

MINUTES  
**SENATE HEALTH & WELFARE COMMITTEE**

**DATE:** Monday, March 16, 2015

**TIME:** 3:00 P.M.

**PLACE:** Lincoln Auditorium

**MEMBERS PRESENT:** Chairman Heider, Vice Chairman Martin, Senators Lodge, Nuxoll, Hagedorn, Tippetts, Lee, Schmidt and Jordan

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Heider** called the meeting to order at 3:00 p.m.

**MINUTES APPROVAL:** **Senator Tippetts** moved to approve the Minutes for February 2, 2015 and February 12, 2015. **Vice Chairman Martin** seconded the motion. The motion carried by **voice vote**.

**H 181:** **Kris Ellis**, on behalf of the Idaho Chapter of the American Association of Naturopathic Physicians (IDAANP), presented **H 181**. This legislation licenses naturopathic physicians who have gone to a four-year accredited school recognized by the Council on Naturopathic Medical Education (CNME). Their training includes traditional medicine and pharmaceuticals. They also take a nationally recognized multi-part exam. This legislation does not impact Chapter 51 in Idaho Code. The one-year grandfather clause allows prior graduates, who attended an accredited school and took the national exam, one year to become licensed. The fees, once determined, will fund a viable board. There is a 2021 sunset date. **H 181** expands the ability of the defined naturopathic physicians, without restricting or removing any rights to practice. Anyone allowed to practice under Chapter 51 is not in violation of **H 181** (see attachment 1).

**Ms. Ellis** said this legislation will help the public determine the practice category of a specific naturopathic's practice. Because previous attempts to include everyone into one board have been unsuccessful, this legislation delineates the two types of naturopathic practice and creates a second board. The board contained in Chapter 51 of Idaho Code will remain as it is. Further discussion referenced §§ 54-5601 and 54-5608 of Idaho Code (see attachments 2 and 3). This legislation requires licensure to use the title "naturopathic physician" or "doctor." The education includes a pre-medical undergraduate program, a four-year medical program, and a clinical rotation. The board would consist of one physician, one pharmacist, and three naturopathic physicians and shall establish by rule of formulary. The formulary will be determined by unanimous vote by the board. **Ms. Ellis** referenced § 54-5605 in regards to a current gap versus successful discharges; they are seeking the conformity that will close this gap (see attachment 4). Additional reference was made to § 54-5608 of Idaho Code, which states that qualifications are similar to other professions and protocols (see attachment 3). **H 181** includes language that is verbatim out of the Medical Practice Act. **Ms. Ellis** asked the Committee to approve **H 181** and send it to the floor with a do pass.

**Senator Tippetts** declared a Senate Rule 39(H) conflict of interest; his son is associated with the same firm as Ms. Ellis.

**Senator Tippets** asked her to clarify how those currently practicing and licensed are treated under this legislation. **Ms. Ellis** responded by stating this legislation added a formulary and that is different from Chapter 51; if a naturopathic physician is prescribing outside the formulary in this act, it is a violation. If prescribing under Chapter 51, it is not in violation of this act.

**Senator Tippets** asked if it was correct that the term "naturopathic physician" means someone practicing with a license obtained under the provisions of Chapter 51; this language is not included in the definition of "naturopathic physicians" in this act. **Ms. Ellis** stated that as referenced in other sections of **H 181**, they are allowed to call themselves, naturopathic physicians and engage in naturopathic medicine as will be defined by rule in this chapter.

**Senator Tippets** stated that in Section 56-5413 "certain acts prohibited", Subsection 3 refers to the practice of naturopathic medicine and Subsection 4 relates to the title. This act does not specify one can practice under Chapter 51, only that one can carry the "naturopathic medicine" title. **Ms. Ellis** stated that when the formulary is added along with minor office procedures, the board will determine the practice of naturopathic medicine under this chapter. This was written to clarify that one must be licensed under this chapter to get that formulary.

**Senator Tippets** asked about the penalty provisions that have been written to read that it is a misdemeanor to violate any provisions of Chapter 51 or other rules that are promulgated. The Committee is being asked to pass an act that penalizes any violation of the rules, however the rules have not yet been produced. **Senator Tippets** asked for an explanation of why there was such a broad penalty provision. **Ms. Ellis** stated most language in this act was negotiated with the Idaho Medical Association and their attorney, and mirrors the Medical Practice Act. Regarding the timing of this act, those provisions will not go into effect for one year, until rules are promulgated and passed by this Committee.

**Senator Nuxoll** asked why it was necessary to have a doctor on this board if it is for naturopathic physicians. **Ms. Ellis** said in Chapter 51 there was a formulary council set up that was comprised of medical doctors, pharmacists, and naturopathic physicians. The Bureau of Occupational Licenses (Bureau) advised bringing this all under the board. During this time they attended several meetings with the State Board of Medicine and the State Board of Pharmacy; at these meetings there were several individuals who expressed their desire to serve on the board. It is believed the creation of this board will be advantageous in developing a formulary as well as a cost savings benefit.

**Senator Nuxoll** asked about disclosure of those providing natural healthcare services; why is this section necessary? **Ms. Ellis** explained this language is directly out of the Medical Practice Act as well as Chapter 51. This is not new language, this is for those practicing naturopathic medicine as defined by the Idaho Supreme Court decision; these are legal requirements that currently exist.

**Chairman Heider** asked that Ms. Ellis explain why the date September 1, 1991 was chosen. **Ms. Ellis** said that is the date used by all other states which license naturopathic medical doctors.

**Senator Nuxoll** asked how many will get licensed under this new act, and how many would this exclude that are currently practicing or are considered naturopathic physicians. **Ms. Ellis** said approximately 20 licenses will be issued. Idaho is surrounded by states that have a significantly higher amount of licensed naturopathic physicians; the goal would be to bring more doctors to Idaho, not less.

**Senator Hagedorn** asked about the amendment Ms. Ellis spoke of earlier and if her reason for discouraging an amendment was because it was not possible to define the medical training of those currently practicing; or because the 1991 language was not included in the amendment. **Ms. Ellis** explained that the board tried to do this in the 2005 legislation because Chapter 51 does not have any education standards. The board brought several rules to the Committee; these rules were not approved. There were lawsuits filed initially, with one subsequent lawsuit that was brought about by those who did not obtain a license. The suit was filed against members of the board, State, and Bureau because there had not been a signed agreement with the Board of Occupational Licenses. Ultimately this suit was dismissed; however, it left debt owed by the board. Additionally, this amendment would allow anyone to be on the board, such as chiropractors, who would be establishing the formulary and this was not in the best interest of the public.

**Senator Hagedorn** asked about the 20 new licenses to be issued and what restricts them from being licensed under Chapter 51. **Ms. Ellis** said that the board is no longer functioning and there are no licenses given out. As a result of the lawsuit, members resigned from the board; there are still two members, but they have not appointed new members for many years. The statute states board appointments must be licensed.

**Senator Lodge** clarified that at this time there are only two remaining members of the board under Chapter 51. **Ms. Ellis** responded yes, that is correct. **Senator Lodge** asked if the board has any funds or is there only debt. **Ms. Ellis** responded that there is currently debt of approximately \$20,000. **Senator Lodge** asked if the debt was due to the lawsuit filed against the board. **Ms. Ellis** explained it was partially due to the lawsuit; additionally, the rules that were brought were very costly.

**Senator Lodge** asked for clarification on the difference between a physician and a doctor. **Ms. Ellis** said under this legislation one can call themselves either, it is not restricted. The purpose of this was to avoid interference with Chapter 51.

**Senator Heider** asked why everyone is allowed to re-license under Title 56 of Idaho Code versus having two different licensing organizations. **Ms. Ellis** said that would be a good question for the Committee; what should the standards be to allow a physician to prescribe medication to someone? Should the physician have been educated at an accredited school, attended clinical, experienced hospital rotation, and worked with other medical doctors? Without this, the public can be treated by non-licensed practitioners such as massage therapists. Should the board decide this is allowable, this can be done under Chapter 51.

**Senator Tippets** asked for clarification on the intent of this bill. His understanding is it is not intended to prohibit anyone currently practicing under provisions of the Smith decision or under provisions of Chapter 51. **Ms. Ellis** said that is correct.

**Senator Nuxoll** asked about exclusion of current practitioners, in regards to naturopathic physicians from other countries that are now practicing in the U.S., and where in this bill is there a grandfather clause. **Ms. Ellis** stated those individuals licensed under Chapter 51 would remain so. This bill not does affect the physicians or their practices. **Ms. Ellis** explained this bill is intended to expand privileges by allowing naturopathic physicians to prescribe legally.

**Senator Nuxoll** asked about having two sets of rules on the books, each setting a board; how does this work? **Ms. Ellis** stated elderly care has two boards, similar rules for administrators and disciplinary action. The Attorney General stated there was not a constitutional conflict nor were there issues with how it sets up both structurally and legally.

**Senator Lodge** asked if Ms. Ellis knew if any individuals planned to testify about the different path this new chapter will cover, similar to some explanation of the path taken under Chapter 51. **Ms. Ellis** responded, stating there will be several individuals testifying about this chapter. It has not been defined in Chapter 51, and there will likely be testimony from individuals that will speak on the different avenues of education.

**TESTIMONY: Testimony in support of H 181**

**Dr. Joan Haynes**, Naturopathic Physician, IDAANP, discussed the current limitations when a patient needs prescriptions and lab work. Licensing helps insurance companies determine coverage, which in turn helps patients. She explained that under Chapter 51, the board was not functioning correctly; licenses were not required to be renewed nor did they have an expiration date.

**Dr. Sara Rodgers**, Naturopathic Physician, IDAANP, stated there are many misconceptions and concerns surrounding **H 181** that she would like to address:

- **H 181** will repeal Chapter 51. This is not true, it will not in any way.
- **H 181** will cause a monopoly. This is not correct, the Smith legislation addressed this.
- **H 181** will prevent providers from providing certain services. This is a misconception.

**Todd Schlapfer**, IDAANP, testified in support of **H 181** stating that lack of licensure prevents naturopathic physicians from doing everything they are capable of doing. Additional concerns were cost and out-of-state collaboration. Passing **H 181** would establish a formulary, and a functioning board would govern licensed naturopathic physicians.

**Valerie Dickerson**, representing herself, testified in support of **H 181** because the lack of insurance and a clear professional definition have made pursuit of her desired type and level of primary care difficult.

**Sharon Van Tyul**, RN, stated she supported **H 181** because doctors who graduated from an accredited school and had already passed the national licensing exam would be eligible for licensing in Idaho. She expressed support for education, accredited institutions, exams, hospital rotation and exposure, as proposed by **H 181**.

**Testimony in opposition of H 181:**

**Dr. Jason West**, Physician and Owner, West Clinic, opposes **H 181** and discussed how it would affect his profession as a naturopathic physician. His clinic employs ten doctors to meet the medical needs of his patients. He opposes **H 181** because of the prescriptive process and legend drugs; this act brings more administrative responsibility to the physician and limits provider services.

**Senator Lee** asked about Mr. West's prescriptive process and if he sees a difference between a formulary and permitted services versus other recommendations that providers give to their patients. **Dr. West** replied yes, this is important to his practice because the prescriptive limitations of **H 181** would no longer allow this due to changes in the definitions. Out-of-pocket costs will increase, and he will not be able to compete. This will make for an unfair advantage to those with licensure versus those without.

**Senator Lee** asked why Dr. West needed a license to practice. **Dr. West** replied the reason for needing a license is to have access to the tools needed to practice naturopathic medicine.

**Senator Nuxoll** asked where the problem is within the bill, and where is the definition that causes concern. **Dr. West** replied it is in the requirements for licensure.

**Senator Hagedorn** asked how this bill will affect him if he is a licensed chiropractor under Chapter 51 and has gone through the currently required prescriptive training. **Dr. West** explained this will affect his ability to compete in this industry; he will not be able to provide services in private practice. **Dr. West** referenced legislation and rules that he was told will be written and will be presented that will affect him as well.

**Senator Lodge** asked how will he be discriminated against if he currently has a staff that includes other medical licensures. Why would he need to have his own private practice? **Dr. West** stated that because of cost, it may become necessary to better serve the patients, and **H 181** will not allow him to be recognized independently.

**Garry Shohet**, Naturopathic Medicine Physician, representing the Idaho Naturopathic Medicine Physicians, expressed his concern with the limited grandfathering along with eligibility based on fraternity, not competency. The one school identified for grandfathering has historical accreditation issues. He suggested several changes to the legislation that would make it more acceptable.

**Dr. Michael Karlfeldt**, The Karlfeldt Center, sees challenges with **H 181** because it takes away from traditional naturopathic medicine intent. Isolating the ability to practice to only those with certifications or that have taken the national exam is not how naturopathic medicine originated, nor how it was meant to be practiced.

**Jed Adamson**, representing himself, explained that naturopathic physicians unable to obtain licensing under Chapter 51 would not be able to do so under **H 181**. Chapter 51 issued a very limited amount of licenses, only 15 were issued, and many naturopathic physicians were unable to obtain a license even after having met all requirements for licensure. There would be less opposition to **H 181** if there was a functional board created and existing under Chapter 51.

**Dean Funk**, formerly a member of the Idaho State Senate in 1959 and one of the original board members for naturopathic medicine, stated that he has personally used naturopathic medicine for over 40 years. The board was unable to govern itself and there was conflict that prevented it from functioning as it should.

**Chairman Heider** asked if he believed that it would be possible to re-establish the original board. **Mr. Funk** stated this was not a probability. When it was created there was too much opposition, conflict among the members and a lack of proper process. There was not a formulary that could be agreed upon; therefore, it did not provide consistency for licensure of naturopathic physicians. The board did not establish licensing regulations such as renewal or expirations of the licenses issued.

**Senator Hagedorn** asked about public safety concerns. **Mr. Funk** replied there were not any public safety issues that he was aware of. **Senator Hagedorn** asked if he knew if anyone monitors or checks on the original licenses. **Mr. Funk** stated it would be addressed in the media if there was an issue, and he believes those with licensure monitor their own people, but otherwise he was not aware of a monitoring system in place.

**Jenny Alderete**, patient of Dr. Schmillen, testified in opposition to **H 181** because it would exclude her practitioner who received his education in Sweden. There are multiple forms of naturopathic medicine, and she does not want providers to be limited in the type of service they can provide. Her provider saved her life; she wants a bill that supports all forms of practice and the freedom to choose.

**Senator Lee** stated that even distinguishing between licensed, structured versus non-licensed, non-structured, she believed there would still be the freedom to choose. **Ms. Alderete** responded that her understanding of **H 181** was that the education requirement would affect this.

**Dr. Tilden H. Sokoloff**, MD, DPM, NMD, explained there has been issues with naturopathic medicine licensure for years. There is conflict and differences of opinion that haven't allowed a good group of providers to be recognized without following a specific educational format and formulary for licensure. Other concerns were the strict guidelines in **H 181** for education by accredited schools in the U.S. and Canada. It affects those who received their education in other countries and have practiced for many years. It also affects those who attended accredited institutions that have closed or no longer offer the programs.

**Dr. Scott Nelson**, licensed Chiropractor, stated naturopathic physicians who were unable to obtain licensing under Chapter 51 would not be able to do so under **H 181**.

**Fred Birnbaum**, Idaho Freedom Foundation, opposes this legislation because the actual problem is that it only benefits graduates of five schools and third party payment from insurance. Existing naturopathic physicians would suffer from drastic changes in their current practice, services and quality of care.

**Ms. Thompson**, patient of Dr. Jason West and the West Clinic, testified that **H 181** would eliminate her existing naturopathic physician from being able to practice or provide services that are necessary to her individual recovery. The ability to choose this type of medical service would no longer be optional, nor allow patients the freedom to choose providers that offer better solutions and better results. Naturopathic physicians provide natural medicine and cures for patients that have been unsuccessful finding help with traditional licensed doctors or prescribed medications. Patients need a choice of providers and reduced cost of care.

**Ms. Ellis** concluded her presentation by giving a summary and addressing many of the concerns of those opposing **H 181**. She explained there are and will always be complaints whenever new processes are put into place or considered for implementation. This is unavoidable; however, a working board, such as the one created by **H 181**, would address and resolve these issues effectively. Issues arose with the Chapter 51 board when it moved out from under the Board of Occupational Licenses. **Ms. Ellis** stated issues with the original board arose from standards conflicts, not personality conflicts; additionally, there are multiple licensures that qualify under **H 181**. **Ms. Ellis** reiterated that the board will not go into effect until July 2015, and the bill itself will not go into effect until July 2016.

**MOTION:** **Senator Nuxoll** made a motion to hold **H 181** in Committee. **Vice Chairman Martin** seconded the motion.

**SUBSTITUTE MOTION:** **Senator Hagedorn** moved to send **H 181** to the 14th Order for amendment. **Senator Lee** seconded the motion.

**ROLL CALL VOTE:** **Chairman Heider** called for a roll call vote. **Senators Lodge, Hagedorn, Lee, Schmidt** and **Jordan** voted aye. **Senators Nuxoll, Tippetts, Vice Chairman Martin** and **Chairman Heider** voted nay. The motion passed. **Senator Nuxoll** asked to be recorded as voting nay.

**ADJOURNED:** There being no further business to come before the committee, **Chairman Heider** adjourned the meeting at 6:04 p.m.

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Senator Heider  
Chair

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Erin Denker  
Secretary