Response: The Board rejects this comment. While the reference to the manual is accurate, the content of the referenced section is outdated due to the changes to s. 227.21 (2) (b), Stats., made by 2021 Wisconsin Act 246, which states: "...each rule containing an incorporation by reference shall state how the material incorporated may be obtained and, except as provided in s. 601.41 (3) (b), Stats., that the standards are on file at the ~~offices of the agency and the~~ legislative reference bureau.

Note: This Section deletes a requirement that an agency maintain, at its offices, a copy of any standards established by technical societies and national organizations that are incorporated into its rules but not reproduced in full."

Comment: 5.a. In the definition of "Modes of treatment" in s. Nat Med 1.02, consider specifying that the relevant "scope of current and acceptable standards of care" relates to naturopathic medicine. As currently drafted and used in the rule, a naturopathic doctor might be required to inform the patient of reasonable alternative modes of treatment outside the scope of naturopathic medicine. See, for comparison, s. Med 18.02 (3) for the reference to "considered by the medical profession".

Response: The Board rejects this comment. It is the intention of the Board that the naturopathic doctor be required to inform the patient of reasonable alternate modes of treatment outside of the scope of naturopathic medicine.

Comment: 5.b. In s. Nat Med 2.01 (1), consider ending the first sentence with "alternate modes of treatment" rather than "treatments" because "modes of treatment" is a defined term. Also, this provision does not require the naturopathic doctor to obtain consent. It only requires informing the patient. Consider requiring the naturopathic doctor to obtain consent and consider what modes are acceptable (e.g., verbal or written).

Response: The Board accepts the first part of this comment and has revised s. Nat Med 2.01 (1) accordingly. The Board rejects the second part of the comment to maintain consistency. Other health related boards contain the same provision without further explanation.

Comment: 5.c. In s. Nat Med 2.01 (3), consider specifying that the informed consent is refused or withdrawn "by the patient". Also, edit the retaliation clause to be in the active voice so that the relevant actor is specified, such as ". . . , a naturopathic doctor may not threaten or carryout any retaliation against the patient".

Response: The Board rejects the first part of this comment. It is the intention of the Board to be general in this provision to cover not only the patient but also any potential guardian or other legally responsible person authorized to make decisions on behalf of the patient. The Board accepts the second part of this comment and has revised s. Nat Med 2.01 (3) accordingly.

Comment: 5.d. In s. Nat Med 2.01 (4), consider specifying how a patient may withdraw informed consent. Also, consider whether this provision, as written, could allow a patient to withdraw informed consent after a treatment and whether that is desirable.

Response: The Board rejects this comment. The provision was drafted intentionally broadly to allow a patient to withdraw consent in any manner that would be obvious to a reasonable practitioner. Additionally, this provision was drafted to be identical to similar provisions in the rules for several other health professions, and the Board believes that consistency is necessary to avoid confusion.

Comment: 5.h. Consider alternative revisions to ss. Nat Med 3.02 (1) and 6.03 (1) (c), in order to more clearly explain the law regarding submission of information relating to pending charges and conviction record. In particular, the statutes cited by the agency delineate different disclosure requirements and legal obligations related to pending charges than those related to conviction record. The rule should be revised to recognize and explain these distinctions. Moreover, the statutes cited by the agency in the proposed rule are, generally, quite complex and it may be more useful to utilize the rulemaking process to add clarity to an applicant's obligations and the limits placed on the agency by statute, rather than merely referring an applicant back to the applicable statutes.

Response: The Board rejects this comment. It is not within this rule project's scope statement to interpret or explain the statutes relating to pending charges and conviction record.

Comment: 5.i. In s. Nat Med 3.02 (2), consider editing the text to be the fee "authorized" instead of "specified", because the statute referenced does not specify a fee.

Response: The Board rejects this comment to maintain consistency. The term "specified" is used consistently in administrative rules promulgated by other boards for the same provision.

Comment: 5.j. In s. Nat Med 3.02 (3) and (5), consider specifying what evidence is satisfactory to the board.

Response: The Board rejects this comment. The term "evidence satisfactory to the board" is understood to mean evidence satisfactory at the Board's discretion and is not normally defined further in the Administrative Code.

Comment: 5.k. In s. Nat Med 3.02 (6), consider specifying that the applicant must submit "evidence of" completion of a required oral examination.

Response: The Board rejects this comment. If an oral examination is completed, the evidence of that examination would be in the possession of the Board, not the individual who was examined.

Comment: 5.l. In s. Nat Med 3.05 (1) (d), (f), and (h), consider specifying the relevant actors who must have found the applicant negligent, who diagnosed the applicant, or who took formal adverse action.

Response: The Board rejects this comment to maintain consistency. Other health related boards contain the same provisions for unprofessional conduct without specifying the relevant actors.

Comment: 5.o. In ss. Nat Med 3.06 (1) (c) and 6.04 (3), consider acknowledging that completing the requirements may not be necessary because the continuing education requirements may not be required for a first renewal.

Response: The Board rejects this comment. By qualifying for the exemption under s. Nat Med 4.02 (2), which states that applicants do not need to complete continuing education requirements in their first renewal after obtaining their initial license those applicants have met the continuing education requirements under Nat Med 4.02.

Comment: 5.s. In s. Nat Med 4.02 (1), consider whether “and related to the practice of naturopathic medicine” is necessary. Would the board approve a continuing education program that is not related to the practice of naturopathic medicine? Consider referring to sub. (2) as an exception to this requirement as well.

Response: The Board rejects the first part of this comment. The Board has approved continuing education offered by the American Medical Association and other groups who may have courses not related to naturopathic medicine. The current rule language provides clarity about the intention of the Board. The Board accepts the second part of the comment and has revised s. Nat Med 4.02 (1) accordingly.

Comment: 5.v. In s. Nat Med 4.04 (2), consider specifying how a license is restored.

Response: The Board rejects this comment to maintain consistency. Other health related boards contain the same provision without further explanation.

Comment: 5.y. In s. Nat Med 5.02 (2) (j), review the duplicate use of “aiding or abetting”, because s. Nat Med 5.02 (intro.) already refers to the same phrase.

Response: The Board rejects this comment to maintain consistency. Other health related boards contain the same provision including the duplicate use of “aiding or abetting.”

Comment: 5.bb. In s. Nat Med 6.03 (1) (b), consider editing it to be the fee “authorized” instead of “specified”, because the statute referenced does not specify a fee.

Response: The Board rejects this comment to maintain consistency. The term “specified” is used consistently in administrative rules promulgated by other boards for the same provision.

Comment: 5.cc. In s. Nat Med 6.03 (1), consider specifying what evidence is satisfactory to the board.

Response: The Board rejects this comment. The term “evidence satisfactory to the board” is understood to mean evidence satisfactory at the Board’s discretion and is not normally defined further in the Administrative Code.

Comment: 5.dd. In s. Nat Med 6.03 (1) (i), consider specifying that the applicant must submit “evidence of” completion of a required oral examination.

Response: The Board rejects this comment. If an oral examination is completed, the evidence of that examination would be in the possession of the board, not the individual who was examined.

All of the remaining recommendations suggested in the Clearinghouse Report have been accepted in whole.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

N/A