STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

A PERFORMANCE AUDIT
OF THE

NATUROPATHIC BOARD OF EXAMINERS

SEPTEMBER 1981

A REPORT TO THE
ARIZONA STATE LEGISLATURE

REPORT 81-8

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AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

September 16, 1981

Members of the Arizona Legislature
The Honorable Bruce Babbitt, Governor
Dr. Milburn C. Shelton, President
Naturopathic Board of Examiners

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Naturopathic Board of Examiners. This report is in response to a January 30, 1980, resolution of the Joint Legislative Oversight Committee. The performance audit was conducted as a part of the Sunset review set forth in A.R.S. §§41-2351 through 41-2379.

The blue pages present a summary of the report; a response from the Naturopathic Board of Examiners is found on the yellow pages preceding the appendices.

My staff and I will be pleased to discuss or clarify items in the report.

Respectfully submitted,

Douglas R. Norton

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Auditor General

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Enclosure

OFFICE OF THE AUDITOR GENERAL

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SUMMARY

The Office of the Auditor General has conducted a performance audit of the Naturopathic Board of Examiners in response to a January 30, 1980, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as a part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The Naturopathic Board of Examiners was created in 1935. The four members of the Board are appointed by the Governor to three-year terms. Three of the Board members must be licensed naturopathic physicians and the remaining member must be a lay member.

The activities of the Board and its administrative office are funded through fees charged for application, examination and license renewal, ten percent of which is deposited in the State General Fund.

Past and present members of the Naturopathic Board of Examiners have reviewed the qualifications of license applicants under an interpretation of statutory requirements that apparently differs from actual requirements for licensure. Our review of the Board's handling of the licensure process revealed that the Board granted licenses to individuals who may not qualify under the statutes to practice naturopathy in Arizona. Our review revealed that these individuals apparently did not comply with one or more of the following statutory requirements:

1. A.R.S. §32-1523, which requires that applicants for licensure achieve a score of 75 percent or more in specified subjects on a licensure examination,

2. A.R.S. §32-1522, which requires that applicants submit evidence to show that they have successfully completed required hours of course work in specified subjects, and

3. A.R.S. §32-1521.C, which requires that applicants submit affidavits signed by residents of the State of Arizona attesting to their good moral character.

As a result, 136 of the 139 currently licensed naturopathic physicians may not be properly licensed. We were unable to determine whether the Board's actions could cause a liability to the State if an improperly licensed individual were to become involved in a malpractice case. We recommend that the Legislature allow the Naturopathic Board of Examiners to terminate under the provisions or A.R.S. §§41-2351 through 41-2379 and, if it deems the continued licensing of naturopathic physicians desirable, institute a new Board effective July 1, 1982. Such an action could mitigate legal liability of the State as a result of the Board's actions. (page 7)

Our review also found that while the scope of naturopathic practice in Arizona approximates that in the five other states which license and regulate the practice of naturopathy, its definition is inconsistent and unclear. We recommend that the Legislature review the scope of naturopathic practice as currently defined, review the prohibitions on the use of drugs and surgery and consider adding specific statutory language to clarify definitions and/or remove inconsistencies with respect to specific areas of practice. (page 25)

Finally, our review found that the Naturopathic Board of Examiners is not resolving complaints in a timely manner. As a result, the Board may not be fulfilling its responsibility to protect the public. We recommend that the Board resolve complaints in a timely manner. If the Board deems that additional funds are required to respond to complaints in a timely manner, it should appeal to the Legislature for these resources. (page 33)

INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the Naturopathic Board of Examiners in response to a January 30, 1980, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as a part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

Naturopathy has been defined as "the science and art of diagnosing and treating and preventing disease and the promotion and preservation of health, as taught in naturopathic medical schools." Naturopathic procedures include: heat, cold, light, water, ultrasound, electricity, manipulation, massage, hypnotherapy, biofeedback, vitamins, minerals, enzymes, glandular extracts and hormones, botanical medicines, acupuncture, reflexology* and homeopathy.** In addition, in three states naturopathic physicians are permitted to use pharmaceuticals and perform minor surgery.

The Naturopathic Board of Examiners was created in 1935. The stated goals and objectives of the Board are to:

> "Regulate the practice of Naturopathy by: administering examinations to individuals requesting a certificate of licensure, issuing licenses to applicants meeting the qualifications standard, renewing licenses of present practitioners and revoking or suspending licenses previously issued when the licensee fails to comply with such standards; and promulgating rules and regulations consistent with their statutes."

---

* The study and interpretation of behavior in terms of simple and complex reflexes.

** A system of medical practice that treats a disease by the administration of minute doses of a remedy that would in healthy persons produce symptoms of the disease treated.

The four members of the Board are appointed by the Governor to three-year terms. Three of the Board members must be licensed naturopathic physicians, and the remaining member must be a lay member.

The Board has no full-time support staff. Support functions are handled by the Arizona State Boards Administrative Office (ASBAO), which was created in 1976. ASBAO serves as the support staff for the Board and ten other State boards or commissions, providing secretarial and clerical services for each tenant board or commission.

The Board is funded through fees charged for examination and licensure. Ninety percent of the fees collected are deposited in the Naturopathic Board fund. The remaining ten percent is deposited in the State General Fund. Table 1 illustrates the expenditures of the Board for fiscal years 1977-78 through 1980-81 and the appropriation for fiscal year 1981-82.

TABLE 1

SUMMARY OF BOARD EXPENDITURES FOR FISCAL YEARS 1977-78 THROUGH 1980-81 AND THE APPROPRIATION FOR FISCAL YEAR 1981-82

	1977-78	1978-79	1979-80	1980-81	Appropriation 1981-82
Personal services	$2,340	$1,600	$3,000	$3,100	
Employee-related	6				
Professional and outside services	1,800	2,100	3,100	5,200	
Travel - in-State				400	
Other operating expenses	445	300	500	800	
Totals	$4,591	$4,000	$6,600	$9,500	$12,600*

The Auditor General expresses gratitude to the members of the Naturopathic Board of Examiners and to the staff of ASBAO for their cooperation, assistance and consideration during the course of this audit.

* For fiscal year 1981-82, the Board received a lump sum appropriation of $12,600.

SUNSET FACTORS

SUNSET FACTOR: OBJECTIVE AND PURPOSE IN ESTABLISHING THE BOARD

The Naturopathic Board of Examiners was created in 1935. Its purpose is to protect the health and well being of the public by regulating the practice of naturopathic physicians.

The Board views the reason for its creation as follows:

> "The object and purpose of establishing the Board is first and foremost the protection of the public welfare in matters relating to health and disease and the establishment of the board arose due to the need to provide the public with quality naturopathic medical care by establishing professional standards and requirements to ensure an effective, intelligent delivery of this medical care system."

SUNSET FACTOR: THE DEGREE TO WHICH THE BOARD HAS BEEN ABLE TO RESPOND TO THE NEEDS OF THE PUBLIC AND THE EFFICIENCY WITH WHICH IT HAS OPERATED

Past and present Board members have reviewed the qualifications of license applicants under an interpretation of statutory requirements that apparently differs from actual requirements for licensure. As a result, 136 of the 139 currently licensed naturopathic physicians may not be properly licensed. (page 7)

SUNSET FACTOR: THE EXTENT TO WHICH THE BOARD HAS ENCOURAGED INPUT FROM THE PUBLIC BEFORE PROMULGATING ITS RULES AND REGULATIONS AND THE EXTENT TO WHICH IT HAS INFORMED THE PUBLIC AS TO ITS ACTIONS AND THEIR EXPECTED IMPACT ON THE PUBLIC

Meetings of the Board are open to the public. Notices of meetings are posted in the Occupational Licensing Building and are circulated to interested parties through direct mailings. The Board has heard statements from public organizations and individuals and has made an effort to incorporate such public input into its procedures.

The Board has held public hearings on proposed rule changes. The general public has had the opportunity to speak at these hearings, and the records indicate that individuals and groups have done so.

SUNSET FACTOR: THE EXTENT TO WHICH THE BOARD HAS BEEN ABLE TO INVESTIGATE AND RESOLVE COMPLAINTS THAT ARE WITHIN ITS JURISDICTION

The Board receives a limited number of complaints. During the period January 1, 1980, to June 30, 1981, the Board received six complaints. As of June 30, 1981, three had been resolved and closed and three still were under investigation.

During 1978 through June 30, 1981, the Board dismissed or delayed action on two complaints, citing a lack of funding. Our review, however, indicates the Board did have sufficient funds to investigate these complaints. (page 33)

SUNSET FACTOR: THE EXTENT TO WHICH THE BOARD HAS OPERATED WITHIN THE PUBLIC INTEREST

The Board may not have operated within the public interest in that it has reviewed applicants for licensure under an interpretation of statutory requirements that apparently differs from actual requirements. (page 7)

SUNSET FACTOR: THE EXTENT TO WHICH RULES AND REGULATIONS PROMULGATED BY THE BOARD ARE CONSISTENT WITH LEGISLATIVE MANDATE

Administrative rules and regulations promulgated by the Board must be reviewed for consistency and legality and approved by the Attorney General prior to their implementation.

SUNSET FACTOR: THE EXTENT TO WHICH THE ATTORNEY GENERAL OR ANY OTHER APPLICABLE AGENCY OF STATE GOVERNMENT HAS THE AUTHORITY TO PROSECUTE ACTIONS UNDER THE ENABLING LEGISLATION

A.R.S. §32-1556 states, in part:

> "The county attorney of each county or the attorney general shall prosecute all persons charged with violating this chapter, but the board may retain its own attorney or investigators or request legal assistance from the attorney general to aid in prosecuting such a violator."

SUNSET FACTOR: THE EXTENT TO WHICH THE BOARD HAS ADDRESSED DEFICIENCIES IN ITS ENABLING STATUTES WHICH PREVENT IT FROM FULFILLING ITS STATUTORY MANDATE

The Board proposed new legislation during the 1979, 1980 and 1981 legislative sessions. Most recently, the Board proposed legislation which would have removed statutory provisions specifying the number of study hours applicants must complete in specific subjects to qualify for licensure.

SUNSET FACTOR: THE EXTENT TO WHICH CHANGES ARE NECESSARY IN THE LAWS OF THE BOARD TO ADEQUATELY COMPLY WITH THE FACTORS LISTED IN THIS SUBSECTION

Statutory changes are needed for clarification and consistency regarding the scope of practice for naturopathy. (page 25)

FINDING I

PAST AND PRESENT MEMBERS OF THE NATUROPATHIC BOARD OF EXAMINERS HAVE REVIEWED THE QUALIFICATIONS OF LICENSE APPLICANTS UNDER AN INTERPRETATION OF STATUTORY REQUIREMENTS THAT APPARENTLY DIFFERS FROM ACTUAL REQUIREMENTS FOR LICENSURE. AS A RESULT, 136 OF THE 139 CURRENTLY LICENSED NATUROPATHIC PHYSICIANS MAY NOT BE PROPERLY LICENSED.

A.R.S. §32-1505 gives the Naturopathic Board of Examiners authority to issue licenses to practice naturopathy in the State of Arizona. A.R.S. §§32-1521 through 32-1525 specify the requirements for licensure. In order to qualify for a license to practice naturopathy in Arizona, an applicant must:

1. File an application,

2. Submit an application fee of $50,

3. Submit documentation which proves that the applicant meets the educational requirements specified in A.R.S. §32-1522,

4. Submit two affidavits signed by State residents attesting to the applicant's moral character, and

5. Successfully complete an examination with a score of 75 percent or better.

If an individual is licensed to practice naturopathy in another state, he may apply for licensure through reciprocity, provided the other state's requirements for licensure are not less than those in this State.

Our review of the Board's handling of the licensure process revealed that the Board may have granted licenses to as many as 136 individuals who may not qualify under the statutes to practice naturopathy in Arizona. Our review revealed that these individuals apparently did not comply with one or more of the following statutory requirements:

1. Examination (A.R.S. §32-1523),

2. Educational qualifications (A.R.S. §32-1522), and

3. Filing of affidavits (A.R.S. §32-1521.C).

Additionally, the Board's granting of reciprocity to licensees of Oregon's naturopathic board of examiners may violate the provisions of A.R.S. §32-1524.

Finally, because as many as 136 of the 139 currently licensed naturopathic physicians may not be qualified to practice naturopathy in Arizona, the State could be liable for substandard care provided by an improperly licensed practitioner.

Examination

A.R.S. §32-1523 states:

> "A. For the purpose of determining the qualifications of applicants for license under the provisions of this chapter, the board shall hold meetings and conduct examinations of applicants for licenses at times and places and under rules and regulations the board determines. The time and place of holding the examination shall be published at least thirty days prior to the date of the examination.
>
> "B. The examination shall be in writing and shall embrace the subjects set forth in §32-1522 and other subjects required by the board. If the applicant answers seventy-five percent of the questions asked on each of the subjects of the examination correctly, a license to practice naturopathy shall be issued to the applicant.
>
> "C. If an applicant fails to pass the examination he shall, within one year after his failure to pass, without losing credit for subjects passed and without paying another fee, be permitted to take another examination at the convenience of the board. An applicant for reexamination shall, not less than fifteen days before the date of the examination, notify the board of his intention to take the examination." (Emphasis added)

Our review of the licensure files of the 139 currently licensed naturopathic physicians revealed that 16 of them were licensed through reciprocity with other states and 123 were licensed through the examination process. In attempting to review the examinations administered by the Board to the 123 persons licensed through examination, we discovered that the Board: 1) had not retained the examinations administered to 98 currently licensed naturopathic physicians before 1976, and 2) had not retained or misplaced several examination sections administered to one currently licensed naturopathic physician after 1975. As a result, our review of examinations was restricted to those administered between December 1975 and June 30, 1981, to 24 currently licensed naturopathic physicians. This review revealed that: 1) the Board's written examination may not comply with the provisions of A.R.S. §32-1523.B, and 2) the Board has granted licenses to 22 of the 24 applicants despite the fact that they did not pass the examination as required by A.R.S. §32-1523.B.

The Board's Examination May Not Comply with A.R.S. §32-1523.B

A.R.S. §32-1523.B states, in part:

> "The examination shall be in writing and shall embrace the subjects set forth in §32-1522 and other subjects required by the board."

A.R.S. §32-1522 lists 19 specific subject areas and permits the Board to include such other subjects as it deems appropriate.

In an opinion dated June 29, 1981, the Legislative Council stated:*

> "The Board is required to cover the subjects listed in A.R.S. § 32-1522 on the licensing examination. The Board may also require subjects other than those listed to be on the exam. If the Legislature had intended the Board to have discretionary authority to exclude some of the subject areas listed in A.R.S. §32-1522 it would have so provided rather than mandating that the Board include the subjects listed and any other subjects the Board may require on the licensing exam."

* Appendix I contains the memorandum text.

Our review of the Board's licensure examination revealed that it has not tested applicants in all subjects listed in A.R.S. §32-1522. Table 2 lists the subject areas specified in A.R.S. §32-1522 and illustrates which subjects were offered as parts of the licensure examination.

TABLE 2

SUBJECT AREAS OFFERED AS PARTS OF
THE LICENSURE EXAMINATION
DECEMBER 1976 TO JUNE 30, 1981

Subject Area Specified In A.R.S. §32-1522	Dec. 1976	May 1977	Nov. 1977	April 1978	Nov. 1978	April 1979	May 1980*
Anatomy					X	X	X
Histology and embryology							
Physiology					X	X	X
Chemistry					X	X	X
Bacteriology					X		
Pathology	X	X	X	X	X	X	X
Diagnosis	X	X	X	X	X	X	X
Orthopedics	X	X	X	X	X	X	X
Manipulative and adjustive technic	X	X	X	X	X	X	
Dietetics							
Drugless gynecology**	X	X	X	X	X	X	X
Nonsurgical obstetrics**	X	X	X	X	X	X	X
Toxicology	X	X	X	X	X	X	
First aid	X	X	X	X		X	X
Ear, nose and throat						X	X
Hygiene and sanitation				X			
Jurisprudence							
Drugless therapeutics	X	X	X	X	X	X	X
Clinical practice							

* No complete examination was offered in November 1979. Therefore, it was eliminated from this summary.

** Obstetrics and gynecology were offered as one subject of examination. This may violate the provisions of A.R.S. §32-1523.B.

As shown in Table 2, the Board did not offer an examination from December 1976 through May 1980 that specifically covered every subject stipulated in A.R.S. §32-1522.

According to Board members, questions from several subject areas may be incorporated into one examination part. For example, the 19 subjects specified in A.R.S. §32-1522 could be incorporated into eight examination parts. However, such a practice may result in the only coverage of a specific subject being two or three questions in an examination part containing 50 questions or more. Not only is it questionable as to whether two or three questions on a subject constitutes adequate examination, but A.R.S. §32-1523.B states that an applicant must answer 75 percent of the questions on each subject correctly. In order for the Board to determine that an applicant has answered 75 percent of the questions on each subject correctly, it would be necessary to analyze every question of every part; that apparently has not been done.

Table 2 illustrates the problem in that obstetrics and gynecology were offered as one section. Theoretically, an applicant could score 100 percent in obstetrics but only 50 percent in gynecology and still pass the examination part with a combined score of 75 percent, despite the fact that the gynecology score was lower than the statutorily required score of 75 percent for each subject.

Individuals Have Been Licensed by the Board Who Have Not Passed the Licensure Examination

During the period December 1976 to June 30, 1981, the Board licensed 24 individuals through the examination process. Our review of the examination papers of these individuals revealed that 22 of the 24 did not achieve scores of 75 percent in all parts as required by law. The Board had: 1) deleted some questions and adjusted some scores and 2) licensed applicants who apparently did not achieve a passing score of 75 percent on all examination parts.

Deleted Questions

During our review of examination papers we noticed several that had two scores written on the front of an examination section. On inquiry, Board members responded that a question may have been deleted because it was deemed by the Board to be improper or unfair, and applicant scores were adjusted accordingly. This practice does not appear to be in compliance with A.R.S. §32-1523.B, which states in part:

> "...If the applicant answers seventy-five percent of the questions asked on each of the subjects of the examination correctly, a license to practice naturopathy shall be issued to the applicant."

In an opinion dated June 29, 1981, the Legislative Council stated:*

> "...If an applicant does not answer seventy-five percent of the questions asked on each of the subjects of the examination correctly, he is not qualified and the Board should not issue a license to that applicant."

Failure to Achieve Passing Scores

During our review we noted several instances in which the Board granted licenses to applicants who apparently did not pass every required examination section successfully.

CASE I

The applicant achieved the following scores during three examinations:

Examination Section	December 1976	May 1977	November 1977
Obsterics/gynecology	55%		
First aid	75		
Pathology	50	75%	
X-ray	74		
Physical therapy	64	78	
Orthopedics	75		
Naturopathic practice	69		
Diagnosis	65	60	44%
Toxicology	50		

* Appendix I contains the memorandum text.

The November 1977 score on the diagnosis section was adjusted from 44 percent to 75 percent without explanation. When the Board deleted questions or regraded answers, there was no evidence of which questions were affected or why. Further, the applicant did not retake obstetrics/gynecology, X-ray, naturopathic practice or toxicology and, therefore, never achieved a score of 75 percent on those examination sections.

CASE II

The applicant sat for the November 1977, April 1978, November 1978 and April 1979 examinations, achieving the scores indicated:

Examination Section	November 1977	April 1978	November 1978	April 1979
Obstetrics/gynecology	55%	33%	50%	
First aid	90	60		
Pathology	45	48*	65*	
X-ray	48	55	44	67**
Physical therapy	68	50	76	
Orthopedics	72	60	76	
Public Health/Toxicology	66	58	65	
Diagnosis	72	48*	65*	
Naturopathic practice		75	94	
Anatomy			60	82
Bacteriology			40	85
Chemistry			35	78
Physiology			80	

As shown, the applicant did not achieve a score of 75 percent in every subject as required by A.R.S. §32-1523.

* Diagnosis and pathology were combined into one examination part in April 1978 and November 1978.

** Applicants' file contained an answer sheet for a practical examination in X-ray. Score on the answer sheet was 90 percent.

CASE III

The applicant sat for the December 1976 and May 1977 examinations and achieved the scores indicated:

Examination Section	December 1976	May 1977
Obstetrics/gynecology	65%	
First aid	75	
Pathology	65	80%
X-ray	64	80
Physical therapy	58	85
Orthopedics	80	
Naturopathic practice	72	
Diagnosis	64	77
Toxicology	60	

As shown, the applicant did not achieve a passing score of 75 percent on obstetrics/gynecology, naturopathic practice or toxicology.

CASE IV

The applicant sat for the April 1978 and April 1979 examinations and achieved the scores indicated:

Examination Section	April 1978	April 1979
Obstetrics/gynecology	49%	81%
X-ray	72.8	
Physical therapy	56	79
Orthopedics	64	
Naturopathic practice	86	
Diagnosis/pathology	68	
Physiology	70	
Chemistry	70	
Bacteriology	44	91
Anatomy	50	80
Toxicology	70	

The applicant did not achieve a score of 75 percent in X-ray, orthopedics, diagnosis/pathology, physiology, chemistry or toxicology.

At the conclusion of our review we met with present and past Board members to discuss these discrepancies. According to Board members, in order to compensate for the difficulty of some examination parts, adjustments were made to the scores of the 22 applicants whose raw scores were below the required score of 75 percent. However, the Board did not document the reasons for grading changes, or change the scores on the examination papers. Thus, the Board cannot document that these applicants passed the examination.

It should be noted that the Board would have had to adjust some applicant scores by as much as 40 points in order for them to achieve passing scores. Further, in December 1976, every applicant failed the toxicology examination section and all but three of the 15 applicants failed the obstetrics/gynecology section. None of these applicants retook the sections but the Board granted licenses to each.

Educational Qualifications

A.R.S. §32-1522* states:

> " Except as provided in this section, the minimum educational requirements for license under the provisions of this chapter shall be a high school diploma, or the equivalent thereof, certified to by the superintendent of public instruction or a county school superintendent, and subsequent graduation from a school or schools of drugless therapeutics, approved by the board, embracing residential studies of not less than four years of eight months each devoted to a study of the following subjects in the approximate number of hours assigned to each as follows:
>
> 1. Anatomy, including dissection, six hundred fifty hours.
> 2. Histology and embryology, one hundred fifty hours.
> 3. Physiology, two hundred fifty hours.
> 4. Chemistry, two hundred hours.
> 5. Bacteriology, one hundred hours.
> 6. Pathology, three hundred fifty hours.

* It should be noted that education requirements for licensure have not been amended since the Board was created in 1935 and that all licenses have been granted under the same educational requirements.

" 7. Diagnosis, including physical, clinical, X-ray, symptomatology, dermatology and mental diseases, five hundred hours.

8. Orthopedics, one hundred hours.

9. Manipulative and adjustive technic, two hundred hours.

10. Dietetics, two hundred hours.

11. Drugless gynecology, one hundred fifty hours.

12. Nonsurgical obstetrics, one hundred fifty hours.

13. Toxicology, fifty hours.

14. First aid, fifty hours.

15. Ear, nose and throat, fifty hours.

16. Hygiene and sanitation, one hundred hours.

17. Jurisprudence, forty-five hours.

18. Drugless therapeutics, including electrotherapy, physiotherapy, hydrotherapy, massage and practice of naturopathy, seven hundred fifty hours.

19. Clincial practice, three hundred hours.

20. Such other subjects as the board requires, excepting materia medica and major surgery, totaling not less than forty-five hundred hours." (Emphasis added)

Our review of the licensure files of the 139 currently licensed naturopathic physicians revealed that 127 of them presented evidence that they had completed 4,500 hours as required by law. However, 1) a significant number of the licensees may not have completed any hours at all in one or more of the specified subjects; and/or 2) applicants may have completed fewer than the minimum number of hours in specific subjects as required by law.

Applicants for licensure as naturopathic physicians are required to present evidence that they have satisfied educational requirements. The Board allows them either to submit official transcripts from schools of drugless theraputics or have the school they attended attest to their scholastic credentials on the application form. Either kind of documentation must show the number of hours completed in each subject.

Applicants Not Completing All Course Work

In an opinion dated June 29, 1981, the Legislative Council stated:*

> "The Legislature intended that applicants for licenses to practice naturopathy complete course work in the subjects listed and in the approximate number of hours stated or they would not have set out the educational requirements with such specificity.
>
> "In order to satisfy the educational requirement in A.R.S. section 32-1522, an applicant is required to complete course work in each of the subjects listed in the approximate number of hours assigned to each subject." (Emphasis added)

Our review revealed that 85 of the 139 currently licensed naturopathic physicians did not submit evidence that they had completed course work in one or more of the subject areas specified in A.R.S. §32-1522. Further, the Board's application form does not request applicants to indicate whether they have completed course work in dietetics, a subject specified in A.R.S. §32-1522. Thus, if the applicant provided only the information requested, the Board would be unable to determine whether the individual had completed course work as required by the statute.

In reviewing the licensure files of each of the 139 currently licensed naturopathic physicians, we found that: 1) eleven files contained no transcripts or other documents pertaining to the licensee's educational background, and 2) 85 files contained no evidence that the applicant had completed any course work in one or more of the following specified subject areas.**

* Appendix II contains the memorandum text.

** Because the Board excluded dietetics from its application form, we have not included it in our statistics. We did note that 108 licensee files contained no information relating to course work in dietetics.

Required Subject per A.R.S. §32-1522	Number of Licensure Files which Contained No Evidence that the Applicant Had Completed Any Hours in the Indicated Subject
Anatomy	*
Histology/embryology	*
Physiology	*
Chemistry	*
Bacteriology	6
Pathology	1
Diagnosis	*
Orthopedics	30
Manipulative and adjustive technic	11
Drugless gynecology	7
Nonsurgical obstetrics	9
Toxicology	15
First aid	4
Ear, nose and throat	29
Hygiene and sanitation	10
Jurisprudence	34
Drugless therapeutics	6
Clinical practice	1

Based on the above, the Board granted licenses to 85 individuals who did not present adequate evidence that they had completed course work in all specified subjects as required by A.R.S. §32-1522.

Applicants Completing Fewer than the Minimum Hours in Specific Subjects

During our review, we also noticed that numerous licensed naturopathic physicians were significantly deficient in the number of hours of course work. A.R.S. §32-1522 states in part:

> "...A study of the following subjects in the approximate number of hours assigned to each...."

* All licensees' files contained evidence of some hours completed in the indicated subject area.

In an opinion dated July 29, 1981, the Legislative Council stated:*

> "The phrase 'in the approximate number of hours assigned to each' means a number of hours merely resembling that assigned to each subject....
>
> "The applicant is required to have completed almost but not quite the exact number of hours stated in A.R.S. §32-1522. The use of the word approximate was probably meant to allow the Board some flexibility when considering applicants' educational backgrounds since it is unlikely that all the schools of drugless therapeutics approved by the Board would offer the identical number of hours as required in the statute for each subject."

Given the lack of clarity regarding a definition of approximate hours, we assumed for the purpose of our review that 50 percent or less did not approximate the statutorily prescribed course hours. Based on that criteria, we identified 34 licensees whose classroom hours, as indicated on their application forms or transcripts, were 50 percent or less than the specified hours in one or more of the required subjects.

According to Board members, every naturopathic licensee has completed at least 4,500 hours of course work at a school or schools of drugless therapeutics, and most licensees present evidence of completed hours in clinical practice that 1) far exceed the 300 hours required by A.R.S. §32-1522, 2) cover every phase of naturopathic medicine, and 3) make up for deficiencies in other subject areas.

We were not able to verify the Board's assertion that clinical practice hours compensate for shortages in specific subject hours. When we contacted the two schools that were attended by most of the licensees in question, we were told that formal research would have to be conducted to determine if clinical practice included enough hours in such areas as obstetrics to make up for shortages ranging up to 150 hours. Further, we noted 17 cases in which the total number of clinical practice hours could not possibly include sufficient hours to cover observed shortages in some subjects.

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* Appendix II contains the memorandum text.

It should be noted that Board members contend that: 1) the statutory course-hours requirements are outdated in that they have not been amended since their adoption in 1935 and do not correspond to the curricula of modern schools and the educational requirements for licensure, and 2) other health regulatory agencies require only graduation from a recognized university or medical school which offers a particular course of study. During 1981, the Board suggested legislation which would have changed A.R.S. §32-1522 to require that an applicant be a graduate of "an approved naturopathic school" and would have deleted specific subjects from the statute. The bill did not pass.

Filing of Affidavits

A.R.S. §32-1521.C states:

> " The applicant shall be of good moral character and shall file with the application affidavits of two reputable residents of the state attesting the good moral character of the applicant and two photographs of the applicant taken within sixty days of the application. Other data and information as the board requires shall be filed with the application. At the time and place the board has previously designated, the applicant shall appear before the board for examination as to his fitness to practice naturopathy." (Emphasis added)

Our review of the 139 current licensees of the Board revealed that 95 of them did not comply with the requirements of A.R.S. §32-1521.C. Noncompliances included: failure to submit any affidavits, submitting only one affidavit, and submitting affidavits signed by residents of other states.

In an opinion dated July 1, 1981, the Legislative Council stated:*

> "The affidavits required under A.R.S. §32-1521, subsection D must be signed by reputable residents of the State of Arizona.
>
> . . . . . .
>
> "...Since A.R.S. §32-1521, subsection C clearly states that the applicant is required to file affidavits of two reputable residents of the State with his application, the affidavits must be signed by residents of the State of Arizona. No other meaning can be given to this language. If the Legislature had intended that the affidavits could be signed by residents of any state it would have used different language.
>
> . . . . . .
>
> "If the affidavits are not signed by residents of the State of Arizona the applicant is not qualified to take the licensing examination or to become licensed to practice naturopathy."

Board members stated that they had interpreted A.R.S. §32-1521.C to mean that the affidavits merely had to be signed by residents of any state and filed with the Board prior to licensure. Board members also questioned the usefullness and purpose of the affidavits. The Board does not consider its noncompliance with A.R.S. §32-1521.C. to be critical.

The Board's Granting of Reciprocity
May Violate A.R.S. §32-1524

A.R.S. §32-1524 states:

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

* Appendix III contains the memorandum text.

As of June 30, 1981, the Board has granted licenses to 16 persons by virtue of their licensure in Oregon. However, a comparison of Arizona's naturopathic statutes with those of Oregon indicates that Arizona's licensure requirements regarding educational requirements are more extensive than Oregon's.

Oregon Revised Statutes §685.060.2 states:

> "The studies required of the applicant for a license to practice naturopathy in this state shall include anatomy, histology, embryology, physiology, chemistry, pathology, bacteriology, public health and hygiene, toxicology, obstetrics and gynecology, diagnosis, theory, practice and philosophy of naturopathy, electrotherapy, hydrotherapy, physiotherapy, clinics, eye-ear-nose-throat, minor surgery, first aid, herbology, proctology, dietetics, jurisprudence, and such other naturopathic subjects as the board may require, except material medica, pharmacology and major surgery, with a total of not less than 4,000 lecture or recitation hours."

Applicants in Oregon are not required to complete course work in orthopedics or manipulative and adjustive technic, as are applicants for licensure in Arizona. Additionally, Oregon Revised Statutes §685.060.2 requires applicants to complete at least 4,000 hours, while A.R.S. §32-1522 states that applicants must complete not less than 4,500 hours of study. Thus, it appears that reciprocity with Oregon does not meet the requirements of A.R.S. §32-1524.

Possible Liability to the State
as a Result of the Board's Actions

A.R.S. §32-1504.A states, in part:

> "The board shall carry the provisions of this chapter into effect...."

Our review has shown that the Board may have granted only three licenses properly, and may have granted licenses improperly to as many as 136 individuals who have not met the qualifications for licensure set forth in A.R.S. §§32-1521 through 32-1524.

We were unable to determine whether the Board's actions could cause a liability to the State if an improperly licensed individuals were to become involved in a malpractice case.

CONCLUSION

Past and present members of the Naturopathic Board of Examiners have reviewed the qualifications of licensure under an interpretation of statutory requirements that apparently differs from actual requirements for licensure. As a result, as many as 136 of the 139 individuals licensed as naturopathic physicians may not meet the statutory requirements to practice naturopathy in Arizona.

RECOMMENDATIONS

Consideration should be given to the following recommendations:

1. The Board carefully review each application for licensure to ensure that the applicant meets all requirements for licensure.

2. The Board carefully prepare the licensure examination to ensure its compliance with the requirements of A.R.S. §32-1523.

3. The Board refrain from granting licenses to individuals until they successfully complete the examination as required by A.R.S. §32-1523.

4. The Board request that the Attorney General review its reciprocal agreement with Oregon to ensure that it meets the requirements of A.R.S. §32-1524.

5. The Attorney General review the Board's actions and determine if the State is liable for damages which could result from improper Board actions.

6. The Legislature review A.R.S. §32-1522 and decide whether to retain specific course-hour requirements in the statute or to accept the recommendations of the Board to change the educational requirements.

7. The Legislature allow the Naturopathic Board of Examiners to terminate under the provisions of A.R.S. §§41-2351 through 41-2379 and, if it deems the continued licensing of naturopathic physicians desirable, institute a new Board effective July 1, 1982, for the purpose of issuing new licenses to the licensees of the former Board. Such an action could mitigate legal liability of the State as a result of the current Board's improper naturopathic license-granting.

FINDING II

WHILE THE SCOPE OF NATUROPATHIC PRACTICE IN ARIZONA APPROXIMATES THAT IN THE FIVE OTHER STATES WHICH LICENSE AND REGULATE THE PRACTICE OF NATUROPATHY, ITS DEFINITION IS INCONSISTENT AND UNCLEAR.

The Naturopathic Board of Examiners has stated that:

> "A change in definition of the practice of naturopathic medicine is necessary because the present definition is antiquated and has resulted in narrowing of the scope of the authorized practice of naturopathic medicine in the state of Arizona."

Our review of the scope of naturopathic practice in the six states which currently license naturopathic physicians revealed that Arizona's scope of practice approximates the scope of practice in the five other states. However, there are inconsistencies in the interpretation of the scope of practice that need review and possible clarification.

Scope of Naturopathic Practice

A.R.S. §32-1501.2 reads:

> "'Naturopathy' includes all forms of physiotherapy and means a system of treating the abnormalities of the human mind and body by the use of drugless and non-surgical methods, including the use of physical, electrical, hygenic and sanitary measures incident thereto."

The Naturopathic Board has claimed:

> "The profession has been unnecessarily limited by the antiquated terms 'drugless' and 'nonsurgical' as these two terms are totally inadequately defined and not appropriate nor consistent with the evolution and teachings of naturopathic medicine. Political lobbying from other groups interested in the general medical field has consistently served to prejudice many of the legislators against the original purposes, evolution and teachings of naturopathic medicine which was not meant to be a drugless and nonsurgical medical practice from its inception."

Board members also contend that 1) at the time the Board's licensing act was adopted in 1935, the term "drug" did not include many substances that are available today and 2) many substances that could be obtained over-the-counter in prior years now are prescription items only. They contend this has resulted in a limiting of their scope of practice beyond that which was originally intended by the Legislature.

We learned that this argument was reviewed and rejected by the Arizona Supreme Court more than 30 years ago. In the case of Kuts-Cheraux et al v. Wilson (71 Ariz. 461, 229 p.2d (713)) the Court stated:

> "Had the legislature not intended to qualify and limit naturopathic practice, it could easily have spelled out in clear and unequivocal language its recognition of naturopathy as it was taught and practiced at the time the act was adopted."

The Court added:

> "...it is evident that the legislature desired to prevent naturopaths from doing two things for which, by training, they are not qualified, viz: prescribing drugs and performing surgical operations."

Thus, the Board's contention that naturopathic medicine was not meant to be drugless and nonsurgical apparently does not agree with the Court's interpretation of legislative intent.

Naturopathic Practice in other States

As of July 1, 1981, there were six states which license individuals to practice naturopathy. They are: Arizona, Connecticut, Hawaii, Nevada, Oregon and Washington. Two other states, Florida and Utah, continue to regulate practitioners as a "dying class"; that is, allowing existing licensees to practice, but not granting new licenses.

Our review of the scope of naturopathic practice in other states revealed a broad range - from very restrictive in Nevada to extremely permissive in Oregon. A comparison of these scopes is shown in Table 3.

TABLE 3

THE SCOPE OF NATUROPATHIC PRACTICE IN THE STATES WHICH LICENSE NATUROPATHS

	Arizona	Connecticut	Hawaii	Nevada	Oregon	Washington	Florida*	Utah*
Practice under supervision of licensed MD only	No	No	No	Yes	No	No	No	No
Prescribe drugs	No	No	No	No	Yes***	No	Yes	Yes
Perform acupuncture	Yes°	No	No	No	Yes°°	No	No	No
Perform minor surgery	No	No	No	No	Yes	No	Yes	Yes
Hydrotherapy	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Colonic irrigation	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Physiotherapy	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Manipulation	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Electrotherapy	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
X-ray	Yes	Yes	N/R	No	Yes	Yes	N/R	Yes
Venapuncture**	No	Yes	Yes	Yes	Yes	No	Yes	Yes
Obstetrics/gynecology	Yes	Yes	Yes	No	Yes	No°°°	Yes	Yes
May clamp and sever umbilical cords	No	Yes	N/R	No	Yes	No	N/R	Yes

* Naturopaths are permitted to practice as a "dying class."

** Venapuncture is the drawing of blood by needle syringe for diagnostic purposes.

*** Naturopaths in Oregon may prescribe natural drugs only; synthetic drugs are not within the scope of practice; may prescribe narcotics which are derivations of the opiate class.

° The Board issues a specialty certificate in acupuncture. It should be noted that the practice of acupuncture may be outside the scope of practice in Arizona. (see page 39)

°° Electro-acupuncture is permitted; needle acupuncture is not.

°°° Naturopaths may perform some gynecological procedures; obstetrics not within the scope of practice.

N/R - No Response

As shown in Table 3, the scope of naturopathic practice in Arizona is roughly equivalent to that in the five other states which continue to license naturopathy. It should be noted that there is no national trend regarding the scope of naturopathic practice. While two of the most permissive states' statutes (Utah's and Florida's) have been amended to establish naturopathic physicians as a "dying class," Oregon recently widened its scope of practice to include the right to prescribe and dispense drugs. On the other hand, the state which most recently adopted legislation regulating the practice of naturopathy, Nevada, also is the state with the most restrictive scope of practice. For example, in Nevada, naturopathic physicians must practice under the supervision of a licensed medical doctor and are not permitted to take X-rays or perform obstetrical or gynecological procedures.

Inconsistencies within Scope of Practice

A.R.S. §32-1501.2 excludes drugs and surgery from the practice of naturopathy in Arizona. Attorney General opinions and court decisions have upheld those exclusions and have provided further definitions of drugs and surgery. Attorney General Opinion No. 72-8 defined "drugs" to be articles for which standards are recognized in the official compendium and which are intended for use in the diagnosis, care, mitigation, prevention or treatment of disease. Attorney General Opinion No. 63-85-L found that surgery was related to severing or penetrating the skin.

We found these definitions result in inconsistencies in application across the whole of the naturopathic scope of practices. The inconsistencies arise because the definitions prohibit the use of some procedures or materials that (a) may be integral parts of other procedures allowed by law, and (b) pose little or no risk of harm to the patient in comparison to the procedures that are allowed.

Examples of some inconsistencies in the scope of practice are:

(a) X-rays and Radiopaque Contrast Media

Naturopathic physicians are permitted to take and use X-rays as a part of their scope of practice. However, in Attorney General Opinion No. 72-8, the Attorney General ruled that barium sulfate (a radiopaque contrast media) was a drug and could not be used by naturopaths. According to an expert from the radiology section of the University of Arizona Medical School, barium sulfate has no therepeutic value and poses no risk of harm to patients when used for diagnostic purposes. However, its use allows a radiologist to view the esophagus and upper gastrointestinal tract or to properly diagnose ulcers or other gastrointestinal ailments.

Thus, under current statutory provisions and definitions naturopaths may take and use X-rays, but may not use materials sometimes needed to make specific diagnoses from the X-rays. To achieve consistency, either the naturopathic use of X-rays should be restricted in cases requiring radiopaque materials, or the use of radiopaque materials should be allowed.

(b) Laboratory Analysis and Venapuncture

Naturopathic physicians may not draw blood samples with needle syringes for laboratory analysis. Attorney General Opinion No. 63-85-L found that such a practice constitutes minor surgery. However, naturopathic physicians may send the patient to a laboratory where the blood may be drawn by a technician who holds no health license. Then the naturopathic physician may diagnose from the laboratory results.

(c) Obstetrics

The naturopathic scope of practice has been defined by the Board to include obstetrics. The Board once considered establishing obstetrics-gynecology as a specialty area. While naturopathic physicians may deliver babies, they may not use general or local anesthetics or perform surgical procedures.

Comparing practices in the area of obstetrics we found that, unlike midwives, naturopathic physicians are not restricted as to the types of pregnancy conditions they may accept. For example, midwives may not attend births if there are such conditions as: multiple gestations, previous cesarean sections, suspected prematurity, abnormal presentations or active infectious diseases; naturopathic physicians may. Midwives must call a physician or transport the expectant mother to a hospital if specified conditions arise during labor; naturopathic physicians need not. However, midwives may clamp and sever umbilical cords; naturopathic physicians may not.

Again, to achieve consistency, either naturopathic physicians should be restricted to a scope of obstetrical practice more nearly resembling that restricting midwives, or naturopathic physicians should be allowed to add to their scope such midwivery procedures as clamping and severing umbilical cords.

CONCLUSION

The Naturopathic Board of Examiners has advocated an expansion in the scope of naturopathic practice. Our review has shown that the Legislature intended to restrict the practice of naturopathy to drugless and nonsurgical therapeutics when the scope of practice was defined in 1935. Further, our review revealed that the scope of practice of naturopathy in Arizona approximates that in the five other states which continue to regulate the practice of naturopathy. However, the scope of practice as currently defined does produce inconsistencies and needs review and possible clarification.

RECOMMENDATIONS

Consideration should be given to the following recommendations:

The Legislature - 1) review the naturopathic scope of practice as currently defined by statute, court decisions and Attorney General opinions, 2) review the prohibitions on the use of drugs and surgery and 3) consider adding specific statutory language to clarify definitions and/or remove inconsistencies with respect to specific areas of practice such as X-ray and obstetrics.

FINDING III

THE NATUROPATHIC BOARD OF EXAMINERS IS NOT RESOLVING COMPLAINTS IN A TIMELY MANNER. AS A RESULT, THE BOARD MAY NOT BE FULFILLING ITS RESPONSIBILITY TO PROTECT THE PUBLIC.

The Naturopathic Board of Examiners receives few complaints against naturopathic physicians. During the 18-month period January 1, 1980, to June 30, 1981, the Board received six complaints against naturopathic physicians in Arizona. As of June 30, 1981, the Board had resolved three of these complaints,* but was unable to close the other three because the investigations into these complaints had not been completed. According to the Board, it was advised by a previous Attorney General representative that it lacked adequate funds to investigate complaints efficiently and bring legitimate complaints to formal hearings. However, our review revealed that the Attorney General representative in question does not recall ever advising the Board that it lacked the funds to pursue a complaint, that the Board had sufficient funds to bring at least one of the three open complaints to a hearing and that its failure to do so may pose a threat to the health and safety of the public.

Complaint Review Process

When a complaint is received, it is placed on the agenda for discussion at the next Board meeting. At that time, the Board reviews the complaint to determine if the complaint is within its jurisdiction. If it is, the Board notifies the naturopathic physician against whom the complaint was made and requests him to respond, in writing, to the charges made in the complaint.

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* Two of the three complaints which the Board has closed during this period deal with advertising practices. The Board directed the naturopathic physicians involved to comply with specific advertising requirements. The other complaint involved a business dispute between two licensees. The Board decided that the complaint was a civil matter and closed the case.

Once the response is received, the Board agains reviews the matter to determine if further information is needed. If not, the Board rules on the complaint and closes the case. If further information is required, the Board requests assistance from other agencies to complete the investigation. For example, the Board has received assistance from the Attorney General through the loan of an investigator to collect information regarding a complaint. The Attorney General has been responsive to the Board's needs.

The Board must bear the cost of an administrative hearing. Fees for investigators, attorneys, processing, court reporters and other related expenses included in a formal administrative hearing can exceed $1,000. If the Board's decision is appealed to the Supreme Court, costs can be significantly higher.

In at least two cases, the Board has cited the cost of bringing complaints to an administrative hearing as the reason the Board dropped the complaint or delayed disposing of it. However, in both cases, it appears the Board may have had sufficient funds:

CASE I

The Board granted a license through reciprocity in March 1976. After the individual was licensed, it was learned that he 1) had falsified information on his license application form, 2) and been convicted on two counts of Social Security fraud and 3) had been arrested for violations of the narcotics act, criminal conspiracy and sale of medical degrees. The Board met and voted to hold a formal hearing to determine if the naturopath's license should be revoked. In a letter dated December 29, 1977, the Board requested the licensee's presence at a hearing.

In a January 5, 1978, letter to the Board, the naturopathic physician threatened suit if legal action were taken against his license.

> "...any illegal revocation of my license will result in a civil rights action and massive law suit for damages against your Board."

The Attorney General proceeded with a review and prepared a formal notice of hearing, detailing the statutory violations attributed to the naturopathic physician. The Attorney General requested that the Board review the notice, approve or amend it and schedule the formal hearing. In an August 23, 1978, letter to the Attorney General, the Board secretary wrote:

> "It is my opinion that any action regarding [the naturopathic physician] should be postponed at this time for the following reasons. First, at this time, the Board is quite short of funds and they cannot afford financing a big court procedure. May I note, had the legislature seen fit to increase our income, we would not be in financial distress.
>
> "Second. It is my understanding that [the naturopathic physician] is in ill health and is only ambulatory with the aid of crutches. Since he is outside the state, as commented once before, he presents no great menace at this time."

The Board informed our staff that it had reached an informal agreement with the naturopathic physician: he would not renew his license and the Board would postpone the revocation hearing indefinitely. We found, however, the naturopathic physician did renew his license and presently holds a valid Arizona license.

This case would have been heard during fiscal year 1978-79, at the end of which the Board had a fund balance of $1,300.

CASE II

On October 22, 1980, a licensed naturopathic physician was arrested and charged with practicing medicine without a license. A search warrant was obtained, and Department of Public Safety agents found the following drugs in his possession:

1. RIMSO-50,
2. DMSO,
3. Reagent DMSO,
4. Testostrone (a male hormone),
5. Estrogen (a female hormone),
6. Birth control pills,

7. Potassium chloride (in injectible form),
8. Bethamphetamines, and
9. Amyl nitrate.

The agents also found many syringes and needles.

On October 30, 1980, the naturopathis physician was brought before a joint meeting of the Naturopathic and Chiropractic Boards.* During the meeting, the Chiropractic Board members voted to suspend immediately the practitioner's chiropractic license as a threat to the health and safety of the public and to proceed with a formal disciplinary hearing. The Naturopathic Board voted not to suspend the practitioner's license, but to proceed with a formal hearing.

The Chiropractic Board has held its formal hearing, and the practitioner's chiropractic license was suspended for six months. As of September 1, 1981, the Naturopathic Board had not held its hearing, and the individual continues to practice, using his naturopathic license. However, Board members have informed audit staff that a formal hearing has been scheduled for September 29, 1981.

Board members said the hearing was delayed in the hope that the county attorney would file criminal charges against the individual for unlawful practice of medicine, a felony. Conviction of a felony is grounds for revocation of a license. The Board viewed this option as a means to take disciplinary action without bearing the costs of a lengthy hearing. It should be noted that since June 1980, the Naturopathic Board has maintained a fund balance of $4,900 to $6,600.

* The practitioner also held a chiropractic license.

CONCLUSION

The Board is not resolving complaints in a timely manner. As a result, the Board may not be fulfilling its responsibility to protect the public.

RECOMMENDATIONS

Consideration should be given to the following recommendations:

1. The Board dedicate its resources to protecting the health and safety of the public.

2. The Board appeal to the Legislature for additional resources if additional funds are required.

OTHER PERTINENT INFORMATION

ACUPUNCTURE

The Board allows naturopathic physicians to practice acupuncture* despite the fact that this may be construed to be minor surgery.

As defined in previous Attorney General opinions, surgery involves severing or penetrating the skin. Board members have told us they do not believe the insertion of very thin needles constitutes surgery. When questioned about the difference between the insertion of needles for venapuncture** and the insertion of needles for acupuncture, the Board president told us he believed surgery involves the removal of something. He said venapuncture may constitute surgery because the needle is hollow and a minute plug of skin is removed. He said acupuncture is not surgery because the needles are not hollow and no plug of skin is removed.

As shown previously on page 28, we found acupuncture is not within the scope of practice of the other states which license naturopathy. We also found the Board has not sought an Attorney General opinion as to whether acupuncture is within the scope of naturopathic practice in Arizona.

The matter may be resolved by the courts soon. At the present time Arizona's Board of Medical Examiners (BOMEX) is pursuing court action to prevent chiropractors from performing acupuncture because chiropractors are restricted to drugless and nonsurgical methods. The court decision on chiropractors' use of acupuncture may apply equally to naturopathic physicians.

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* Acupuncture is an ancient oriental system of therapy involving puncture of the skin with long, fine needles.

** Venapuncture is the puncture of a vein for diagnostic purposes.

ARIZONA NATUROPATHIC PHYSICIANS
BOARD OF EXAMINERS

1645 W. Jefferson, Room 418 Phoenix, AZ 85007
(602) 255-3095

September 10, 1981

Mr. Douglas Norton
Office of the Auditor General
Legislative Services Wing
Room 200
State Capitol
Phoenix, Arizona 85007

Dear Mr. Norton:

The Board wishes to take this opportunity to thank the Arizona Legislature for instituting the Sunset Review Program and implementing a performance audit of a non-fiscal nature. All previous audits have been of a fiscal nature and therefore, did not address any irregularities in the Board's interpretation of the law.

The Board wishes to express its gratitude to the staff of the Auditor General's office for their cooperation, assistance and consideration during the course of this audit.

The Board has reviewed the revised draft report of the Auditor General's office and submits the attached responses.

Sincerely,

M. C. Shelton, N.D.

M. C. Shelton, N.D.
President

MCS:vlc

Attachments

FINDING I

In reviewing the qualifications of current licenses under the Board's interpretation of statutory requirements relating to Examinations (A.R.S. 32-1523), Educational Qualifications (A.R.S. 32-1522), Filing of Affidavits (A.R.S. 32-1521.C) and Reciprocity (A.R.S. 32-1524), the Board does not agree that 136 of 139 currently licensed Naturopathic Physicians are improperly licensed; therefore, the Board has responded to the needs of the public and has operated with efficiency.

However, the Board recognizes the possibility of differences of technical interpretations of the statutes and will immediately implement the more technical aspect of the statutes as outlined in the report.

FINDING II

The Board appreciates the statements in the Sunset Review report of Finding II as it has tried for years to bring these inconsistencies and unclear statutory requirements before the legislative process, but the Board's needs have not been met.

FINDING III

The Board has investigated and resolved complaints in a timely manner during the course of its operation, always keeping uppermost in mind, the protection, health and welfare of the public.

During the period of January 1, 1980 thru June 30, 1981, as stated in the draft, only 6 complaints have been lodged against licensees which is a very insignificant number and represents the quality of Naturopathic Medical practitioners. According to the Board's records from 1970 thru 1980 there were only 6 complaints. All were satisfactorily processed in a timely manner.

The Board wishes to review the report in detail.

Page 1, paragraph 2.

Naturopathy has been defined as "the science and art of diagnosing and treating and preventing diseases and the promotion and preservation of health, as taught in naturopathic medical schools." Naturopathic procedures include, but not limited to: heat, cold, light, water . . .

Page 5, paragraph 1.

The Attorney General's Office has been cooperative in the great majority of cases. However, the Board has been advised on occasion that the prosecution of a misdemeanor was low on the list of investigations because of the multitude of a more severe type of infraction. This situation will be properly dealt with in view of the fact that the infraction in this statute is now deemed a class 5 (five) felony.

Page 5, paragraph 3.

The Board is in unanimous agreement with the Auditor General's office of the need to update the scope of practice and the statutes.

Page 9, paragraph 1.

The Board did not retain examinations until the Attorney General's office advised the Board to do so in 1975. Prior to this time grades were kept on a master sheet. This sheet was retained at the office of the Board Secretary and when the Board moved to the Occupational Licensing Building, 1645 W. Jefferson, this list was moved with all the files. The master list was kept up to date thru 1977 and since then there have been many people examining the Board's files and attempts to locate this list and other materials, have all been futile.

Page 9, paragraph 1, line 12.

The Board feels it has complied with the statutes and refers to 32-1523.A. which allows "***and under rules and regulations the Board determines.". We contend the combining of subjects is a standard procedure practiced by other state boards of naturopathic medicine, also used in the colleges by conjoining subject teaching. In an opinion dated June 29, 1981, the Legislative Council stated: "The Board is required to cover the subjects listed in A.R.S. 32-1522 on the licensing examination. The Board may also require subjects other than those listed to be on the exam." If the legislature had intended the Board to have discretionary authority to exclude some of the subject areas listed in A.R.S. 32-1522 it would have so provided rather than mandating that the Board include the subjects

listed and any other subjects the Board may require on the licensing exam. The above does not specify each subject to be examined separately; it does say, "the Board is required to cover the subjects listed in A.R.S. 32-1522***". It does not prescribe the manner in which the examination is to be executed other than it is to be in writing. Subjects listed under 32-1522 we refer to item #18. "Drugless therapeutics, including electrotherapy, physiotherapy, hydrotherapy, massage and practice of naturopathy, seven hundred fifty hours." This is a prime example and precedent for the combining of subjects on the examinations.

The Board is interested in the applicant's overall knowledge and ability to practice naturopathic medicine in its entirety and has found by combined examinations that this has proven to be a superior process.

The Board feels if it has operated improperly, then it recommends a change in the statute to allow the Board the latitude as do the other medical boards to determine the knowledge of the applicants in the practice of naturopathic medicine.

Page 9, paragraph 1, line 14.

In the first portion of the 70's the Board determined, for increased protection of the public health and welfare, to elevate the level of difficulty of the examinations. This was perhaps carried out to extreme as some questions were missed by all applicants and some questions by a large majority of the applicants. On the basis of accepting applicants from only one college, in recent years, whose students are required to have considerably more class hours than our chapter requires, it is reasonable to presume that some examination questions could be inappropriate. The Board has taken this into consideration and adjusted accordingly as it is not the Board's intent to prevent a qualified doctor of naturopathic medicine the privilege to practice in the State of Arizona. Also at this time the Board commenced the practice of grading papers as a group (members) where questions were evaluated as to their inappropriateness, and validity.

Based upon A.R.S. 32-1523.A. "For the purpose of determining the qualifications of applicants for license under the provisions of this chapter, the board shall hold meetings and conduct examinations of applicants for licenses at times and places and under rules and regulations the Board determines." the Board felt that it had the prerogative to determine grading procedures.

Page 10, table 2.

The following subjects have been combined for as many years as this Board can remember.

Anatomy, histology and embryology
Obstetrics and gynecology
First aid and hygiene and sanitation
Diagnosis and ear, nose and throat
Dietetics, drugless therapeutics, jurisprudence and clinical practice

The Board has also always given an oral examination covering the clinical aspect of practice.

Page 11, paragraph 1.

The Board did, through combined exams, cover all subjects as outlined in A.R.S. 32-1522.

Page 11, paragraph 2.

The Board's purpose is to completely evaluate the total comprehension of the applicant and determine his practice capabilities.

Page 11, paragraph 3.

The Board feels, in the combined subjects, that if an applicant isn't knowledgeable in one subject he can't be in the other, since the subjects are so interlocking.

Page 11, paragraph 4.

1. The Board deleted questions that were deemed to be inappropriate and/or if difficulty level was too high.

2. At the Board meeting on November 30, 1978, it was determined that "doctors who have been in practice for a considerable length of time might be given some consideration in the future".

Page 12, case I.

Questioning past Board members concerning these exams, obstetrics, gynecology, naturopathic practice, toxicology and diagnosis, it was determined that there was an extreme difficulty factor in the examination of December 1976.

Page 13, case II.

The subjects of pathology, x-ray and oral, public health/toxicology and diagnosis were all re-evaluated to the number of years the applicant had been in practice (18 years), using ½ point per year for the first 10 years and 1 point per year thereafter, for a maximum of 15 points.

Page 14, case III.

The subjects of obstetrics/gynecology, naturopathic practice and toxicology were all re-evaluated because of the extreme difficulty factor of the December, 1976 examination.

Page 14, case IV.

The subjects of x-ray, orthopedics, diagnosis/pathology, physiology, chemistry and toxicology were all re-evaluated because of the number of years the applicant has been in the field (36 years), using ½ point per year for the first 10 years and 1 point per year thereafter for a maximum of 15 points.

Page 15, asterisk.

The Board wishes to compliment the fact that the review recognized the fact the educational requirements have not been upgraded since the enactment of this chapter. The Board has, and shall continue to administer the best possible from an antiquated law. The Board has addressed the legislature on many occasions regarding this matter. Again, regarding qualifications, we refer to 32-1523 and previous discussion in this paper.

Page 16, paragraph 2, (1 and 2).

The alleged discrepancies regarding completion of course work has been repeatedly described and explained. In this regard the Board wishes to submit the following: The Arizona law stating the subjects and hours that an applicant shall have in a school has been a problem since 1935 because the schools do not necessarily follow our subject and hourly outlines. Also, this Board is not empowered to tell the schools how or what subjects they must teach. Therefore, it strikes this Board as being most unreasonable for any agency to insist upon absolute adherence to the number of hours required in each subject and the disallowance of conjoined subjects in the classroom and on examination. The chapter clearly states approximate hours in a subject and demonstrates the combining of subjects in item #18 of the list of subjects outlined in A.R.S. 32-1522. Further, all applicants have been considered on an individual basis so that the applicant's educational background was proper for him to be licensed as a naturopathic physician as a graduate from an approved college of drugless therapeutics, if he passed the exams.

The Board realizes the above is a legislative problem and we have approached that body for more than the last thirty years for relief and have been denied consistently.

Page 17, paragraph 2.

85 of 139 currently licensed naturopathic physicians show no evidence of having completed course work and is again demonstrative in the above answer.

Page 17, paragraph 3.

Eleven files contain no transcripts. In response to this, the Boards observation of this fact contends that these early licensees may have been reciprocal applicants or grandfathered in.

Page 17, double asterisk.

The Board appreciates the Auditor General's finding of dietetics (subject of) not being listed on the application form. We wish to submit that dietetics is involved in many subjects, such as, physiology, chemistry, pathology, orthopedics, hygiene, clinical practice, etc., and applicants have always been examined in this.

Page 18, paragraph 2.

The Arizona law in mandating the subjects and hours that an applicant shall have in a school has been a problem since 1935 because the schools do not necessarily follow our subject and hourly outline and we do not have the authority to tell the schools out of state to teach these subjects. The Board, in carrying out its duties and administering the chapter, has made such policies that an applicant taking combined courses such as patho-physiology has been accepted as meeting the requirements for the Arizona law. All applicants have been considered on an individual basis so that the applicant's educational background was adequate for him to be licensed as a naturopathic physician and graduate from a college of drugless therapeutics.

The colleges have difficulty issuing transcripts to satisfy the Arizona Board. We realize this is a legislative problem and we have asked for relief for the past 30 years and have been denied.

The Board feels that in 1935 the 32-1522 was the way the legislature had of making sure that a person would have at least those minimal qualifications.

The Board, in 1976, realizing the problems of subject hours made a policy to accept only graduates from approved naturopathic medical colleges with N.D. degrees. The Board was trying to improve on its response to the statute, the graduates of these schools now have 5000+ hours.

The Board has determined that the clinical subjects in questions are of such a nature that practical application must be made. The clinical practice is the follow up to all classroom didactic hours as exemplified by obstetrics and gynecology in which the applicant must complete his training in the clinic.

Page 19, paragraph 1.

See the legislative council statement on page 19 of the draft, as follows: "***The use of the word approximate was probably meant to allow the Board some flexibility when considering applicants' educational backgrounds***." The Board does need reasonable latitude and flexibility to administer the statute.

Page 20, paragraph 3.

A.R.S. 32-1521 states: "Affidavits of two reputable residents of the state attesting the good moral character of the applicant." Please note "of the state" which does not designate any particular state. It should be noted the Board feels it should be allowed to make presumptive conclusions the same as any other agency.

Page 22, paragraph 3.

Oregon does examine in orthopedics or manipulative and adjustive technique (see attached document). Please note that the Oregon Board accepts only graduates from colleges which this Board accepts and said college requires five thousand plus hours to graduate; this complies with our 4500 requisite. Additionally, the college requires 1500 hours in clinical practice as compared with the 300 hour requirement of our statute.

Page 23, paragraph 4 (conclusion)

The Board does not feel that 136 people were improperly licensed. The explanations have been stated previously.

Page 23, paragraph 5, Recommendations.

The Board feels that a strict adherance to the technicality of the statute must be followed and agrees with the recommendation.

Page 25, paragraph 2.

The Board feels that changes are a must in order to afford the people of Arizona the services they wish and deserve. Many people of this state prefer an alternative to the predominate philosophy of health care which now exists in the State of Arizona. We feel the changes are necessary for the progress and evolution of the profession and more so for the betterment of the people of Arizona.

Page 26, paragraph 1.

A claim made by the Board at the top of the page should be greatly emphasized. Contrary to a court decision of over 30 years ago, which has the probability of also being outdated and inconsistent with procedures and practices of today and of teachings in present colleges of naturopathic medicine.

A 1925 Websters dictionary of the English language describes "drug" as follows:

1. An ingredient used in medicine.
2. A narcotic.
3. An unsalable article.

Page 26, paragraph 4.

The Board feels that these manners concerning practice should not be determined by the courts but by the legislature and the Board does not feel that the legislature in 1935 meant drugless and nonsurgical.

Page 27, paragraph 1.

The dying class is not true in the fact that both Florida and Utah are preparing legislation for reinstatement of that portion of their statute which prohibits new licensing.

Page 28, table 3.

In reference to "practice under supervision of licensed M.D. only", in Nevada, the Board understands the Attorney General's office of Nevada had determined this to mean that a medical doctor is on the Board but has nothing to do with practicing under a medical physician's prescription.

X-Ray - Hawaii and Florida have x-ray privileges.

Page 28, table 3, continued.

This Board does give an examination in acupuncture and issues to those who are successful a letter stating they have passed the examination. This is not a license to practice acupuncture. It is a method of showing proficiency in the subject.

Page 29, paragraph 1.

The statement: "It should be noted that there is no national trend regarding the scope of naturopathic practice". Since 1978 the President of this Board is also the President of the Federation of Licensing Boards which is dedicated to the betterment of the profession. This Federation is making provisions for the standardization of practice and procedures for formation of a committee to standardize the examination and procedures that may be used by any and all naturopathic examining boards.

In May, 1981, the President of this State Board of Naturopathic Examiners was elected to the Presidency of the Council on Naturopathic Medical Education. This council was formed in 1978 and incorporated in Washington, D.C. The purpose of this body is to become the accrediting agency of the naturopathic medical profession. The council has made great strides in this direction in its workings with the Department of Education in Washington, D.C. The council has made voluminous compilations setting forth procedures for accrediting colleges and the methods necessary to carry out their implementation.

Page 29, paragraph 2.

The term "drugs" in 1935 when our law was enacted meant:

1. An ingredient used in medicine.
2. A narcotic.
3. An unsalable article.

Page 31, Conclusion.

As stated before, "drugs" as defined in 1935 is not the same as defined today. Minor surgery has always been a part of naturopathic practice since the founders of naturopathic medicine were doctors of medicine and surgery and so carried it over into naturopathic practice. Under RECOMMENDATIONS on page 31, this Board agrees.

Page 33, paragraph 2.

The estimated cost of a formal hearing as presented to this Board was considerably more than $1000. As to case #1, the Attorney General's representative did make preparation for a formal hearing. At a meeting in his office he stated that such a hearing would probably cost several thousand dollars. He also remarked that since the doctor was in ill health and resided and practiced in Florida he was not considered to be a present danger to the health and welfare of the people of Arizona. The doctor did write "any illegal revocation of my license will result in a civil rights action and massive law suit for damages against your Board". To our knowledge there was no informal agreement and this Board finds no documentation of such agreement.

Page 35, paragraph 5, case II.

Case II is pending and a formal hearing date has been set for September 29, 1981. In the third paragraph of page 34 the statement appears to be in error regarding the "dropped" complaint.

The Board was anxious for the Chiropractic Board to institute its hearing in order to utilize its findings and thus use this position to reach a possible consent agreement.

Page 36.

The statement "the naturopathic board has maintained a fund balance of $4,900 to $6,600." This appears to be enough funds to institute legal proceedings. However, it is this Board's opinion the question involves mitigating circumstances such as: The Board, even since its inclusion in the administrative offices has not been aware of an accumulating reserve. At a board meeting in July, 1981, the Board was informed by Don Reville of the Executive Budget Office of such a reserve fund.

Page 37, Conclusion.

The Board has investigated and resolved complaints in a timely manner during the course of its operation, always keeping uppermost in mind, the protection, health and welfare of the public.

Page 37, Recommendations.

This Board agrees with the recommendations.

Page 39, paragraph 2.

The Board President says "acupuncture needles are not hollow as are needles for injection or aspiration. The acupuncture needle neither implants nor withdraws any substance whatsoever. The hollow needle will collect a plug of tissue as it penetrates and this plug may be deposited or extracted. The use of the hollow needle in some circles may be considered surgery. I do not consider either to be a surgical procedure. If these modalities are of a surgical nature, why is ear piercing permitted by one other than a surgeon? Also, technicians in laboratories, hospitals, clinics and other facilities, who routinely

Page 39, paragraph 2, continued.

do needle puncturing without benefit of being licensed to do surgery. Recently two chiropractors won a court case permitting them to do needle acupuncture as it is not considered to be surgery in the State of Arizona. So far, that decision has not been overturned. There are records of court decisions in recent years in other states showing acupuncture (needle) not to be surgery. In 1975, the Board made provisions for examining in acupuncture, as provided for in the statute, for those licensed naturopathic physicians in Arizona who presented proper credentials to take an examination in the subject of acupuncture. The Board offered a letter of proficiency to those who were successful in both the written and oral examination.

The Board does feel that acupuncture is a natural healing modality and fits into our realm of practice.

SUMMARY

The Board feels it has done an efficient job based upon a 1935 unchanged statute and is amenable to recommendations by the report. This Board shall adhere to a more strict technical interpretation of the statutes.

VICTOR ATIYEH
GOVERNOR

Department of Human Resources
HEALTH DIVISION
Board of Naturopathic Examiners
3619 S.E. DIVISION, PORTLAND, OREGON 97202 PHONE 234-0044

file

AUG 21 1981

August 18, 1981

Dr. Milburn C. Shelton
4814 W. Gendale Avenue
Glendale, Az 85301

Dear. Dr. Shelton:

In answer to your question concerning the examination in orthopedics and manipulation. Orthopedic questions are covered in physical diagnosis examination. Manipulation and x-ray positioning is handeled by oral examination but no spearate grade is given. This grade would be reflected in the physical therapy subject.

Respectfully yours,

Don C Walker ND

Don C. Walker, N.D.
Executive Secretary

DCW/bcs

ADDENDum A

APPENDIX I

LEGISLATIVE COUNCIL OPINION 0-81-59
JUNE 29, 1981

ARIZONA LEGISLATIVE COUNCIL

MEMO

June 29, 1981

TO: Douglas R. Norton
Attorney General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (O-81-59)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated June 12, 1981. No input was received from the Attorney General concerning this request.

FACT SITUATION:

Arizona Revised Statutes (A.R.S.) section 32-1523, subsection B states:

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

QUESTIONS:

1. Is the Naturopathic Board of Examiners (Board) required to test applicants on all subject areas listed in A.R.S. section 32-1522 or does the Board have the discretionary authority to exclude some of the subject areas listed in section 32-1522?

2. If an applicant fails to achieve a seventy-five percent score in one or more of the subject areas of the examination, does the Board have the authority to issue a license to the individual?

3. If it is determined that a currently licensed naturopath had failed to achieve a score of seventy-five percent on one or more parts of the licensure examination, what is the impact on the individual's license?

ANSWERS:

1. The Board is required to test applicants on all of the subject areas listed in A.R.S. section 32-1522.

A.R.S. section 32-1523, subsection B provides that the examination "/s/hall embrace the subjects set forth in section 32-1522 and other subjects required by the board." (Emphasis added.) "It is a fundamental rule of statutory construction that plain, clear and unambiguous language of a statute is to be given that meaning unless impossible or absurd consequences may result." Balestrieri v. Hartford Accident and Indemnity

Insurance Co., 112 Ariz. 160, 163, 540 P. 2d 126 (1975). "Embrace" means "to take in: enfold, include, cover . . . ." Webster's Third New International Dictionary 740 (1976).

The Board is required to cover the subjects listed in A.R.S. section 32-1522 on the licensing examination. The Board may also require subjects other than those listed to be on the exam. If the Legislature had intended the Board to have discretionary authority to exclude some of the subject areas listed in A.R.S. section 32-1522 it would have so provided rather than mandating that the Board include the subjects listed and any other subjects the Board may require on the licensing exam.

2. A.R.S. section 32-1523, subsection A requires the Board to conduct examinations for the purpose of determining the qualifications of applicants for licenses to practice naturopathy. If an applicant answers seventy-five percent of the questions asked on each of the subjects on the examination correctly and he meets the other requirments for licensure, he is qualified and the Board is required to issue the applicant a license to practice naturopathy. Conversely, if an applicant does not answer seventy-five percent of the questions asked on each of the subjects of the examination correctly, he is not qualified and the Board should not issue a license to that applicant.

If an applicant fails to pass the examination, that is, he does not answer seventy-five percent of the questions asked on each of the subjects correctly, he is allowed to take another exam at the convenience of the Board, within one year after his failure to pass, without losing credit for subjects passed and without paying another fee. A.R.S. section 32-1523, subsection C. If any applicant does not answer seventy-five percent of the questions asked on each of the subjects of the examination correctly, the Board should not issue him a license to practice naturopathy. Rather the applicant should take another exam as permitted under A.R.S. section 32-1523, subsection C in order to qualify for a license.

3. The function of this office in connection with performance audits by the Auditor General is to provide legal research and statutory interpretation. It would be inappropriate for this office to apply legal principles to a question which asks what the impact of a particular administrative action would be if the result would imply the same conclusion in all cases. A subjective application of the law can only be done on a case-by-case basis and is properly left to the administrative authority in the first instance and to the courts in the second.

CONCLUSION:

1. The Board is required to test applicants on all of the subject areas listed in A.R.S. section 32-1522.

2. If an applicant fails to answer seventy-five percent of the questions asked on each of the subjects of the examination, he is not statutorily qualified to be licensed and the Board should not issue him a license.

3. It is not appropriate for this office to answer this question for the reasons set forth above.

cc: Gerald A. Silva
Performance Audit Manager

APPENDIX II

LEGISLATIVE COUNCIL OPINION O-81-57
JUNE 29, 1981

ARIZONA LEGISLATIVE COUNCIL

MEMO

June 29, 1981

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (O-81-57)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated June 10, 1981. No input was received from the attorney general concerning this request.

FACT SITUATION:

Arizona Revised Statutes (A.R.S.) section 32-1522 states:

Except as provided in this section, the minimum educational requirements for license under the provisions of this chapter shall be a high school diploma, or the equivalent thereof, certified to by the superintendent of public instruction or a county school superintendent, and subsequent graduation from a school or schools of drugless therapeutics, approved by the board, embracing residential studies of not less than four years of eight months each devoted to a study of the following subjects in the approximate number of hours assigned to each as follows:

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

QUESTIONS PRESENTED:

1. Are applicants for licensure by the State Naturopathic Board of Examiners (Board) required to complete course work in each of the subjects listed in A.R.S. section 32-1522?

2. What is meant by the phrase ". . .in the approximate number of hours assigned to each. . ."? Does case law or statutory precedent exist which provides a basis for evaluating candidates' educational backgrounds?

3. If an individual who has been licensed by the Board is shown to have completed less than the statutorily required course work, what is the impact on the individual's license?

ANSWERS:

1. Yes. A.R.S. section 32-1522 sets forth the minimum educational requirements for an individual to be eligible for a license to practice naturopathy in the State of Arizona. These requirements are a high school diploma or the equivalent of a high school diploma and graduation from a school or schools of drugless therapeutics approved by the Board. The board-approved school or schools must include a four year residential studies program devoted to the study of the subjects listed in the statute. The number of hours of study in each subject listed are to be in approximately the same number as stated in the statute.

"A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . . ." Sutherland, Statutes and Statutory Construction section 46.06 (4th ed., Sands, 1972); State Board of Technical Registration v. McDaniel, 84 Ariz. 223, 326 P.2d 348 (1958). All the provisions of A.R.S. section 32-1522 must be given effect. The Legislature intended that applicants for licenses to practice naturopathy complete course work in the subjects listed and in the approximate number of hours stated or they would not have set out the educational requirements with such specificity.

In order to satisfy the educational requirements in A.R.S. section 32-1522, an applicant is required to complete course work in each of the subjects listed in the approximate number of hours assigned to each subject.

2. The phrase "/i/n the approximate number of hours assigned to each" means a number of hours nearly resembling that assigned to each subject. "Approximate" means nearly resembling; near to correctness or accuracy; nearly exact; located very close together. See Webster's Third New International Dictionary 107 (1976). The applicant is required to have completed almost but not quite the exact number of hours stated in A.R.S. section 32-1522. The use of the word "approximate" was probably meant to allow the Board some flexibility when considering applicants' educational backgrounds since it is unlikely that all the schools of drugless therapeutics approved by the Board would offer the identical number of hours as required in the statute for each subject.

The basis for evaluating the educational backgrounds of applicants for licenses to practice naturopathy in Arizona is found in A.R.S. section 32-1522. An applicant must have a high school diploma or its equivalent and be a graduate of a board-approved school of drugless therapeutics with a total of not less than forty-five hundred hours of study in the subjects listed with the hours divided between the subjects in approximately the same number as assigned to each in the statute.

Arizona courts have only briefly mentioned the educational requirements of naturopaths. In Chalupa v. Industrial Commission, 17 Ariz. App. 386, 498 P.2d 228 (1972), the Court of Appeals stated that:

> /t/he statutes /A.R.S. section 32-1522/delineating the educational requirements of naturopaths indicate that as a group they are likely to be relatively well schooled in medical matters. 17 Ariz. App. at 390.

The Supreme Court in Kuts-Cheraux v. Wilson, 71 Ariz. 461, 465, 229 P.2d 773 (1951), noted that naturopaths are not qualified by their training to prescribe drugs or perform surgical operations.

The Board has adopted a rule regarding educational requirements. Arizona Code of Administrative Rules and Regulations (A.C.R.R.), R4-18-05 provides that:

> A. No credit whatever will be allowed on the educational requirements of this Act for any so-called home extension or correspondence study.
>
> B. The educational requirements for certification for this Board shall be those stated in the A.R.S. section 32-1522, which excludes major surgery and includes diagnosis. Each licentiate is required to participate in fifteen (15) hours of postgraduate work during each calendar year. Said postgraduate work shall be as prescribed by this Board or said requirement shall be satisfied by an affidavit sworn to by the registrar of a Naturopathic college that is recognized by the National Association of Naturopathic Physicians.

3. The function of this office in connection with performance audits by the Auditor General is to provide legal research and statutory interpretation. It would be inappropriate for this office to apply legal principles to a question which asks what the impact of a particular administrative action would be if the result would imply the same conclusion in all cases. A subjective application of the law can only be done on a case-by-case basis and is properly left to the administrative authority in the first instance and to the courts in the second.

CONCLUSION:

1. Applicants for licensure by the Board are required to complete course work in each of the subjects listed in A.R.S. section 32-1522.

2. The phrase "/i/n the approximate number of hours assigned to each" means a number of hours nearly resembling that assigned to each subject.

3. It would be inappropriate for this office to answer this question for the reasons set forth above.

cc: Gerald A. Silva
Performance Audit Manager

APPENDIX III

LEGISLATIVE COUNCIL OPINION 0-81-58
JULY 1, 1981

ARIZONA LEGISLATIVE COUNCIL

APPENDIX III

MEMO

July 1, 1981

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (O-81-58)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated June 10, 1981. No input was received from the Attorney General concerning this request.

FACT SITUATION:

Arizona Revised Statutes (A.R.S.) section 32-1521, subsection C states that:

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

QUESTIONS PRESENTED:

1. Do the requirements of A.R.S. section 32-1521, subsection C state that the affidavits shall be signed by reputable residents of the State of Arizona, or may they be the residents of any state?

2. If the affidavits must be signed by residents of the State of Arizona, does the failure to comply with this requirement automatically disqualify an applicant?

3. If an individual is already licensed by the Board of Naturopathic Examiners (Board) and it is learned that the affidavits are signed by residents of states other than Arizona, what impact would this have on the individual's license to practice naturopathy?

ANSWERS:

1. The affidavits required under A.R.S. section 32-1521, subsection C must be signed by reputable residents of the State of Arizona.

"It is a fundamental rule of statutory construction that plain, clear and unambiguous language of a statute is to be given that meaning unless impossible or absurd consequences may result." Balestrieri v. Hartford Accident and Indemnity Insurance Co., 112 Ariz. 160, 163, 540 P.2d 126 (1975). Since A.R.S. section 32-1521, subsection C clearly states that the applicant is required to file affidavits of two reputable residents of

the state with his application, the affidavits must be signed by residents of the state of Arizona. No other meaning can be given to this language. If the Legislature had intended that the affidavits could be signed by residents of any state it would have used different language.

Impossible or absurd consequences do not result from giving the language its plain meaning. Indeed, since the applicant will be practicing naturopathy in Arizona it is more desirable to have Arizona residents attest to the applicant's good moral character.

2. It is mandatory for an applicant to file affidavits of two reputable residents of the state attesting to the good moral character of the applicant in order to satisfy the application requirements for taking the qualifying examination and obtaining a license to practice naturopathy.

> Where an individual's rights depend upon his compliance with the provisions of a statute, those provisions are generally mandatory, and compliance therewith a condition precedent to the perfection of such rights.[1] Sutherland, Statutes and Statutory Construction section 57.15 (4th ed., Sands, 1972).

An applicant's qualification for the privilege of taking the naturopathic exam and obtaining a license to practice naturopathy depends upon his compliance with A.R.S. section 32-1521. That compliance is a condition precedent to his qualifying to take the exam and for a naturopathic license.

So long as the applicant files the affidavits called for with the application and satisfies the other requirements of A.R.S. section 32-1521 not less than thirty days before the date of the examination he will qualify to take the examination. If those conditions have not been met the applicant is not qualified to take the examination or to become licensed to practice naturopathy.

3. The function of this office in connection with performance audits by the Auditor General is to provide legal research and statutory interpretation. It would be inappropriate for this office to apply legal principles to a question which asks what the impact of a particular administrative action would be if the result would imply the same conclusion in all cases. A subjective application of the law can only be done on a case-by-case basis and is properly left to the administrative authority in the first instance and to the courts in the second.

CONCLUSION:

1. The affidavits required under A.R.S. section 32-1521, subsection C must be signed by reputable residents of the State of Arizona.

---

1. In Arizona, no right to practice medicine exists, but a privilege to practice medicine as allowed and regulated by the Legislature does exist. Kuts-Cheraux v. Wilson, 71 Ariz. 461, 229 P.2d 713, opinion supplemented 72 Ariz. 37, 230 P.2d 512 (1951).

2. If the affidavits are not signed by residents of the State of Arizona the applicant is not qualified to take the licensing examination or to become licensed to practice naturopathy.

3. It would be inappropriate for this office to answer this question for the reasons set forth above.

cc: Gerald A. Silva
Performance Audit Manager