

# The Regulation of Pediatric Naturopathy and Recommendations for Improvement

ERIN P. RINGEL\*

## INTRODUCTION

As naturopathy continues to expand in the United States,<sup>1</sup> issues surrounding its availability and safety have arisen. This Note will focus on a subcategory of naturopathic medicine, pediatric naturopathy, and argue that further regulation is necessary in order to protect patients in this field of care. Part I will introduce pediatric naturopathy by discussing the history of naturopathy, its licensing requirements and availability, and its current principles. This part will also discuss the reasons why one might opt for naturopathic care and explain how naturopathy has become part of pediatric medicine with unique licensing requirements. Part II will explain how the law currently regulates pediatric naturopathy in the areas of licensure, scope of practice, standard of care, and informed consent, and describe the law's shortcomings. This part will also discuss how problems with informed consent apply specifically to pediatrics. Part III will propose recommendations for statutory reform in the areas of licensure, scope of practice, informed consent, and legal consequences that should follow from violating these statutes. These recommendations will be based on maximizing safety and increasing agency over medical care. This part will also explain how lawyers have a unique obligation to help create this change. Finally, this Note will conclude by restating that pediatric naturopathy is a field deserving of careful regulation, given that children, especially adolescents who are capable of decision-making, are not currently given appropriate agency over their medical decisions.<sup>2</sup>

## I. OERVIEW OF PEDIATRIC NATUROPATHY

### A. NATUROPATHY

Naturopathy is a practice that “emphasizes use of the most natural, least invasive remedies for treating illnesses.”<sup>3</sup> A key component of naturopathy is viewing

---

\* J.D., Georgetown University Law Center (expected May 2023); B.A., University of Michigan (2020). © 2022, Erin P. Ringel.

1. See Donald Patrick Albert & Ferry Butar Butar, *Distribution, Concentration, and Health Care Implications of Naturopathic Physicians in the United States*, 9 COMPLEMENTARY HEALTH PRACTICE REV. 103, 104 (2004).

2. See Kimberly M. Mutcherson, *Whose Body Is It Anyway? An Updated Model of Healthcare Decision-Making Rights for Adolescents*, 14 CORNELL J.L. & PUB. POL'Y 251, 259 (2005).

3. STACEY A. TOVINO & LUCINDA E. JESSON, COMPLEMENTARY AND ALTERNATIVE MEDICINE AND THE LAW 14 (2010).

the person holistically, which involves “considering all the factors that comprise a person’s overall health, including a combination of genetics, environmental exposures, lifestyle habits, diet, exercise history and social/emotional factors.”<sup>4</sup> The philosophy of naturopathy can be traced back to ancient Greece.<sup>5</sup> Hippocrates, who is known as “the founder of ancient Greek medicine,” approached medical treatment in a way that is appreciably similar to modern naturopathy.<sup>6</sup> Hippocrates’s practice “emphasized environmental causes and natural treatments of diseases, the causes and therapeutic importance of psychological factors, nutrition and lifestyle, independence of the mind, body, and spirit, and the need for harmony between the individual and the social and natural environment.”<sup>7</sup> However, the actual term “naturopathy” was devised in 1885 by Dr. John Scheel who practiced homeopathic medicine.<sup>8</sup>

Naturopathy began to develop in the United States during the early 1900s as naturopathic schools were established, although the exact number of naturopaths in the 1920s and 1930s is unknown.<sup>9</sup> Many chiropractors began incorporating naturopathy into their practices, and became known as “mixers.”<sup>10</sup> This resulted in schools which offered Doctor of Naturopathy (N.D.) degrees and Doctor of Chiropractic (D.C.) degrees.<sup>11</sup> From the 1940s to 1960s, states began restricting the licensure and practice of naturopathic practitioners, resulting in only five states providing licensure for naturopaths by 1958.<sup>12</sup> Finally, from the 1970s to the 1990s, attitudes toward naturopathy began to shift as more naturopathic schools of medicine were established, the American Association of Naturopathic Physicians (AANP) was formed, and the AANP held its first convention in 1986.<sup>13</sup>

Today, licensure is available in twenty-three states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.<sup>14</sup> The licensure process consists of graduating from an accredited naturopathic medical program and passing the

---

4. NUHS Team, *What is a Naturopathic Doctor and What Can They Do?*, NAT’L UNIV. HEALTH SCI., <https://blog.nuhs.edu/the-future-of-integrative-health/what-is-a-naturopathic-doctor-and-what-can-they-do> [<https://perma.cc/D27N-6R32>] (last visited Nov. 13, 2021).

5. Christos F Kleisiaris, Chrisanthos Sfakianakis, & Ioanna V. Papathanasiou, *Health Care Practices in Ancient Greece: The Hippocratic Ideal*, J. OF MED. ETHICS AND HISTORY OF MED., Mar. 15, 2014, at 2.

6. *Id.*

7. *Id.*

8. *Overview*, OREGON ASS’N OF NATUROPATHIC PHYSICIANS, <https://www.oanp.org/page/overview> [<https://perma.cc/87B6-WWEP>] (last visited Nov. 13, 2021).

9. Hans A. Baer, *The Sociopolitical Status of U.S. Naturopathy at the Dawn of the 21st Century*, 15(3) MED. ANTHROPOLOGY Q. 329, 331 (2001).

10. *Id.*

11. *Id.* at 332.

12. *Id.* at 332.

13. *Id.* at 333–34.

14. *Regulated States and Regulatory Authorities*, AM. ASS’N OF NATUROPATHIC PHYSICIANS, <https://naturopathic.org/page/RegulatedStates#> [<https://perma.cc/Q2Z4-AGNY>] (last visited Apr. 1, 2022).

Naturopathic Physicians Licensing Examination (NPLEX).<sup>15</sup> Presently, there are five different naturopathic medical programs that are part of the Association of Accredited Naturopathic Medical Colleges (AANMC), plus one in Puerto Rico.<sup>16</sup> These programs are offered on seven different campuses in North America.<sup>17</sup> The schools include Bastyr University, which has campuses in both Kenmore, Washington and San Diego, California, National University of Natural Medicine in Portland, Oregon, National University of Health Sciences in Lombard, Illinois, Southwest College of Naturopathic Medicine in Tempe, Arizona, Canadian College of Naturopathic Medicine in Toronto, Ontario, and Canadian College of Naturopathic Medicine in New Westminster, British Columbia.<sup>18</sup>

The AANMC describes naturopathic education as “the perfect balance of both standard foundational medical and biological sciences, and naturopathic diagnostic and therapeutic coursework.”<sup>19</sup> The first two years consist of “foundational biomedical and clinical sciences,” including biochemistry, human physiology, immunology, and others.<sup>20</sup> The last two years consist of “clinical coursework,” including clinical nutrition, lifestyle counseling, and homeopathy.<sup>21</sup> The NPLEX consists of two parts, one focused on Biomedical science and another focused on clinical science.<sup>22</sup>

Although the licensing requirements are the same nationally, there are “state-mandated continuing education requirements” that naturopathic physicians must complete.<sup>23</sup> For example, in the District of Columbia, the continuing education statute states:

An applicant for renewal of a license shall: (a) Have completed thirty (30) hours of approved continuing education credit during the two (2) year period preceding the date the license expires; (b) Attest to the completion of the required continuing education credit on the renewal application form; and (c) Be subject to a random audit.<sup>24</sup>

In Oregon, the continuing education statute states:

(1) All Licensees: Complete mandatory pain management education as required by ORS 413.590 as follows: (a) One credit hour of pain management

---

15. *Professional Education*, AM. ASS'N OF NATUROPATHIC PHYSICIANS, <https://naturopathic.org/page/Education> [<https://perma.cc/FGC2-QEG4>] (last visited Nov. 13, 2021).

16. *Id.*

17. *Id.*

18. *Id.*

19. *Naturopathic Curriculum*, ASS'N OF ACCREDITED NATUROPATHIC MED. COLLEGES, <https://aanmc.org/curriculum/> [<https://perma.cc/9U75-NURA>] (last visited Nov. 13, 2021).

20. *Id.*

21. *Id.*

22. *NPLEX Examination Overview*, NORTH AMERICAN BOARD OF NATUROPATHIC EXAMINERS, <https://www.nabne.org/exam-overview/> [<https://perma.cc/WN73-QJFS>] (last visited Nov. 13, 2021).

23. *Regulated States and Regulatory Authorities*, *supra* note 14.

24. D.C. Mun. Regs. tit. 17, § 5206.4 (2012).

every odd number calendar year. (b) Pain management credit(s) earned may be applied to annual continuing education required for license renewal. (2) Active License: Thirty-two (32) [total] continuing education (CE) hours are annually required to maintain an active license to practice Naturopathic Medicine, including a minimum of: (a) Ten (10) hours of pharmacology. (b) Two (2) hours of medical ethics, suicide intervention and prevention, or cultural competency. (c) Twenty (20) hours of education that promotes competency and skills necessary to assure the people of Oregon the highest standard of naturopathic medical care.<sup>25</sup>

Today, the AANMC website explains that there are six principles central to the practice of naturopathy.<sup>26</sup> These principles include “First Do No Harm, the Healing Power of Nature, Identify and Treat the Causes, Doctor as Teacher, Treat the Whole Person, and Prevention.”<sup>27</sup> The specific practices that naturopathic physicians employ can vary significantly in invasiveness; for example, naturopathy can range from dietary recommendations to minor surgery.<sup>28</sup>

### B. RATIONALE FOR THE PRACTICE

There are numerous reasons why someone might choose naturopathic care over allopathic care. One of the most popular reasons is to obtain a more holistic approach to medical care than one would in an allopathic medical setting.<sup>29</sup> One of the six principles of naturopathic medicine is “Treat the Whole Person.”<sup>30</sup> This refers to how “[n]aturopathic doctors understand the interconnectedness of our body, our environment and our lifestyle on total health.”<sup>31</sup> Implementing this principle involves not only taking the patient’s bodily symptoms into consideration, but also considering their environment and lifestyle.<sup>32</sup>

Another reason why one might choose naturopathy is for a more personalized approach. In a Canadian survey of parents who chose naturopathic care for their children, one reason for this choice was “[m]ore time and attention given by the ND.”<sup>33</sup> A different and improved interpersonal experience might also derive from another one of the six principles of naturopathic medicine, “Doctor as

25. OR. ADMIN. R. § 850-040-0210 (2020).

26. *The Six Principles of Naturopathic Medicine*, ASS’N OF ACCREDITED NATUROPATHIC MED. COLLEGES, <https://aanmc.org/6-principles/> [<https://perma.cc/TP4A-MBPN>] (last visited Nov. 13, 2021).

27. *Id.*

28. Sara A. Fleming & Nancy C. Gutknecht, *Naturopathy and the Primary Care Practice*, 37 PRIMARY CARE 119, 119 (2010).

29. See Brenda Leung & Marja Verhoef, *Survey of Parents on the Use of Naturopathic Medicine in Children—Characteristics and Reasons*, 14 COMPLEMENTARY THERAPIES IN CLINICAL PRAC. 98, 98 (2008); *What is the Difference Between a Naturopathic Doctor and a Medical Doctor?*, NATURAL TERRAIN NATUROPATHIC CLINIC, <https://naturalterrain.com/faq/what-is-the-difference-between-a-naturopathic-doctor-and-a-medical-doctor/> [<https://perma.cc/HK3C-CDS5>] (last visited Feb. 22, 2022).

30. *The Six Principles of Naturopathic Medicine*, *supra* note 26.

31. *Id.*

32. *Id.*

33. Leung & Verhoef, *supra* note 29, at 100.

Teacher.”<sup>34</sup> This principle refers to how “NDs are part of the team helping patients have a better understanding of what it takes to be and stay well. Through education and a trust-based relationship, patients better understand the steps they need to take to achieve and maintain health.”<sup>35</sup>

Naturopathic medicine might also be a less invasive option than allopathic medicine. For example, “[m]any naturopathic treatments involve dietary and lifestyle changes, herbal supplementation, and other gentle therapies that are safe to use by themselves or in tandem with more conventional medical approaches.”<sup>36</sup> This might stem from two of the principles of naturopathic medicine, “First Do No Harm” and “Prevention.”<sup>37</sup> The principle “First Do No Harm” refers to how “NDs typically approach care by utilizing the most natural, least invasive and least toxic therapies. NDs will refer when the patient’s presentation is outside their scope or level of skill.”<sup>38</sup> The principle “Prevention” implies that minimally invasive practices, such as making changes to diet or exercise, will be used to help prevent illness.<sup>39</sup> A person seeking treatment for a minor illness or who may just want a less invasive approach might be drawn to naturopathy for this reason.

### C. PEDIATRIC NATUROPATHY

The licensing requirements to become certified in pediatrics differ from the requirements to become a general naturopathic physician. To become a fellow of the American Board of Naturopathic Pediatrics, a person must have a N.D., complete requirements in the areas of experience, cases, and post-graduate education, and pass the Board Certification examination.<sup>40</sup>

The experiential requirement may be met six different ways.<sup>41</sup> Applicants can complete a one year naturopathic pediatric residency with “a minimum of 3 years in practice with a minimum of 3000 cumulative patient care hours with 65% of the patient load in pediatrics,” or a two year residency with “a minimum of 1 year in practice with a minimum of 1000 cumulative patient care hours with 65% of the patient load in pediatrics.”<sup>42</sup> Applicants may also meet the experiential requirement without doing a residency, either by spending five years practicing, doing research, instructing a course, or directing a residency program, subject to

---

34. *The Six Principles of Naturopathic Medicine*, *supra* note 26.

35. *Id.*

36. *Holistic Medicine: Its Benefits and Dangers*, ASS’N OF ACCREDITED NATUROPATHIC MED. COLLEGES, <https://aanmc.org/holistic-medicine-benefits-risks/#1631750314118-c9d559e6-1619> [<https://perma.cc/JK7D-K99D>] (last visited Nov. 13, 2021).

37. *The Six Principles of Naturopathic Medicine*, *supra* note 26.

38. *Id.*

39. *See id.*

40. *Board Certification*, PEDIATRIC ASS’N OF NATUROPATHIC PHYSICIANS, <https://www.pedanp.org/board-certification> [<https://perma.cc/5QQJ-ZF3C>] (last visited Nov. 13, 2021).

41. *Id.*

42. *Id.*

requirements specified on the Pediatric Association of Naturopathic Physicians (PedANP) website.<sup>43</sup>

To complete the case requirement, applicants must submit “[d]etailed case reports on 5 different pediatric patients demonstrating ongoing naturopathic management.”<sup>44</sup> The cases must include certain subjects specified on the PedANP website, including “[o]ne case of two sequential well-child visits during infancy.”<sup>45</sup> Finally, to complete the post-graduate education requirement, applicants must complete “50 hours of documented pediatrics CME in the past three years.”<sup>46</sup> After meeting these requirements, applicants are qualified to take the Board Certification examination.<sup>47</sup>

Naturopathic pediatricians offer a wide range of services, similar to traditional naturopathic physicians. For example, one integrative doctor’s office in Montana offers naturopathic pediatric care such as wellness visits, naturopathic prenatal care such as birth planning, naturopathic perinatal care, and naturopathic postpartum care.<sup>48</sup> Another office in Connecticut offers care to both adults and children.<sup>49</sup> This office offers Applied Behavior analysis (ABA), biofeedback/neurofeedback, homeopathy, IonCleanse footbath treatment, and nutrition recommendations.<sup>50</sup>

Pediatrics adds a unique angle to discussions about the ethics of naturopathy. Courts have held that “[p]arents possess a fundamental right to care, control, and custody of their children, which includes making major decisions on their behalf.”<sup>51</sup> Typically, this is only limited by “a compelling state interest.”<sup>52</sup> One scholar explained that the criteria the state uses to make this decision is called the “harm principle,” which is when “the [medical] decision poses some harm to the child.”<sup>53</sup> However, the state is generally reluctant to interfere with parents’ decisions.<sup>54</sup> For example, the parents of a boy named Colin Newmark refused to let him have chemotherapy after he was diagnosed with Burkitt’s Lymphoma due to their religious beliefs.<sup>55</sup> After Child Protective Services attempted to intervene,

---

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Pediatric & Perinatal Care*, SPRING INTEGRATIVE HEALTH, <https://springintegrativehealth.com/services/family-medicine-and-pediatrics/> [<https://perma.cc/J9LN-AY8K>] (last visited Nov. 13, 2021).

49. *About Us*, PEDIATRIC AND FAMILY CENTER FOR NATURAL MEDICINE, <https://www.naturopathicanswer.com/about-us.html> [<https://perma.cc/7ZEK-6B3U>] (last visited Nov. 13, 2021).

50. *Services*, PEDIATRIC AND FAMILY CENTER FOR NATURAL MEDICINE, <https://www.naturopathicanswer.com/services.html> [<https://perma.cc/29R4-B8EL>] (last visited Nov. 13, 2021).

51. Jennifer L. Rosato, *Using Bioethics Discourse to Determine When Parents Should Make Health Care Decisions for Their Children: Is Deference Justified?*, 73 TEMP. L. REV. 1, 6 (2000) (citations omitted).

52. *Id.* at 7.

53. Douglas S. Diekema, *Parental Refusals of Medical Treatment: The Harm Principle as Threshold for State Intervention*, 25 THEORETICAL MED. 243, 250 (2004).

54. *See id.* at 257.

55. *Id.* at 256.

the Delaware Supreme Court did not interfere with his parents' decision, given that Newmark's chance of survival with chemotherapy would be less than 40%.<sup>56</sup>

On its surface, giving deference to parents seems rationally based: medical decisions should be made by those in a position to understand the treatment and consequences. However, issues arise when medical treatments are not properly regulated, and might be unsafe. For example, the parents of a boy named Ezekiel Stephan faced legal action after they "treated him with herbal and natural remedies instead of taking him to a doctor," and the boy died of meningitis.<sup>57</sup> Additionally, the argument can be made that adolescents are competent enough to make medical decisions for themselves, as research has suggested they possess "decision-making capacity."<sup>58</sup> Because deference is largely given to parents for the medical decisions of their children, including adolescents, it is in the state's interest to make sure that all available medical care is safe and carefully monitored.

## II. HOW PEDIATRIC NATUROPATHY IS REGULATED AND RESULTING PROBLEMS

Pediatric naturopathy is regulated through various methods. Licensure creates a barrier to entry, scope of practice limits what practitioners are able to do, standards of care ensure practitioners are competent, and informed consent gives patients agency over their medical decisions. However, significant problems have arisen with how these regulations have functioned. There is a lack of uniformity in licensure availability, inconsistency in scopes of practice, and inadequate informed consent standards.

### A. LICENSURE AND CERTIFICATION

The first way that pediatric naturopathy is regulated is through requiring practitioners to have a license in naturopathic medicine.<sup>59</sup> The licensure process begins with attending an accredited naturopathic medical school, which is four years long, and after that, passing the NPLEX.<sup>60</sup> As discussed above, there are additional requirements to become certified in pediatrics specifically, including experience, submission of case reports for review, and education.<sup>61</sup> These requirements regulate pediatric naturopathy by creating minimum barriers to entry. They help to ensure that pediatric naturopaths are competent.

---

56. *Id.*

57. The Canadian Press, *My Son's Not Breathing': Father Made Frantic 911 Call Before Toddler's Meningitis Death*, CBC (June 4, 2019, 2:31 PM) <https://www.cbc.ca/news/canada/calgary/david-collet-stephan-trial-naturopath-1.5162271> [<https://perma.cc/H2TD-SK6A>].

58. Mutcherson, *supra* note 2, at 283–85.

59. *Professional Education*, *supra* note 15.

60. *Id.*

61. *Board Certification*, *supra* note 40.



However, there is a lack of uniformity in the availability of licensure for naturopaths. Some states have held that it is within their rights to deny licensure to naturopathic physicians.<sup>62</sup> This significantly limits options for patients seeking alternative treatment, potentially leading to patients seeking treatment from unlicensed practitioners. These “lay naturopaths,” may have received training through apprenticeships, but “little information is available” on what their training actually consists of.<sup>63</sup> These practitioners “have come to refer to themselves as ‘traditional naturopaths’ and disparagingly refer to the graduates of the four-year colleges as ‘allopathic naturopaths’ or ‘medical naturopaths,’” even though use of the term “naturopath” is restricted in most states where the practice is regulated.<sup>64</sup> Although the risk of seeing an incompetent practitioner applies to naturopathy generally, the risk is more serious when considering pediatrics. A parent could decide that seeing one of these naturopaths is in their child’s best interest, putting the child at risk of seeing an incompetent or untrained practitioner.

### B. SCOPE OF PRACTICE

Another way that naturopathy is regulated in states that allow licensure is through scope of practice statutes. Scope of practice statutes, which permit or prohibit certain medical procedures, vary greatly by state. Some of the differences are whether the physicians can prescribe controlled substances, prescription drugs, non-prescription drugs, administer IV and IM injections, whether they need additional training for these, whether they can oversee childbirth, use diagnostic imaging tests, and carry out minor procedures.<sup>65</sup>

Six states require additional steps before a naturopath can practice childbirth.<sup>66</sup> This typically consists of a certificate the naturopath must obtain through specified instructions.<sup>67</sup> One state, Colorado, restricts the treatment of children outside

---

62. See *Idaho Ass’n of Naturopathic Physicians, Inc. v. U. S. Food & Drug Admin.*, 582 F.2d 849, 853–54 (4th Cir. 1978); *Betancur v. Fla. Dep’t of Health*, 296 F. App’x 761, 764 (11th Cir. 2008).

63. Baer, *supra* note 9, at 338.

64. *Id.*; Laura Farr, JoAnn Yáñez, & Michelle Simon, *Media Guidance on Terminology Related to Naturopathic Medicine*, [https://static1.squarespace.com/static/5aa9b578266c0728a17f5c9c/t/605e632396982546ecfdeb55/1616798502036/Guidance+on+Terminology+Related+to+the+Practice+of+Naturopathic+Medicine\\_FINAL+%281%29.pdf](https://static1.squarespace.com/static/5aa9b578266c0728a17f5c9c/t/605e632396982546ecfdeb55/1616798502036/Guidance+on+Terminology+Related+to+the+Practice+of+Naturopathic+Medicine_FINAL+%281%29.pdf) [https://perma.cc/63V8-APMX] (last visited Feb. 22, 2022).

65. *Naturopathic Physician Scope of Practice-State by State Comparison*, NATUROPATHIC MED. COMM., <https://www.naturopathic.ca.gov/formspubs/attach-h-oversight-2016.pdf> [https://perma.cc/2HPU-RY8X] (last visited Nov. 13, 2021).

66. See OR. ADMIN. R. § 850-035-0230 (2020) (Naturopaths who want to practice childbirth must receive a “certificate of special competency in natural childbirth”); CAL. BUS. & PROF. CODE § 3650 (2016) (Naturopaths may only practice childbirth after additional training and receiving a “certificate of specialty practice”); UTAH ADMIN. CODE r. § 58-71-102(12)(a)(i) (2020) (Naturopaths may only practice childbirth if they meet standards set by the American College of Naturopathic Obstetricians and follow a written plan specified in the code); MONT. ADMIN. R. § 24.111.510 (2003) (Naturopaths may only practice childbirth if they obtain a certificate from the board); N.H. CODE ADMIN. R. § 306.02 (2020) (Certificate required for naturopaths to practice childbirth); 26-81 VT. CODE R. § 4121–4125 (2016) (Naturopaths must receive an endorsement on their license to practice childbirth).

67. *Id.*



of the childbirth context.<sup>68</sup> In Colorado, naturopaths treating children under the age of two must provide the child's parent or guardian with an immunization schedule, complete additional education requirements, create a "Collaborative Agreement," and have the child's parent or guardian sign an informed consent form.<sup>69</sup> If a child is between the ages of two and eight, naturopaths must complete additional education requirements, provide the child's parent or guardian with an immunization schedule, and have the parent or guardian sign an informed consent form.<sup>70</sup>

Inconsistent scopes of practice are problematic to begin with; they essentially allow people in some states to access care that is deemed unsafe in others. However, when an adult is making the decision to seek naturopathic care, they are able to do research and become informed about this risk. Therefore, even if an adult is not informed that they are receiving care that is illegal in another state, they could have sought out the information, making this problem less drastic. However, when a parent is making the decision for their child to receive naturopathic care, the child does not have any agency or control over the decision. Therefore, it is the state's responsibility to ensure that scopes of practice for naturopathic physicians are as safe as possible to ensure that children will not unknowingly receive unsafe care due to the beliefs of their parents.

### C. STANDARD OF CARE

In states that allow licensure for naturopathic practitioners, the applicable standard of care is another way the practice is regulated. Standard of care in allopathic medicine refers to "the determination of the clinical care that should have been provided to a patient when there is a question of malpractice."<sup>71</sup> The standard of care for a medical doctor has been defined as "what a reasonable and prudent doctor would have done under the same or similar circumstances."<sup>72</sup> In complementary and alternative medicine (CAM), the same basic principle applies:

In malpractice actions against them, chiropractors and other drugless healers have been held to the standard of the use of the same degree of care, diligence, and skill in the treatment of their patients as is possessed and used by prudent, skillful, and careful practitioners of the same school, and not that of a medical doctor or specialist. Some courts have reached this conclusion in terms of assumption of the risk: the plaintiff, by seeking a drugless healer, has assumed the risks of such a standard of treatment, thus holding the drugless healer to the

---

68. 4 COLO. CODE REGS. § 749-1-1.16 (2021).

69. 4 COLO. CODE REGS. § 749-1-1.16(A) (2021).

70. 4 COLO. CODE REGS. § 749-1-1.16(B) (2021).

71. Jeffrey A. Cooper & Lindsay McNair, *Standard of Care: Not Always Standard*, 11(1) J. EMPIRICAL RSCH. HUM. RSCH. ETHICS: AN INT'L J. 84, 84 (2016).

72. *Hardy v. Marsh*, 170 S.W.3d 865, 869 (Tex. App. 2005) (citing *Snow v. Bond*, 438 S.W.2d 549, 550-51 (Tex. 1969)).

standard of care of similar drugless healers. Some courts have ruled that the licensing and other regulation of drugless practitioners signified a standard of skill and care to be applied to them in a malpractice action based on the licensing standards of such field, distinct from the standard of care applicable to physicians, although other courts have ruled that the standard of care of an unlicensed drugless healer was that of a lay person for ordinary negligence.<sup>73</sup>

For example, the Supreme Court of North Carolina considered a case where it was alleged that the defendant, a naturopath, who saw a child with diphtheria, “negligently and unskillfully diagnosed and improperly treated as tonsilitis.”<sup>74</sup> The court held that the defendant was required, “. . . only to exercise that degree of care, knowledge, and skill ordinarily possessed by members of his school of practice, and to use reasonable care and diligence in the exercise of that skill and knowledge and in the exercise of his judgment . . . .”<sup>75</sup>

However, when a “drugless healer” exceeds their scope of practice and ventures into the area of another practitioner, some courts have held that the practitioner should be held to the standard of a medical doctor, while others have held the practitioner should be held to the standard of “the field which he has invaded.”<sup>76</sup> For example, the Supreme Court of Iowa held that a chiropractor who used an ultra-sonic machine exceeded his scope of practice, and therefore should be held to the same standard of care as medical doctors.<sup>77</sup> Alternatively, the Court of Appeals of New York held that a defendant “must meet the professional standards of skill and care prevailing among those who do offer treatment lawfully.”<sup>78</sup>

Similar to ensuring adequate scopes of practice, it is the state’s responsibility to ensure that naturopathic physicians are held to appropriate standards of care so that children do not receive subpar medical care. Since children are uniquely vulnerable in that they are not choosing to pursue naturopathic care for themselves, it is even more crucial that physicians are incentivized to practice competently by state implementation of an appropriate of care. When appropriate standards are in place, children will be more likely to receive safe, competent care from naturopaths.

#### D. INFORMED CONSENT

Another prominent issue with pediatric naturopathy is informed consent. Unlike allopathic medicine, there is a concerning lack of uniform standards for

---

73. Annotation, *Liability of Chiropractors and Other Drugless Practitioners for Medical Malpractice*, 77 A.L.R. 4th 273 § 2[a] (Originally published in 1989) (citations omitted).

74. *Hardy v. Dahl*, 187 S.E. 788, 788 (1936).

75. *Id.* at 790.

76. Annotation, *supra* note 73, at § 2[a].

77. *Correll v. Goodfellow*, 255 Iowa 1237, 1245 (1964).

78. *Brown v. Shyne*, 242 N.Y. 176, 181 (1926).

informed consent in CAM.<sup>79</sup> In allopathic medicine, “[a] physician who fails to disclose to the patient material information may be liable to the patient under a simple negligence theory.”<sup>80</sup> Several states have addressed informed consent in CAM practices in vague, indefinite ways, or not at all.<sup>81</sup> For example, in California, the statute states that the board should “assess the need for” “(a) Specific standards for informed consent, if any, in order for patients to be able to understand the risks and benefits associated with the range of treatment options available.”<sup>82</sup>

Conversely, other states have addressed informed consent clearly, either explicitly requiring it or allowing the requirement to be ignored.<sup>83</sup> Vermont requires informed consent where a naturopath is practicing childbirth:

(a) Before accepting a client for prenatal and natural childbirth, the naturopathic physician must first obtain a written informed consent. Informed consent must be shown in a written statement and signed by the ND and the client to whom care is to be given, in which the ND certifies that full disclosure has been made and acknowledged by the client of the following: (1) The naturopathic physician’s credentials. (2) A copy of the written plan for consultation, emergency transfer, and transport. (3) A description of the procedures, benefits, and risks of home birth. (b) The informed consent form must be filed in the client’s chart, and a copy must be provided to the client.<sup>84</sup>

Colorado specifically addresses the issue of informed consent in the context of pediatrics.<sup>85</sup> The state requires the parent or guardian of children under eight years old to complete informed consent forms.<sup>86</sup> On the other hand, Utah has explicitly stated that lack of informed consent is not unlawful.<sup>87</sup> Utah’s Statute “Unlawful conduct” states “(2) ‘Unlawful conduct’ does not include the good faith expression of informed opinions as to available alternatives to the treatment prescribed or advised by the licensee.”<sup>88</sup>

This lack of liability for breaching informed consent leaves patients extremely vulnerable—this is because there are not statutes in place to ensure patients receive the information they need. While informed consent is an issue with

---

79. Opher Caspi & Joshua Hoxea, *Lack of Standards in Informed Consent in Complementary and Alternative Medicine*, 13 *COMPLEMENTARY THERAPIES MED.* 123, 123–24 (2005).

80. James A. Bulen, Jr., *Complementary and Alternative Medicine, Ethical and Legal Aspects of Informed Consent and Treatment*, 24 *J. LEGAL MED.* 331, 331 (Sept. 2003).

81. See CAL. BUS. & PROF. CODE § 2501 (2016); ALASKA ADMIN. CODE tit. 12 (2016).

82. CAL. BUS. & PROF. CODE § 2501 (2016).

83. See 20-4 VT. ADMIN. CODE § 11:3.8 (2021); 4 COLO. CODE REGS. § 749-1-1.16(A)(4) (2021); UTAH ADMIN. CODE r. § 58-71-501 (2020).

84. 20-4 VT. ADMIN. CODE § 11:3.8 (2021).

85. See 4 COLO. CODE REGS. §§ 749-1-1.16(A)(4), 749-1-1.16(B)(3) (2021).

86. 4 COLO. CODE REGS. §§ 749-1-1.16(A)(4), 749-1-1.16(B)(3) (2021).

87. UTAH ADMIN. CODE r. § 58-71-501(2) (2020).

88. *Id.*

naturopathy in general, informed consent in the context of pediatric naturopathy deserves specific consideration.

#### E. INFORMED CONSENT IN THE CONTEXT OF PEDIATRICS

Informed consent in the context of pediatrics is still evolving.<sup>89</sup> Presently, “obtaining informed permission from parents or legal guardians before medical interventions on pediatric patients is now standard within our medical and legal culture.”<sup>90</sup> Although the American Academy of Pediatrics (AAP) recommended in their 1995 publication that pediatric patients “should provide assent to care whenever reasonable,” the decision-making power is still given to parents.<sup>91</sup> This rests on the assumption that “Parents generally are better situated than others to understand the unique needs of their children and family and make appropriate, caring decisions regarding their children’s health care.”<sup>92</sup>

However, according to one article, adolescents should be given power over their medical decisions along with their parents.<sup>93</sup> The article explains that, “[a] ccording to the Hastings Center, decision-making capacity exists when a patient has ‘(a) the ability to comprehend information relevant to the decision, (b) the ability to deliberate [about choices] in accordance with [personal] values and goals, and (c) the ability to communicate [verbally or nonverbally] with caregivers.’”<sup>94</sup> Research has shown that “adolescents possess a developed capacity for decision-making that is on par with that of young adults.”<sup>95</sup> The American Academy of Pediatrics and the Society for Adolescent Medicine have both stated that adolescents might have decision-making skills as competent as adults.<sup>96</sup>

There are some areas where minors are already allowed to make medical decisions for themselves, which include “healthcare decisions related to pregnancy, STIs, substance abuse treatment, and mental health treatment.”<sup>97</sup> For example, in Alaska, California, Connecticut, the District of Columbia, Hawaii, Maine, Nevada, New Jersey, New Mexico, New York, Oregon, Vermont, and Washington, minors can access abortions without any parent involvement.<sup>98</sup> Although naturopathic care is different from sexual health treatment or substance abuse treatment, it should be

---

89. See Aviva L. Katz, Sally A. Webb, & AAP Committee on Bioethics, *Informed Consent in Decision-Making in Pediatric Practice*, 138(2) PEDIATRICS 1, 1 (2016).

90. *Id.*

91. *Id.*

92. *Id.* at 5.

93. Mutcherson, *supra* note 2, at 259.

94. *Id.* at 283 (quoting BRUCE JENNINGS, NANCY BERLINGER, & SUSAN M. WOLF, THE HASTINGS CTR. GUIDELINES ON TERMINATION OF LIFE-SUSTAINING TREATMENT AND THE CARE OF THE DYING (1987)).

95. *Id.* at 285.

96. *Id.* at 288.

97. *Id.* at 304 (citations omitted).

98. *Parental Consent and Notification Laws*, PLANNED PARENTHOOD, <https://www.plannedparenthood.org/learn/teens/stds-birth-control-pregnancy/parental-consent-and-notification-laws> [https://perma.cc/VC75-Y9NA] (last visited Dec. 24, 2021).

treated as a distinctive category due to the abovementioned issues and inconsistencies. Since the policies regulating this field are inconsistent and still developing, practitioners should be required to give minors more of a say in their care.

### III. RECOMMENDATIONS FOR HOW THE LEGAL FIELD CAN ENSURE SAFETY

In order to improve the issues with pediatric naturopathic care, statutory reform is needed to maximize both safety and agency over this care. To achieve this reform, statutes should be modified in the areas of licensure, scope of practice, and informed consent.

#### A. LICENSURE REFORM

In order to solve the issues discussed above, all states should implement licensing procedures for naturopathic medical providers. Licensure offers numerous benefits, including that it:

[o]ffers protection to the public and a guarantee that the provider has met educational standards and continuing education requirements[,] [i]ncreases access to, and provides a pathway for established and regulated care[,] [p]rovides oversight and recourse for patient claims and medical malpractice[,] [c]odifies the naturopathic doctor in the jurisdiction and paves the road for broader inclusion in government-funded programs[,] [and] [p]ositively impacts the health-care community and fosters interprofessional practice[.]<sup>99</sup>

Licensing naturopathic physicians in all jurisdictions will help ensure safety for patients, since they know that naturopaths are meeting competency standards. This fixes the safety issues involved with unlicensed naturopaths practicing in jurisdictions where people can describe themselves as “naturopaths,” but naturopathy is not regulated.<sup>100</sup> Patients who might be unfamiliar with naturopathy laws might not even know that naturopathy is prohibited in their jurisdiction, and they might see an unlicensed practitioner. Licensing naturopathic practitioners in all states will help to eliminate this problem. Although this step applies to naturopathy in general, and not pediatrics specifically, it is the first step in order to ensure safety in pediatric naturopathy.

To achieve this, laws will need to be implemented in all states that do not currently offer licensure for naturopaths. The language of these statutes should be modeled after what states have done in the past. For example, in Utah, the Naturopathic Physician Practice Act contains a section titled “Licensing” which states “(1) A license is required to engage in the practice of naturopathic

---

99. *Naturopathic Doctor Licensure*, ASSOCIATION OF ACCREDITED NATUROPATHIC MEDICAL COLLEGES, <https://aanmc.org/licensure/> [<https://perma.cc/4E67-STCW>] (last visited Nov. 13, 2021).

100. Heather Boon et al., *Practice Patterns of Naturopathic Physicians: Results from a Random Survey of Licensed Practitioners in Two US States*, BMC COMPLEMENT ALT. MED., Oct. 20 2004, at 2.

medicine, on or for any person in Utah, as a naturopathic physician. (2) The division shall issue to a person who qualifies under this chapter a license in the classification of naturopathic physician.”<sup>101</sup> Following this is a sub-section titled “Qualifications for licensure,” which summarizes the specific steps naturopaths must take in order to obtain licensure.<sup>102</sup> Each state statute should include language similar to the language in these sub-sections.<sup>103</sup>

This goal will take time, but efforts to achieve it are currently underway. The AANP states that one of its “[k]ey areas of focus” is “advancing ND licensure to all 50 states.”<sup>104</sup> The AANP has directly provided funding to licensure campaigns in various states, facilitates a monthly “pre-licensed team call” to strategize on how to achieve licensure in all states, and provides resources on how constituents can sign petitions and letters in support of licensure.<sup>105</sup> State-level organizations have also participated in advocacy for licensure.<sup>106</sup> For example, the Wyoming Association of Naturopathic Physicians has resources on its website to help constituents send letters and contact their representatives and donate to assist with advocacy efforts.<sup>107</sup>

“Advocacy initiatives” are currently taking place in Wyoming, Texas, Oklahoma, Iowa, Arkansas, Mississippi, Tennessee, Indiana, Ohio, Virginia, North Carolina, Georgia, Florida, and New Jersey.<sup>108</sup> Although it may take some time, licensure in all states is the first step to ensure safety in the field of naturopathy, and consequently in the field of pediatric naturopathy.

## B. SCOPE OF PRACTICE REFORM

Furthermore, states should undergo reform in the area of scope of practice. In particular, states should uniformly limit the scope of practice of naturopathic physicians. Connecticut’s scope of practice seemingly sets a reasonable and model standard which should be adopted by all states. Given that my proposal includes licensure in all fifty states, which may in turn increase the number of practicing naturopaths, Connecticut’s relatively limited scope of practice should be adopted to ensure public health and safety.<sup>109</sup> Connecticut does not allow

101. UTAH ADMIN. CODE r. § 58-71-301 (2020).

102. UTAH ADMIN CODE r. § 58-71-302 (2020).

103. See UTAH ADMIN CODE r. § 58-71-301–58-71-302 (2020).

104. *State Advocacy*, AM. ASS’N OF NATUROPATHIC PHYSICIANS, <https://naturopathic.org/page/StateAdvocacy> [<https://perma.cc/MDM7-DWVK>] (last visited Jan. 3, 2022).

105. *Id.*; See *Legislative Action Center*, AM. ASS’N OF NATUROPATHIC PHYSICIANS, <https://naturopathic.org/page/LegislativeActionCenter#/takeaction> [<https://perma.cc/M66N-QWQZ>] (last visited Jan. 3, 2022).

106. See Kristen Thometz, *Naturopathic Physicians Pushing for State Licensing Law*, WTTW (March 6, 2018, 4:33 PM), <https://news.wttw.com/2018/03/06/naturopathic-physicians-pushing-state-licensing-law> [<https://perma.cc/NVK2-JB4A>]; Dan Frosch, *Colorado Faces a Fight Over Naturopathy*, N.Y. TIMES (Feb. 21, 2011), <https://www.nytimes.com/2011/02/22/health/22license.html> [<https://perma.cc/JDL2-FQ9F>].

107. *Wyoming Naturopathic Licensure*, WYOMING ASS’N OF NATUROPATHIC PHYSICIANS, <https://www.wyanp.org/licensure> [<https://perma.cc/5TJF-CKUF>] (last visited Jan. 3, 2022).

108. *Regulated States and Regulatory Authorities*, *supra* note 14.

109. See *Naturopathic Physician Scope of Practice-State by State Comparison*, *supra* note 65.

naturopathic physicians to prescribe controlled substances or other prescription drugs.<sup>110</sup> It only allows “oral, non-narcotic, non-prescription substances” to be prescribed by naturopathic practitioners.<sup>111</sup> It does not allow naturopathic physicians to administer IV or IM, facilitate childbirth, or do minor office procedures, but it does allow the use of diagnostic imaging tests.<sup>112</sup>

Connecticut’s scope of practice aligns with a proposal which values public safety while also allowing naturopathic physicians to practice. Additionally, implementing a uniform scope of practice among all states will help eliminate the problem of practitioners exceeding their scope of practice if they are used to a more expansive scope. Finally, it will help eliminate confusion for both practitioners and patients about what is allowed, potentially increasing the likelihood that the scope of practice will always be followed.

Similar to how licensing requirements should undergo reform, statutes will need to be implemented or modified in each state to conform to the appropriate scope of practice. The language of these statutes should follow the same basic model: Similar to Minnesota’s naturopathy statute, there should be a section titled “Scope of Practice,” with two sub-sections within it, specifying what is allowed and prohibited.<sup>113</sup> As in Minnesota’s statute, the first section should be titled “Practice Parameters,” and should state “(a) The practice of naturopathic medicine” consists of “the following services.”<sup>114</sup> The language of this model statute is taken from Minnesota’s, with some omissions to reflect the appropriate scope of practice:

(1) ordering, administering, prescribing, or dispensing for preventive and therapeutic purposes: food, extracts of food, nutraceuticals, vitamins, minerals, amino acids, enzymes, botanicals and their extracts, botanical medicines, herbal remedies, homeopathic medicines, . . . glandulars, protomorphogens, lifestyle counseling, hypnotherapy, biofeedback, dietary therapy, electrotherapy, galvanic therapy, oxygen, therapeutic devices, [and] barrier devices for contraception . . . ; (2) performing or ordering physical examinations and physiological function tests; (3) ordering clinical laboratory tests and performing waived tests as defined by the United States Food and Drug Administration Clinical Laboratory Improvement Amendments of 1988 (CLIA); (4) . . . diagnostic imaging including x-ray, CT scan, MRI, ultrasound, mammogram, and bone densitometry . . . .<sup>115</sup>

This section should include another line that states (5) prescribing “[o]nly oral, non-narcotic, non-prescription substances.”<sup>116</sup> The second section should be titled

---

110. *Id.*

111. *Id.*

112. *Id.*

113. See MINN. STAT. §147E.05 (2021).

114. *Id.*

115. *Id.*

116. *Naturopathic Physician Scope of Practice-State by State Comparison*, *supra* note 65.



“Prohibitions on Practice,” similar to Minnesota’s statute.<sup>117</sup> This language is also modeled after Minnesota’s:

(a) The practice of naturopathic medicine does not include: (1) administering therapeutic ionizing radiation or radioactive substances; (2) administering general or spinal anesthesia; (3) prescribing, dispensing, or administering legend drugs or controlled substances including chemotherapeutic substances; or (4) performing or inducing abortions . . . .<sup>118</sup>

In addition to this, the list should include (5) “prescribing, dispensing, or administering”<sup>119</sup> any prescription drugs, non-oral non-prescription substances, or narcotic non-prescription substances,<sup>120</sup> (6) administering an IV or IM, (7) facilitating childbirth, or (8) Carrying out any “minor office procedures.”<sup>121</sup>

However, if a state has a more limited scope of practice in a certain area, it will need to be expanded. For example, Minnesota currently does not allow naturopaths to use diagnostic imaging tests: it only allows the naturopath to refer the patient to a health care professional.<sup>122</sup> Therefore, Minnesota would need to amend its scope of practice as shown above to include diagnostic imaging tests. If a state has a greater scope of practice, it will need to be limited. For example, California allows naturopaths to carry out minor office procedures, so its statutes would need to be amended to limit this scope of practice.<sup>123</sup> Similar to licensing reform, this step also applies to naturopathy in general, not pediatrics specifically. However, this step is necessary to ensure safety for all patients of naturopathy, including children.

### C. INFORMED CONSENT REFORM

Informed consent is the final area that should undergo reform in order to ensure safety and agency in pediatric naturopathy. Laws should be passed implementing informed consent in the practice of naturopathy, and since naturopathy is a unique category of care, adolescents should have further control over whether they receive naturopathic treatment. This should take the form of both the adolescent and their parents needing to provide consent in order to receive treatment. Implementing this standard will require several different steps.

First, since there is no uniform informed consent standard applicable to CAM presently, laws should be passed in each state implementing this requirement. Currently, the United States is split between physician-oriented and patient-

---

117. MINN. STAT. §147E.05 (2021).

118. *Id.*

119. *Id.*

120. See *Naturopathic Physician Scope of Practice-State by State Comparison*, *supra* note 65.

121. *Id.*

122. *Id.*

123. *Id.*

oriented standards.<sup>124</sup> The physician-oriented standard requires disclosure of “only those risks, benefits, and treatment alternatives to a procedure that a reasonable *physician* with similar training and experience would disclose under the circumstances.”<sup>125</sup> Conversely, the patient-oriented standard requires disclosure of “all material facts a reasonable *patient* would consider important in making informed health care decisions.”<sup>126</sup> To align with a model that maximizes agency over medical care, a patient-oriented standard should be uniformly adopted by all jurisdictions.

Next, it should be required for naturopathic physicians to obtain informed consent from adolescents over the age of fourteen, since this has been recommended as an appropriate age of medical consent.<sup>127</sup> This should be required in addition to consent from their parents. One article proposes a decision-making model which gives adolescents agency over their healthcare decisions:

The shared decision-making model proposed here affords two levels of protection for adolescents. The first level is a knowledge tier. This knowledge tier, like assent as recommended by the AAP and the Society, seeks to ensure that healthcare providers make a young patient aware of her own medical condition, its potential impact on her health, available treatment options, and the risks and benefits of participating or failing to participate in any particular treatment protocol. As the AAP recognizes, “Social forces tend to concentrate authority for health care decisions in the hands of [healthcare providers] and parents and this tendency diminishes the moral status of children. Thus, those who care for children need to provide measures to solicit assent and to attend to possible abuses of ‘raw’ power over children when ethical conflicts occur.” The second tier, generally unavailable to young people outside the limited context of the mature minor doctrine or healthcare emancipation statutes, is a consent tier. The consent tier reinforces the right to knowledge by giving young people the right to consent or refuse to consent to treatment thus making them partners in decisions about their own health, which has not been supported or required by the law except in limited circumstances. More importantly, adolescent consent is valuable for its own sake because it acknowledges adolescent capacity and autonomy.<sup>128</sup>

While this model refers to allopathic medicine, its principles of knowledge and consent<sup>129</sup> should be adopted in naturopathic statutes. This Note proposes consent from both adolescents and their parents because the purpose of this recommendation is not to limit parental rights, but to give adolescents further agency over

---

124. Bulen, *supra* note 80, at 333–34.

125. *Id.* at 334 (citing Anna Karpman, *Informed Consent: Does the First Amendment Protect a Patient’s Right to Choose Alternative Treatment?*, 2000 N.Y.L. SCH. J. HUM. RTS. 933, 938).

126. *Id.* at 334.

127. Mutcherson, *supra* note 2, at 255.

128. *Id.* at 302–03 (citation omitted).

129. *Id.*

their medical care. Therefore, if an adolescent did not want to receive naturopathic care, they could object to it. However, if they did want to receive naturopathic care and the parent objected, this would also be valid. This would also be applicable if either party denied a specific type of treatment. Similar to licensing reform, this statutory reform would be implemented through advocacy efforts of both state and national level organizations.

This proposal envisions that these statutes would follow the same basic language in all states. There should be a section within each state's naturopathy statute titled "Informed Consent," stating: (a) Both patients fourteen and over and their parent should be informed of "all material facts a reasonable *patient* would consider important in making informed health care decisions"<sup>130</sup> before any treatment begins. If both or either the parent or patient does not consent to treatment, the naturopathic physician will not proceed with treatment.

Finally, children under fourteen should be given information about their care, at least satisfying the "knowledge"<sup>131</sup> component of informed consent. Under this proposal, parents would still retain decision-making power, but children would at least be informed of the care they would be receiving. This proposal envisions this requirement being implemented by statute, which would require that children receive information pertaining to their care that is up to the patient-oriented informed consent standard. In practice, this could be implemented by the naturopathic physician, the parent reading a child the information, or having the child read and acknowledge this information themselves, if they are able.

The language of this proposal would also vary by state but follow the same basic structure. There should be a subsection under the "Informed Consent" section titled "(b) Informed Consent for Children Under Fourteen Years of Age." This subsection would state: If a child is under the age of fourteen, they should be informed of "all material facts a reasonable *patient* would consider important in making informed health care decisions."<sup>132</sup> This information should be communicated in a method that is appropriate given the child's age and level of understanding.

#### D. LEGAL CONSEQUENCES REFORM

A final way that the legal system can protect patients of naturopathy is through legal consequences for violating any of the abovementioned standards. For example, states have implemented consequences for practicing naturopathy without a license, failing to meet disclosure requirements, violating restrictions on their scope of practice, or other prohibited conduct.<sup>133</sup> For example, the state of Alaska has passed a specific statute stating:

---

130. Bulen, *supra* note 80, at 334.

131. Mutcherson, *supra* note 2, at 302.

132. Bulen, *supra* note 80, at 334.

133. See ALASKA STAT. ANN. § 08.45.010–08.45.060, (2016); D.C. Mun. Regs. tit. 17, § 5200–5299 (2012); UTAH CODE ANN. § 58-71-101–58-71-201 (2020).

9a) When it finds that a licensee under this chapter has violated AS 08.45.040 – 08.45.050 or is guilty of an offense under AS 08.45.060, the department may impose the following sanctions singly or in combination: (1) permanently revoke the license to practice; (2) suspend the license for a determinate period of time; (3) censure the licensee; (4) issue a letter of reprimand to the licensee; (5) place the licensee on probationary status and require the licensee to (A) report regularly to the department upon matters involving the basis of probation; (B) limit practice to those areas prescribed; (C) continue professional education until a satisfactory degree of skill has been attained in areas determined by the department to need improvement; (6) impose limitations or conditions on the practice of the licensee.<sup>134</sup>

Alaska's statutes 08.45.040–08.45.050 describe the disclosures required by naturopaths and restrictions on practicing naturopathy.<sup>135</sup> Alaska's statute 08.45.060 describes “[g]rounds for suspension, revocation or refusal to issue a license.”<sup>136</sup>

All states should adopt statutes that are roughly based on Alaska's, with statutes specific to the abovementioned scope of practice and informed consent recommendations added. Alaska's statutes are open-ended enough to give the department discretion on whether to impose disciplinary sanctions based on the situation but are specific enough to provide guidance on what penalties might be appropriate in different situations.<sup>137</sup>

Similar to Alaska, this recommendation for state statutes would include a section titled “Disciplinary sanctions” including the wide range of sanctions available. In addition to these sanctions being available under the three sections which Alaska provides, these sanctions would also be available when a naturopathic physician violates my proposed scope of practice or breaches my proposed doctrine of informed consent. This proposal is intentionally open-ended as to what disciplinary measures should be taken for a specific violation. This is because each case varies by severity, intentionality, and the degree of harm, so under this proposal, state boards are given discretion to decide the appropriate sanction for a specific violation.

This proposal is very attainable when considering the current state naturopathy statutes regarding discipline. Besides Alaska, eighteen states have disciplinary statutes that are similar to the structure described above.<sup>138</sup> Only three states,

---

134. ALASKA STAT. ANN. § 08.45.070 (2016).

135. ALASKA STAT. ANN. § 08.45.040–08.45.050 (2016).

136. ALASKA STAT. ANN. § 08.45.060 (2016).

137. ALASKA STAT. ANN. § 08.45.070 (2016).

138. *See* OR. ADMIN. R. § 850-050-0010 (2020) (Lists grounds for discipline and what penalties might result); CAL. BUS. & PROF. CODE § 3660–3664 (2016) (Lists grounds for discipline and disciplinary procedures that might result); IDAHO CODE §54-5109 (2019) (Lists grounds for discipline and consequences that might result); UTAH ADMIN. CODE r. § 58-71-401–58-71-503 (2020) (Contains sections addressing discipline and penalties that may result from this conduct); ARIZ. REV. STAT. § 32-1555–32-1556 (2020) (Lists what is unlawful and subsequent penalties); N.M. STAT. § 61-12G-8 (2019) (Lists prohibited acts); 4 COLO. CODE REGS. § 749-

Washington, North Dakota, and Maine, have either no disciplinary statutes, or statutes that are very different from this structure.<sup>139</sup> Therefore, the statutory reform that would need to take place in most states is minimal to none, and implementation of entire sections describing discipline would only need to take place in four states.

#### E. RESPONSIBILITIES OF LAWYERS

While the abovementioned changes will require the efforts of various different stakeholders, lawyers are uniquely obligated to assist in this area. The Preamble of the *Model Rules of Professional Conduct (Model Rules)* states:

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education.<sup>140</sup>

Therefore, since it is the responsibility of lawyers to help “seek improvement of the law,” lawyers with an interest in the reform of pediatric naturopathy should help advocate for change in this field.<sup>141</sup> In practice, this advocacy could take place in each abovementioned area. If a lawyer lives or practices law in a state that is attempting to achieve licensure, such as Wyoming, they could help by sending letters to their representatives or donating to advocacy efforts.<sup>142</sup> Since reform in the areas of scope of practice, informed consent, and legal consequences would all take place through implementing new statutes or amending existing ones, lawyers can help create this change through contacting representatives in their states or joining or testifying in front of committees.<sup>143</sup>

The Preamble of the *Model Rules* also states that lawyers should “cultivate knowledge of the law beyond its use for clients” and that they should “employ

1.9 (2021) (Describes what qualifies as discipline); KAN. ADMIN. REGS. § 100-72-3 (2003) (Explains what conduct is unlawful); MINN. STAT. §§ 147.091, 147.141 (2021) (Contains specific “grounds for discipline” and what may result); N.H. CODE ADMIN. R. §§ 101.01, 306 (2020) (Includes disciplinary procedures); 26-81 VT. CODE R. § 4132(a) (2016) (Describes “unlawful conduct” and disciplinary procedures); MASS. GEN. LAWS ch. 112, §273 (2017) (Describes prohibited conduct and penalties); CONN. GEN. STAT. § 20-40 (2005) (Describes “disciplinary grounds”); R.I. CODE R. § 5-36.1-15 (2017) (Describes prohibited conduct); 63 PA. STAT. ANN. §272.206 (2018) (Describes penalties for specific violations); MD. CODE ANN. § 14-5F-29 (2017) (Describes penalties for unlicensed practice); HAW. REV. STAT. § 455-11 (2016) (Describes grounds for discipline and disciplinary procedures); MONT. ADMIN. R. § 24.111.2301 (2003) (Describes “unprofessional conduct”).

139. See WASH. ADMIN. CODE § 246-836-510 (2021) (Contains statutes specifically prohibiting sexual misconduct, and states that this conduct can result in disciplinary action); N.D. ADMIN. CODE § 112-02 (2013) (No specific discipline section or procedures discussed); ME. REV. STAT. tit. 32, § 12522 (2021) (No specific disciplinary procedures/violations specified).

140. MODEL RULES OF PROF'L CONDUCT pmbl. ¶ 6 (2018) [hereinafter MODEL RULES].

141. *Id.*

142. See *Wyoming Naturopathic Licensure*, *supra* note 107.

143. Roger A. Hofford, *Seven Tips for Effecting Legislative Change*, 8 FAM. PRAC. MGMT. 35, 36 (2001), <https://www.aafp.org/fpm/2001/0400/fpm20010400p35.pdf> [<https://perma.cc/8HTR-NZTQ>].

that knowledge in reform of the law.”<sup>144</sup> Therefore, lawyers without a preexisting interest or knowledge of naturopathy should learn about this area of the law if it interests them, and could then participate in the advocacy discussed above.

### CONCLUSION

Overall, there are significant issues with the way naturopathy is currently regulated in the United States. Firstly, not all states allow licensure for naturopathic physicians, leading to issues surrounding who is competent to practice and freedom of choice. Secondly, different jurisdictions have varying scopes of practice, which can lead to confusion and potential danger for patients and cause an allopathic standard of care to be imposed when the scope is violated. Lastly, there is not a uniform informed consent standard for naturopathy, leaving patients unprotected by this doctrine. Additionally, children are uniquely vulnerable since they are not able to give informed consent even when receiving allopathic care.

This recommendation for how to improve pediatric naturopathy involves statutory reform based on the maximization of safety and agency over medical decisions. The proposed reform would take place in the areas of licensure, scope of practice, and informed consent, and in the area of consequences for practitioners that violate these statutes. This Note proposes that licensure be available in all jurisdictions, scope of practice be limited uniformly among these jurisdictions, and patient-oriented informed consent be implemented. Additionally, this patient-oriented informed consent should be applicable to adolescents above the age of fourteen, and younger children should be offered the “information” prong of informed consent. Finally, this Note proposes statutory reform regarding potential consequences for violations in order to further protect patients receiving naturopathic care. Though this reform will be carried out through the efforts of various stakeholders, lawyers have a unique obligation to help facilitate this reform.

In the medical field, children are uniquely vulnerable, as their parents are given the ability to make their medical decisions. This is the case notwithstanding research that shows adolescents have adequate ability to make medical decisions for themselves.<sup>145</sup> Given this vulnerability, special consideration should be given to how children are treated in the area of naturopathy. In order to promote safety and agency, the field of naturopathy as a whole should be further regulated. In the meantime, giving children further agency over their medical decisions can help improve ethicality of pediatric naturopathy.

---

144. MODEL RULES pmbi. ¶ 6.

145. *Mutcherson*, *supra* note 2, at 286.