

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL HEARING BOARD

[25 PA. CODE CH. 1021]

Practice and Procedure

The Environmental Hearing Board (Board) amends Chapter 1021 (relating to practice and procedure) to read as set forth in Annex A. The amendments to Chapter 1021 modify the rules of practice and procedure before the Board by implementing improvements in practice and procedure.

The Board approved the final regulations at its meeting on October 24, 2023.

Effective Date

This final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

Contact Person

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Statutory Authority

The Board has the authority under section 5(c) of the Environmental Hearing Board Act (act) (35 P.S. § 7515(c)) to adopt regulations pertaining to practice and procedure before the Board. Under section 5(c), regulations “shall be promulgated by the Board upon a majority affirmative vote on the recommended regulations.”

Additionally, with regard to the amendments to §§ 1021.182—1021.184 and 1021.191, dealing with recovery of costs and attorney fees, certain statutes authorize the Board to award attorney fees and costs, including but not limited to section 307(b) of The Clean Streams Law (35 P.S. § 691.307(b)); and 27 Pa.C.S. § 7708 (relating to costs for mining proceedings).

Background and Purpose

The purpose of the amendments is to improve practice and procedure before the Board. The revisions are based on the recommendations of the Environmental Hearing Board Rules Committee (Rules Committee) which is a nine-member advisory committee created under section 5(a) and (c) of the act to make recommendations to the Board on its rules of practice and procedure.

Comments and Revisions to Proposed Rulemaking

The proposed rulemaking was published at 53 Pa.B. 3193 (June 17, 2023), with a 30-day public comment period. Two comments were submitted by the Independent Regulatory Review Commission (IRRC). The comments and the Board’s response were discussed at a public meeting of the Rules Committee held by videoconference on September 14, 2023. In response to the comments received on the proposed rulemaking, the

final rulemaking was prepared. A summary of the comments and Board’s response follows:

§§ 1021.51(f)(1)(iv) and (2)(vi)(C). *Commencement, form and content—Service of a notice of appeal on potentially adversely affected persons*

IRRC noted that paragraphs (1)(iv) and (2)(vi)(C) include a general citation to the Pennsylvania Rules of Civil Procedure that is vague and does not provide clear guidance to an appellant. IRRC asked the Board to clarify these provisions. In response, the Board deletes the proposed reference to “Pennsylvania Rules of Civil Procedure” in paragraphs (1)(iv) and (2)(vi)(C) and replaces it with language allowing service of a notice of appeal “at any office or usual place of business of any potentially adversely affected persons.”

This amendment is necessary because, in some instances, appellants would have difficulty determining what constitutes a person’s “chief place of business” as currently required. The amendment in this final-form rulemaking achieves the ultimate goal of expanding the locations at which service can be made to potentially adversely affected persons.

In striking the proposed language and further amending this final-form rulemaking, the Rules Committee reviewed Pennsylvania Rules of Civil Procedure (Pa.R.C.P.) 402, 403 and 440 (relating to manner of service, acceptance of service; service by Mail; and service of Legal Papers Other than Original Process) and concluded that none of the rules specifically addressed what was contemplated by the proposed amendment to paragraphs (1)(iv) and (2)(vi)(C). For example, Pa.R.C.P. 402 provides for service by hand delivery or the filing of a specific form instead of hand delivery, whereas the Board allows service by mail. Pa.R.C.P. 403 allows service by mail but requires a receipt signed by the defendant or his authorized agent. In contrast, the Board does not require a signature for delivery of a notice of appeal by mail. Nor is the recipient of the notice of appeal a defendant. Finally, Pa.R.C.P. 440 addresses service of legal papers other than original process, whereas § 1021.51(f) (relating to commencement, form and content) addresses service of original process. After a great deal of discussion, the Rules Committee recommended deleting the reference to “Pennsylvania Rules of Civil Procedure” in paragraphs (1)(iv) and (2)(vi)(C) and, instead, allowing service of a notice of appeal “at any office or usual place of business of any potentially adversely affected persons.”

§ 1021.51(j). *Intervention in an appeal*

IRRC asked whether an interested person identified under subsection (h)(4) is required to file a petition to intervene or whether the person may simply file an entry of appearance. In response, the Board amends the language in subsection (j) to make clear how an interested person identified under subsection (h)(4) may intervene. Namely, an interested person under subsection (h)(4) must file a petition to intervene unless the Board specifies otherwise.

IRRC also asked what intervention procedure is typically included in the order referenced in subsection (h)(4). While the Board does not retain specific data on this subject, the Board anticipates that most persons filing a petition under subsection (h)(4) will be allowed to intervene by filing an entry of appearance; however, the Board would like to preserve the right to require a petition to intervene where further information is needed.

Finally, IRRC asked the Board to consider clarifying subsection (j) so that it is consistent with the proposed comment to § 1021.81 (relating to intervention), which provides:

Section 1021.51(j) (relating to commencement, form and content) allows certain potentially adversely affected persons, as that term is defined in § 1021.51(h), to intervene in an appeal as of right by simply filing an entry of appearance.

The Board believes that the final-form language is now consistent with the comment to § 1021.81, because § 1021.51 now allows certain potentially adversely affected persons, as that term is identified in § 1021.51(h), to intervene in an appeal as of right by simply filing an entry of appearance.

Miscellaneous changes and corrections

§ 1021.5(b). *Citations to Board decisions*

The Board makes one stylistic change in § 1021.5(b) (relating to citations to Board decisions) to avoid confusion among practitioners. Specifically, in the example provided by the Board to show the proper citation, the Board replaces the year “2022” with a generalized reference to “(Date and Year).”

This generalized reference is necessary because subsection (b) of the proposed rule sets forth the format for citing to a slip opinion. Prior to publication, the Board’s decisions are available as slip opinions by means of an opinion search on the Board’s web site. The docket number and date of issuance are listed in the caption of each decision and, therefore, this information is easily available to anyone citing the decision.

The Board’s Opinions and Adjudications (decisions) are published in reporters each year, and so the opinions and adjudications for 2022 have since been published. The reporters are available in hard copy and on the Board’s web site.

The Board believes the language set forth previously provides more clarification to practitioners than the use of an actual date and year in the example.

“Fees and Costs” language

Finally, this final-form rulemaking corrects §§ 1021.182—1021.184 and 1021.191 and the undesignated center headings that appear before those sections to replace the phrase “costs and fees” with “fees and costs.” The language was inadvertently changed to “costs and fees” in the proposed rulemaking and is corrected to “fees and costs” in this final-form rulemaking.

Sunset Date

A sunset date has not been established for these regulations. The effectiveness of the regulations will be evaluated on an ongoing basis by the Board and the Rules Committee.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 6, 2023, the Board submitted a copy of the notice of proposed rulemaking, published at 53 Pa.B. 3193, to IRRC and the chairperson of the Environmental Resources and Energy Committees of the Senate and chairperson of the Environmental Resources and Energy Committees of the House of Representatives for review and comment.

Under section 5(c) of the Regulatory Review Act, the Board shall submit to IRRC and the House and Senate committees copies of comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments received from IRRC. No comments on the proposed regulations were received from either of the legislative committees or the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on March 21, 2024, the final-form rulemaking was deemed approved by the House and Senate committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on March 21, 2024, and approved the final-form rulemaking.

Findings of the Board

The Board finds that:

(1) Public notice of the proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law, and the regulations promulgated thereunder, at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law, and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 53 Pa.B. 3193.

(4) These regulations are necessary and appropriate for administration of the act.

Order

(1) The regulations of the Board, 25 Pa. Code Chapter 1021, are amended by amending §§ 1021.2, 1021.51, 1021.61, 1021.63, 1021.81, 1021.92, 1021.94a, 1021.133, 1021.182, 1021.183, 1021.184 and 1021.191 and adding § 1021.5 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(2) The Chairperson of the Board shall submit this final-form rulemaking and Annex A to the Office of Attorney General and Office of General Counsel for review and approval as to legality and form, as required by law.

(3) The Chairperson of the Board shall submit this final-form rulemaking and Annex A to the House and Senate committees, and IRRC, as required by law.

(4) The Chairperson of the Board shall certify this final-form rulemaking and deposit it with the Legislative Reference Bureau as required by law.

(5) This final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

STEVEN C. BECKMAN,
Chief Judge and Chairperson

(*Editor’s Note:* See 54 Pa.B. 1907 (April 6, 2024) for IRRC’s approval.)

Fiscal Note: Fiscal Note 106-14 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION
PART IX. ENVIRONMENTAL HEARING BOARD
CHAPTER 1021. PRACTICE AND PROCEDURE
PRELIMINARY PROVISIONS
GENERAL

§ 1021.2. Definitions.

(a) The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

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Business day—A day that is not a Saturday, Sunday or a legal holiday.

Conventional filing—Presenting documents to the Board by hand, mail or other personal delivery services, for purposes of filing.

Department—The Department of Environmental Protection or other governmental entities whose decisions are appealable to the Board.

Dispositive motion—A motion that seeks to resolve the issues in an appeal without the need for hearing or further hearing. The term includes a motion to quash appeal, a motion to dismiss, a motion for summary judgment, and a motion for partial summary judgment, but not a motion in limine.

* * * * *

Pa.R.C.P.—Pennsylvania Rules of Civil Procedure, 42 Pa.C.S.; 231 Pa. Code.

Party—An appellant, appellee, plaintiff, defendant, permittee or intervenor.

Permittee—The recipient of a permit, license, approval or certification issued by the Department.

* * * * *

Registration statement—A completed application to use the electronic filing provider for electronic filing and electronic service in Board proceedings.

Supersedeas—A suspension of the effect of an action of the Department pending proceedings before the Board.

Third-party appeal—The appeal of an action by a person to whom the action is not directed or issued.

(b) Subsection (a) supplements 1 Pa. Code § 31.3 (relating to definitions) except for “pleading” which supersedes the definition of “pleading” in 1 Pa. Code § 31.3.

§ 1021.5. Citations to Board decisions.

(a) Citations to Board decisions in briefs, legal memoranda and other documents filed with the Board shall contain the names of the parties, and the year and page number of the Environmental Hearing Board Reporter (Opinion and Adjudication volumes) located on the Board’s web site. The citation shall be provided using the following format: Name of Appellant v. DEP, 2021 EHB 43. Pinpoint citations shall be preceded with a comma and a space, in the following format: Name of Appellant v. DEP, 2021 EHB 43, 45.

(b) If the Environmental Hearing Board Reporter has not been published for a particular year, the citation shall be to the slip opinion which can be found on the Board’s web site. The citation shall include the names of the parties, the docket number, the type of decision being issued (that is, Adjudication or Opinion) and the date of issuance, using the following format: Name of Appellant

v. DEP, EHB Docket No. ____ (Opinion and Order on Motion to Dismiss issued (date and year)).

Comment:

Additional citations to legal research databases such as LexisNexis and Westlaw are permissible.

FORMAL PROCEEDINGS
APPEALS

§ 1021.51. Commencement, form and content.

* * * * *

(f) An original notice of appeal shall be filed electronically, conventionally or by facsimile.

(1) Electronic filing.

* * * * *

(iv) The appellant shall, concurrent with or prior to the filing of a notice of appeal, serve a copy on any potentially adversely affected persons as identified in subsection (h)(1)—(3). The service shall be made at the address in the document evidencing the action by the Department or at any office or usual place of business of any potentially adversely affected persons.

* * * * *

(2) Conventional filing.

* * * * *

(vi) The appellant shall, concurrent with or prior to the filing of a notice of appeal, serve a copy on each of the following in the same manner in which the notice of appeal is filed with the Board:

(A) The office of the Department issuing the Departmental action.

(B) The Office of Chief Counsel of the Department.

(C) A potentially adversely affected person as identified in subsection (h)(1)—(3). The service shall be made at the address in the document evidencing the action by the Department or at any office or usual place of business of any potentially adversely affected persons.

* * * * *

(h) For purposes of this section, a “potentially adversely affected person” includes the following:

(1) The recipient of a permit, license, approval, certification or order.

(2) In appeals involving a decision under section 5 or section 7 of the Pennsylvania Sewage Facilities Act (35 P.S. §§ 750.5 or 750.7), any affected municipality, its municipal authority, the proponent of the request, when applicable, and any municipality or municipal authority whose official plan may be affected by the decision or a decision of the Board in the appeal.

(3) A mining company, well operator, or owner or operator of a storage tank in appeals involving a claim of subsidence damage, water loss or contamination.

(4) Other interested persons as ordered by the Board.

(i) The service upon the recipient of a permit, license, approval, certification or order, as required under subsection (h)(1), shall subject the recipient to the jurisdiction of the Board, and the recipient shall be added as a party to the appeal without the necessity of filing a petition for leave to intervene under § 1021.81 (relating to intervention). The recipient of a permit, license, approval, certification or order who is added to an appeal under this section shall still comply with §§ 1021.21 and 1021.22 (relating to representation; and notice of appearance).

(j) Potentially adversely affected persons under subsection (h)(2) or (3) may intervene as of right in the appeal by filing an entry of appearance within 30 days of service of the notice of appeal in accordance with §§ 1021.21 and 1021.22, without the necessity of filing a petition for leave to intervene under § 1021.81. Potentially adversely affected persons under subsection (h)(4) may seek leave to intervene by filing a petition to intervene under § 1021.81, or may intervene as of right by filing an entry of appearance where permitted to do so by order of the Board.

* * * * *

Comment:

If a potentially adversely affected person under subsection (h)(2), (3) or (4) elects not to intervene following service of notice of an appeal or notice by the Board that the person's rights may be affected by an appeal, the person's right to appeal from the Board's adjudication in the matter may be adversely affected. This comment is added in response to the Commonwealth Court's ruling in *DEP v. Schneiderwind*, 867 A.2d 724 (Pa. Cmwlth. 2005).

SUPERSEDEAS

§ 1021.61. General.

* * * * *

(d) At the discretion of the Board, if necessary to ensure prompt disposition, supersedeas hearings may be limited in time and format, with parties given a fixed amount of time to present their entire case, and with restricted rights of discovery, cross-examination or reopening the record in accordance with § 1021.133 (relating to reopening of record prior to adjudication).

* * * * *

§ 1021.63. Circumstances affecting grant or denial.

(a) The Board, in granting or denying a supersedeas, will be guided by relevant judicial precedent and the Board's own precedent. Among the factors to be considered:

- (1) Irreparable harm to the petitioner.
- (2) The likelihood of the petitioner prevailing on the merits.
- (3) The likelihood of injury to the public or other parties in the case.

* * * * *

CONSOLIDATION, INTERVENTION AND SUBSTITUTION OF PARTIES

§ 1021.81. Intervention.

* * * * *

Comment:

Section 1021.51(j) (relating to commencement, form and content) allows certain potentially adversely affected persons, as that term is defined in § 1021.51(h), to intervene in an appeal as of right by simply filing an entry of appearance.

MOTIONS

§ 1021.92. Procedural motions.

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(e) Procedural requests, whether in letter or motion form, shall be accompanied by a proposed order.

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§ 1021.94a. Summary judgment motions.

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(g) *Opposition to motion for summary judgment.* Within 30 days of service of the motion or, if a supporting party files a memorandum of law alone, within 30 days of service of the memorandum of law, a party opposing the motion shall file the following:

(1) A response to the motion for summary judgment which includes a concise statement, not to exceed two pages in length, as to why the motion should not be granted.

(2) A response to the statement of undisputed material facts either admitting or denying or disputing each of the facts in the movant's statement. Any response must include a citation to the portion of the record controverting a material fact. The citation must identify the document and specify the pages and paragraphs or lines thereof or the specific portions of exhibits relied on demonstrating existence of a genuine issue as to the fact disputed. An opposing party may also include in the responding statement additional facts the party contends are material and as to which there exists a genuine issue. Each fact shall be stated in separately numbered paragraphs and contain citations to the motion record. The response to the statement of undisputed material facts may not exceed five pages in length unless leave of the Board is granted.

* * * * *

POSTHEARING PROCEDURES

§ 1021.133. Reopening of record.

(a) After the conclusion of the hearing on the merits of the matter pending before the Board and before the Board issues an adjudication, or after the conclusion of a hearing on a supersedeas and before the Board issues an order granting or denying a supersedeas, the Board, upon its own motion or upon a petition filed by a party, may reopen the record as provided in this section.

* * * * *

ATTORNEY FEES AND COSTS AUTHORIZED BY STATUTE

§ 1021.182. Application for fees and costs.

(a) If statutorily authorized, a party may initiate a request for fees and costs by filing a fee application with the Board. The fee application shall conform to any requirements set forth in the statute under which fees and costs are being sought and shall also conform to any requirements set forth in §§ 1021.181, 1021.183, 1021.184 and 1021.191.

(b) A fee application shall be verified by the applicant, and shall set forth sufficient grounds to justify the award, including the following:

(1) A copy of the order of the Board in the proceedings in which the applicant seeks attorney fees and costs.

(2) A statement of the basis upon which the applicant claims to be entitled to attorney fees and costs, setting forth in numbered paragraphs the facts in support of the fee application and the amount of fees and costs requested. The statement must identify all legal issues upon which the applicant contends it prevailed and the degree to which the relief sought in the appeal was granted. The fee application may not be accompanied by a supporting memorandum of law unless otherwise ordered by the Board.

(3) An affidavit, or affidavits, signed by each of the applicant's lawyers and each consultant or expert witness whose fees and costs the applicant seeks to recover,

setting forth in detail all reasonable fees and costs incurred for or in connection with issues in which the party prevailed.

(4) Where attorney fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area and the experience, reputation and ability of the individual or individuals performing the services.

(5) The name of each party from whom fees and costs are sought.

(c) An applicant shall file a fee application with the Board within 30 days of the date of a final order of the Board. An applicant shall serve a copy of the fee application upon the other parties to the proceeding.

(d) The Board may deny a fee application sua sponte or require an applicant to amend its fee application within a specified time frame if the applicant fails to provide all the information required by this section in sufficient detail to enable the Board to fully evaluate the request for relief.

Comment:

For the purpose of establishing the number of hours an attorney or consultant/expert witness worked under subsection (b)(4), the Board encourages the submission of records that avoid grouping multiple tasks into a single time entry.

§ 1021.183. Response to fee application.

A response to a fee application shall be filed within 30 days of service, unless a longer period of time is ordered by the Board following a fees conference under § 1021.184(c) (relating to disposition of fee application). The factual bases for the response shall be supported by affidavits signed by the parties from whom the fees and costs are sought or others with relevant knowledge. A response to a fee application shall set forth in correspondingly numbered paragraphs all factual disputes and the reason the opposing party objects to the fee application. Material facts set forth in a fee application that are not denied may be deemed admitted for the purposes of deciding the fee application.

§ 1021.184. Disposition of fee application.

(a) [Reserved].

(b) [Reserved].

(c) Within 7 days of the Board's receipt of a fee application, the Board will hold a fees conference with all parties to the appeal to determine the process and deadlines for responses, briefing, discovery and evidentiary hearings, if any. Following the fees conference, the Board will issue a fees conference order establishing case management procedures for these and any other issues that the Board may address.

(d) The applicant has the burden of proving its entitlement to the recovery of fees and costs.

(e) The fee application process will be stayed if one of the parties files an appeal from the Board's final order in the underlying appeal.

**ATTORNEY FEES AND COSTS UNDER
MORE THAN ONE STATUTE**

§ 1021.191. Application for fees and costs under more than one statute.

An applicant seeking to recover fees and costs under more than one statute shall file a single fee application which sets forth, in separate counts, the basis upon which

fees and costs are claimed under each statute. The fee application shall comport with the requirements in § 1021.182 (relating to application for fees and costs).

[Pa.B. Doc. No. 24-721. Filed for public inspection May 17, 2024, 9:00 a.m.]

**Title 49—PROFESSIONAL AND
VOCATIONAL STANDARDS**

STATE BOARD OF MEDICINE

[49 PA. CODE CHS. 16 AND 18]

Registration of Naturopathic Doctors

The State Board of Medicine (Board) amends Chapters 16 and 18 (relating to State Board of Medicine—general provisions; and State Board of Medicine—practitioners other than medical doctors) to read as set forth in Annex A. Specifically, the Board amends §§ 16.1, 16.11—16.13, 18.13a, 18.15, 18.15a, and adds Subchapter M (relating to registration of naturopathic doctors), comprised of §§ 18.901—18.913, to Chapter 18.

Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

The primary statutory authority to regulate the registration of naturopathic doctors is the Naturopathic Doctor Registration Act (NDRA) (63 P.S. §§ 272.101—272.301). Specifically, section 207 of the NDRA (63 P.S. § 272.207) provides that “[t]he board shall enforce and administer the provisions of this act and shall promulgate regulations that are consistent with the intent of this act.” Further, section 203(b) of the NDRA (63 P.S. § 272.203(b)), provides the authority of the Board to require naturopathic doctor registrations to be renewed “. . . in a manner and at such intervals as the board shall determine by regulation. . . .” Sections 202(6) and 203(c) of the NDRA (63 P.S. § 272.202(6)) set forth the authority of the Board to set fees for initial registration and biennial renewal of registration. The Board sets all fees by regulation.

The Board is taking this opportunity to update its regulations and to delete outdated provisions in the Board's existing regulations relating to “drugless therapists” under the authority of section 8 of the Medical Practice Act of 1985 (act) (63 P.S. § 422.8), which provides, in part, that, “[t]he board, in the exercise of its duties under this act, shall have the power to adopt regulations as are reasonably necessary to carry out the purposes of this act.” This authority necessarily includes the power to repeal provisions of the regulations that are no longer necessary.

Background, Need for and Description of Amendments

The Board amends § 16.1 (relating to definitions) to update the definitions of “act” and “Board-regulated practitioner.” The definition of “act” is amended to update the citation to the Medical Practice Act of 1985 (act) (63 P.S. §§ 422.1—422.53). The definition of “Board-regulated practitioner” is amended to delete references to “drugless therapists” and adds several license classifications which are currently missing from the definition. Specifically, the licensure classifications of respiratory therapist, genetic counselor, prosthetist, orthotist, pedorthist, orthotic fitter

and naturopathic doctor are added to the definition of “Board-regulated practitioner” in § 16.1. Persons applying for a registration issued by the Board are also included in the definition of “Board-regulated practitioner.”

Additionally, this final-form rulemaking deletes all regulatory references to “drugless therapists.” The Board last issued a new license to practice as a drugless therapist in 1951 (1 month after the State Board of Chiropractic began operations) and no longer has the authority to issue new drugless therapist licenses. See *Reisinger v. Com., State Bd. of Med. Ed. & Licensure*, 399 A.2d 1160 (Pa. Cmwlth. 1979). *Reisinger* involved an individual trained as a chiropractor and naturopathic doctor who petitioned for licensure as a “drugless therapist,” but was denied because the Board determined that it no longer had the authority to license drugless therapists. On appeal, the Commonwealth Court agreed, holding that although the Board could continue to register and regulate persons engaged in the practice of drugless therapy, “the Board lacks the authority now to license Drugless Therapists.” See *id.*, 399 A.2d at 1163. Since 1951, the Board has continued to biennially register/renew existing drugless therapist licenses and has continued to regulate their practice but has not issued new licenses. No individual currently holds an active license as a drugless therapist from the Board. Therefore, it is no longer necessary to keep any references to drugless therapists in the Board’s regulations. This is especially true now that the Board will be registering individuals as naturopathic doctors under this final-form rulemaking.

As such, the Board also amends § 16.11 (relating to licenses, certificates and registrations) to delete the reference to biennial registration of a drugless therapist license and add the initial registration as a naturopathic doctor and the biennial registration of a naturopathic doctor. Section 16.12 (relating to general qualifications for licenses and certificates) is amended to update its title and to extend its provisions to initial registrations issued by the Board. In addition, the fees associated with biennial renewal of the drugless therapist license are deleted from § 16.13 (relating to licensure, certification, examination and registration fees), and the fees associated with naturopathic doctor registration, including the initial registration fee of \$100 and biennial registration renewal fee of \$50, are added.

Next, the Board amends Chapter 18, Subchapter B (relating to registration and practice of acupuncturists and practitioners of Oriental medicine) to address the perceived overlap between the practice of a registered naturopathic doctor and a licensed acupuncturist or practitioner of Oriental medicine. Specifically, §§ 18.13a and 18.15a (relating to requirements for licensure as a practitioner of Oriental medicine; and scope of practice of acupuncturists and practitioners of Oriental medicine) are amended to point out that these regulations do not limit a registered naturopathic doctor when recommending herbs, minerals and other supplements according to traditions other than Oriental medicine traditions. Section 18.15 (relating to practice responsibilities of acupuncturist and practitioner of Oriental medicine who is not a physician) is significantly amended and reorganized (see the final-form rulemaking published on September 16, 2023 (53 Pa.B. 5759)), necessitating amendments to subsections (a)(10) and (b.1)(3) with regard to identification tags/badges for licensed acupuncturists and practitioners of Oriental medicine who are also registered as naturopathic doctors.

The Board adds Subchapter M to Chapter 18 to implement the provisions of the NDRA. Section 18.901 (relating to purpose) notes that this subchapter implements the registration of naturopathic doctors as required under the NDRA. Section 18.902 (relating to definitions) defines necessary terms used in Subchapter M, including “authorization to practice,” “CNME—Council on Naturopathic Medical Education,” “marketing activity,” “merchandise,” “NABNE—North American Board of Naturopathic Examiners,” “naturopathic doctor,” “naturopathic medicine,” “naturopathic physical medicine,” “naturopathic service,” “natural therapies,” “NDRA,” “NPLEX—Naturopathic Physicians Licensing Examinations” and “regionally accredited or pre-accredited college or university.”

Next, the Board includes the process and requirements to apply for a registration as a naturopathic doctor in § 18.903 (relating to application for naturopathic doctor registration), including the qualifications for registration as a naturopathic doctor as set forth in section 202 of the NDRA. The Board is also including the requirement that an applicant for registration as a naturopathic doctor shall have completed at least 3 hours of approved education/training in child abuse recognition and reporting requirements, as required for all Board-regulated practitioners under 23 Pa.C.S. § 6383(b)(3)(i) (relating to education and training) and in the Board’s regulations in § 16.108(a) (relating to child abuse recognition and reporting—mandatory training requirement).

The Board includes the requirements for the biennial renewal of the naturopathic doctor registration in § 18.904 (relating to biennial registration of naturopathic doctor) as required by section 203(b) of the NDRA. Section 203(b) of the NDRA provides for renewal “. . . in a manner and at such intervals as the board shall determine by regulation. . . .” As such, this final-form rulemaking requires that all registrations of naturopathic doctors will expire on December 31st of each even-numbered year, to correspond with the expiration of existing licenses issued by the Board. The manner of renewing a registration is found in subsection (b), which sets forth the requirements for renewal as informed by the existing practice of the Board. As a condition of biennial renewal, the Board requires the completion of at least 2 hours of approved continuing education in child abuse recognition and reporting, as required under 23 Pa.C.S. § 6383(b)(3)(ii) and the Board’s regulations in § 16.108(b).

Similarly, the Board provides for reactivation of inactive and expired registrations in § 18.905 (relating to inactive status; reactivation of inactive and expired registration). Again, the manner in which expired and inactive registrations are reactivated is informed by the Board’s existing practices and includes payment of applicable fees and the completion of the required continuing education in child abuse recognition and reporting. Section 18.906 (relating to display of registration) simply requires registered naturopathic doctors to prominently display their certificate of registration at the registrant’s regular place of business and have evidence of current registration available for inspection when providing services at other locations.

In § 18.907 (relating to acceptable titles and professional designations by registrants; prohibited titles), the Board clarifies the acceptable titles that may be used by registered naturopathic doctors. Section 201 of the NDRA (63 P.S. § 272.201) provides that “[i]t shall be unlawful for an individual to use the title of “naturopathic doctor” or “doctor of naturopathic medicine” unless that person is

registered as a naturopathic doctor with the board.” Further, § 18.907 makes it clear that a naturopathic doctor who uses the designation “Dr.” shall further identify himself as a “naturopathic doctor,” “registered naturopathic doctor” or “doctor of naturopathic medicine” and may not use a term or a designation that implies that the naturopathic doctor is authorized to practice medicine or other health care profession, unless the naturopathic doctor also holds a current and active authorization to practice the other profession issued by the appropriate licensing authority of this Commonwealth. The Board has chosen not to regulate the terms that may be used by individuals who are not registered naturopathic doctors as beyond the Board’s statutory authority.

Next, the Board addresses informed consent and required disclosures in § 18.908 (relating to informed consent and disclosure of financial interests). In this section, the Board requires that the informed consent include notice that the naturopathic doctor is not a physician. Further, in subsection (b), the Board includes a requirement that a naturopathic doctor inform the patient if the naturopathic doctor will receive any financial incentive for marketing activities, as that term is now defined in this final-form rulemaking.

In § 18.909 (relating to naturopathic records) the Board provides standards for the creation and retention of patient records and authorizes a naturopathic doctor to charge patients no more than the applicable costs for production of health records as annually adjusted by the Secretary of Health and published in the *Pennsylvania Bulletin*. It further prohibits a naturopathic doctor from requiring payment for naturopathic services rendered as a condition of releasing records to a patient or the patient’s designee.

Section 18.910 (relating to advertising) sets forth information that must be included in all advertisements for naturopathic services by registered naturopathic doctors, as well as standards for what may not be included in advertisements. Items that must be included in all advertisements include the name of the naturopathic doctor as registered with the Board and the words “naturopathic doctor” or “doctor of naturopathic medicine.” Prohibitions include misrepresentations and other statements that are likely to mislead or deceive, those that create false or unjustified expectations as to results and those that imply that a manifestly incurable condition can be cured or that guarantee a cure of any condition. The Board is prohibiting statements recommending any modality or service that is inconsistent with the health, safety and welfare of the public. In addition, a registered naturopathic doctor may not include the term “physician” unless also licensed as a physician or physician assistant by the Board or the State Board of Osteopathic Medicine.

Section 18.911 (relating to Code of Ethics) establishes the ethical principles for registered naturopathic doctors in this Commonwealth. These principles were informed by the ethical standards of other health care professions regulated by the Board and the ethical standards for licensed naturopathic doctors in other states and by National organizations such as the American Association of Naturopathic Physicians. These standards include items relating to competence, confidentiality and privacy, informed consent and maintenance of professional boundaries. Specific unethical conduct is prohibited such as making misrepresentations relating to credentials, qualifications or affiliations; engaging in fraudulent, dishonest or deceitful conduct; exploiting the professional relation-

ship including a personal, sexual, romantic or financial relationship; and engaging in sexual misconduct.

Section 18.912 (relating to sexual misconduct) makes clear that sexual misconduct, to include sexual exploitation of a current or former patient or of an immediate family member of a patient, and sexual behavior with a current patient, constitute unprofessional conduct and subjects the registered naturopathic doctor to disciplinary action.

Finally, § 18.913 (relating to grounds for discipline) sets forth the grounds for discipline of a registered naturopathic doctor, including those reasons set forth in section 204 of the NDRA (63 P.S. § 272.204), and additional reasons such as engaging in fraud in obtaining a registration as a naturopathic doctor; false or deceptive advertising; aiding, assisting, employing or advising an unregistered individual to hold themselves out in a manner which states or implies that the individual is a naturopathic doctor; paying or receiving a commission, bonus, kickback or rebate or engaging in a fee splitting arrangement based on patient referrals; promoting the sale of services, drugs, devices, appliances or goods to a patient so as to exploit the patient for financial gain; failing to disclose the contents of substances or merchandise or the nature and description of naturopathic services recommended, provided or offered to a patient; failing to maintain records; and failing to cooperate with a lawful investigation of the Board. Subsection (b) summarizes the panoply of potential disciplinary and corrective actions that the Board may impose for violations as authorized by the NDRA, the act and 63 Pa.C.S. § 3108(b) (relating to civil penalties), including denying an application for registration, administering a public reprimand, imposing probation or other restrictions on a registration, requiring other corrective actions or assessing monetary civil penalties and costs of investigation.

Proposed Rulemaking

Notice of the proposed rulemaking was published at 51 Pa.B. 7877 (December 18, 2021). The Board did not receive any comments from the Consumer Protection and Professional Licensure Committee of the Senate (SCP/PLC) or from the Professional Licensure Committee of the House of Representatives (HPLC). The Independent Regulatory Review Committee (IRRC) reviewed this proposed rulemaking and provided comments and recommendations. The Board received a comment from the Honorable Senator Doug Mastriano as well as comments from multiple stakeholders and members of the public.

Advance Notice of Final Rulemaking

After reviewing the comments to the proposed rulemaking, the Board determined the amendments contemplated as a result of these comments were sufficiently significant to warrant the solicitation of additional comments. Thus, the Board published an “Advance Notice of Final Rulemaking” (ANFR). See 53 Pa.B. 2961 (June 3, 2023). In the ANFR, the Board proposed adding key terms and definitions to the definition section, rectifying ambiguity, providing clarity and replacing non-regulatory language with regulatory language, among other things. As a result of the publication of the ANFR, the Board received comments from the Honorable Senator Jay Costa and the Honorable Senator Doug Mastriano, stakeholders and members of the public.

Summary of Comments to the Proposed Rulemaking and Advance Notice of Final Rulemaking and the Board's Response

General letters of support received in response to proposed rulemaking

The Board received approximately 60 comments from members of the public expressing support for this final-form rulemaking. These comments were received in a form letter generally indicating an anticipated positive impact on public assurance of competency of naturopathic doctors, an increase in the number of practitioners in this Commonwealth and the potential for mainstream recognition of these services, including by insurance companies in the form of plan coverage. In addition, the Board received comments from three patients of naturopathic doctors expressing the importance of their naturopathic doctor's role to their health.

The Board received several individual comments expressing support for the regulations as a whole and indicating the belief that registration of naturopathic doctors will assist with access to business and practice resources and increase opportunities for integrative care and collaboration across the health care community. The Pennsylvania Association of Naturopathic Doctors submitted a comment that included general support for the registration of naturopathic doctors to increase the health care workforce.

The Council on Naturopathic Medical Education (CNME) offered that the registration of naturopathic doctors in this Commonwealth will benefit individuals seeking "integrative/natural healthcare approaches," naturopathic doctors currently practicing in this Commonwealth or those who may wish to relocate from other states, and the overall health and well-being of the citizens of this Commonwealth. The comment further described the function of the CNME in establishing standards for naturopathic doctor training programs and the acceptance of these standards by multiple states. The CNME offers that its standards provide public assurance of the safety and effectiveness of graduates of naturopathic doctor programs.

§ 16.1. Definitions

The American Association of Naturopathic Medical Colleges submitted a comment inquiring into the nature of the practice of a drugless therapist. The Board directs the commentor to the lengthy discussion previously set forth relating to drugless therapists, a licensure category which was eliminated decades ago. As such, the Board determined that another lengthy discussion about an outdated classification of licensee was unnecessary except to note that the "drugless therapist" was eliminated when the State Board of Chiropractic began issuing licenses to practice chiropractic.

§ 18.13a. Requirements for licensure as a practitioner of Oriental medicine

In response to the ANFR, the Board received 46 comments relating to § 18.13a(e) asserting that § 18.13a(e) stands for the proposition that a registration is required for "recommending herbs, minerals and other supplements, or combinations, according to traditions other than Oriental medicine traditions." With this interpretation, the commentors suggest that no individual other than a Board licensee/registrant would be able to recommend herbs, minerals or supplements to another individual in any context. The commentors' misinterpretation appears to be a result of the lack of context for the amendment. Reading § 18.13a in its entirety makes clear

that § 18.13a(e) relates solely to registered naturopathic doctors who are also licensed acupuncturists. There is no explicit or implied restriction on "GNC clerks" or "mothers," as suggested by the commentors, when recommending herbs, minerals and other supplements according to traditions other than Oriental medicine traditions. Thus, the Board did not amend this final-form rulemaking as a result of these comments.

The Board also received a comment to the ANFR from the Association of Accredited Naturopathic Medical Colleges (AANMC) in response to all subsections using the term "Oriental medicine." AANMC asserts the term "Oriental" is inappropriate. The appropriateness of the term "Oriental medicine" was discussed at length in the proposed rulemaking relating to acupuncturists and practitioners of Oriental medicine published at 52 Pa.B. 985 (February 12, 2022). For the reasons set forth in that proposed rulemaking, the Board has not replaced the term used here.

§ 18.15. Practice responsibilities of acupuncturist and practitioner of Oriental medicine who is not a physician

The Board did not receive any comments on the proposed rulemaking relating to this section. The Board did receive 46 form comments to this section in response to the ANFR. The group of commentors assert concerns about § 18.15(b) relating to the titles that may be used by an individual licensed as an acupuncturist. In addition, the Board received a comment from a self-identified naturopathic doctor and licensed acupuncturist, which comment further addresses the usage of the terms "doctor of naturopathy" or "N.D." by acupuncturists, as set forth in § 18.15. The Board received a comment which generally takes issue with the required name tag or badge indicating the title of the licensee.

The Board notes that § 18.15(b) was deleted by the final-form rulemaking published at 53 Pa.B. 5759 (September 16, 2023), and § 18.15 was significantly restructured, necessitating amendments to § 18.15(a)(10), pertaining to acupuncturists, and to § 18.15(b.1)(3), pertaining to practitioners of Oriental medicine. The Board notes that section 201 of the NDRA (63 P.S. § 272.201) makes it unlawful for an individual to use the title of "naturopathic doctor" or "doctor of naturopathic medicine" unless registered by the Board. Therefore, the Board has determined that its statutory authority only extends to the use of those titles. The amendments to § 18.15 merely permit licensed acupuncturists and practitioners of Oriental medicine to incorporate either of these terms on their required identification if they are also registered with the Board as a naturopathic doctor under the NDRA.

§ 18.15a. Scope of practice of acupuncturists and practitioners of Oriental medicine

As indicated by IRRC in its comment to the proposed rulemaking, proposed § 18.15a(d) contained language appearing to reference a scope of practice. In this section, and throughout the rulemaking, the Board eliminates references to the "scope of practice" of a naturopathic doctor where necessary based on the legislative intent of the NDRA to create a registration for individuals that meet the qualifications set forth in the NDRA. The Board notes that the provision in § 18.15a(d) simply provides an exception for individuals registered as naturopathic doctors when recommending herbs, minerals and other supplements.

§ 18.902. Definitions

In a comment to the proposed rulemaking received from IRRC, a list of terms classified as essential to administer and enforce the act and provide the regulated community with a common understanding of key terms was provided. In response to this comment, the Board adds and defines the following key terms in the ANFR: “naturopathic medicine,” “naturopathic physical medicine,” “naturopathic service,” and “natural therapies.” The NDRA authorizes the Board to impose discipline when a naturopathic doctor provides a naturopathic service below the standard of care. Thus, the Board concludes that the NDRA contains the requisite statutory authority for the Board to define several key terms. Thus, as set forth in the ANFR, “naturopathic medicine,” “naturopathic physical medicine,” “naturopathic service,” and “natural therapies” are defined in this final-form rulemaking. In addition, the Board determines the terms “commercial activity” and “purveyor of merchandise or services” could be replaced with the term “marketing activity” and defined, thereby providing clarity that may have been lacking. The Board finds that the remaining terms identified by IRRC (“naturopathic evaluation,” “naturopathy,” “natural substances,” “naturopathic plan of service” and “service regimen”) are either deleted from this final-form rulemaking or are clarified by the added definitions, and therefore do not need to be defined in this final-form rulemaking.

The Board received 46 form comments relating to the terms and definitions added in response to the comments from IRRC and as set forth in the ANFR. Specifically, the commentators opine that, by negative implication, “only board-registered doctors of naturopathic medicine” may perform naturopathic medicine, naturopathic services and naturopathic therapies. This group of commentators suggest that by defining these terms, the Board has devised a scope of practice unauthorized by the NDRA. To the contrary, the Board defines the terms in this final-form rulemaking to provide a regulatory scheme that is administrable and enforceable as to naturopathic doctors registered by the Board. By way of specific example, under section 204(8) of the NDRA, the Board is permitted to discipline a registrant for immoral or unprofessional conduct, which conduct includes “acting outside the scope of a registration.” Without the additional definitions provided in this final-form rulemaking, this provision of the NDRA may be unenforceable because it would fail to place registrants on notice of their obligations and the consequences for failing to meet those obligations. Therefore, the Board declines to delete these additional terms as suggested by the commentators. However, the Board notes that there is no provision in the NDRA that makes it unlawful to provide these types of services without being registered. Indeed, the only prohibition provided for by the NDRA is found in section 201 of the NDRA, which makes it unlawful for an individual to use the title of “naturopathic doctor” or “doctor of naturopathic medicine” unless registered by the Board. It was not the Board’s intention to regulate the activities of unregistered individuals who provide these types of services by negative implication as suggested by the commentators.

The Board received comments from CNME as well as a practicing naturopathic doctor suggesting the definition of CNME in § 18.902 should include language that would include CNME’s existing role of program accreditor. Specifically, the CNME accredits naturopathic doctor programs, which are offered by institutions of higher education which have been accredited by an accrediting body recognized by the United States Department of Educa-

tion. To clarify the role of CNME as a program accreditor, the Board amends the definition of CNME in this final-form rulemaking.

The Board received a comment from a practicing naturopath suggesting the addition of a definition for the key term identified by IRRC, “traditional naturopath.” Given that the term “traditional naturopath” does not appear in this final-form rulemaking as a result of the deletion of § 18.907(b), this is no longer a key term and does not require a definition.

The Board received an additional comment suggesting that the Board specifically permit naturopathic physicians to perform multiple tasks, including medical and nutritional testing and granting prescriptive authority. The comment also suggests, and provides, definitions for natural substances and naturopath, and suggests amendments to the definition of natural therapies. The Board declines to amend or add definitions as suggested, particularly because many of the tasks listed by the commentator fall squarely within the scope of practice of other health care practitioners required to be licensed by other boards within the Bureau of Professional and Occupational Affairs, and would require an act of the General Assembly to provide this authority.

§ 18.903. Application for naturopathic doctor registration

IRRC asked whether, for consistency with the NDRA, should § 18.903(b)(3) read “An applicant who graduated prior to 1986 shall demonstrate a passing score on a state naturopathic licensure examination.” The Board declines to use the term “licensure” examination because not all states that regulate naturopathic doctors use the term “license;” at least one state uses the term “registration.” Therefore, to be inclusive of all state regulatory schemes relating to naturopathic doctors regardless of whether the categorization term is a license, registration or something else, the Board elected to simply refer to a state naturopathic examination.

The Board received a comment on the proposed rulemaking relating to the education requirements for registration as a naturopathic doctor as set forth in § 18.903(b). The Board identified these education requirements to ensure competency of naturopathic doctors and protect the public, which requirements are consistent with the NDRA. The Board is not authorized to modify the statutorily imposed education requirements and declines to do so.

Following publication of the ANFR, the Honorable Senator Jay Costa, the prime sponsor of the NDRA, provided valuable comments relating to the legislative intent of the NDRA. The Honorable Senator Jay Costa stated the requirements for registration as a naturopathic doctor are to provide “safe and regulated access to naturopathic medicine for Pennsylvanians.” To that end, the Honorable Senator Jay Costa succinctly reiterated many of the qualifications for registration as set forth in section 202 of the NDRA: graduate of an accredited college, completion of a Federally recognized postgraduate education, competency-based licensure examinations and completion of advanced clinical training. The regulations mimic these requirements for registration.

A comment was received suggesting the North American Board of Naturopathic Examiners (NABNE) is not the singular examination provider capable of measuring the competency of a prospective naturopathic doctor. Instead, it is asserted by the commentator that the National Board of Naturopathic Examiners is likewise qualified to be an examiner provider. Notably the commentator

does acknowledge the NDRA provides only for the Naturopathic Physicians Licensing Examinations (NPLEX) examination to meet the registration requirements. In opposition, the comment received from NABNE sets forth its perception of the differences between traditional naturopaths and naturopathic doctors, and identification of the states and territories where naturopathic doctors are regulated and the associated identification of either or both the NABNE and NPLEX. As set forth by the Honorable Senator Jay Costa, the requirements for registration as a naturopathic doctor are to provide safe and regulated access to naturopathic medicine. Therefore, the Board declines to add an additional examination provider not contemplated or authorized by the NDRA.

IRRC commented that inconsistency exists between the disciplinary history disclosures on initial applications in § 18.903 and those for registration and renewal and reactivation registration applications in § 18.904(b)(3). Section 18.903 relates to the criteria for registration as a naturopathic doctor and is consistent with other regulatory provisions relating to criteria for a license, certificate, permit or registration. The disclosures required by all applicants for a license, certification or registration are set forth in the Board's regulations in § 16.16 (relating to reporting of disciplinary actions, criminal dispositions and other licenses, certificates or authorizations to practice). These disclosures include "[d]isciplinary action instituted against the applicant by a licensing authority of another state, territory or possession of the United States, another country or a branch of the Federal government." Because § 16.16 applies to applications for registrations as a naturopathic doctor, it would be duplicative and inconsistent to insert this same requirement in § 18.903. However, the Board adds a cross-reference to § 16.16 for the sake of clarity.

The CNME provided a comment which defines the role of CNME in the accreditation process as did two other commentors. The CNME accredits naturopathic doctor programs, which are offered by institutions of higher education which have been accredited by an accrediting body recognized by the United States Department of Education. To clarify the role of CNME as a program accreditator, the Board amends § 18.903(b)(2) in this final-form rulemaking. The Board notes CNME provided information relating to the difference between the training obtained through a CNME-accredited program and other programs teaching some level of naturopathy.

The Board received 18 form comments, a comment from The American Association of Naturopathic Physicians (AANP) and a comment from a practicing naturopathic doctor requesting consistency between the number of continuing education hours in child abuse recognition and reporting required for initial registration and renewal. The commentors suggest 23 Pa.C.S. § 6383(b)(3)(i) (relating to education and training), the statute from which the Board derives its authority to require this continuing education, requires only 2 hours of training at the time of initial application and as such, the language in § 18.903(b)(5) should be modified accordingly. The regulation, as written, reflects the differing requirements for the training hours in child abuse recognition and reporting for individuals seeking initial registration (at least 3 hours) set forth at 23 Pa.C.S. § 6383(b)(3)(i) and registrants seeking renewal or reactivation of a registration (at least 2 hours) set forth at 23 Pa.C.S. § 6383(b)(3)(ii). This language is also consistent with the training requirement and continuing education hours required by the Board for all other Board-regulated practitioners in Chapter 16 at § 16.108 (relating to child abuse recognition and

reporting—mandatory training requirement). To aid clarity, the Board adds a cross-reference to § 16.108.

Finally, AANMC suggests deleting the word "licensure" in the parenthetical found at the end of § 18.903(a). The parenthetical represents the verbatim title of § 16.13. Therefore, the Board declines to make the requested amendment.

§ 18.904. *Biennial registration of naturopathic doctor*

The Board received 18 form comments, a comment from AANP as well as a comment from a naturopathic doctor requesting consistency between the number of continuing education hours in child abuse recognition and reporting required for initial registration and renewal. As previously set forth, the required hours are consistent with 23 Pa.C.S. § 6383 and the requirements for other Board-regulated practitioners. To aid clarity, the Board adds a cross-reference to the mandatory training requirements in § 16.108.

§ 18.905. *Inactive status; reactivation of inactive or expired registration*

The comments to the proposed rulemaking received from IRRC contain several suggestions for amendments to § 18.905. First, IRRC suggests revising § 18.905(a) to provide specificity of the effective date of inactive status. Section 18.905(a), as written, is consistent with the language in §§ 18.310, 18.526, 18.608, 18.707 and 18.863. It should be noted that the Board currently receives requests for inactive status through the online licensing system. Therefore, requests are processed and become effective within 24 hours, with notice thereof sent to the requestor within the same timeframe. Because an amendment would cause inconsistency with the regulations of other allied professions regulated by the Board and because inactive status is an automatic function of the online licensing system, the Board does not find inclusion of a specific date to be necessary.

Also relating to § 18.905(a), IRRC suggests including the title usage prohibition upon registrants with an expired registration. Because § 18.905(a) relates only to inactive status, the Board concludes that introducing expired status would cause confusion to the regulated community. The Board notes that the title usage prohibition for expired licenses is already set forth in § 18.904(a). In addition, § 18.907(a) and (c) require an individual to have a current, active and unsuspended registration to use the title of or hold oneself out as, a naturopathic doctor, registered naturopathic doctor, doctor of naturopathic medicine or any similar title implying that the individual holds a current registration. Thus, the Board did not make a change to § 18.905(a).

IRRC commented that a reactivation fee was not included in the proposed rulemaking, despite inclusion in RAF # 17. The Board will not charge a separate reactivation fee. The only fee that will be charged is the usual renewal fee. Therefore, reference to this fee does not need to be included in § 18.905(b). The RAF has been corrected.

After publication of the ANFR, the Board received 18 form comments, and comments from NABNE, AANP, AANMC and a practicing naturopathic physician relating to the clinical competency requirement. The commentors request that the clinical competency requirement set forth in § 18.905(b) be limited to NPLEX Part II—Core Clinical Science Examination. In response to these comments, and upon the determination of the Board that passage of the NPLEX Part II would provide the assurance of

clinical competency sought by the Board for reactivation, the suggested amendment is made in this final-form rulemaking.

In response to the ANFR, the Board received two comments relating to prohibitions and disclosures while a naturopathic doctor's registration is expired or inactive. Sections 18.904(a) and 18.905(a) prohibit the use of several titles by a naturopathic doctor while expired or on inactive status and § 18.905(b)(2) requires disclosure if one of these titles is used during a period of time registration is inactive or expired. One commentator suggests medical doctors and other healthcare professionals are permitted to use their titles while inactive or in expired status and as such, naturopathic doctors should be no different.

The Board notes that section 201 of the NDRA clearly states that “[i]t shall be unlawful for an individual to use the title of “naturopathic doctor” or “doctor of naturopathic medicine” unless that person is registered as a naturopathic doctor with the board.” In addition, section 206(a)(3) of the NDRA (63 P.S. § 272.206), pertaining to violation of the act, provides the Board the authority to impose a civil penalty on “[a]n individual who holds himself out as a registrant without being properly registered as provided in this act.” Thus, a naturopathic doctor may not use any of the three titles set forth in § 18.905 if their registration is expired or inactive.

The Board directs the commentators to the Medical Practice Act of 1985 (act) (63 P.S. §§ 422.1—422.53), which prohibits medical doctors, as well as other Board-regulated practitioners, from utilizing certain titles without a valid, current license. See, for example, section 13.3(a) of the act (63 P.S. § 422.13c(a)) which makes it “unlawful for any person to hold himself out the public as a perfusionist. . . unless the person holds a valid, current license issued by the board. . .” Further, a medical doctor is defined in section 2 of the act (63 P.S. § 422.2) as “an individual who has acquired one of the following licenses to practice medicine and surgery issued by the board: (1) license without restriction; (2) interim limited license; (3) graduate license. . .” Section 10 of the act (63 P.S. § 422.10) states “no person other than a medical doctor shall engage in any of the following conduct except as authorized or exempted in this act: . . . (3) hold forth as authorized to practice medicine and surgery through use of a title, including, but not necessarily limited to, medical doctor, doctor of medicine, doctor of medicine and surgery, doctor of a designated disease, physician, physician of a designated disease, or any abbreviation of the foregoing.”

However, the Board acknowledges that the language in § 18.905 is somewhat different than the corresponding regulations for other Board-regulated practitioners. This is because the NDRA is not a true “practice” act. For all other professions, the act and regulations prohibit “practicing” or “holding oneself out as authorized to practice” when a license, certificate, permit or registration is expired or inactive. Further, Board-regulated practitioners are required to disclose whether they practiced while their license was expired or inactive. Because the NDRA contains no such prohibition, but rather prohibits the use of certain protected titles as previously noted. Therefore, this final-form rulemaking prohibits the use of these protected titles when a registration is expired or inactive to be consistent. For these reasons, the Board makes no changes to these provisions.

The additional comment received relating to § 18.905 takes issue with the prohibition on usage of terms

implying current registration with the Board unless the individual is currently registered. Similar to other commentators, it is asserted that this subsection should not be used to prohibit the use of the post-nominal “N.D.” by any person, whether registered or not, who has earned this degree. As with other professions containing similar prohibitions, the goal of the Board is the promotion of public safety through discernable methods for the public at large to easily distinguish between individuals who are licensed or registered with the Board, and those who are not. Because the Board finds § 18.905(a) and (d) of this final-form rulemaking to be consistent with the intent of the NDRA, the Board declines to amend the subsections as requested.

§ 18.907. Acceptable titles and professional designations by registrants; prohibited titles

IRRC provided comment to § 18.907 indicating it would await the Board response to comments on this section. In response to all comments received on the proposed rulemaking, the Board initially determined maintaining § 18.907 as written was appropriate and as such, declined to make suggested amendments in the ANFR. Upon review of the comments to the proposed rulemaking as well as comments to the ANFR, the Board determines deletion of § 18.907(b) is consistent with the legislative intent of the NDRA.

Response to Comments to § 18.907(b) as proposed

The Board received a comment from the Honorable Senator Doug Mastriano wherein concern was raised relating to the restriction of the use of the title Doctor of Naturopathy to those who are registered with the Board. The Honorable Senator Doug Mastriano suggests that the restriction will cause financial and professional hardship to established naturopathic doctors and traditional naturopathic doctors, some of whom may have been practicing for decades. The proposed amendment to this section offered by the Honorable Senator Doug Mastriano would allow an individual to use the title “doctor of naturopathy” or “N.D.” so long as the title does not imply that the individual is a naturopathic doctor registered with the Board.

The Board received six additional comments in substantially similar form relating to § 18.907. Through this letter, these individuals set forth opposition to § 18.907(b) and assert that the NDRA does not specifically preclude individuals who identified themselves as a “Naturopathic Doctor” or used the abbreviation “N.D.,” or both, prior to the enactment of the NDRA (“traditional naturopaths”) from maintaining use of those designations. The commentators posit they should be able to retain the use of both the designation “Naturopathic Doctor” and “N.D.” abbreviation without the necessity of registration as required by the NDRA and this regulation.

In support thereof, the Honorable Senator Doug Mastriano and the other commentators refer to the legislative history of the NDRA and the final enactment as standing for the proposition that the General Assembly did not intend for the Board to regulate the use of the abbreviation “N.D.” or “naturopathic doctor.” Additionally, the commentators opine traditional naturopaths will incur expenses to change signage and other forms to comply with § 18.907(b). Further concern was expressed that § 18.907(b) creates uncertainty among traditional naturopaths’ continued use of the degree they earned, “doctor of naturopathy” or “N.D.” Finally, it is asserted that members of the public are confused as to whether they can continue seeing traditional naturopaths. The

commentors' proposed solution to the previous comment is an amendment to § 18.907(b) that would allow a non-registered person to use "doctor of naturopathy or N.D." as long as use thereof does not imply that the individual is a naturopathic doctor registered with the Board.

In response to the foregoing, the Board reiterates several provisions from the NDRA. First, section 102 of the NDRA (63 P.S. § 272.102) defines the term "naturopathic doctor" as "[a]n individual who holds an active registration under this act." Second, section 201 of the NDRA makes unlawful the use of the "title 'naturopathic doctor' or 'doctor of naturopathic medicine' unless that person is registered as a naturopathic doctor with the board." However, in response to the commentors' concerns, the Board determines that deletion of subsection (b), which seeks to regulate individuals who are not registered with the Board, is sufficient to address their concerns and is consistent with the NDRA.

The Pennsylvania Association of Naturopathic Doctors suggests the addition of the post-nominal "N.D." to § 18.907(a) to ensure that use of this designation is limited to individuals who have completed accredited naturopathic doctor programs. The Board received several additional comments from naturopathic doctors who possess the education requirements set forth in the regulations and their desire to restrict usage of the terms "naturopathic doctor" and use of "N.D." to those who have obtained that same education. The Board finds the language of § 18.907 is sufficient and does not necessitate a listing of post-nominals or more specific usage exclusions that are not contained in the NDRA.

Response to Comments to § 18.907(b) received after ANFR publication

In the comment submitted from the Honorable Senator Jay Costa, as it pertains to section § 18.907(b), the Honorable Senator Jay Costa indicates this subsection as written is contrary to the language and legislative intent of the NDRA. In support of the request to delete § 18.907(b), the Honorable Senator Jay Costa states it was not the intent of the General Assembly to "address unregistered lay or traditional providers under the NDRA or, as a consequence, its governing regulations." In keeping with the legislative intent as set forth by the Honorable Senator Jay Costa, § 18.907(b) is deleted in this final-form rulemaking.

The Board also received a comment from the Honorable Senator Doug Mastriano, with the Honorable Representatives Dawn Keefer, David Zimmerman, Wendy Fink, Rob Kauffman, Barbara Gleim and Stephanie Borowicz additional signatories to this letter. The Board thanks the Honorable Senator Doug Mastriano as well as the Honorable Representatives for the in-depth and careful consideration given to the text of the ANFR. The Honorable Senator Doug Mastriano provided a comment relating to use limitation of the terms "Doctor of Naturopathy" and "N.D." As previously set forth, reference to the post-nominal "N.D." is deleted in this final-form rulemaking. The Board likewise deletes § 18.907(b). The Board does not find additional amendments necessary to address the concerns relating to this comment.

The Board received 46 form comments suggesting that § 18.907 is insufficiently specific. As previously set forth fully in response to the comment received from the Honorable Senator Jay Costa, § 18.907(b) is deleted in this final-form rulemaking. By way of further response, the Board asserts the list of titles in § 18.907(a) and the phrase "any similar title implying that the individual

holds a current registration as a naturopathic doctor in this Commonwealth" are sufficiently specific to place individuals on notice that they may be subjected to disciplinary action for title utilization without having first secured registration from the Board.

Additional comments were received regarding the deletion of § 18.907(b). The Board received 18 comments in substantially similar form, a comment from a practicing naturopathic doctor, the CNME, the AANP and a comment from a practicing naturopathic doctor requesting deletion of § 18.907(b). As previously set forth fully in response to the comment received from the Honorable Senator Jay Costa, § 18.907(b) is deleted in this final-form rulemaking.

The Board received a comment from a self-identified traditional naturopath, who opposes any restriction on the use of "N.D." As set forth in the NDRA, it is "unlawful for an individual to use the title 'naturopathic doctor' or 'doctor of naturopathic medicine' unless that person is registered as a naturopathic doctor with the board." As previously set forth in response to the Honorable Senator Jay Costa and many other commentors, § 18.907(b), which addressed traditional naturopaths such as this commentor, is deleted from this final-form rulemaking.

In addition to the foregoing, a self-identified naturopathic doctor comments that public confusion will surface should the regulations specifically provide for indiscriminate title usage by registrants and non-registrants or fail to address title usage at all. The Board finds the NDRA and § 18.907, as it reads with the deletion of subsection (b) as provided herein, are sufficient to address concerns that members of the public will not be able distinguish between a registered naturopathic doctor and any other nonregistered individual practicing naturopathy. The commentor further suggests providing a post-nominal that could be used by an individual who holds a degree as a naturopathic doctor but is not registered with the Board. There are many practitioners regulated by the Board subject to restriction on the usage of any title that would imply the individual is currently licensed by the Board to practice a particular profession. The Board declines to make any changes to this final-form rulemaking specific to naturopathic doctors that would result in inconsistency with other Board-regulated practitioners.

An additional comment was received highlighting the differences between an individual who would qualify for registration as a naturopathic doctor and as traditional naturopaths. The comment also relays a concern that usage of the post-nominal "N.D." by anyone, registered with the Board or not, will blur the distinction between those who have obtained a naturopathic doctor degree after completing a robust postgraduate naturopathic doctor program and those who have engaged in other types of naturopathic education or training. The Board deletes § 18.907(b) in this final-form rulemaking for the multiple reasons set forth herein. The Board believes this will allay, to the extent possible, commentors' concerns that the public will be unable to distinguish a registered naturopathic doctor, who has met the corresponding education and training requirements, from all others practicing as traditional naturopaths.

The Board received a comment from the AANMC relating to this section and post-nominal usage. The AANMC opines that the patients are often unable to distinguish between a naturopathic doctor who meets the education and training requirements in the regulation and a naturopath who does not meet those requirements.

For public safety purposes and to promote the public understanding of the distinction between the two, AANMC suggests title protection within the regulation of the following terms: “naturopath,” “traditional naturopath,” “naturopathic doctor and naturopathic physician,” and the post-nominals “N.D.,” “N.M.D.” and “D.N.M.” The Board deletes § 18.907(b) for the reasons set forth herein. The Board declines to include the requested titles and post-nominals in the regulation.

The AANMC requests the regulation authorize the use of N.D. or N.D. (ret.) by individuals who have earned a naturopathic doctor degree but may not be registered with the Board for various reasons, including retirement and engagement in academia. This appears to contradict the request of AANMC to limit the usage of N.D. to those who are registered with the Board. Nevertheless, the Board similarly finds that § 18.907 provides sufficient notice to the public of when certain title usage is appropriate.

The AANP offered an additional comment relating to § 18.907(c). In its comment, the AANP suggests an amendment that would include the post-nominals for the designations contained in the subsection as published. The Board declines to include the post-nominals as requested.

§ 18.908. Informed consent and disclosure of financial interest

The comments received from IRRC address several facets of § 18.908. The first of the three concerns raised relate to what appears to be a conflict between § 18.908(b), which requires disclosures relating to certain financial incentives, and § 18.911(d)(3) and (8), which appears to categorize the same activity as unethical. The second concern of IRRC related to the lack of a definition for “purveyors of merchandise or services” and “commercial activity.” To cure any inconsistencies, the Board replaces the terms “purveyors of merchandise or services” and “commercial activity” with the term “marketing activity” and provides a definition in § 18.902. The definition of the term “marketing activity” excludes health care providers as service providers. The Board published these amendments in the ANFR along with other added definitions and finds these changes to be sufficient to address the third concern of IRRC relating to duties of a naturopathic doctor.

In response to the ANFR, the Board received a comment regarding §§ 18.908(b) and 18.913(a)(6)); the commentor asserts the former is too broad and the latter too restrictive resulting in a provision that is difficult for the regulated public to follow and the Board to enforce. The commentor further suggests deletion of § 18.913(a)(6), pertaining to the authority to discipline for promoting the sale of services, drugs, devices, appliances or goods to a patient so as to exploit the patient for financial gain, as it is duplicative given the breadth of § 18.908(b). The Board notes that §§ 18.908(b), 18.911(d) and 18.913(a)(5) and (6) address the monetary aspects attendant to the practice of naturopathic medicine. Upon review, the Board determined that § 18.908(b) can be more narrowly tailored to apply only to merchandise, as it appears that §§ 18.911(d) and 18.913(a)(5) and (6) address the other financial-related topics of concern to the Board. As a result of that amendment, the Board declines to delete § 18.913(a)(6) as requested.

An additional comment was received requesting deletion of § 18.908 in its entirety. The Board declines to delete this section. The Board would like to note that

informed consent is also a duty of physicians prior to conducting certain procedures, as set forth in section 504 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. § 1303.504).

In addition, the disclosure of financial interests in § 18.908(b), with the amendments made in response to the ANFR comments received, address commissions, rebates, referral fees or other financial incentives received by the registrant for recommending any merchandise to the patient. Subsection (b) is a means of public protection and is consistent with Federal and State laws governing other healthcare practitioners and healthcare related fields. For example: (1) pharmaceutical manufacturer gift bans of items exceeding a specific dollar amount and other restrictions; (2) Federal anti-kickback laws which make it illegal to knowingly and willfully offer, pay or provide anything of value to induce an individual or entity to recommend or prescribe a product or service reimbursed by the government; (3) the Prescription Drug Marketing Act of 1987 (P.L. 100-293, 102 Stat. 95) prohibits the sale, purchase, or trade of drug samples and for an individual to sell or seek reimbursement for samples; and (4) The Physician Payments Sunshine Act (42 U.S.C. § 1320a-7h), which is designed to increase transparency around financial relationships between physicians, teaching hospitals, and manufacturers of drugs, medical devices and biologics. For all of the reasons set forth herein, the Board does not find it is in the public interest to delete § 18.908.

§ 18.911. Code of Ethics

Five subsections were found by IRRC to contain nonregulatory language lacking clarity and failing to set a binding norm. In response thereto, the Board amended the annex and published in the ANFR clear compliance standards for the regulated community. Section 18.911(f) is amended consistent with these comments, as set forth in the ANFR, to prohibit a naturopathic doctor from using the absence of a specific ethical, legal or professional duty as a defense to a disciplinary action, when the duty is within the standard of care. In addition, the Board amends the language in subsection (c) as suggested. With regard to subsection (d)(3), the Board amends this subsection to replace the term “commercial activity” with the term “marketing activity” and replace reference to the “duties of a naturopathic doctor” with a cross-reference to subsection (c).

In response to the concern relating to the enforceability of these regulations as contemplated by the language of the NDRA, the Board adds subsection (d)(13) which specifically precludes providing or performing a naturopathic service at a level beneath the standard of care.

The Board received a comment to § 18.911 unrelated to the compliance standards as modified by the IRRC comments to the proposed rulemaking. AANMC requested the Board confirm that § 18.911(b) does not contradict the Americans with Disabilities Act of 1990 (ADA) (P.L. 101-336, 104 Stat. 327). The Board complies with Federal laws relating to the ADA while exercising its authority to protect the public. The Board’s concern is not with all disabilities, but only those that impact an individual’s ability to practice naturopathic medicine or provide naturopathic services with reasonable skill and safety to patients and has amended this provision accordingly.

§ 18.913. Grounds for discipline

In response to a comment received from IRRC, the Board amends § 18.913(a)(8) to clarify that a

naturopathic doctor is prohibited from failing to disclose the contents of medicines or merchandise or the nature and description of naturopathic services, replacing the language in this proposed rulemaking relating to “secret method, treatment, product or medicine.” The Board believes the amended language addresses IRRC’s concerns.

IRRC also submitted a comment to subsection (b) pertaining to the Board’s authority in section 204(5)(iv) of the NDRA to impose disciplinary or corrective action when a naturopathic doctor is unable to practice naturopathic medicine with reasonable skill and safety to patients by reason of illness, addiction or other enumerated conditions. Specifically, IRRC noted that “a naturopathic doctor shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume a competent practice of his profession with reasonable skill and safety to patients,” and asked the Board to provide a detailed description of how it will administer this provision in this final-form rulemaking. The Board notes that nearly identical language can be found in section 41(5) of the act for all other Board-regulated practitioners and has been part of the Board’s practice since at least 1985. Generally, a Board-regulated practitioner may petition for relief from a disciplinary order under this provision at any time and is given an opportunity to demonstrate that he or she can resume a competent practice of his or her profession with reasonable skill and safety. Thus, the Board does not dictate what a “reasonable interval” may be and leaves that to the affected individual to determine. The Board is required to follow 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure), the act, the Board’s regulations in Chapter 16 (relating to general provisions) and any other statutory or constitutional authority relating to due process and the property interest a naturopathic doctor may have in a registration when enforcing these provisions. The Board declines to reiterate those standards in this final-form rulemaking.

The Board received a comment in response to the ANFR pertaining to § 18.913(a)(6), in which the commentator asserts that the acts that would constitute patient deception and exploitation are vague. While the Board cannot foresee, and consequently list, every activity that could be considered deceitful or exploitive, the common legal definition of exploitation and understanding of exploitation are sufficient to overcome the purported vagueness. Therefore, the Board declines to make an amendment.

IRRC Comments to RAF

IRRC noted the incorrect dates set forth the RAF at # 29. The Board amends its response to RAF # 29 to reflect the correct timeline.

IRRC also notes the reactivation fee of \$100 set forth in RAF # 17 and the absence of the same fee in the regulation. The Board will not require registrants to pay an additional \$100 reactivation fee. Therefore, reference to this fee is deleted from RAF # 17.

Comments to proposed rulemaking applicable to multiple or unspecified subsections

IRRC mentions inconsistency with usage of the terms “initial registration” and “naturopathic service.” The Board finds the amendments made in response to the prior comments made by IRRC to correct inconsistencies.

The Board received a comment to the proposed rulemaking suggesting the inclusion of the abbreviation “N.D.” in all parts of the regulation where the titles

“naturopathic doctor” and “doctor of naturopathic medicine” appear for the purpose of excluding any individual who does not have a current registration with the Board from using the abbreviation for the title “naturopathic doctor.” In balancing the competing interests identified through the various comments, the Board finds the inclusion throughout the regulation of the phrase “any other term implying that the individual is currently registered as a naturopathic doctor” is sufficiently inclusive and consistent with legislative intent and the plain language of the NDRA.

The Board received a comment to the proposed rulemaking suggesting further clarification on whether naturopathic doctors are providing homeopathic care, medical care or nursing care, and the level of education required. The Board believes that the addition of the definitions requested by IRRC satisfies the request for clarity as to what type of care naturopathic doctors provide. In addition, the act and the Professional Nursing Law (63 P.S. §§ 211—225.5) limit the practice of these professions to those who are properly licensed by the applicable Board. The educational requirements for naturopathic doctors registered with the Board are set forth in the NDRA and § 18.903. In addition, the educational requirements and practice responsibilities of all other health-related professions are set forth in the respective Boards’ practice acts and regulations.

The Board received a comment to the proposed rulemaking expressing concern relating to the implementation of oversight of naturopathic doctors registered with the Board. In response thereto, the Board refers the commentator to §§ 18.911—18.913 and to the Board’s regulations in Chapter 16, Subchapter E (relating to medical disciplinary process and procedures), pertaining to the Board’s disciplinary process and procedures.

Comments to ANFR applicable to multiple or unspecified subsections

The Honorable Senator Doug Mastriano

As previously indicated relative to § 18.907(b), the Board received a comment from the Honorable Senator Doug Mastriano. The Honorable Representatives Dawn Keefer, David Zimmerman, Wendy Fink, Rob Kauffman, Barbara Gleim and Stephanie Borowicz were also signatories to this letter. The Board recognizes that the pool of naturopathic doctors who may qualify for registration as a naturopathic doctor does not encompass all current practitioners of naturopathy. This final-form rulemaking reflects a regulatory scheme the Board finds is consistent with the legislative intent of the NDRA.

The Board received a comment requesting the Board authorize prescriptive authority for naturopathic doctors. Authorization for prescriptive authority must be derived from a specific act of the General Assembly. Because this authority does not exist, the Board has not and will not consider prescriptive authority for registered naturopathic doctors.

The American Naturopathic Association (ANA) provided comments which highlight the difference between the class of professionals who meet the registration requirements of the NDRA and all others who identify as traditional naturopaths and suggests both should be permitted to register as naturopathic doctors. The ANA posits that these regulations would “severely limit the practice of many in the State of Pennsylvania.” However, the ANA fails to provide specific details as to how these regulations limit that practice. Thus, the Board is unable to respond directly to this comment. The ANA concludes

that a separate regulatory scheme is needed to encompass the practice of the traditional naturopathy. The Board appreciates the comments and brief, yet comprehensive, historical narrative of the “schism between naturopaths.” However, the creation of a new type of license, registration, permit or certification for traditional naturopaths is a function of the General Assembly. Therefore, the Board is unable to act upon the suggestions of the ANA.

Description of Amendments to the Final-form Rulemaking

The Board amends § 18.13a(e) to delete implicit reference to the scope of practice of a naturopathic doctor by replacing the phrase “the practice of a naturopathic doctor” with “a registered naturopathic doctor.”

The Board amends § 18.15 to delete the proposed amendment to subsection (b), which was deleted in a previous rulemaking of the Board. Because that rulemaking restructured § 18.15, it was necessary to amend subsections (a) and (b.1) to provide that an individual licensed as an acupuncturist or as a practitioner of Oriental medicine who also possesses a current and active registration as a naturopathic doctor may utilize the title “doctor of naturopathic medicine” or “naturopathic doctor” notwithstanding the general prohibition on the use of the word “doctor” on their identification tag or badge.

The Board amends § 18.15a(d) to delete implicit reference to the scope of practice of a naturopathic doctor by replacing the phrase “the practice of a naturopathic doctor” with “a registered naturopathic doctor.”

The Board amends § 18.902 to revise the definition of “CNME” to correspond to the information provided by CNME as to programmatic accreditation. The Board adds definitions for the following terms: “marketing activity,” “naturopathic medicine,” “naturopathic physical medicine,” “naturopathic service” and “natural therapies.” Finally, the Board deletes “natural substances” from the definition of “merchandise” because it is overbroad, and the remaining list is sufficient.

The Board amends § 18.903(a) to include a cross reference to § 16.16 for clarity. Section 18.903(b) is amended to simply refer to a registration as a naturopathic doctor and (b)(2) to read “holds a doctoral degree from an institutionally accredited or pre-accredited college or university offering a naturopathic doctor program which has been granted programmatic candidacy or accreditation by the CNME. . .” instead of “holds a doctoral degree from a naturopathic school accredited by the CNME. . .” based on the comment submitted by CNME. Finally, § 18.903(b)(5) is amended to include a cross reference to the mandatory training requirement in child abuse recognition and reporting in § 16.108(a) as a condition of initial registration to aid clarity.

The Board amends § 18.904(a) to add “registered naturopathic doctor” to the list of titles prohibited from use when registration is expired to be consistent with § 18.907. Additionally, the Board amends § 18.904(b)(5) to add a cross reference to the mandatory continuing education in child abuse recognition and reporting in § 16.108(b) as a condition of biennial renewal to aid clarity.

The Board amends § 18.905(a) and (b)(2) to add “registered naturopathic doctor” to the list of titles prohibited from use when registration is on inactive status. Section 18.905(b)(6) is also amended to add a cross reference to the mandatory continuing education in child abuse recognition and reporting in § 16.108(b) as a condition of reactivation of an expired or inactive registration. The Board amends § 18.905(c) to specify the examination

required to demonstrate competency is the “NPLEX Part II—Core Clinical Science Examination.”

The Board amends § 18.907 to change the title from “[a]cceptable titles and professional designations by registrants and nonregistrants; prohibited titles” to “[a]cceptable titles and professional designations by registrants; prohibited titles.” The Board further amends § 18.907 to delete proposed subsection (b) which sought to instruct nonregistrants as to what titles they could utilize.

The Board amends § 18.908(b) to replace “referral of a patient to purveyors of merchandise or services or for recommending any merchandise to a patient” to “any marketing activity relating to merchandise.”

The Board amends § 18.910(b)(9) to replace the undefined term “natural substances” with the defined term “merchandise” and to utilize the defined term “naturopathic service.”

The Board amends § 18.911(a) to clarify that the Board is concerned about impairments that impact a naturopathic doctor’s ability to practice naturopathic medicine or to provide naturopathic services. Subsection (c) is amended to delete “nonregulatory” language, to use the defined term “naturopathic services” throughout and to provide needed clarity.

The Board amends § 18.911(d) as follows: subsection (d)(3) is amended to read “engage in a marketing activity which conflicts with subsection (c)” instead of “engage in a commercial activity which conflicts with the duties of a naturopathic doctor;” subsection (d)(9) is amended to delete the phrase “a particular course of care” and add the phrase “particular naturopathic service;” subsection (d)(13) is added which reads “provide or perform a naturopathic service at a level beneath the accepted standard of care for a naturopathic doctor which would be normally exercised by the average professional of the same kind in this Commonwealth under the circumstances, including locality and whether the naturopathic doctor is or purports to be a specialist in the area;” and to use the defined term “naturopathic service” throughout.

The Board amends § 18.911(e) to read “A naturopathic doctor may not perform or provide a naturopathic service that the naturopathic doctor is not qualified to perform, or which is beyond the naturopathic doctor’s education and training.

The Board amends § 18.911(f) to replace the entire subsection with the following language: “A naturopathic doctor may not assert as a defense to a disciplinary action under 204 of the NDRA (63 P.S. § 272.204) or § 18.913, the absence of a specific ethical, legal or professional duty in this subsection when such duty is normally exercised by the average professional of the same kind in this Commonwealth under the circumstances, including locality and whether the naturopathic doctor is or purports to be a specialist in the area.

The Board amends § 18.913(a)(8) to replace “offering, undertaking or agreeing to cure or treat a disease by a secret method, treatment, product or medicine” with “failing to disclose the contents of merchandise or the nature and description of services recommended, provided or offered to a patient.”

Fiscal Impact and Paperwork Requirements

The only fiscal impacts of this final-form rulemaking are the fees imposed upon naturopathic doctors for initial registration (\$100) or biennial renewal (\$50). Naturopathic doctors applying for initial registration, biennial renewal of registration or reactivation of an inactive or

expired registration will be required to submit online applications and submit required documentation to the Board.

Sunset Date

The Board continuously monitors the effectiveness of its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on November 30, 2021, the Board submitted a copy of the proposed rulemaking, published at 51 Pa.B. 7877 (December 18, 2021) and a copy of a Regulatory Analysis form to IRRC and to the chairpersons of the SCP/PLC and the HPLC. A copy of this material is available to the public upon request.

Under section 5(c) of the Regulatory Review Act, the Board provided IRRC, SCP/PLC and HPLC with copies of the comments received, as well as other documents when requested. In preparing the final-form regulation, the Board considered the comments from IRRC, the legislative comments and the public comments. The Board received no comments from the HPLC or SCP/PLC.

Under section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)), on January 18, 2024, the Board delivered this final-form rulemaking to IRRC, the HPLC and the SCP/PLC. Under section 5.1 (j.2) of the Regulatory Review Act, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC on March 20, 2024. Under section 5.1(e) of the Regulatory Review Act, IRRC met on March 21, 2024, and approved the final-form rulemaking.

Additional Information

Additional information may be obtained by writing to Saiyad Ali, Acting Board Administrator, State Board of Medicine, P.O. Box 2649, Harrisburg, PA 17105-2649, ST-MEDICINE@PA.GOV.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law, and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law and all comments received were considered in drafting this final-form rulemaking.

(3) The amendments to this final-form rulemaking do not enlarge the original purpose of the proposed rulemaking published at 51 Pa.B. 7877.

(4) This final-form rulemaking is necessary and appropriate for the administration of the NDRA.

Order

The Board, therefore, orders that:

(a) The regulations of the Board, at 49 Pa. Code Chapters 16 and 18, are amended by amending §§ 16.1, 16.11—16.13, 18.13a, 18.15, 18.15a and adding §§ 18.901—18.913, as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Board shall submit this final-form regulation to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall submit this final-form regulation to IRRC, the SCP/PLC and the HPLC as required by law.

(d) The Board shall certify this final-form regulation and deposit it with the Legislative Reference Bureau as required by law.

(e) This final-form regulation shall take effect upon notice or publication in the *Pennsylvania Bulletin*.

MARK B. WOODLAND, MS, MD,
Chairperson

(Editor’s Note: See 54 Pa.B. 1907 (April 6, 2024) for IRRC’s approval.)

Fiscal Note: Fiscal Note 16A-4953 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 16. STATE BOARD OF MEDICINE—GENERAL PROVISIONS

Subchapter A. BASIC DEFINITIONS AND INFORMATION

§ 16.1. Definitions.

The following words and terms, when used in this chapter and Chapters 17 and 18 (relating to State Board of Medicine—medical doctors; and State Board of Medicine—practitioners other than medical doctors), have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Act—The Medical Practice Act of 1985 (63 P.S. §§ 422.1—422.53).

Approved activity—A continuing medical education activity accepted for AMA PRA credit.

Board—The State Board of Medicine.

Board-regulated practitioner—A medical doctor, midwife, physician assistant, respiratory therapist, athletic trainer, acupuncturist, practitioner of Oriental medicine, genetic counselor, behavior specialist, perfusionist, prosthetist, orthotist, pedorthist, orthotic fitter, naturopathic doctor or an applicant for a license, registration or certificate that the Board may issue.

* * * * *

Subchapter B. GENERAL LICENSE, CERTIFICATION AND REGISTRATION PROVISIONS

§ 16.11. Licenses, certificates and registrations.

* * * * *

(c) The following registrations are issued by the Board:

(1) Registration as a supervising physician of a physician assistant.

(1.1) Initial registration as a naturopathic doctor.

(2) Biennial registration of a license without restriction.

(3) Biennial registration of an extraterritorial license.

(4) Biennial registration of a midwife license.

(5) Biennial registration of a physician assistant license.

(6) [Reserved].

(7) Biennial registration of a limited license-permanent.

* * * * *

(18) Biennial registration of an orthotic fitter license.

(19) Biennial registration of a naturopathic doctor registration.

§ 16.12. General qualifications for licenses, registrations and certificates.

To qualify for an initial license, registration or certificate issued by the Board, an applicant shall establish that the following criteria are satisfied:

* * * * *

§ 16.13. Licensure, certification, examination and registration fees.

* * * * *

(d) Acupuncturist licenses:

(1) Acupuncturist:

Application.....	\$30
Biennial renewal	\$40

(2) Practitioner of Oriental medicine license:

Application.....	\$30
Biennial renewal	\$40

(e) [Reserved].

* * * * *

(q) Orthotic fitters:

Application for orthotic fitter license	\$25
Biennial renewal of orthotic fitter license	\$75
Application for reactivation of orthotic fitter license	\$25
Application for orthotic fitter temporary permit ...	\$25

(r) Naturopathic doctor registration:

Application for initial registration	\$100
Biennial renewal	\$50

CHAPTER 18. STATE BOARD OF MEDICINE—PRACTITIONERS OTHER THAN MEDICAL DOCTORS

Subchapter B. REGISTRATION AND PRACTICE OF ACUPUNCTURISTS AND PRACTITIONERS OF ORIENTAL MEDICINE

§ 18.13a. Requirements for licensure as a practitioner of Oriental medicine.

* * * * *

(d) This section does not apply to a medical doctor licensed as an acupuncturist nor does it restrict the practice of medicine by a medical doctor.

(e) This section does not limit a registered naturopathic doctor who is also licensed as an acupuncturist when recommending herbs, minerals and other supplements, or combinations, according to traditions other than Oriental medicine traditions.

§ 18.15. Practice responsibilities of acupuncturist and practitioner of Oriental medicine who is not a physician; practice responsibilities of an acupuncturist who is licensed as a medical doctor.

(a) Responsibilities to patient and public—acupuncturist who is not a physician. An acupuncturist who is not a physician:

* * * * *

(10) Shall wear a tag or badge with lettering clearly visible to the patient bearing the acupuncturist's name and the title "acupuncturist." The use of the words, doctor, physician or any title or abbreviation implying licensure as a physician on this tag or badge is prohibited, provided, however, that an individual licensed as an acupuncturist who also possesses a current and active registration as a naturopathic doctor may utilize the title "doctor of naturopathic medicine" or "naturopathic doctor" in addition to the title "acupuncturist."

(b) [Reserved].

(b.1) Additional responsibilities to patient and public—practitioner of Oriental medicine who is not a physician. In addition to the responsibilities in subsection (a)(1)—(9), a licensed practitioner of Oriental medicine who provides, or contemplates providing, herbal therapy:

* * * * *

(3) Shall wear a tag or badge with lettering clearly visible to the patient bearing the licensee's name, as well as the title "practitioner of Oriental medicine." The use of the words doctor, physician or any title or abbreviation implying licensure as a physician on this tag or badge is prohibited, provided, however, that an individual licensed as a practitioner of Oriental medicine who also possesses a current and active registration as a naturopathic doctor may utilize the title "doctor of naturopathic medicine" or "naturopathic doctor" in addition to the title "practitioner of Oriental medicine."

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§ 18.15a. Scope of practice of acupuncturists and practitioners of Oriental medicine.

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(c) This section does not limit the scope of practice of a medical doctor who is registered as an acupuncturist.

(d) This section does not limit a registered naturopathic doctor when recommending herbs, minerals and other supplements, or combinations, according to traditions other than Oriental medicine traditions.

Subchapter M. REGISTRATION OF NATUROPATHIC DOCTORS

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§ 18.901. Purpose.

This subchapter implements the NDRA pertaining to the registration of naturopathic doctors.

§ 18.902. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Authorization to practice—A license, registration, certificate, permit, authorization or approval issued by a state or Federal agency which authorizes the holder to advertise, engage in, or both advertise and engage in the practice of a profession or occupation.

*CNME—Council on Naturopathic Medical Education—*The accrediting body which grants candidacy and accreditation to programs of naturopathic medicine for the education of naturopathic doctors.

*Marketing activity—*A communication about a service or merchandise that encourages recipients of the communication to purchase or use the merchandise or service. For purposes of this chapter, the term does not include a service from or referral to another health care practitioner.

*Merchandise—*Items that can be sold including vitamins, supplements, food, food extracts, homeopathic remedies, botanical medicines and herbs.

*NABNE—North American Board of Naturopathic Examiners—*The organization which administers the NPLEX.

*NDRA—*The Naturopathic Doctor Registration Act (63 P.S. §§ 272.101—272.301).

*NPLEX—Naturopathic Physicians Licensing Examinations—*The licensing examination accepted by the Board as a prerequisite to registration, consisting of Part I—Biomedical Science Examination and Part II—Core Clinical Science Examination, or its successor recognized by the Board.

*Natural therapies—*Treatment of an individual through the use of substances in which the active ingredient is derived from plant, mineral or fungal sources, or any substance found in nature, and which may also contain common pharmaceutical excipients, and nonprescription drugs as defined by the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. §§ 301—399g).

*Naturopathic doctor—*An individual who holds an active registration issued by the Board under the NDRA.

*Naturopathic medicine—*Naturopathic physical medicine, natural therapies, naturopathic counseling or a combination thereof, to support and stimulate the individual's self-healing processes.

*Naturopathic physical medicine—*The use of the physical agents of air, water, heat, cold, sound and light, and the physical modalities of electrotherapy, biofeedback, diathermy, ultraviolet light, ultrasound, hydrotherapy and exercise, including naturopathic manipulation and mobilization therapy.

*Naturopathic service—*Providing or performing naturopathic physical medicine, natural therapies, naturopathic counseling or a combination thereof, to support and stimulate an individual's self-healing processes.

*Regionally accredited or pre-accredited college or university—*A college or university which is accredited or pre-accredited by one of the following:

- (1) Accrediting Commission of Career Schools and Colleges.
- (2) Accrediting Council for Continuing Education and Training.
- (3) Accrediting Council for Independent Colleges and Schools.
- (4) Council on Occupational Education.
- (5) Distance Education Accrediting Commission.
- (6) Higher Learning Commission.
- (7) Middle States Commission on Higher Education.
- (8) Middle States Commission on Secondary Schools.
- (9) New England Commission of Higher Education.

(10) New York State Board of Regents and the Commissioner of Education.

(11) Northwest Commission on Colleges and Universities.

(12) Southern Association of Colleges and Schools, Commission on Colleges.

(13) Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges.

(14) Western Association of Schools and Colleges, Senior Colleges and University Commission.

(15) Other regional or National accrediting agency which has been recognized by the United States Department of Education as being a reliable authority concerning the quality of education or training offered by the institutions of higher education or higher education programs they accredit.

§ 18.903. Application for naturopathic doctor registration.

(a) An applicant for a registration to practice naturopathic medicine shall submit, on an application made available by the Board, a completed application for a registration, including the necessary supporting documents, including information required by § 16.16 (relating to reporting of disciplinary actions, criminal dispositions and other licenses, certificates or authorizations to practice) and pay the application fee in § 16.13 (relating to licensure, certification, examination and registration fees).

(b) Except as otherwise provided by law, the Board will issue a registration as a naturopathic doctor to an applicant who meets all of the following requirements:

(1) Holds a bachelor's degree from a regionally accredited or pre-accredited college or university or the equivalent.

(2) Holds a doctoral degree from an institutionally accredited or pre-accredited college or university offering a naturopathic doctor program which has been granted programmatic candidacy or accreditation by the CNME which consists of at least 4,100 total credit hours in basic and clinical sciences and naturopathic philosophy and modalities, including at least 2,500 hours of academic instruction and at least 1,200 hours of supervised clinical training. Proof of the degree shall be sent directly from the applicant's education program and include an official transcript.

(3) Has passed Parts I and II of a competency-based National naturopathic licensing examination administered by the NABNE or a successor agency. An applicant who graduated prior to 1986 shall demonstrate a passing score on a state naturopathic examination.

(4) Holds a current basic cardio-pulmonary resuscitation (CPR) certificate issued by the American Heart Association, American Red Cross or a similar health authority or professional body approved by the Board.

(5) Has completed at least 3 hours of approved education/training in child abuse recognition and reporting requirements as set forth in 23 Pa.C.S. § 6383(b)(3)(i) (relating to education and training) and in § 16.108(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(6) Is of good moral character.

(c) The Board may deny an application for registration as a naturopathic doctor upon any of the grounds for

disciplinary action in § 18.913 (relating to grounds for discipline).

§ 18.904. Biennial registration of naturopathic doctor.

(a) The registration of a naturopathic doctor will expire biennially on December 31 of each even-numbered year in accordance with § 16.15 (relating to biennial registration; inactive status and unregistered status). A naturopathic doctor may not use the title of “naturopathic doctor,” “doctor of naturopathic medicine,” “registered naturopathic doctor” or any other term implying that the individual is currently registered as a naturopathic doctor unless the individual holds a current and unexpired registration.

(b) As a condition of biennial renewal, a naturopathic doctor shall:

(1) Submit a completed application, including payment of the biennial registration fee in § 16.13 (relating to licensure, certification, examination and registration fees).

(2) Disclose on the application any authorization to practice as a naturopathic doctor in another state, district, territory, possession or country.

(3) Disclose on the application disciplinary action pending before, or taken by, the appropriate licensing, registration or certification authority in another jurisdiction since the most recent application for biennial registration, whether or not authorized to practice or advertise in that other jurisdiction.

(4) Affirm that the applicant holds a current basic cardio-pulmonary resuscitation (CPR) certificate issued by the American Heart Association, American Red Cross or a similar health authority or professional body approved by the Board.

(5) Certify that the applicant has completed at least 2 hours of approved continuing education in child abuse recognition and reporting as set forth in 23 Pa.C.S. § 6383(b)(3)(ii) (relating to education and training) and in § 16.108(b) (relating to child abuse recognition and reporting—mandatory training requirement).

§ 18.905. Inactive status; reactivation of inactive or expired registration.

(a) A naturopathic doctor may request in writing that the Board place the registration on inactive status. Confirmation of inactive status will be forwarded to the registrant. A naturopathic doctor may not use the title of “naturopathic doctor,” “doctor of naturopathic medicine,” “registered naturopathic doctor” or any other term implying that the individual is currently registered as a naturopathic doctor while on inactive status.

(b) To reactivate an inactive or expired registration, the registrant shall apply for reactivation by completing an application for reactivation on a form made available by the Board. The registrant shall:

(1) Pay the current biennial registration fee specified in § 16.13 (relating to licensure, certification, examination and registration fees) and any applicable late fees required under section 225 of the Bureau of Professional and Occupational Affairs Fee Act (63 P.S. § 1401-225).

(2) Disclose whether the registrant used the title of “naturopathic doctor,” “doctor of naturopathic medicine,” “registered naturopathic doctor” or any other term implying that the individual was currently registered as a naturopathic doctor in the Commonwealth while the registration was inactive or expired.

(3) Disclose on the application any authorization to practice as a naturopathic doctor in another state, district, territory, possession or country.

(4) Disclose on the application disciplinary action pending before or taken by the appropriate licensing, registration, or certification authority in another jurisdiction since the most recent application for biennial registration, whether or not authorized to practice or advertise in that other jurisdiction.

(5) Submit evidence the registrant holds a current basic cardio-pulmonary resuscitation (CPR) certificate issued by the American Heart Association, American Red Cross or a similar health authority or professional body approved by the Board.

(6) Verify completion of at least 2 hours of approved continuing education in child abuse recognition and reporting in the 2 years immediately preceding the application for reactivation as set forth in 23 Pa.C.S. § 6383(b)(3)(ii) (relating to education and training) and in § 16.108(b) (relating to child abuse recognition and reporting—mandatory training requirement).

(c) A registrant who has not had clinical contact with patients for 4 years or more shall demonstrate current competency and qualification to hold forth as a naturopathic doctor by demonstrating a passing score on the NPLEX Part II—Core Clinical Science Examination, completed within 12 months of the application to reactivate the registration.

(d) Payment of applicable late fees required under section 225 of the Bureau of Professional and Occupational Affairs Fee Act does not preclude the Board from taking disciplinary action for utilizing the title of “naturopathic doctor,” “doctor of naturopathic medicine,” “registered naturopathic doctor” or any other term implying that the individual was currently registered as a naturopathic doctor while holding an inactive or expired registration.

§ 18.906. Display of registration.

A naturopathic doctor registrant shall prominently display the certificate of registration and evidence of biennial renewal in a publicly accessible location at the registrant’s regular place of business. The registrant shall have evidence of current registration available for inspection by authorized agents of the Board and by persons receiving services when the naturopathic doctor provides services at locations other than the registrant’s regular place of business.

§ 18.907. Acceptable titles and professional designations by registrants; prohibited titles.

(a) An individual must have a current, active and unsuspended registration to claim to be, or hold oneself out as, a naturopathic doctor, registered naturopathic doctor, doctor of naturopathic medicine or use any similar title implying that the individual holds a current registration as a naturopathic doctor in this Commonwealth.

(b) A naturopathic doctor who uses the designation “Dr.” shall further identify himself as a “naturopathic doctor,” “registered naturopathic doctor” or “doctor of naturopathic medicine” and may not use any term or designation that would imply that the naturopathic doctor is licensed or authorized to practice medicine and surgery, dentistry, podiatry, optometry, psychology, nursing, physical therapy, acupuncture, chiropractic, genetic counseling, athletic training, massage therapy or any other health care profession, unless that individual also holds a current and active authorization to practice the

other profession issued by the appropriate licensing authority of this Commonwealth.

§ 18.908. Informed consent and disclosure of financial interests.

(a) A naturopathic doctor shall obtain written informed consent from the patient prior to providing naturopathic services to the patient. The informed consent shall include notification to the patient that the naturopathic doctor is not a physician. This subsection shall not apply to registrants who are also currently and actively licensed to practice as a physician in this Commonwealth.

(b) A naturopathic doctor shall disclose to patients and prospective patients if the naturopathic doctor receives any commission, rebate, referral fee or similar financial incentive in connection with any marketing activity relating to merchandise.

§ 18.909. Naturopathic records.

(a) A naturopathic doctor shall maintain patient records that accurately describe the patient's concerns, evidence the naturopathic doctor's plan of service and implementation of service and document the patient's response to any services provided.

(b) All patient records for minors and adults shall be retained for a minimum period of 7 years from the date of the service for which a naturopathic record entry is required. Patient records for minor patients shall also be retained until 1 year after the minor patient reaches majority, even if this means that the naturopathic doctor retains the record for a period of more than 7 years.

(c) Upon written request, a naturopathic doctor shall make true, correct and legible copies of the written records of service available to the patient or the person or persons designated by the patient.

(d) Payment for naturopathic services rendered may not be required as a condition to making the written records of service available to the patient or the patient's designee. A naturopathic doctor may require pre-payment of the costs to copy and produce the naturopathic records. The maximum applicable copying and reproduction costs for naturopathic service records shall be the same as those costs applicable to production of health records as annually adjusted by the Secretary of the Department of Health and published in the *Pennsylvania Bulletin*.

§ 18.910. Advertising.

(a) An advertisement by a naturopathic doctor shall contain both of the following:

(1) The name of the naturopathic doctor as registered with the Board.

(2) The words "naturopathic doctor," "doctor of naturopathic medicine," or "registered naturopathic doctor."

(b) Advertisements by a naturopathic doctor may not contain any of the following:

(1) The word "physician" unless the naturopathic doctor is also currently and actively licensed as a physician or physician assistant in this Commonwealth.

(2) Words or phrases indicating or implying that the naturopathic doctor is "board certified" or "board eligible" unless the certification body is also disclosed.

(3) Statements containing misrepresentations of facts.

(4) Statements that cannot be verified by the Board for truthfulness.

(5) Statements likely to mislead or deceive because of their context or because the statements make only a partial disclosure of relevant facts.

(6) Statements intended to, or likely to, create false or unjustified expectations of favorable results.

(7) Statements containing representations or implications that can reasonably be expected to cause an ordinary prudent person to misunderstand or be deceived.

(8) Statements that are untruthful and improbable or contain misstatements, falsehoods, misrepresentations, distorted or fabulous statements as to cures.

(9) Statements that misrepresent the nature, characteristics or qualities of merchandise or naturopathic services provided by a naturopathic doctor.

(10) Statements that a manifestly incurable condition can be cured or that guarantee a cure of any condition.

(11) Statements promoting herbal, natural or dietary supplements as drugs.

(12) Statements recommending any modality of service that is inconsistent with the health, safety and welfare of the public.

§ 18.911. Code of Ethics.

(a) Naturopathic doctors shall concern themselves primarily with the welfare of the patient.

(b) A naturopathic doctor who suffers from a physical, mental or emotional impairment, including substance abuse, that impacts the individual's ability to practice naturopathic medicine or to provide naturopathic services with reasonable skill and safety to patients shall seek professional treatment and refrain from the practice of naturopathic medicine until the impairment no longer exists or reasonable accommodations can be made.

(c) A naturopathic doctor shall:

(1) Respect and maintain the privacy and confidentiality of the patient.

(2) Disclose the patient's records or information about the patient only with the patient's consent or as required by law.

(3) Safeguard patient protected health information, including storage and disposal of records.

(4) Provide sufficient information to a patient to allow the patient to make an informed decision regarding care, including:

(i) The purpose and nature of a naturopathic evaluation or naturopathic service regimen.

(ii) Alternatives to naturopathic care.

(iii) Side effects and benefits of a proposed naturopathic service regimen.

(iv) The estimated cost of naturopathic services.

(v) The right of the patient to withdraw from naturopathic services.

(5) Maintain professional boundaries, even when the patient initiates crossing the boundaries of the professional relationship.

(6) Decline to administer a naturopathic service if the naturopathic doctor believes that the service is contraindicated or unjustified.

(7) Make referrals only to registered naturopathic doctors or other qualified and duly licensed health care providers.

(8) Inform the patient, other health care professionals and the public of the limitations of naturopathic medicine.

(9) Assess the patient to determine if contraindications against naturopathic service exist and refer the patient to an appropriate health care practitioner.

(10) At all times respect the patient's dignity, autonomy and privacy.

(11) Cooperate with any lawful investigation conducted by the Board, including:

(i) Furnishing information requested as directed by the Board.

(ii) Complying with a subpoena.

(iii) Responding to a complaint at the request of the Board.

(iv) Providing access to relevant patient records.

(12) Report to the Board misconduct committed by a naturopathic doctor in the practice of naturopathic medicine or in the provision of naturopathic services.

(d) A naturopathic doctor may not:

(1) Misrepresent credentials, qualifications or affiliations, and shall attempt to correct others who misrepresent the naturopathic doctor's credentials, qualifications or affiliations.

(2) Knowingly engage in or condone behavior that is fraudulent, dishonest or deceitful.

(3) Engage in a marketing activity which conflicts with subsection (c).

(4) Perform naturopathic medicine on or provide a naturopathic service to a patient if a contraindication against naturopathic service exists.

(5) Intimidate, threaten, influence or attempt to influence any person regarding any violation of law or regulation.

(6) Aid or abet any individual violating or attempting to violate any provision of law or regulation.

(7) Accept a patient for a naturopathic service, or continue unnecessary service, when the patient cannot be reasonably expected to benefit from the service.

(8) Receive remuneration from, or provide remuneration to, or split a fee, for either making or accepting a referral of the patient to or from another health care provider.

(9) Make a guarantee or promise about the efficacy of the naturopathic doctor's practice, particular naturopathic service or the anticipated results of care.

(10) Exploit the professional relationship by either of the following:

(i) Continuing naturopathic service unnecessarily.

(ii) Charging for a naturopathic service not provided or different from what was actually provided.

(11) Exploit a relationship with a patient, staff member or student for the naturopathic doctor's personal advantage including, but not limited to, a personal, sexual, romantic or financial relationship.

(12) Engage in sexual misconduct.

(13) Provide or perform a naturopathic service at a level beneath the accepted standard of care for a naturopathic doctor which would be normally exercised by the average professional of the same kind in this com-

monwealth under the circumstances, including locality and whether the naturopathic doctor is or purports to be a specialist in the area.

(e) A naturopathic doctor may not perform or provide naturopathic service that the naturopathic doctor is not qualified to perform, or which is beyond the naturopathic doctor's education and training.

(f) A naturopathic doctor may not assert as a defense to a disciplinary action under section 204 of the NDRA (63 P.S. § 272.204) or § 18.913 (relating to grounds for discipline), the absence of a specific ethical, legal or professional duty in this subsection when the duty is normally exercised by the average professional of the same kind in this Commonwealth under the circumstances, including locality and whether the naturopathic doctor is or purports to be a specialist in the area.

§ 18.912. Sexual misconduct.

(a) Sexual exploitation by a naturopathic doctor of a current or former patient, or of an immediate family member of a patient, constitutes unprofessional conduct, is prohibited and subjects the naturopathic doctor to disciplinary action under section 204(8) of the NDRA (63 P.S. § 272.204(8)).

(b) Sexual behavior that occurs with a current patient, other than the naturopathic doctor's spouse, constitutes unprofessional conduct, is prohibited and subjects the practitioner to disciplinary action under section 204(8) of the NDRA.

(c) When a naturopathic doctor was involved with the management or directly provided naturopathic services to a patient other than the naturopathic doctor's spouse for a mental health disorder, any sexual behavior with that patient which occurs prior to the 2-year anniversary of the termination of the professional relationship constitutes unprofessional conduct, is prohibited and subjects the naturopathic doctor to disciplinary action under section 204(8) of the NDRA.

(d) A practitioner who engages in conduct prohibited by this section will not be eligible for placement into an impaired professional program in lieu of disciplinary or corrective actions.

(e) Consent is not a defense to conduct prohibited by this section.

§ 18.913. Grounds for discipline.

(a) The Board shall have the authority to impose disciplinary or corrective measures on a naturopathic doctor or applicant for registration as a naturopathic doctor for the reasons set forth in section 204 of the NDRA (63 P.S. § 272.204) and any of the following:

(1) Fraudulently or deceptively obtaining, or attempting to obtain, or using a registration or assisting another in fraudulently or deceptively obtaining or using a registration.

(2) Using false, deceptive or misleading advertising.

(3) Advertising, practicing or attempting to practice under a name other than the naturopathic doctor's name as registered with the Board; provided, however, that a naturopathic doctor may advertise utilizing a business name if the advertisement also includes the naturopathic doctor's name as registered by the Board.

(4) Aiding, assisting, employing or advising any unregistered individual to hold himself out in a manner which states or implies the unregistered individual is a naturopathic doctor.

(5) Paying or receiving any commission, bonus, kick-back or rebate, or engaging in any split-fee arrangement in any form with a licensed physician, organization, agency or other person, either directly or indirectly, for patients referred to other health care providers.

(6) Promoting the sale of services, drugs, devices, appliances or goods to a patient so as to exploit the patient for financial gain.

(7) Failing to keep written records justifying the course of service of a patient.

(8) Failing to disclose the contents of merchandise or the nature and description of naturopathic services recommended, provided or offered to a patient.

(9) Failing to cooperate with a lawful investigation of the Board.

(b) When the Board is empowered to take disciplinary or corrective action under the provisions of the NDRA, the Board's regulations or other statutory or regulatory authority, the Board may impose one or more of the following disciplinary or corrective actions as set forth in section 206 of the NDRA (63 P.S. § 272.206), section 42 of the act (63 P.S. § 422.42) and 63 Pa.C.S. § 3108 (relating to civil penalties):

(1) Deny the application for registration.

(2) Administer a public reprimand with or without probation.

(3) Revoke, suspend, limit or otherwise restrict a registration.

(4) Require the registrant to submit to the care, counseling or treatment of a physician or a psychologist designated by the Board.

(5) Require the registrant to take refresher educational courses or demonstrate passage of the NPLEX examination, or both.

(6) Stay enforcement of any suspension and place the registrant on probation with the right to vacate the probationary order for noncompliance.

(7) Impose a civil penalty of up to \$1,000 in accordance with the NDRA.

(8) Impose a civil penalty of up to \$10,000 in accordance with 63 Pa.C.S. § 3108(b); provided, however, that the Board will not impose a civil penalty under the NDRA and also impose a civil penalty under 63 Pa.C.S. § 3108(b) for the same violation, as prohibited by 63 Pa.C.S. § 3108(c)(2).

(9) Impose the costs of investigation underlying the disciplinary action.

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