



1-1-2004

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Recommended Citation

Thomas R. Clark, *Business and Professions / Licensing Alternative Approaches to Medicine: The Naturopathic Doctors' Act of 2003*, 35 MCGEORGE L. REV. 387 (2004).

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Licensing Alternative Approaches to Medicine: The Naturopathic Doctors' Act of 2003

Thomas R. Clark

Code Sections Affected

Business and Professions Code, §§ 3610-3685 (new); §§101,144,146,149 (amended), Corporations Code § 13401.5 (amended).
SB 907 (Burton); 2003 STAT. Ch. 485.

I. INTRODUCTION

According to a 1993 study published in *The New England Journal of Medicine*, thirty-four percent of those Americans polled reported that they had relied upon some form of “alternative” or “unconventional” medicine within the course of a single year.¹ A follow-up study published in 1998 concluded that the trend seen in 1993 had only accelerated in the intervening five years.² In California the numbers were even higher,³ and in 2002, a committee of the California Legislature concluded that between five and six million Californians see a non-conventional medical practitioner on a regular basis.⁴ One of the fastest growing areas of alternative medicine is naturopathy, which relies upon an array of “natural” treatments, such as herbal remedies, vitamins, amino acids, hydrotherapy, massage, electromagnetism, and dietary and nutritional regimens.⁵ The primary aim of naturopathic treatment, according to its practitioners, is to initiate the body’s natural “self-healing” mechanisms.⁶ Those who turn to naturopathy report that it is a more personalized approach to medicine.⁷ Some

1. David Eisenberg et al., *Unconventional Medicine in the United States: Prevalence, Costs, and Patterns of Use*, 328 NEW ENG. J. MED. 246 (1993).

2. See ASSEMBLY COMMITTEE ON HEALTH, COMMITTEE ANALYSIS OF SB 577, at 4 (June 18, 2002) (summarizing the conclusion of the 1998 follow-up study); Debbie Talanian, *Meeting in the Middle: Western Physicians and Alternative Practitioners Are Joining Forces to Treat Patients*, ORANGE COUNTY REG., Jan. 29, 2003.

3. Sabin Russell, *Cashing In On Non-Traditional Therapies, HMOs Try Dose of Alternative Medicine*, S.F. CHRON., Jan. 22, 1996, at A1.

4. ASSEMBLY COMMITTEE ON HEALTH, COMMITTEE ANALYSIS OF SB 577, at 2 (June 12, 2002).

5. See STEVEN BRATMAN, *THE ALTERNATIVE MEDICINE SOURCEBOOK: A REALISTIC EVALUATION OF ALTERNATIVE HEALING METHODS*, 59-101 (2d ed. 1999) (providing a general overview of the history, philosophy, and techniques of naturopathic medicine); Dorsey Griffith, *California Legislature to Consider Bill Licensing Naturopathic Practitioners*, SACRAMENTO BEE, Feb. 25, 2003 (noting that naturopathy is gaining acceptance from the established medical community and that naturopaths have already won licensure in eleven states and bills are pending in the legislatures of several other states, including California).

6. BRATMAN, *supra* note 5, at 59-70 (describing development of principles underlying naturopathy from the eighteenth century to the present).

7. See Andrea Petersen, *States Grant 'Herb Doctors' New Powers; Naturopaths Can Now Write Prescriptions, Perform Surgery; Some Insurers Pick up the Tab*, WALL ST. J. at D1 (Aug. 22, 2002) (stating that a typical initial visit lasts between 90 minutes and two hours “compared to a conventional medical doctor’s visit at only 20 minutes).

speculate that the growing interest in naturopathy and other alternative approaches reflects an increasing displeasure with conventional practice and the regime of “managed care.”⁸

In addition to increasing consumer interest in alternative medicine—or perhaps because of it—members of the established medical community have begun to recognize the potential of some naturopathic methods.⁹ For example, many conventionally trained medical doctors now work in “integrative” clinics that combine naturopathic and “allopathic” (i.e. conventional) approaches to medicine.¹⁰ Health insurance companies, especially health maintenance organizations (HMOs), have shown a keen interest in an approach to medicine that is relatively cost-effective and also stresses prevention and healthy lifestyles.¹¹

Despite the growing numbers of Californians who turn to naturopathic health care providers, either as an alternative or a supplement to conventional medicine, the state had no mechanism for licensing naturopaths before the enactment of Chapter 485. In October of 2002, the need for licensing was tragically highlighted when a fifty-year-old Los Angeles man, Roberto Caceres, sought treatment for a rash from two women who advertised themselves as “naturopathic faith healers.”¹² After receiving two injections of an unknown substance from one of the women, Mr. Caceres went into shock and later died at Valley Presbyterian Hospital.¹³ To protect the interests of both clinically trained naturopaths and the consumers who rely upon their expertise, the California Association of Naturopathic Physicians (CANP) and its allies persuaded the California Legislature to enact Chapter 485.¹⁴

8. Griffith, *supra* note 5; see also Petersen, *supra* note 7 (describing naturopathy movements in several states as a response, in part, to the perceived impersonal nature of conventional medicine and managed care).

9. Talanian, *supra* note 2.

10. *Id.*; see also Betty F. Lay, *Healer-Patient Privilege: Extending the Physician-Patient Privilege to Alternative Health Practitioners in California*, 48 HASTINGS L.J. 633, 638 (1997) (noting several “integrated” clinics that have emerged in recent years).

11. Russell, *supra* note 3; see also Lay, *supra* note 10, at 638-39 (discussing insurance companies’ growing interest in alternative medicine and listing various health insurance companies that now cover certain alternative medicine treatments).

12. Ryan Oliver, “Healers” Arrested After Man’s Death, L.A. DAILY NEWS, Oct. 30, 2002, at N5.

13. *Id.*

14. ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS, COMMITTEE ANALYSIS OF SB 907, at 10-11 (July 1, 2003).

II. LEGAL AND HISTORICAL BACKGROUND

A. California's Medical Practices Act

First enacted in 1876, California's Medical Practices Act ("MPA") regulates the practice of medicine in the state and establishes a framework for medical licensing.¹⁵ In 1937, the Act became codified as sections 2000 through 2497 of the California Business and Professions Code.¹⁶ Originally administered by a single medical board, existing law creates separate boards for various medical specialties, such as osteopathy, chiropractic, and acupuncture among others.¹⁷ In creating a system of medical licensing, the MPA serves three important functions.¹⁸ First, it establishes minimum educational and training requirements for medical licensees.¹⁹ In order to qualify for a license, the practitioner must hold a degree from an accredited medical school or college and pass an examination administered by the relevant board of examiners.²⁰ Second, by defining the licensee's "scope of practice," it specifies which particular medical practices a licensee may or may not perform.²¹ Third, it offers "title protection" to licensees by providing for the criminal punishment of those who practice medicine or appropriate medical titles without a license.²² The MPA also imposes criminal penalties of up to \$10,000 or one year in jail for practicing medicine without a license.²³

B. Naturopaths and Licensing in California up to 1952

Naturopaths were not always excluded from the licensing provisions of the MPA.²⁴ When first enacted in 1876, the MPA established a single medical board, which issued "certificates" or "licenses"²⁵ to anyone "who shall profess publicly

15. See *Ex Parte Frazer*, 54 Cal. 94, 95 (1880) (citing the original 1876 Act "to regulate the practice of medicine" and discussing its initial powers).

16. See *Gross v. Molony*, 102 P.2d 816, 818, 39 Cal. App. 2d 175, 177 (1940) (discussing the codification of the Medical Practices Act into the Business and Professions Code).

17. *Id.*; CAL. BUS. & PROF. CODE §§ 101, 144, 149 (West 2003).

18. SENATE FLOOR, ANALYSIS OF SB 907, at 3-9 (May 21, 2003).

19. See SENATE COMMITTEE ON BUSINESS AND PROFESSIONS, COMMITTEE ANALYSIS OF SB 907, at 4-6 (defining educational and training requirements for the new license).

20. CAL. BUS. & PROF. CODE § 2005 (West 2003).

21. See SENATE COMMITTEE ON BUSINESS AND PROFESSIONS, COMMITTEE ANALYSIS OF SB 907, at 6-11 (defining "scope of practice" requirements).

22. See *id.* at 11-12 (defining "title protection" provisions).

23. CAL. BUS. & PROF. CODE § 2052(a) (West 2003).

24. See SENATE COMMITTEE ON BUSINESS AND PROFESSIONS, COMMITTEE ANALYSIS OF SB 907, at 14 (Apr. 28, 2003) (explaining that naturopaths were licensed as "drugless practitioners" in the early twentieth century).

25. CAL. BUS. & PROF. CODE § 2040 (West 2003) (noting the synonymy [sic] of "certificate" and "license" as used in the statute.); see also *Oosterveen v. Bd. of Med. Exam'rs*, 246 P.2d 136, 138, 112 Cal. App. 2d 201, 203 (1952) (using the terms of "certificate" and "license" interchangeably).

to be a physician, or who shall habitually prescribe for the sick, or who shall append to his name the letters 'M.D.'"²⁶ This rather non-exacting requirement was replaced by the Medical Practice Act of 1901, which empowered the Medical Board to issue certificates only to those who could meet minimum educational and skill requirements.²⁷ A 1907 amendment provided for three separate certificates issued by three separate boards.²⁸ One board issued certificates to "physicians and surgeons," who alone enjoyed the title of "M.D."²⁹ A second board issued certificates to osteopaths, whose training and scope of practice became nearly indistinguishable from that of regular medical doctors over the course of the twentieth century.³⁰ A third board issued certificates to those who practiced "any other system or mode of treating the sick or afflicted."³¹ Although vaguely defined, this third category covered so-called "drugless practitioners," a catchall phrase that covered those who administered traditional folk and homeopathic remedies and generally eschewed synthetic drugs and invasive surgery.³² A 1909 amendment to the MPA expressly included within the "drugless practitioner" category those who held a certificate from the Association of Naturopaths of California, which had begun operation of the state's only school of naturopathy in 1904.³³ By recognizing these certificates, the state effectively granted naturopaths a license to practice their system of medicine in California.³⁴

From 1909 to 1949, licensed naturopaths practiced legally in California,³⁵ but the California courts gradually narrowed the naturopath's scope of practice and sharply distinguished naturopathy from the "practice of medicine."³⁶ Naturopaths finally lost whatever recognition they once enjoyed when a 1949 amendment to

26. See *Millsap v. Alderson*, 219 P. 469, 472, 63 Cal. App. 518, 524 (1923) (discussing the 1901 amendment to the Medical Practices Act).

27. See *id.* at 472, 63 Cal. App. at 524.

28. See *id.* at 471-73, 63 Cal. App. at 521-25 (discussing the 1907 amendment).

29. *Id.* at 471-72, 63 Cal. App. at 522-23.

30. *Id.*; see also *Gamble v. Bd. of Osteopathic Exam'rs of the State of Cal.*, 130 P.2d 382, 383-385, 21 Cal. 2d 215, 216-218 (1942) (noting the similarity of training between physicians and osteopaths as early as 1942); PAUL STARR, *THE SOCIAL TRANSFORMATION OF AMERICAN MEDICINE* 108, 137, 223 (1984) (discussing the movement of osteopathy from the fringe to the mainstream of established medicine); ROBERT FULLER, *ALTERNATIVE MEDICINE AND AMERICAN RELIGIOUS LIFE* 85-86 (1989) (discussing the gradual shift of osteopathy to allopathic techniques).

31. *Millsap*, 219 P. at 471, 63 Cal. App. at 521.

32. *Oosterveen v. Bd. Of Med. Exam'rs*, 246 P.2d 136, 137-38, 112 Cal. App. 2d 201, 203 (1952); see also SENATE COMMITTEE ON BUSINESS AND PROFESSIONS, *COMMITTEE ANALYSIS OF SB 907*, at 14 (Apr. 28, 2003); FULLER, *supra* note 30, at 22-26, 55-56 (discussing the development of "homeopathy" and related approaches in the nineteenth century).

33. *Millsap*, 219 P. at 471-72, 63 Cal. App. at 522-23.

34. *Id.* at 471-72, 63 Cal. App. at 522-23; *Oosterveen*, 246 P.2d at 137-138, 112 Cal. App. 2d at 203.

35. *Oosterveen*, 246 P.2d at 137-138, 112 Cal. App. at 203.

36. *Millsap*, 219 P. at 469, 63 Cal. App. at 530 (holding that naturopaths were not licensed to "practice medicine"); see also *Gross v. Molony*, 102 P.2d 816, 39 Cal. App. 2d 179 (1940) (holding that naturopaths could not prescribe glycerin since it was a synthetic drug rather than a natural substance).

the MPA eliminated the category of “drugless practitioner.”³⁷ Three years later, in *Oosterveen v. Board of Medical Examiners*, the California Court of Appeals held that “the practice of naturopathy, as such, may not be licensed under existing laws, nor may the system be practiced without a license.”³⁸

C. *A First Step: SB 577 and the Decriminalization of Naturopathy*

When the court in *Oosterveen* held that naturopaths could not practice or be licensed in the state, there were few practicing naturopaths around to protest.³⁹ However, with renewed interest in natural and alternative approaches to medicine, the suspect legal status of naturopathy and other forms of alternative medicine became more apparent.⁴⁰ Insofar as naturopaths practiced a “system” of medicine and purported to diagnose or treat medical ailments, they ran the risk of violating the MPA.⁴¹ A group representing the interests of natural and alternative health practitioners, claimed that the “overly broad wording of the Medical Practices Act has driven alternative and complementary medicine practices underground.”⁴² Specifically, section 2052 of the Business and Professions Code made it unlawful for any unlicensed person to practice, advertise, or hold oneself out as practicing “any system or mode of treating the sick or afflicted.”⁴³ The law also imposed penalties on anyone who “diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition” without a license.⁴⁴ While naturopaths, by definition, rejected prescription drugs and invasive surgery, the rather broad language prohibiting diagnosis and treatment of “any ailment” subjected many naturopathic methods to prosecution under the MPA.⁴⁵

In response to these concerns, Senator John Burton introduced SB 577 in the California Legislature in 2001.⁴⁶ Finally enacted in 2002, the new law lifted the cloud of criminality that hung over the practice of alternative medicine.⁴⁷ While prior law prohibited the “practice of medicine” without a license in very broad language,⁴⁸ the new law exempted alternative health care practitioners from prosecution so long as they did not engage in certain specified acts.⁴⁹ Most

37. *Oosterveen*, 246 P.2d at 138, 112 Cal. App. 2d at 203.

38. *Id.* at 139, 112 Cal. App. 2d at 205.

39. *See id.* at 138, 112 Cal. App. 2d at 203 (noting that no more than 1000 naturopaths were practicing).

40. ASSEMBLY COMMITTEE ON HEALTH, COMMITTEE ANALYSIS OF SB 577, at 4-5 (June 18, 2002).

41. *Id.* at 3.

42. *See id.* at 5 (citing the North American Society of Homeopaths).

43. CAL. BUS. & PROF. CODE § 2052 (West 2003).

44. *Id.*

45. ASSEMBLY COMMITTEE ON HEALTH, COMMITTEE ANALYSIS OF SB 577, at 3 (June 18, 2002).

46. *Id.* at 1-4.

47. CAL. BUS. & PROF. CODE §§ 2053.5, 2053.6 (West 2003).

48. *Id.* §§ 2051, 2052.

49. *Id.* § 2053.5.

notably, they could not prescribe drugs, order radiation treatment, or perform surgery.⁵⁰ In addition, while prior law made it a crime to “diagnos[e], or treat[t] . . . any ailment,”⁵¹ the amended law prohibited diagnosis or treatment only “under circumstances or conditions that cause or create a risk of great bodily harm, serious physical or mental illness, or death.”⁵² According to section 2053.6 of the Business and Professions Code, the practitioner must disclose to the client that natural and alternative medicines are not licensed in the state of California and that the practitioner is not a licensed physician.⁵³

While SB 577 freed alternative health care providers from the threat of criminal prosecution, it left a number of issues unresolved. First, the new law failed to positively define a scope of practice, defining alternative health care only in the negative terms of what its practitioners could not do.⁵⁴ Second, because the new law did not provide for the licensing of practitioners, it could not set minimum educational or training requirements for the practice of alternative medicine.⁵⁵ Without a license that signified a certain level of education or training, a naturopath who had undergone several years of graduate training at an accredited college of naturopathy could not be distinguished from one who had received a certificate from a correspondence school.⁵⁶ Finally, without licensing, the law did not provide title protection to practitioners.⁵⁷ In short, the new legislation merely clarified the language of the Medical Practices Act so as to exempt a limited range of naturopathic services from prosecution under the MPA.⁵⁸ In an effort to address the shortcomings of his previous measure, in 2003 Senator Burton and the California Association of Naturopathic Physicians sponsored the bill that would become Chapter 485.⁵⁹

III. CHAPTER 485

Chapter 485, the “Naturopathic Doctor’s Act,” provides for the state licensing of “naturopathic doctors” who have completed a full-time, accredited, graduate-level program in the study of naturopathic medicine and passed a

50. *Id.* § 2053.5(a)(1)-(3).

51. *Id.* § 2052(a).

52. *Id.* § 2053.5(a)(5).

53. *Id.* § 2053.6.

54. See SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 577, at 5 (Aug. 17, 2002) (stating opposition to SB 577).

55. *Id.* at 4-5.

56. ASSEMBLY COMMITTEE ON HEALTH, COMMITTEE ANALYSIS OF SB 577, at 5-6 (June 18, 2002).

57. *Id.*; see also California Association of Naturopathic Physicians, *Natural Medicine Now: Information on SB 907*, at http://www.naturalmedicinenow.org/bill_info.html (last visited July 18, 2003) (copy on file with the *McGeorge Law Review*).

58. SENATE COMMITTEE ON BUSINESS AND PROFESSIONS, COMMITTEE ANALYSIS OF SB 907, at 1-11 (Apr. 28, 2003).

59. SENATE FLOOR, ANALYSIS OF SB 907, at 10 (May 21, 2003).

licensing exam administered or approved by the North American Board of Naturopathic Examiners.⁶⁰ The Act creates the Bureau of Naturopathic Medicine (“Bureau”) within the Department of Consumer Affairs and imposes upon it the responsibility of developing, administering, and enforcing a naturopathic educational and licensing program.⁶¹

Under Chapter 485, the Bureau must approve an educational program that meets the requirements of the Council on Naturopathic Medical Education (“CNME”).⁶² Although admission into this program does not require a bachelor’s degree, it does require that applicants have completed three-quarters of the credit hours required for a bachelor’s degree at a regionally accredited college or university.⁶³ Specific program requirements include the completion of 4,100 academic and clinical hours in basic medical sciences (or “allopathic” medicine) as well as naturopathic philosophy and naturopathic medicine.⁶⁴ Of the required 4,100 hours, at least 2,500 hours must consist of academic instruction while at least 1,200 hours must consist of supervised clinical training.⁶⁵

Those applying for a license from the state Bureau must meet at least three minimum requirements. First, they must not have “committed an act or crime that constitutes grounds for license denial generally under the Business and Professions Code.”⁶⁶ Second, they must hold a degree from an accredited naturopathic medical school, and the degree must fulfill the basic requirements of the Act.⁶⁷ Third, they must pass the Naturopathic Physicians Licensing Examination (“NPLEX”) or an equivalent exam administered by the Bureau and approved by the North American Board of Medical Examiners.⁶⁸ The Act also authorizes the Bureau to grant licenses to applicants who hold a valid license from another state, presuming those states have requirements equivalent to those of California.⁶⁹ In addition, the Act provides for periodic renewal of licenses and corresponding continuing education requirements.⁷⁰

In addition to developing educational and licensing requirements, Chapter 485 also defines the licensed naturopaths “scope of practice,” one of the most controversial aspects of the new legislation.⁷¹ Under Chapter 485, the naturopathic doctor may

60. CAL. BUS. & PROF. CODE §§ 101, 144, 146, 149 (amended by Chapter 485); *see also id.* § 3610-3685 (added by Chapter 485).

61. *Id.* §§ 3612, 3620-3622 (added by Chapter 485).

62. *Id.* § 3623(a); *see also* SENATE FLOOR, ANALYSIS OF SB 907, at 1-2 (May 21, 2003).

63. CAL. BUS. & PROF. CODE § 3623(a)(1) (added by Chapter 485); *see also* SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 907, at 2 (May 21, 2003).

64. CAL. BUS. & PROF. CODE § 3623(a)(1)-(2) (amended by Chapter 485).

65. *Id.* § 3623(a)(2) (added by Chapter 485); *see also* SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 907, at 3 (May 21, 2003).

66. CAL. BUS. & PROF. CODE § 3630(a) (added by Chapter 485).

67. *Id.* § 3630(b).

68. *Id.* § 3631.

69. *Id.* §§ 3633, 3633.1, 3622.2.

70. *Id.* §§ 3634-3635.

71. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 907, at 5-6 (May 21, 2003).

diagnose and treat medical conditions within the framework of established naturopathic practice.⁷² These practices include prescribing vitamins, herbs, amino acids, and other homeopathic medicines⁷³ and performing such therapeutic procedures as hydrotherapy, massage, colon hydrotherapy, electromagnetic procedures, and exercise therapy.⁷⁴ Naturopathic doctors may also practice back and joint “manipulation,” so long as it is consistent with the methods taught in accredited schools of naturopathy and does not encroach upon the techniques used by licensed chiropractors.⁷⁵ In addition to these traditional naturopathic procedures, the new law permits naturopaths to prescribe some prescription, or “legend,” drugs so long as it is done under the supervision of a licensed physician.⁷⁶ The naturopathic doctor may now order and perform routine physical and laboratory examinations, but complex diagnostic procedures (e.g. x-rays and mammograms) must be conducted and interpreted by an appropriate licensed medical professional.⁷⁷ Chapter 485 also permits licensed naturopaths to perform “minor office procedures,” defined as the treatment of minor skin surface lacerations, abrasions, and lesions, so long as the licensee submits additional evidence of surgical training.⁷⁸ Lastly, a naturopathic doctor may perform “natural childbirth”—including pre-natal care, delivery, and postpartum care—so long as he or she has passed a state midwifery examination and has had clinically supervised training in natural childbirth.⁷⁹

Finally, Chapter 485 provides “title protection” to those who meet the educational and licensing provisions of the Act.⁸⁰ This means that persons who claim to be “naturopaths,” but do not meet the requirements of licensure, will not be allowed to present themselves or advertise as “naturopathic doctors” or use the title “N.D.” after their name.⁸¹ While persons who call themselves “naturopaths,” but who lack the requisite training set out in the bill, may continue to act as natural health care “consultants,” they will not be able to use the title “doctor” or “N.D.”⁸² As importantly, they are not permitted to perform the practices and procedures that constitute the expanded scope of practice that the Act creates for licensed naturopathic doctors.⁸³

72. *Id.* at 5-7.

73. CAL. BUS. & PROF. CODE § 3640(c)(1) (added by Chapter 485).

74. *Id.* § 3640(c)(2).

75. See SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 907, at 10 (May 21, 2003) (commenting on provisions of SB577).

76. CAL. BUS. & PROF. CODE § 3640(e)(1) (added by Chapter 485).

77. *Id.* § 3640(a)-(b).

78. *Id.* § 3640(c)(5); see also SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 907, at 5-6 (May 21, 2003).

79. CAL. BUS. & PROF. CODE §§ 3650-3654 (added by Chapter 485); see also SENATE RULES COMMITTEE, ANALYSIS OF SB 907, at 7-9 (May 21, 2003).

80. CAL. BUS. & PROF. CODE §§ 3660-3664 (added by Chapter 485).

81. *Id.* §§ 3660(b), 3661-3662.

82. *Id.*

83. *Id.* §§ 3660-3664; see also SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 907, at 9-10 (May 21, 2003).

IV. ANALYSIS OF CHAPTER 485

According to its supporters, Chapter 485 permits licensed naturopaths to offer a full scope of services commensurate with their skill, education, and training.⁸⁴ As a result, California consumers will enjoy access to a wider range of alternative and complimentary health care services.⁸⁵ By offering title protection to naturopaths who have completed an approved four-year program at an accredited school, the new law permits consumers to distinguish between different modes and levels of training and, therefore, make more informed choices when selecting a naturopathic health care provider.⁸⁶ Dr. Andrew Weil, a medical doctor who embraces alternative medicine, believes that licensed naturopaths will complement, not compete with, conventionally trained medical doctors. “[Naturopathic doctors] are very well trained in areas of medicine that medical doctors are not, such as nutrition and mind-body medicine,” Dr. Weil observes. “And they may have lower-cost methods of dealing with common conditions.”⁸⁷ In short, Chapter 485 will establish much needed educational and training standards, provide greater choice and access to California consumers, and lower costs while improving the quality of health and healthcare in the state.⁸⁸

Will Chapter 485 live up to its promise? Established medical doctors, as represented by the California Medical Association (“CMA”), are not so sure.⁸⁹ Although the CMA dropped its opposition to the new law once certain amendments were made, the organization maintained a cautious reserve and stopped short of endorsing the measure.⁹⁰ The CMA questions whether naturopaths, even those who complete accredited graduate programs, have sufficient education and training in conventional medicine.⁹¹ Initially, the CMA feared the prospect of naturopaths dispensing prescription drugs, performing

84. ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS, COMMITTEE ANALYSIS OF SB 907, at 1, 10-11 (July 1, 2003); see also Shari Roan, *Doctors with An Alternative Agenda; Naturopathic Healers in California Are Seeking the Right to Offer More Medical Services*, L.A. TIMES, June 23, 2003, at F1; Ulysses Torassa, *Bill Gives Big Dose of Credibility to Naturopaths: But Practitioners Split over Proposed Rules*, S.F. CHRON., July 5, 2003, at A1 (listing general support for the new law licensing naturopaths).

85. ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS, COMMITTEE ANALYSIS OF SB 907, at 11-12 (July 1, 2003); Roan, *supra* note 84; Torassa, *supra* note 84.

86. Roan, *supra* note 84 at F1.

87. *Id.*

88. ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS, COMMITTEE ANALYSIS OF SB 907, at 1, 10-12 (July 1, 2003).

89. *Id.* at 13.

90. *Id.*; see also Torassa, *supra* note 84 at F1 (noting the “guarded optimis[m]” of the CMA even after the amendments had been passed).

91. See Roan, *supra* note 84 at F1 (quoting a CMA representative to the effect that naturopaths were not qualified to cover the full range of services provided by primary care doctors); see also CMA Position Paper on SB 907, at http://www.calphys.org/assets/applets/sb_907.pdf (last visited July 11, 2003). [hereinafter CMA Position Paper] (copy on file with the *McGeorge Law Review*) (outlining reasons for the CMA’s opposition to SB 907).

even “minor” surgical procedures, and delivering infants.⁹² To a certain extent, these fears were assuaged by amendments that allow licensed naturopaths to prescribe drugs only under the supervision of a licensed physician.⁹³ As for the licensed naturopath’s ability to perform minor surgery—or “minor office procedures” as the new law refers to it—naturopathic doctors must submit evidence of additional training in surgical techniques.⁹⁴ Similarly, chiropractors, jealous of their monopoly on manipulating joints beyond their “natural” bending points, secured an amendment that prevents the naturopathic doctor from intruding into the more specialized chiropractic methods.⁹⁵

While amendments to the original bill deflected much of the opposition from conventional practitioners, the most strenuous criticism of the new law comes from within the naturopathic community.⁹⁶ Organizations such as the Coalition for Natural Health (“CNH”) and the California Naturopathic Association (“CNA”) claim that graduates of the handful of accredited schools represent only a minority of practicing naturopaths.⁹⁷ The CNH and CNA contend that their members are “true” and “traditional” naturopaths, whereas the methods taught in the accredited institutions, with their greater acceptance of allopathic medicine, mark a heretical departure from traditional naturopathy.⁹⁸ There is no need, the traditionalists point out, for provisions on prescription drugs or surgery since neither has ever been part of the naturopathic approach.⁹⁹ For the naturopaths represented by the CNH and CNA, the real issue is not about access to alternative health care, but about protecting the economic and professional interests of those who received their training at one of the accredited schools.¹⁰⁰ According to Boyd Landry, executive director of the CNH, many practicing naturopaths have

92. CMA Position Paper, *supra* note 91; Griffith, *supra* note 5.

93. See ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS, HEARINGS ON SB 907, at 13 (July 1, 2003) (explaining how the bill as amended incorporated the CMA’s suggestions).

94. CAL. BUS. & PROF. CODE §§ 3613(g), 3640.1(a) (added by Chapter 485).

95. *Id.* § 3640(c)(2); see also SENATE COMMITTEE ON BUSINESS AND PROFESSIONS, COMMITTEE ANALYSIS OF SB 907, at 17-18 (Apr. 28, 2003); California Chiropractic Association, Action Alert: Bill to License Naturopathic Physicians Has Been Introduced, at <http://www.occhiro.org/documents/SB%20907&20Action%Alert.doc> (last visited June 4, 2003) (copy on file with the *McGeorge Law Review*) (asking members to write letters of opposition to state senators and assembly members).

96. Torassa, *supra* note 84; ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS, COMMITTEE ANALYSIS OF SB 907, at 13-14 (July 1, 2003).

97. ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS, COMMITTEE ANALYSIS OF SB 907, at 13-14 (July 1, 2003); SENATE COMMITTEE ON BUSINESS AND PROFESSIONS, COMMITTEE ANALYSIS OF SB 907, at 19-21 (Apr. 28, 2003).

98. Coalition for Natural Health, Licensing Natural Health is Bad Medicine, at <http://www.naturalhealth.org/agenda/license.html> (last visited July 12, 2003) (copy on file with the *McGeorge Law Review*).

99. *Id.*; see also ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS, COMMITTEE ANALYSIS OF SB 907, at 13-14 (July 1, 2003); SENATE COMMITTEE ON BUSINESS AND PROFESSIONS, COMMITTEE ANALYSIS OF SB 907, at 19-21 (Apr. 28, 2003) (listing CNH and CNA as opponents to this legislation).

100. SENATE COMMITTEE ON BUSINESS AND PROFESSIONS, COMMITTEE ANALYSIS OF SB 907, at 19-21 (Apr. 28, 2003).

invested “years of blood, sweat, and tears” into training and practice.¹⁰¹ But those naturopaths who did not happen to go to one of the accredited schools will not be able to call themselves a “naturopathic doctor” and will be placed at a competitive disadvantage compared to licensed naturopaths.¹⁰² “When one achieves enough political power,” Landry says of those who sponsored Chapter 485, “they [sic] are able to get a licensing law passed, and the first thing they do is put everybody else out of business [who] didn’t qualify.”¹⁰³

Whether Chapter 485 will in fact put non-licensed naturopaths “out of business” remains to be seen. Chapter 485 leaves in place the 2002 amendment exempting traditional naturopaths from prosecution under the MPA so long as they did not engage in expressly prohibited procedures.¹⁰⁴ However, unlicensed naturopaths will not be allowed to engage in the expanded scope of practice developed in Chapter 485, nor will they will be permitted to use the title “doctor” or the abbreviation “N.D.”¹⁰⁵ They may, however, use the titles “naturopathic practitioner,” or “traditional naturopathic practitioner.”¹⁰⁶

Finally, Chapter 485 raises questions about the always thorny issue of health insurance coverage.¹⁰⁷ While licensure opens up the prospect of health insurance coverage for naturopathic services, it does not compel insurance companies to offer coverage.¹⁰⁸ Of the eleven states and one U.S. territory that preceded California in licensing naturopaths, only two of them—Washington and Connecticut—require health insurance companies to cover the services of licensed naturopaths.¹⁰⁹ Chapter 485 also raises the prospect of licensed naturopaths acting as primary care doctors within a system of managed care.¹¹⁰ At the core of the managed care system is the concept of a “primary care physician” who acts as gatekeeper for an individual patient’s health care.¹¹¹ For example, under many managed care plans, services provided by a specialist typically will

101. Torassa, *supra* note 84.

102. *Id.*; Roan, *supra* note 84.

103. Torassa, *supra* note 84.

104. See CAL. BUS. & PROF. CODE §§ 2053.5, 2053.6 (added by Chapter 485); see also ASSEMBLY COMMITTEE ON HEALTH, COMMITTEE ANALYSIS OF SB 577, at 1-2 (June 18, 2002) (specifying that the new law will allow a person to practice naturopathy as long as he discloses his status as an unlicensed physician and refrains from performing specified acts).

105. CAL. BUS. & PROF. CODE §§ 3660-3661 (added by Chapter 485).

106. *Id.* §§ 3645(a)(1)-(3), 3645(b); see also ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS, COMMITTEE ANALYSIS OF SB 907, at 14 (July 1, 2003) (noting that the California Naturopathic Association would remove its opposition to the bill in exchange for the amendment expressly permitting use of the alternative titles).

107. Lay, *supra* note 10, at 633-40; Petersen, *supra* note 7; Roan, *supra* note 84.

108. Petersen, *supra* note 7.

109. Roan, *supra* note 84.

110. *Id.*

111. ARNOLD BIRENBAUM, MANAGED CARE: MADE IN AMERICA 17-40 (1997) (discussing the role of the primary care doctor as “gatekeeper”).

not be reimbursed unless the primary care physician first makes a referral.¹¹² Even though Chapter 485 says nothing about whether licensed naturopaths may serve as primary care physicians, spokespersons for both naturopathic and medical doctors assume that this could be a likely outcome.¹¹³

V. CONCLUSION

As part of a longer history of medical licensure in America, Chapter 485 addresses a complex set of issues involving both the professional interests of medical practitioners and the community's interest in safe, effective, and affordable health care.¹¹⁴ By licensing naturopaths, Chapter 485 protects consumers and allows licensed naturopaths to practice the full range of services for which they have been trained.¹¹⁵ Chapter 485 leaves unanswered, however, a number of questions about health insurance coverage and whether or not licensed naturopaths will be allowed to serve as primary care doctors within a system of managed care.¹¹⁶ It also remains to be seen how licensing will affect the practices of unlicensed naturopaths. First, it is unclear how the new law will restrict the unlicensed naturopath's scope of practice.¹¹⁷ Second, some unlicensed naturopaths fear that licensure and titles will grant a competitive advantage to licensed naturopaths, eventually driving the unlicensed out of business.¹¹⁸ Finally, one might speculate on the impact of licensure on naturopathy as an alternative to conventional medicine. Will the development of naturopathy mirror that of osteopathy, becoming so integrated with conventional medicine that it ceases to exist as an "alternative?"¹¹⁹

112. *Id.*; see also DAVID DRANOVE, *THE ECONOMIC EVOLUTION OF AMERICAN HEALTH CARE: FROM MARCUS WELBY TO MANAGED CARE 172-74* (2000) (describing the general requirements for referrals from primary care providers).

113. Roan, *supra* note 84 (quoting representatives of both the California Assn. of Naturopathic Physicians and the CMA to the effect that licensing may eventually allow licensed naturopaths to act as "primary care providers").

114. RICHARD HARRISON SHYLOCK, *MEDICAL LICENSING IN AMERICA 1650-1965* (1967) (providing an overview of the history of medical licensing).

115. ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS, COMMITTEE ANALYSIS OF SB 907, at 1, 10-12 (July 1, 2003).

116. Roan, *supra* note 84.

117. ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS, COMMITTEE ANALYSIS OF SB 907, at 13-14 (July 1, 2003).

118. *Id.*; Torassa, *supra* note 84.

119. See, e.g., STARR, *supra* note 30, at 229-30 (discussing the incorporation of osteopathy into the mainstream of allopathic medicine after winning licensure).