

# WHAT'S BEHIND THE TITLE? THE CONFUSING LANDSCAPE OF NATUROPATHIC REGULATION IN IDAHO

LAUREN SMYSER

## ABSTRACT

*A peculiar 1950's Idaho Supreme Court case, State v. Smith, held that naturopaths need not be regulated to protect public health. This case has inexplicably bewitched Idaho legislators for years, who have consistently declined to effectively regulate naturopathy despite a continued threat to public health. Keeping the Smith holding in mind, the Idaho legislature has fought for many years over licensure of the naturopathic profession. A perplexing point of contention in this battle surrounds title protection. Traditional naturopaths want to continue to use the title "naturopathic doctor" and "ND" even without any official education or training. Whereas naturopathic medical doctors want to protect these titles and include them under their title protection. In 2019, still a hostage to the Smith holding, the Idaho legislature decided to continue to allow traditional naturopaths to use the title "ND" and "naturopathic doctor." This causes public confusion about the credibility of these unlicensed and uneducated "naturopathic doctors." Such public confusion presents a serious danger to the citizens of Idaho because Idahoans can easily believe that a "naturopathic doctor" has been licensed, educated, and formally trained. This is especially true in today's world of misinformation. The time for the legislature to act to better protect Idahoans is now.*

*This Note begins by analyzing the licensure and historical background of the practice of naturopathic medicine. With that background information in mind, this Note discusses the State v. Smith holding and considers Idaho's rich legislative history in attempting to regulate the naturopathic profession. This Note then turns to examine other states' licensure laws for the naturopathic profession. After that, this Note considers the importance of regulating the profession to protect public health. Finally, this Note recommends that the Idaho legislature (1) expand NMD title protection to include "ND" and "naturopathic doctor;" (2) grant jurisdictional authority to either the Idaho Board of Medicine or the Idaho Department of Health & Welfare; and (3) at a minimum, amend the Idaho Medical Practice Act to require unlicensed traditional naturopaths to notify patrons that they are not receiving treatment from an NMD.*

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## I. INTRODUCTION

Dr. Joan Haynes, a licensed Idaho Naturopathic Medical Doctor (NMD), received her undergraduate degree from the University of Arizona.<sup>1</sup> She then pursued a degree from a federally accredited, 4-year naturopathic medical school.<sup>2</sup> To earn a Doctor of Naturopathic Medicine degree, NMDs like Joan partake in 4,100 hours of total instruction with 1,200 hours of hands-on clinical training, which totals 5,300 hours.<sup>3</sup> These degrees must meet certain standards established by the

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1. *Our Staff*, BOISE NAT. HEALTH CLINIC, <https://boisenaturalhealth.com/our-staff/joan-haynes/> (last visited Nov. 23, 2021).

2. *Id.*

3. NAT'L UNIV. OF NAT. MED., <https://nunm.edu/programs/nd/>, (last visited Nov. 23, 2021). In contrast to NMDs, family physicians or MDs are required to spend around 9,000 hours in lectures, clinical study, lab, and direct patient care. Greg Martin, *Education and Training: Family Physicians versus*

Council on Naturopathic Medical Education, which is a Council recognized by the U.S. Department of Education.<sup>4</sup> After earning a Doctor of Naturopathic Medicine degree from an accredited school, NMDs must pass the National Licensing Exam (NPLEX).<sup>5</sup> This two-part exam covers basic sciences, diagnostic and therapeutic subjects, and clinical sciences.<sup>6</sup> NMDs in Idaho receive extensive education and necessary training because the state of Idaho requires such education and training to become a licensed NMD.<sup>7</sup> Moreover, in Idaho, licensed NMDs are required to complete 48 hours of continuing medical education every two years.<sup>8</sup> In addition to completing all of these requirements, Joan completed a one-year family practice residency.<sup>9</sup> Because of NMDs' extensive training and education, states regulating NMDs allow NMDs to use certain titles to convey their credibility to the public<sup>10</sup> (such a law is known as a *title act*).<sup>11</sup>

On the other hand, under Idaho law, unlicensed traditional naturopaths are not required to receive any formal training or education.<sup>12</sup> Nor are traditional naturopaths required to sit for an exam.<sup>13</sup> Practically, this means that traditional naturopaths could treat patients in Idaho with *zero* hours of instruction and *zero* hours of hands-on clinical training.<sup>14</sup> Yet, because of a 1959 Idaho Supreme Court decision, these traditional naturopaths are permitted to advertise and refer to themselves as *naturopathic doctor* and ND.<sup>15</sup> Simply put, any layperson may use the title naturopathic doctor and ND in Idaho, regardless of their medical training or education.<sup>16</sup>

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*Naturopaths*, AM. ACAD. OF FAM. PHYSICIANS,  
<https://www.aafp.org/dam/AAFP/documents/advocacy/workforce/gme/ES-FPVsNaturopaths-110810.pdf>.

4. Martin, *supra* note 3, at 1.

5. *Naturopathic Doctor Licensure*, ASS'N OF ACCREDITED NATUROPATHIC MED. COLL., <https://aanmc.org/licensure/> (last visited Nov. 23, 2021).

6. *Id.*

7. IDAHO CODE §§ 54-5101 to 5111 (2022).

8. *Continuing Medical Education*, IDAHO BD. OF MED., <https://elitepublic.bom.idaho.gov/IBOMPortal/BoardAdditional.aspx?Board=NMB&BureauLinkID=130> (last visited Jan. 7, 2022). 20 out of the 48 continuing medical education hours must be pharmacology. *Id.*

9. BOISE NAT. HEALTH CLINIC, *supra* note 1.

10. *Understanding Naturopathic Medicine & Physicians*, NATUROPATHIC MED., <https://www.naturopathicmedicine.website/nmd-nd-titles/> (last visited Dec. 18, 2021).

11. See *id.*

12. See IDAHO CODE § 54-1804 (2022).

13. See *id.*

14. See *id.*

15. State *ex rel.* State Bd. of Med. v. Smith, 81 Idaho 103, 337 P.2d 938 (1959).

16. See IDAHO CODE § 54-1804.

In Idaho, the stark contrast in education and training between traditional naturopaths (i.e., NDs) and NMDs goes largely unbeknownst to the public. Given the lack of obvious distinction in titles (*ND* versus *NMD*), a patient in Idaho could visit a traditional naturopath without knowing that this naturopathic doctor completely lacks medical education and training. In comparing the titles *ND* and *NMD*, many would not recognize the distinction, especially because border states, like Washington and Oregon, provide title protection for naturopathic medical doctors under the *ND* acronym.<sup>17</sup> With no real end in sight, this confusion continues to linger in Idaho because of the lack of adequate title protection for licensed NMDs.

The reason there is no end in sight is largely due to a peculiar Idaho Supreme Court case from the 1950s.<sup>18</sup> In *Smith v. State*, the Idaho Supreme Court provided title protection to traditional naturopaths.<sup>19</sup> Today, traditional naturopaths in Idaho maintain that *Smith* allows them to use the titles naturopathic doctor and *ND*. These traditional naturopaths have successfully lobbied to continue to use these titles.

Traditional naturopaths prevailed in 2019 when the Idaho legislature passed H.B. 244, which granted certain title protection for NMDs who received a degree from an accredited naturopathic medical school and passed NPLEX.<sup>20</sup> This protection extended to the titles: *licensed naturopathic physician*, *physician of naturopathic medicine*, *naturopathic medical doctor*, and *NMD*.<sup>21</sup> However, the titles *naturopath*, *naturopathic doctor*, and *ND* may still be used by any layperson.<sup>22</sup>

Despite the formal licensure and title protection for NMDs, this confusing nomenclature serves to seriously mislead the public about the credentials and qualifications of traditional naturopaths. This phenomenon heightened during the COVID-19 pandemic.<sup>23</sup> For instance, a traditional naturopath, representing himself with the title *naturopathic doctor*, recently suggested at an Idaho Southwest District Health Board meeting that society “overreacted” to the pandemic by wearing masks and seeking the COVID-19 vaccine.<sup>24</sup> This traditional naturopath claimed that past vaccine corona animal studies were all failures because of pathogenic priming.<sup>25</sup> Instead of the vaccine, the traditional naturopath recommended therapies such as high intravenous doses of vitamin C, inactivation of SARS-CoV-2 by ozone treatment, and more.<sup>26</sup> These comments were made in a public meeting

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17. See OR. REV. STAT. §§ 685.010–685.990 (2022); see WASH. REV. CODE § 18.36A.030 (2022).

18. See *Smith*, 81 Idaho at 107, 337 P.2d at 942.

19. *Id.*

20. H.B. 244, 65th Leg., 1st Reg. Sess. (Idaho 2019).

21. *Id.*

22. See *id.*

23. See, e.g., *infra* note 24.

24. Idaho Southwest Dist. Health Bd., *Southwest District Health Board of Health Meeting*, YOUTUBE (Nov. 17, 2020), <https://www.youtube.com/watch?v=vrSRI99kc30>.

25. *Id.*

26. *Id.*

and were widely disseminated to the public, with the implication by the title that the traditional naturopath was actually a *doctor*.<sup>27</sup>

This story illustrates just one type of harm caused by allowing unlicensed naturopaths to use the titles naturopathic doctor and ND when engaging with clients and the public at large. The current lack of protection of these titles in Idaho<sup>28</sup> is inherently misleading and therefore injurious to public health because the public is unlikely to distinguish an NMD and someone calling themselves a naturopathic doctor. While the spread of misinformation by those in the medical field is not confined to traditional naturopaths,<sup>29</sup> it is startling that Idaho continues to allow these individuals to spread misinformation under the guise and implied expertise of the titles naturopathic doctor and ND.<sup>30</sup> Moreover, Idaho has provided no disciplinary measures for unlicensed individuals engaging in activities that endanger public health, as it currently only regulates traditional naturopaths in a limited capacity.<sup>31</sup> The Idaho legislature needs to act by extending NMD title protection to include the titles ND and naturopathic doctor, and though this Note does not fully explore the issue, by requiring all traditional naturopaths to register with the state of Idaho—not just voluntarily registration.<sup>32</sup>

This Note examines the regulatory battle of naturopathic medical doctors in Idaho and proposes that the Idaho legislature amend the Idaho code to grant those licensed practitioners title protection for the titles *naturopathic doctor* and *ND*. Part II surveys the licensure and historical background surrounding naturopathic medicine in general, then specifically focuses on the legislative history in Idaho and other western states. Part III compares Idaho's licensure laws to other western states and demonstrates Idaho's shortcomings in regulating the profession. Part IV discusses the importance of regulation to protect Idaho consumers, specifically highlighting how patients grant credibility to individuals using healthcare titles, which harms the public when those using such titles do not have the proper training and education to be offering healthcare services. Part V argues in favor of (1) expanding NMD title protection to include the titles ND and naturopathic doctor (title protection); (2) granting enforcement power to either the Idaho Board of Medicine or the Idaho Department of Health & Welfare to penalize traditional naturopaths or any other unlicensed individuals who use a protected title

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27. *Id.*

28. IDAHO CODE § 54-5110(2) (2022).

29. KTVB Staff, *Idaho State Board of Medicine Called to Investigate Dr. Ryan Cole by Medical Leaders*, KTVB7 (October 11, 2021, 5:33 PM), [https://www.ktvb.com/article/news/local/208/idaho-medical-leaders-ask-state-board-of-medicine-investigate-dr-ryan-cole-vax-covid-19-ivermectin/277-423c5aae-2e47-4051-88d6-50cc162b876c?utm\\_campaign=snd-autopilot](https://www.ktvb.com/article/news/local/208/idaho-medical-leaders-ask-state-board-of-medicine-investigate-dr-ryan-cole-vax-covid-19-ivermectin/277-423c5aae-2e47-4051-88d6-50cc162b876c?utm_campaign=snd-autopilot).

30. IDAHO CODE § 54-5110(2) (2022).

31. *Id.*; IDAHO CODE § 54-5908 (2022). In 2022, the Idaho Legislature created a registration for traditional naturopaths to register. See § 54-5908.

32. § 54-5908.

(jurisdiction & enforcement); and (3) amending the Idaho Medical Practice Act to require unlicensed traditional naturopaths to notify patients that they are not receiving treatment from a licensed NMD (mandatory notice). For the purposes of clarity and readability of this Note, I will refer to unlicensed traditional naturopaths as TNs to distinguish them from licensed naturopathic medical doctors (NMDs).<sup>33</sup>

## II. HISTORICAL AND REGULATORY BACKGROUND

### A. The Practice of Naturopathic Medicine: What & Who

Naturopathy is “a method of healing that avoids drugs and surgery and emphasizes the use of natural agents (such as air, water, and herbs) and physical means.”<sup>34</sup> Naturopaths tend to focus on their patients’ health as a whole, rather than on medication.<sup>35</sup> They try to pinpoint the underlying causes of an individual’s healthcare concerns.<sup>36</sup> Naturopaths identify these causes and then treat their patients with a variety of methods, ranging from dietary and lifestyle changes to psychotherapy and counseling.<sup>37</sup>

In providing care to patients, naturopaths adhere to core principles, including the healing power of nature, searching for the cause of an ailment, doing no harm, treating the whole person, doctor as teacher, and preventing disease.<sup>38</sup> Naturopaths abiding by these principles may be (1) naturopathic medical doctors who completed a four-year, graduate-level program at an accredited naturopathic

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33. This note does not address the recent legislative action creating laws that govern TNs’ and Licensed Naturopathic Doctors’ optional licensure process. *See* IDAHO CODE §§ 54-5901 to 5912 (2022). Arguably, Idaho Code §§ 54-5901 to 5912 causes more confusion to the title protection issues. *See id.* It provides no title protection for “Naturopathic Doctor.” *See id.* Rather, it creates a new title “Licensed Naturopathic Doctors” for practitioners like chiropractors. *Id.* So, in Idaho, consumers now must determine whether they are seeing a Traditional Naturopath, a Registered Traditional Naturopath, a Naturopathic Medical Doctor, or a Licensed Naturopathic Doctor. *See id.*; *see also* IDAHO CODE §§ 54-5101 to 5111 (2022). All of whom may use the title Naturopathic Doctor, but who have strikingly different qualifications and trainings.

34. Deborah F. Buckman, Annotation, *State Regulation of Naturopaths and Naturopathy*, 41 A.L.R.7th Art. 10 (2019).

35. *Id.*

36. *See What is a Naturopathic Doctor?*, AM. ASS’N OF NATUROPATHIC PHYSICIANS, <https://naturopathic.org/page/WhatisaNaturopathicDoctor> (last visited Feb. 26, 2022).

37. *Naturopathy*, NAT’L CTR. FOR COMPLEMENTARY AND INTEGRATIVE HEALTH (Sept. 2017), <https://www.nccih.nih.gov/health/naturopathy>.

38. *The Six Principles of Naturopathic Medicine*, ASS’N OF ACCREDITED NATUROPATHIC MED. COLLS., <https://aanmc.org/6-principles/> (last visited Oct. 16, 2021).

medical school,<sup>39</sup> (2) TNs who may have received training, but not at an accredited naturopathic medical school, or (3) other healthcare providers, like licensed medical doctors, chiropractors, and dentists.<sup>40</sup>

The licensure status for the three naturopath categories varies depending on the state.<sup>41</sup> In states that regulate NMDs, NMDs may only practice if they received an education from an accredited school and passed a two-part national board exam.<sup>42</sup> In states that regulate naturopathy, the NMD's scope of practice is significantly broader than that of a TN.<sup>43</sup> On the other hand, many states do not regulate the profession and simply lump the professions together.<sup>44</sup> This means that NMDs, whose education required years of study and thousands of dollars, are lumped together with TNs, who spent nowhere near that amount of money and received a certificate in a few months.<sup>45</sup> To best understand the licensure issues surrounding naturopathic medicine and the different scopes of practice thereof, one must first understand the history of naturopathic medicine in the United States.

#### B. History of Naturopathic Medicine

The use of naturopathic medicine dates back to ancient times,<sup>46</sup> but many consider modern naturopathic medicine's origins as rooted in North America.<sup>47</sup> In 1901, Benedict Lust, a doctor of medicine, started the naturopathic movement in

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39. See NAT'L CTR. FOR COMPLEMENTARY AND INTEGRATIVE HEALTH, *supra* note 37; see also *Accredited Naturopathic Medical Schools*, ASS'N OF ACCREDITED NATUROPATHIC MED. COLLS., <https://aanmc.org/naturopathic-schools/> (last visited Oct. 16, 2021). The U.S. Department of Education and Council on Naturopathic Medical Education recognize seven naturopathic medicine programs. *Id.* The accredited programs are in San Diego, California, Seattle, Washington, Vancouver, British Columbia, Toronto, Ontario, Chicago, Illinois, Portland, Oregon, and Phoenix, Arizona. *Id.* If a person graduates from one of these seven schools, then they are eligible for the Naturopathic Physicians Licensing Examinations, which is required for licensure. *Id.*

40. NAT'L CTR. FOR COMPLEMENTARY AND INTEGRATIVE HEALTH, *supra* note 37.

41. Valerie Gettings, *The Difference Between a Traditional Naturopath and a Licensed Naturopathic Doctor in North America*, ASS'N OF ACCREDITED NATUROPATHIC MED. COLLS. (Jan. 19, 2020), <https://aanmc.org/featured-articles/difference-between-traditional-naturopath-and-licensed-naturopathic-doctor/>.

42. *Id.*

43. See *id.*

44. Les Witherspoon, *Naturopathic Medicine and Scope of Practice*, EBMND (Aug. 2, 2020), <https://ebm-nd.org/naturopathic-medicine-scope-of-practice/>.

45. See *id.*; Gettings, *supra* note 41.

46. *About Naturopathic Medicine*, NAT'L UNIV. OF NAT. MED., <https://nunm.edu/about-naturopathic-medicine/> (last visited Oct. 11, 2021).

47. *About Naturopathy*, WORLD NATUROPATHIC FED'N, <http://worldnaturopathicfederation.org/about-naturopathy/> (last visited Oct. 31, 2021).

the United States.<sup>48</sup> At its founding, naturopathy accepted all natural therapeutics.<sup>49</sup> By the 1920s, many naturopathic medical schools opened and many states began licensing naturopathic doctors.<sup>50</sup> However, interest in the field declined in the 1950s due to the advancement of pharmaceutical drugs and medical technology.<sup>51</sup> After the decline, naturopathy became more grounded in medical science, and in the 1960s, naturopathy developed into naturopathic medicine.<sup>52</sup>

Despite suffering a significant decline in interest during the 1950s, the profession persisted, experiencing a resurgence in the 1970s.<sup>53</sup> This resurgence was largely due to public interest in alternatives to traditional medicine.<sup>54</sup> Many seeking naturopathic medicine preferred it to traditional medicine because of its personalized methods.<sup>55</sup> The public's desire for other medical alternatives, including naturopathic medicine, led Congress to create the Office of Alternative Medicine in 1992.<sup>56</sup> Today this agency is known as the National Center for Complementary and Integrative Health (NCCIH).<sup>57</sup> As a federal agency, NCCIH aims to inform the public about the safest complementary and alternative health approaches.<sup>58</sup> However, the federal government does not regulate naturopaths—states do.<sup>59</sup>

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48. Heather S. Boon et al., *Practice Patterns of Naturopathic Physicians: Results from a Random Survey of Licensed Practitioners in Two U.S. States*, BMC COMPLEMENT ALTERN. MED. Oct. 2004 at 1, 2; see also Pamela Snider & Jared Zeff, *Unifying Principles of Naturopathic Medicine Origins and Definitions*, INTEGRATIVE MED.: CLINICIAN'S J., Aug. 2019, at 36–39, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7219457/pdf/imcj-18-36.pdf>.

49. *History of Naturopathic Medicine*, OR. ASS'N OF NATUROPATHIC PHYSICIANS, <https://www.oanp.org/page/overview>, (last visited Jan. 4, 2023).

50. *Id.*

51. *Id.*

52. Snider & Zeff, *supra* note 48.

53. NAT'L UNIV. OF NAT. MED., *supra* note 46.

54. Hans A. Baer, *The Sociopolitical Status of U.S. Naturopathy at the Dawn of the 21st Century*, 15 MED. ANTHROPOLOGY Q. 329, 337 (2001); see NAT'L UNIV. OF NAT. MED., *supra* note 46.

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

56. Anna C. Smith, *The Regulation of Complementary and Alternative Medicine (CAM) in South Carolina: What is Happening and What Needs to Change*, 70 S.C. L. REV. 1049, 1055 (2019).

57. *About NCCIH*, NAT'L CTR. FOR COMPLEMENTARY AND INTEGRATIVE HEALTH, <https://www.nccih.nih.gov/about> (last visited Oct. 16, 2021).

58. *Id.*

59. Buckman, *supra* note 34.



## C. The Battleground: States' Fights over Naturopathic Regulation

## i. Use of Titles

In states that regulate and license practitioners of naturopathic medicine, there are designated titles that only licensees may use. Depending on the state, the following titles may be protected: Naturopathic Doctor, ND, Naturopathic Physician, Naturopathic Medical Doctor, NMD, Doctor of Naturopathic Medicine, Registered Naturopathic Doctor, RND, Licensed Naturopathic Doctors, Naturopathic Physician, Natureopath, Naturopath.<sup>60</sup>

When regulating naturopathic medical doctors, some states have chosen to protect only some of the above titles, like the titles NMD, naturopathic doctor, or ND.<sup>61</sup> For instance, Idaho law protects NMD but not ND.<sup>62</sup> Oregon, California, and Washington do just the opposite—these states protect ND, but not NMD.<sup>63</sup> This inconsistency in how naturopathic medical doctors are titled almost certainly leads to confusion amongst the public in Idaho,<sup>64</sup> especially with the influx of individuals from border states like California, Washington, and Oregon.<sup>65</sup>

To add more confusion to the title protection issue, accredited naturopathic medical schools reference the degrees earned at their institutions as ND degrees.<sup>66</sup> For example, the Association of Accredited Naturopathic Medical Colleges labels the degree ND Degree,<sup>67</sup> which is likely to lead consumers to believe that someone with the title ND following their name indeed received a formal degree at an

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60. *Understanding Naturopathic Medicine & Physicians*, NATUROPATHIC MED., <https://www.naturopathicmedicine.website/nmd-nd-titles/> (last visited Dec. 18, 2021); *see, e.g.*, IDAHO CODE § 54-5110 (2022).

61. Buckman, *supra* note 34.

62. IDAHO CODE § 54-5110 (2022).

63. CAL. BUS. & PROF. CODE § 3645 (2022); OR. REV. STAT. § 685.020 (2022); WASH. REV. CODE § 18.36A.030 (2022).

64. Laura Farr et al., *Media Guidance on Terminology Related to Naturopathic Medicine*, INST. FOR NAT. MED., <https://www.naturemedpro.org/media-guidance-on-terminology-related-to-naturopathic-medicine> (select "Terminology Guidance for the Media" to access the document) (last visited March 1, 2022).

65. Katija Stjepovic, *Idaho Continues to Attract Out-of-Staters, Mainly from California*, KTVB7 (March 2, 2021, 10:33 PM), <https://www.ktvb.com/article/news/local/growing-idaho/idaho-attracts-californians-migration-growing/277-5c2a35b2-d3be-46fa-8565-faf024a16f7c>; *States Sending the Most People to Idaho*, STACKER (July 10, 2022), <https://stacker.com/idaho/states-sending-most-people-idaho>.

66. *Frequently Asked Questions*, ASS'N OF ACCREDITED NATUROPATHIC MED. COLLS., <https://aanmc.org/about/faq/#1587759366663-8b587d7a-9acc> (last visited Dec. 21, 2021).

67. *Id.*

accredited school. But in Idaho, this is not the case because those with the title ND next to their name may have received no training, nor a formal degree.<sup>68</sup>

In short, NMD title protection varies across the states. This discrepancy may lead to public confusion when people migrate from state to state. In order to fully understand the issues surrounding title protection for NMDs, it is important to consider the arguments for and against the regulation of the naturopathic profession.

## ii. Licensure

Under states' police power, states possess the power to regulate medical licensure.<sup>69</sup> In 1910, the United States Supreme Court held that states' police power extends to the regulation of certain occupations, especially those focused on public health.<sup>70</sup> This is a well-settled legal principle.<sup>71</sup> But because each state possesses the power to regulate occupations related to public health, the progress for achieving licensure for naturopaths varies depending on the state.<sup>72</sup> Some states require licenses to practice, while others outright ban the practice of naturopathic medicine.<sup>73</sup>

Currently, over 25 U.S. jurisdictions regulate naturopathic medicine.<sup>74</sup> In these 25 jurisdictions, the scope of practice for NMDs varies.<sup>75</sup> Some states that regulate the profession allow NMDs to perform minor surgeries, perform diagnostic tests, and prescribe certain "natural medications."<sup>76</sup> In stark contrast, three states—

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68. IDAHO CODE § 54-5110 (2022).

69. Buckman, *supra* note 34.

70. *Id.* at § 2 (quoting *Watson v. State of Maryland*, 218 U.S. 173 (1910)).

71. *Watson*, 218 U.S. at 176.

72. Baer, *supra* note 54, at 336.

73. *Review of State Laws Regulating Naturopathy*, AM. NATUROPATHIC CERTIFICATION BD., <https://ancb.net/legislative-action-and-advocacy/naturopathy-laws-state-by-state/> (last visited Jan. 27, 2022).

74. ASS'N OF ACCREDITED NATUROPATHIC MED. COLL., *supra* note 5. The jurisdictions offering licensure or registration to naturopathic physicians are—Alaska, Arizona, California, Colorado, Connecticut, District of Columbia, Hawaii, Idaho, Kansas, Maine, Maryland, Massachusetts, Minnesota, Montana, New Hampshire, New Mexico, North Dakota, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, Washington, Puerto Rico, and U.S. Virgin Islands. *Id.*

75. *Scope of Practice – Naturopaths*, AM. ACAD. OF FAM. PHYSICIANS (Sept. 2021), <https://www.aafp.org/dam/AAFP/documents/advocacy/workforce/scope/BKG-Scope-Naturopaths.pdf>. Idaho's licensure law regulating NMDs allows NMDs to perform minor office procedures (surgeries), prescribe certain medications, and run diagnostic tests. IDAHO ADMIN. CODE r. 24.33.04 (2019).

76. *Scope of Practice – Naturopaths*, AM. ACAD. OF FAM. PHYSICIANS (Sept. 2021), <https://www.aafp.org/dam/AAFP/documents/advocacy/workforce/scope/BKG-Scope-Naturopaths.pdf>.

Florida, South Carolina, and Tennessee—outright ban the practice of naturopathy.<sup>77</sup> Other states do not regulate the profession at all.<sup>78</sup>

While not all states regulate naturopaths, the effort to do so has not waned.<sup>79</sup> The three major players in the regulation battle are licensed medical doctors, NMDs, and TNs.<sup>80</sup> Licensed medical doctors argue that naturopaths, whether TNs or NMDs, do not receive nearly enough education or training to use the title *doctor*.<sup>81</sup> According to MDs, allowing lay people to use naturopathic treatments is essentially allowing “untrained and unscrupulous individuals to pose as healthcare providers” and promise to provide a “miracle cure,” which endangers the public.<sup>82</sup>

Conversely, NMDs view themselves as healthcare practitioners with a medical influence in natural healthcare, who favor regulation because licensure distinguishes them from TNs lacking formal training and education.<sup>83</sup> This in turn protects the public.<sup>84</sup> The American Association of Naturopathic Physicians (AANP) advocates for all NMDs to be licensed.<sup>85</sup> According to AANP, demanding licensure in all 50 states will protect the public by ensuring the public is able to distinguish between qualified NMDs and TNs.<sup>86</sup> The regulation of naturopathic medicine safeguards the public from unqualified individuals.<sup>87</sup>

On the other hand, TNs view themselves as natural healthcare providers with a non-medical approach, who do not need to be regulated like those practicing traditional medicine.<sup>88</sup> TNs argue that there should not be licensure for TNs or title protection for ND and naturopathic doctor because licensure and title protection restrict (1) the public’s health freedom, and (2) the free market.<sup>89</sup> For instance, in 2015, an Idaho TN fought against licensure because “it would make it very hard to

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77. AM. NATUROPATHIC CERTIFICATION BD., *supra* note 73.

78. ASS’N OF ACCREDITED NATUROPATHIC MED. COLL., *supra* note 5.

79. *Position Statement: Licensure of Naturopathic Physicians*, AM. ASS’N OF NATUROPATHIC PHYSICIANS, <https://www.nmlegis.gov/handouts/LHHS%20082216%20Item%2012%20AANP-Position-Statement-ND-Licensure.pdf> (last visited Oct. 31, 2021).

80. *Id.*

81. Paige Lescure, *Health Freedom: The Practice of Complementary and Alternative Medicine*, 42 MD. BAR J. 38, 45 (2009).

82. *Id.*

83. AM. ASS’N OF NATUROPATHIC PHYSICIANS, *supra* note 79.

84. *See id.*

85. *Id.* The American Association of Naturopathic Physicians (AANP) was founded in 1985 and advocates for naturopathic doctors who graduated from accredited naturopathic medical schools and who have passed the CNME to achieve licensure. *Id.*

86. *Id.*

87. *Id.*

88. Lescure, *supra* note 81.

89. *Id.*

compete in the free market.”<sup>90</sup> TNs argue that medical doctors use licensing acts to protect their economic status.<sup>91</sup> Medical doctors restrict the free market by creating a monopoly and “protecting their turf.”<sup>92</sup> In the eyes of TNs, the medical doctors and NMDs want licensure to protect their economic viability, *not* to protect the public.<sup>93</sup>

Depending on the audience, TNs and NMDs provide insightful arguments, but their arguments are aimed at achieving different goals. Arguments in favor of regulation, like AANP’s argument, tend to focus on protecting consumers.<sup>94</sup> Regulation ensures that citizens are protected when choosing medical services.<sup>95</sup> Licensure reassures consumers that NMDs are meeting government professional standards, which shows the legislature’s acceptance of certain naturopathic treatments.<sup>96</sup> Traditionally licensure has provided the state with the power to discipline practitioners that provide substandard care, harm or abuse patients, or are convicted of a felony.<sup>97</sup> Thus, the public may rest easy knowing that they are safe in choosing licensed NMDs to treat them.<sup>98</sup> On the contrary, TNs emphasize consumers’ freedom of health choices, which disregards that it is difficult for a consumer to decide on the proper course of treatment without being fully informed about a provider’s qualifications. While TNs provide an alternative to other forms of healthcare, consumers may have no idea that a TN using the title ND, or naturopathic doctor actually has no formal training or education.<sup>99</sup>

#### D. History of Professional Regulation: Naturopathic Medicine in the Pacific Northwest

The Pacific Northwest has long acted as a haven for naturopaths, even when the field’s popularity declined in the 1950s.<sup>100</sup> Naturopathy has a strong foothold in Oregon and Washington because these states reportedly act as a “sanctuary for maverick social movements and alternative medical systems.”<sup>101</sup>

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90. Dustin Hurst, *After Battling Excruciating Pain, Single Mom Fights for Her Healer at the Capitol*, IDAHO FREEDOM FOUND. (Mar. 9, 2015), <https://idahofreedom.org/after-battling-excruciating-pain-single-mom-fights-for-her-healer-at-the-capitol/>.

91. John Lunstroth, *Voluntary Self-Regulation of Complementary and Alternative Medicine Practitioners*, 70 ALB. L. REV. 209, 210 (2006).

92. *Id.* at 239.

93. *Id.*

94. Smith, *supra* note 56, at 1073.

95. *Id.*

96. *Id.*

97. See IDAHO CODE § 54-1815 (2022); IDAHO CODE § 54-5110 (2022).

98. See Farr et al., *supra* note 64.

99. *Id.*

100. Baer, *supra* note 54, at 333.

101. *Id.*

## i. Oregon

States regulate the naturopathic profession to protect the public's health.<sup>102</sup> Oregon, like many other states, regulates this profession to protect its citizens.<sup>103</sup> In fact, Oregon has a long history of accepting and regulating naturopaths, even when many other state governments refused to do so.<sup>104</sup> Oregon began licensing naturopathic doctors in 1927.<sup>105</sup> Furthermore, Oregon was the first state in the United States to establish a *Board of Naturopathic Examiners*.<sup>106</sup> To practice in Oregon, naturopathic practitioners must receive licensure from this board.<sup>107</sup>

This board currently oversees 1,200 licensees.<sup>108</sup> Applicants for licensure to practice naturopathic medicine must complete and submit (1) a licensure application, (2) a national criminal record check, (3) proof of passage of NPLEX exams, (4) proof of passage of Oregon Jurisprudence Examination within 3 years of submitting the application, (5) payment for a licensure application fee, and (6) fulfill the mandatory one-credit hour of pain management education.<sup>109</sup>

Applicants who satisfy the above requirements may be issued a license to practice naturopathic medicine in Oregon.<sup>110</sup> If granted such a license, these licensees are the only individuals allowed to use the titles: Doctor of Naturopathy, N.D., Naturopath, or Naturopathic Physician.<sup>111</sup>

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102. See Smith, *supra* note 56, at 1077–82.

103. See OR. REV. STAT. §§ 685.010–685.990 (2022); see also WASH. REV. CODE § 18.36A.010 (2022).

104. See Baer, *supra* note 54, at 333.

105. OR. ASS'N OF NATUROPATHIC PHYSICIANS, *supra* note 49.

106. *About Us*, OR. BD. NATUROPATHIC MED., <https://www.oregon.gov/obnm/Pages/About-Us.aspx> (last visited Feb. 26, 2022). This Board is now known as the Board of Naturopathic Medicine. See *id.*

107. *Id.*

108. *Id.*

109. OR. ADMIN. R. 850-030-0020 (2022). Under this Rule, Oregon requires NMDs to take one hour of pain management training to satisfy NMDs' continued education requirement. *Id.* The criteria for this pain management continued education is established by the Pain Management Commission, which is within the Oregon Health Authority. OR. REV. STAT. § 413.570 (2022). This Commission develops pain management recommendations and represents the concerns of patients on issues of pain management to the executive and legislative branches. *Id.* The Commission creates modules to help healthcare professionals, not only NMDs, to help patients living with pain. See Oregon Pain Management Commission, *OPMC Pain Management Module*, OR. HEALTH AUTH., <https://www.oregon.gov/oha/HPA/dsi-pmc/Pages/module.aspx> (last visited Feb. 10, 2022).

110. See OR. ADMIN. R. 850-030-0010 to 0035 (2022).

111. OR. REV. STAT. § 685.020(2) (2022). To clarify that only licensees under this chapter could use the titles, Oregon amended the statute in 2001 to insert "only licensees." S.B. 413, 71st Legis. Assemb., Reg. Sess. (Or. 2001).

In addition to these statutorily protected titles, Oregon administrative rules protect the titles: naturopathic practitioner, naturopathic healer, naturopathic doctor, naturopathic consultant, or any other terms that may project that the individual practices naturopathy or naturopathic medicine.<sup>112</sup> This means that only those licensed under Oregon law may use the protected titles.<sup>113</sup> The board possesses the power to impose a civil penalty, up to \$5,000, on anyone “attempting to practice naturopathic medicine or practicing or claiming to practice naturopathic medicine or any of its components in [Oregon] without first complying with” Oregon law.<sup>114</sup> Thus, if a lay person in Oregon attempts to use common titles associated with naturopathic practitioners or even implies they practice naturopathic medicine, the board may impose a civil penalty.<sup>115</sup>

While Oregon allows for the board to impose penalties on violators, recent case law regarding title protection in Oregon may impact the enforcement of title acts.<sup>116</sup> In *Järlström v. Aldridge*, a self-declared engineer who earned his Bachelor of Science degree in electrical engineering in Sweden became interested in a traffic light’s timing after his wife received a “red-light camera ticket.”<sup>117</sup> After three years of research, this self-declared engineer found that the formula for calculating the duration of a yellow light was flawed.<sup>118</sup> Representing himself as an engineer, he contacted the Oregon State Board of Examiners for Engineering and Land Surveying to notify them of this flaw.<sup>119</sup> The board responded that the engineer needed to stop using the titles *electronics engineer* and *engineer* until he registered with the board.<sup>120</sup> The engineer ignored the board and continued to use the title engineer

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112. OR. ADMIN. R. 850-050-0120 (2022).

113. *See id.*

114. OR. REV. STAT. § 685.110 (2022). Maryland also allows its board to discipline TNs using restricted titles. *See, e.g.,* Consent Order, Md. State Bd. of Physicians v. Zenzele (*In re* Zenzele), No. 2219-0146B, (Sep. 4, 2020), <https://www.mbp.state.md.us/BPQAPP/orders/Zenz09.160.pdf>. For example, in Maryland, a TN violated state law when she used the title naturopathic doctor and similar variations of the title on business cards and other similar advertisements. *Id.* at 3. After discovering these unauthorized uses of protected titles, Maryland’s board took prompt action and ordered the “doctor” to pay a civil fine of \$5,000. *Id.* at 5. Maryland regulates such conduct because it desires to protect the health, safety, and welfare of the public by providing a method of identifying qualified naturopathic doctors in the state. *See id.* at 1. Maryland’s legislature realized that the public gives credibility to individuals using certain titles. *See id.* To see how different states prioritize public health, it is helpful to compare Oregon’s and Maryland’s laws to Idaho’s laws. Idaho law does not allow the Board of Medicine to discipline unlicensed naturopaths. *See* IDAHO CODE § 54-5109 (2022). The only action the Board may take is against “license holder[s].” *Id.*

115. *See* OR. REV. STAT. § 685.110(23) (2022); *see also* OR. REV. STAT. § 685.020(1)–(2) (2022).

116. *See Järlström v. Aldridge*, 366 F. Supp. 3d 1205 (D. Or. 2018).

117. *Id.* at 1210.

118. *Id.* at 1210–11.

119. *Id.* at 1211.

120. *Id.*

when discussing his discovery with news organizations and the public.<sup>121</sup> The board then opened a formal investigation into the engineer and ultimately ordered him to pay a \$500 penalty for his unauthorized use of the title.<sup>122</sup> After paying the fee, the engineer filed a lawsuit in U.S. District Court for the District of Oregon against the board on free speech grounds.<sup>123</sup>

Ultimately, the court held that the board violated this self-declared engineer's constitutional right to free speech when it reprimanded the engineer under the title act.<sup>124</sup> The court reasoned that the title engineer has a "generic meaning," and in the past, it has "enjoyed 'widespread usage in job titles to describe positions which require no professional training.'"<sup>125</sup> Since this title is generic it is not misleading, the court reasoned, usage of the title is protected under the U.S. Constitution.<sup>126</sup>

The impact of the *Järlström* holding is unclear with respect to other Oregon boards that attempt to enforce their title acts. However, the court did stress the importance of protecting the title MD.<sup>127</sup> According to the court, the title "MD" has a "fixed" meaning, whereas the title "engineer" does not.<sup>128</sup> The court did not address the titles naturopathic doctor or ND, but arguably, the titles naturopathic doctor and ND have a similar "fixed" meaning to that of MD.<sup>129</sup> Because both titles are related to public health, the titles carry with them a fixed meaning, which signals to the public that practitioners using such titles are credible. Accordingly, the court would likely agree that title protection of naturopathic doctor and ND does not violate an individual's constitutional right to free speech.

Post-*Järlström*, Oregon continues to protect certain titles for naturopaths who meet certain criteria.<sup>130</sup> Moreover, the board statutorily retains the power to impose a fine on any TN using specific titles.<sup>131</sup> As such, Oregon remains an advocate for the licensed practice of naturopathic medicine.

Oregon's long history of supporting NMDs dates to the 1920s.<sup>132</sup> Because Oregon took a proactive approach to naturopathic licensure early on, it has been

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121. *Id.*

122. *Järlström*, 366 F. Supp. 3d at 1211.

123. *Id.*

124. *See id.* at 1210.

125. *Id.* at 1220 (quoting N.C. State Bd. of Registration for Prof. Eng'rs & Land Surveyors v. Int'l Bus. Machs. Corp., 230 S.E.2d 552, 556 (N.C. Ct. App. 1976)).

126. *Id.* at 1220–22.

127. *See id.* at 1220.

128. *Järlström*, 366 F. Supp. 3d at 1220. Although this is indeed an important part of the licensure landscape in Oregon, this Note does not discuss in depth the constitutional issues surrounding free speech and title protection.

129. *Id.*

130. OR. REV. STAT. § 685.110 (2022).

131. *Id.*

132. *See* OR. ASS'N OF NATUROPATHIC PHYSICIANS, *supra* note 49.

able to protect its citizens. The lack of reported case law stemming from Oregon's naturopathic licensure laws after all these years suggests that its clear statutory framework has protected citizens.<sup>133</sup>

## ii. Washington State

The state of Washington, like Oregon, regulates naturopathic doctors.<sup>134</sup> Regulation allows the state to protect the public from healthcare providers that are unqualified to practice naturopathic medicine.<sup>135</sup> Washington state has a long history of protecting the public from unqualified individuals trying to practice naturopathic medicine.<sup>136</sup> From 1919 to 1956, Washington licensed naturopaths "as sanipractors under the Drugless Healers Act of 1919."<sup>137</sup>

Washington started "formally licensing naturopaths in 1957."<sup>138</sup> Thirty years later the legislature expanded naturopaths' scope of practice "to include diagnostics and all natural treatments."<sup>139</sup> In 1993, Washington granted naturopaths limited prescription powers.<sup>140</sup> Additionally, in the 1990s, the legislature enacted a law that "require[d] state health plans to contract with naturopath[s] . . . ."<sup>141</sup> In 2007, the legislature expanded naturopaths' prescription powers to include several controlled substances.<sup>142</sup> Four years later, Washington created a *Board of Naturopathy* to regulate licensed naturopaths instead of the Washington Department of Health.<sup>143</sup> The legislature also expanded title/term protection to *naturopathy*, *naturopathic*, *naturopathic physician*, and *ND*.<sup>144</sup>

Currently, in Washington, a person may not "represent" himself or herself as a naturopath without a license.<sup>145</sup> To represent oneself as a naturopath is to use any of the following titles or terms ("or any description of services that *incorporates*

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133. Smith, *supra* note 56, at 1078–79.

134. See WASH. REV. CODE § 18.36A.010 (2022).

135. *Id.* ("[I]t is necessary to regulate the practice of naturopaths in order to protect the public health, safety, and welfare."); see also Wash. State Dep't of Health's Response Brief at 1, *Jimenez v. Wash. State Dep't of Health*, No. 51482-6-II, 2018 WL 4761442 at \*1 (Wash. Ct. App. June 28, 2018) (demonstrating the Health Department's interpretation of the statute's importance; "[t]he Department of Health . . . has a duty to protect the public from healthcare providers who are unqualified. . . .").

136. *Washington Creates New Board to Oversee Naturopaths*, NATUROPATHIC NEWS (May 19, 2011), <https://ndnr.com/naturopathic-news/washington-state-creates-new-board-to-oversee-naturopaths/>.

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. NATUROPATHIC NEWS, *supra* note 136.

143. H.B. 1181, 62d Leg., Reg. Sess. (Wash. 2011).

144. *Id.*

145. WASH. REV. CODE § 18.36A.030 (2022).



one or more” of the titles or terms): naturopath, naturopathy, naturopathic, naturopathic physician, ND, or doctor of naturopathic medicine.<sup>146</sup> This means that if a person uses naturopathic in conjunction with doctor or any other similar combination, they are violating Washington law.<sup>147</sup> This “catch-all” provision ensures that the public is best protected from unqualified individuals attempting to use titles incorporating naturopathic and doctor.<sup>148</sup>

To use the above-listed titles, individuals must: (1) graduate from a naturopathic college that holds current CNME accreditation,<sup>149</sup> (2) pass the NPLEX,<sup>150</sup> (3) submit a completed application and pay an application fee, (4) provide successful passage of the jurisprudence examination, (5) complete a federal background check application,<sup>151</sup> (6) have good moral character, and (7) have not engaged in unprofessional conduct or “being unable to practice with reasonable skill and safety” due to a physical or mental impairment.<sup>152</sup> After becoming licensed, a licensee must complete sixty hours of qualifying continuing education every two years.<sup>153</sup> If an individual does not meet these qualifications, then they may not use any of the protected titles.<sup>154</sup>

If a person not meeting the above qualifications represents themselves as a naturopath, then the Secretary of the Washington Department of Health may discipline that person.<sup>155</sup> For example, in 2017, the Secretary issued a cease and desist order to a licensed marriage and family therapist who represented herself as a naturopath without proper licensure.<sup>156</sup> This therapist represented herself in

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146. *Id.* (emphasis added).

147. *Id.*

148. *See id.*

149. WASH. ADMIN. CODE §§ 246-836-020, -130 (2022). If an applicant received their education in naturopathy outside of the United States or its territories, then the program must be the equivalent to, or exceed, the minimum required standards for Washington state-approved colleges of naturopathic medicine. *Id.* § 246-836-100 (2022).

150. *Id.* § 246-836-030. If the applicant received their education for naturopathy outside the United States or its territories, then they must take the NPLEX. *Id.* § 246-836-100.

151. *Id.* § 246-836-020.

152. WASH. REV. CODE § 18.36A.090 (2022).

153. WASH. ADMIN. CODE § 246-836-080 (2022).

154. *See* WASH. REV. CODE § 18.36A.160 (2022); *see also id.* § 18.130.190.

155. *See id.* § 18.36A.160; *see also id.* § 18.130.190. The State of Washington defines unlicensed practice as “[p]racticing a profession or operating a business . . . without holding a valid, unexpired, unrevoked, and unsuspended license to do so; or [r]epresenting to a consumer, through offerings, advertisements, or use of a professional title or designation, that the individual is qualified to practice a profession . . . without holding a valid, unexpired, unrevoked, and unsuspended license to do so.” *Id.* § 18.130.020.

156. Department’s Response Brief, *Jimenez v. Wash. State Dep’t of Health*, No. 17-2-03404-34, 2017 WL 11553498 (Wash. Super. Ct. 2017).

newspaper articles and on a website as a naturopath who was board certified in naturopathy.<sup>157</sup> As such, the Secretary instituted a reprimand, imposed a \$5,000 fine, temporarily suspended her therapy license, and ordered that the therapist complete three hours of continuing education in law and ethics.<sup>158</sup>

The therapist appealed the Secretary's decision, but the Washington Court of Appeals deferred to the Secretary's decision and affirmed the Secretary's rulings.<sup>159</sup> This case confirms that Washington recognizes the importance of protecting the public from unqualified individuals who use certain titles, such as only the title naturopath by itself, to deceive the public.

Like Oregon, Washington has prioritized protecting the public from unqualified lay people attempting to practice naturopathic medicine. These efforts are demonstrated by the state's decision to extend NMD title protection to include *naturopath*, *naturopathy*, *naturopathic*, *naturopathic physician*, *ND*, or *doctor of naturopathic medicine*. The 2017 case demonstrates the importance of a state authority—like a department or board—possessing jurisdiction over TNs. Such protection proactively shields consumers who may be misled when a person represents that they is a naturopath regulated by a state.

#### E. History of Professional Regulation: Naturopathic Medicine in Idaho

##### i. Where it all began: *State Board of Medicine vs. Smith*

The legislative battle over regulating the naturopathic profession in Idaho began in the early 2000s.<sup>160</sup> However, Idaho's judiciary began the debate surrounding the practice of naturopathic medicine, regulation, and title protection decades before, in the late 1950s.<sup>161</sup>

In *State Board of Medicine v. Smith*, the Idaho State Board of Medicine sought an injunction against a traditional naturopath who advertised himself as a naturopathic doctor.<sup>162</sup> The defendant was unlicensed to practice medicine, surgery, or other healing arts.<sup>163</sup> The defendant (1) held himself out as a TN by displaying a sign at his office with the language: "David W. Smith, N.D.," and (2) his practice focused only on treating "real and imagined mental and physical ailments of the human body" by using drugless treatments of disease through "light, air, water, heat, rest, diet, herbs, and massage."<sup>164</sup> The Idaho Supreme Court denied

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157. *Id.*

158. See *Jimenez v. Washington State Dep't of Health*, 9 Wash. App. 2d 1089 (Wash. Ct. App. 2019).

159. *Id.*

160. IDAHO CODE §§ 54-5101 to 5118 (2005) (repealed in 2015 pursuant to S.B. 1177).

161. *State ex rel. State Bd. of Med. v. Smith*, 81 Idaho 103, 337 P.2d 938 (1959).

162. *Id.* at 107, 337 P.2d at 939.

163. *Id.* at 105, 337 P.2d at 938.

164. *Id.* at 105–06, 337 P.2d at 939.

the injunction on several grounds.<sup>165</sup> First, the court held that the right to engage in a “recognized” profession, like naturopathy, is protected by the Fourteenth Amendment of the United States Constitution.<sup>166</sup> Second, the court reasoned that recognized professions should only be regulated if the profession is “inherently injurious to the public health, safety or morals, or it has a tendency in that direction.”<sup>167</sup> The court rejected that the defendant advertised himself in a way that harmed the public’s health because (1) he did not hold himself out as a physician, surgeon, chiropractor, or osteopath, and (2) his practice was limited to only natural methods.<sup>168</sup> Third, the court reasoned that the legislature is free to regulate professions when the profession bears a relation to public health.<sup>169</sup> However, in this instance, the legislature showed no intent to prohibit the practice of naturopathy.<sup>170</sup> For these reasons, the court denied the board’s injunction.<sup>171</sup>

In *Smith*, the court declined to regulate the naturopathic profession and deferred to the Idaho legislature.<sup>172</sup> This case essentially allows anyone to use the title *naturopathic doctor* so long as they do not practice medicine (as defined by statute). The *Smith* Court compared naturopathic doctors to physicians, surgeons, chiropractors, and osteopaths to reach the conclusion that naturopath doctors are not the same as physicians, surgeons, chiropractors, and osteopaths.<sup>173</sup> However, the court did not—and could not—compare TNs and NMDs because the title distinction and scope of practice differences did not exist until 2005.<sup>174</sup>

The statutory distinction between TNs and NMDs observed today could lead the Idaho Supreme Court to a different conclusion than found in *Smith*. The *Smith* decision was based in part on the court’s determination that the defendant’s practice was not inherently injurious to public health.<sup>175</sup> Today, the court could find that the distinction between naturopathic medical doctors and TNs using the title naturopathic doctor is “inherently injurious to public health” because of the likelihood of misleading the public.<sup>176</sup> Nonetheless, the *Smith* court and Fourteenth Amendment jurisprudence clearly have granted the legislature the power to

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165. *Id.* at 108, 337 P.2d at 940.

166. *Id.* at 109, 337 P.2d at 941.

167. *Smith*, 81 Idaho at 110, 337 P.2d at 941.

168. *Id.* at 110, 337 P.2d at 942.

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Smith*, 81 Idaho at 110, 337 P.2d at 941.

174. IDAHO CODE §§ 54-5101 to 5118 (2005) (repealed in 2015 pursuant to S.B. 1177).

175. *Smith*, 81 Idaho at 110, 337 P.2d at 942.

176. Farr et al., *supra* note 64.

regulate all areas related to public health, not the court.<sup>177</sup> This notion was acknowledged again in 1977, when the Idaho Supreme Court in *State v. Maxfield*, relied on *Smith* to hold that there is no indication that naturopathy should be prohibited.<sup>178</sup> Echoing *Smith*, the *Maxfield* court reasoned that any regulation of naturopathy rests in the hands of the legislature, not the judiciary.<sup>179</sup> Therefore, even if a suit was brought forth, the Idaho Supreme Court would have grounds to defer to the Idaho legislature.

Over the years, the Idaho legislature has taken action to regulate naturopaths, although many legislators have been hesitant to overturn *Smith* because they do not want to go against case precedent protecting jobs.<sup>180</sup> But in 2005, Representative Rusche commented in a committee hearing that the legislature “go[es] against court cases all of the time, that is what the [I]legislature does . . . make new law.”<sup>181</sup> Even with legislators like Rep. Rusche vocalizing the legislature’s authority to overturn *Smith* (a case from the 1950s), the hesitancy to do so persists today.

#### ii. Legislative History: 2005<sup>182</sup>

Like Oregon and Washington, Idaho has exercised its police power to regulate the naturopathic profession.<sup>183</sup> The battle over regulation of the profession has

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177. *Smith*, 81 Idaho at 110, 337 P.2d at 942; see *Constitutionality of Statute or Ordinance Prohibiting or Regulating Advertising by Physician, Surgeon, or Other Person Professing Healing Arts*, 54 A.L.R. 400 (1928).

178. See *State v. Maxfield*, 98 Idaho 356, 358, 564 P.2d 968, 970 (1977).

179. *Id.* at 358, 564 P.2d at 970.

180. *Naturopathic physicians, license: Hearing on S 1158 Before the H. Health and Welfare Comm.*, 2005 Leg., 58th Sess. (Idaho 2005) (summarizing Rep. Loertscher’s and Rep. Sali’s concerns about overturning *State v. Smith*).

181. *Id.*

182. Again, this note does not address the recent legislative action creating laws that govern TNs and Licensed Naturopathic Doctors optional licensure process. See IDAHO CODE §§ 54-5901 to 5912 (2022). Arguably, Idaho Code §§ 54-5901 to 5912 causes more confusion surrounding the title protection issues. See *id.* It provides no title protection for “Naturopathic Doctor.” See *id.* Rather, it creates a new title “Licensed Naturopathic Doctors” for practitioners like chiropractors. *Id.* So, in Idaho, consumers now must determine whether they are seeing a Traditional Naturopath, a Registered Traditional Naturopath, a Naturopathic Medical Doctor, or a Licensed Naturopathic Doctor. See *id.*; see also IDAHO CODE §§ 54-5101 to 5111 (2022). All of whom may use the title Naturopathic Doctor, but who have strikingly different qualifications and training.

183. S.B. 1158, 58th Leg., 1st Sess. (Idaho 2005); IDAHO CODE §§ 54-5101 to 5118 (2005) (repealed in 2015 pursuant to S.B. 1177).

been arduous and highly political,<sup>184</sup> but in 2005, Idaho successfully began regulating naturopathic medical doctors through passage of S.B. 1158.<sup>185</sup> However, the legislature clearly stated its intent was not to limit the *Smith* holding.<sup>186</sup> This legislation protected the ability of unlicensed TNs to call and advertise themselves as naturopathic doctors.<sup>187</sup>

While the legislature successfully passed S.B. 1158, it did not do so without months of debate. The three main groups debating S.B. 1158 were the Idaho Medical Association (IMA), the Idaho Association of Naturopathic Physicians (IANP), and Idaho Coalition of Natural Health (ICNH).<sup>188</sup> IMA argued that the bill failed to extend title protection for doctor.<sup>189</sup> IANP argued that naturopaths with the proper training and education from accredited schools should be licensed and distinguished from those without the proper training and education.<sup>190</sup> Whereas, ICNH argued that naturopaths with certain training and education should not be treated differently than those who did not attend an accredited school.<sup>191</sup> ICNH complained that licensure would give NMDs a monopoly on the industry.<sup>192</sup> But eventually, IANP and ICNH agreed to a compromise.<sup>193</sup> This compromise allowed TNs to continue to use the titles ND and naturopathic doctor, and to practice as allowed by *Smith*, while allowing medically educated and trained naturopaths to practice to the extent of their formal education and training.<sup>194</sup> Yet, even with compromise, the question of whether the public would be able to distinguish between NMD and ND was continuously raised.<sup>195</sup>

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184. Audrey Dutton, *Health Misinformation Was an Idaho-Grown Product for Years. Now it Has a Body Count*, IDAHO CAPITAL SUN, (Oct. 19, 2021, 2:12 PM), <https://idahocapitalsun.com/2021/10/19/health-misinformation-was-an-idaho-grown-product-for-years-now-it-has-a-body-count/>.

185. IDAHO CODE §§ 54-5101 to 5118 (2005) (repealed in 2015 pursuant to S.B. 1177).

186. *Id.*

187. *Id.*

188. Naturopathic physicians, license: Hearing on S 1158 Before the S. Health and Welfare Comm., 2005 Leg., 58th Sess. 2–3 (Idaho 2005).

189. *Id.* at 4 (statement of Ken McClure, Idaho Medical Association).

190. *Id.* at 3 (statement of Kris Ellis, Idaho Naturopathic Physicians Association).

191. *Id.* at 5 (statement of Chuck Lempesis, Idaho Coalition of Natural Health).

192. *Naturopathic physicians, license: Hearing on S 1158 Before the H. Health and Welfare Comm.*, 2005 Leg., 58th Sess. 1–2 (Idaho 2005) (statement of Kris Ellis, Idaho Naturopathic Physicians Association).

193. *Naturopathic physicians, license: Hearing on S 1158 Before the S. Health and Welfare Comm.*, 2005 Leg., 58th Sess. 4 (Idaho 2005) (statement of Kris Ellis, Idaho Naturopathic Physicians Association).

194. *Id.* at 5–6 (statement of Chuck Lempesis, Idaho Coalition of Natural Health).

195. *See id.* at 5 (statement of Ken McClure, Idaho Medical Association); *see also id.* at 4 (statement of Sen. Keough).

During a committee hearing on the bill, Senator Keough, asked how will “the public know the difference between N.M.D. and N.D.?” Kris Ellis, IANP’s lobbyist and former law maker, replied: “[n]ow the public can’t tell any difference, but with this bill, N.M.D. is restricted to licensed practitioners.”<sup>196</sup> Under S.B. 1158, licensed naturopaths could use the title NMD, and TNs could continue to use the titles naturopathic doctor and ND, which as noted during debate causes confusion to the public.<sup>197</sup>

Healthcare providers’ titles are often confusing to the public, however, the confusion is exacerbated when one provider is licensed, and the other is not. For instance, during a committee hearing, Kris Ellis highlighted the difference between optometrist and ophthalmologist.<sup>198</sup> She stated that the public is often confused by which physician provides what services.<sup>199</sup> While that may be true, both optometrist and ophthalmologist are regulated by the state.<sup>200</sup> Moreover, the abbreviated title for an optometrist is OD,<sup>201</sup> and the abbreviated title for an ophthalmologist is MD or DO.<sup>202</sup> Even with the many confusing titles in the healthcare industry, the concern is lessened if both fields are regulated by the government. The concern intensifies when only one group is regulated and the other group, like those TNs using the title ND, is not. In that regard the confusion surrounding the titles NMD and ND is much more impactful, and potentially dangerous than the concern surrounding the titles of optometrist and ophthalmologist. Nonetheless, the legislature decided to move forward with S.B. 1158 and passed it.<sup>203</sup>

The legislature continued to honor the *Smith* holding by allowing unlicensed TNs to use the titles: doctor of naturopathy, naturopathic doctor, and ND.<sup>204</sup> Although TNs could continue to use those titles, to do so they must have (1) received a degree from a naturopathic school, college, or institution; (2) completed a doctoral level course of study that included both coursework and practical experience; (3) practiced as a doctor of naturopathy for 20 years; or (4) practiced as a doctor of naturopathy for at least five years and received a doctor of

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196. *Id.* at 4 (statement of Sen. Keough); *Id.* at 4 (statement of Kris Ellis, Idaho Naturopathic Physicians Association).

197. *See id.* at 5 (statement of Ken McClure, The Idaho Medical Association).

198. *Naturopathic physicians, license: Hearing on S 1158 Before the S. Health and Welfare Comm.*, 2005 Leg., 58th Sess. 10 (Idaho 2005) (statement of Kris Ellis, Idaho Naturopathic Physicians Association).

199. *Id.*

200. IDAHO CODE §§ 54-1501 to 1525 (2022); *See id.* §§ 54-1801 to 1866. An ophthalmologist is a medical doctor, and thus uses M.D. or D.O. as its protected title. *What is an Ophthalmologist*, IDAHO SOCIETY OF OPHTHALMOLOGY, <https://eyephysiciansofidaho.com/> (last visited Jan. 4, 2023).

201. IDAHO CODE § 54-1501(2) (2022).

202. *See id.* § 54-1804(4).

203. *See* S.B. 1158, 58<sup>th</sup> Leg., 1<sup>st</sup> Sess. (Idaho 2005) (repealed 2015 pursuant to S.B. 1177).

204. *See id.*

naturopathy degree prior to the act taking effect.<sup>205</sup> While the statute permitted TNs to use certain titles, it did not allow them to use any of the following titles: naturopathic physician, physician of naturopathic medicine, physician of natural medicine, doctor of naturopathic medicine, or NMD.<sup>206</sup> Rather, only NMDs licensed under the statute could use those titles.<sup>207</sup> The enactment of S.B. 1158 was a promising compromise between NMDs and TNs, however despite this legislation, the two groups continued to battle over administrative rules.<sup>208</sup>

### iii. Legislative History: 2015

Even with the passage of S.B. 1158, the debate over regulating the naturopathic profession continued for years.<sup>209</sup> The Idaho Chapter of the American Association of Naturopathic Physicians (IDAANP) and the Idaho Association of Naturopathic Physicians (IANP), continued to debate the training and education standards for the 2005 law.<sup>210</sup> These associations disagreed about the administrative rules promulgated by the Idaho Board of Naturopathic Medical Examiners.<sup>211</sup> On one side, IDAANP argued that licensed NMDs must attend an accredited naturopathic medical school.<sup>212</sup> On the other side, IANP argued that the education requirement would “unfairly” exclude individuals from practicing their profession.<sup>213</sup> For 10 years, these differences halted progress and rendered the five-member naturopathic board essentially useless.<sup>214</sup> This board failed to agree on rules for obtaining and regulating a license and left confusion in the profession.<sup>215</sup> With such tension between the two different naturopath groups, the IDAANP took measures to try to preserve the 2005 legislation.<sup>216</sup>

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205. *Id.*

206. *See id.*

207. *Id.*

208. Kimberlee Kruesi, *Idaho Senate Panel Backs New Naturopathic Licensing Bill*, KSL.COM, (March 16, 2015, 7:51 PM), <https://www.ksl.com/article/33855956/idaho-senate-panel-backs-new-naturopathic-licensing-bill>.

209. *Id.*

210. *Id.*

211. *Id.*

212. *See id.*

213. *Id.*

214. *See Kruesi, supra* note 208.

215. *See id.*

216. Naturopathic Medical Physicians Licensing: Hearing on H. 181 Before the S. Health and Welfare Comm., 2015 Leg., 63rd Sess. (Idaho 2015).

Such measures included introducing H.B. 181 in 2015.<sup>217</sup> This bill created a pathway for NPLEX graduates to be licensed, while again not limiting the holding in *Smith*.<sup>218</sup> This bill extended title protection to doctor, physician, NMD, and ND.<sup>219</sup> Conversely, the 2005 enacted bill allowed any layperson to use the title naturopathic doctor and ND if they met certain criteria.<sup>220</sup> TNs strongly opposed restricting the use of naturopathic doctor, arguing that preventing them from using that title would shut down their businesses.<sup>221</sup> Additionally, the 2015 bill set adequate educational standards, whereas the 2005 law allowed for a grandfathering in of TNs without degrees from accredited schools.<sup>222</sup> The 2005 legislation was proposed as a means of creating a pathway for a new board to promulgate rules.<sup>223</sup> Yet, this legislation spurred even more heated debate and drew greater divides within the profession.<sup>224</sup>

Resolution of this essential issue evaded the two groups. One local TN described the ongoing battle as a “political issue where somebody is scared to death, they are going to lose their monopoly over naturopathy. We’ve tried to talk it out. I don’t care what you do, you could bend over backward and spin around 10 times, you’re never going to get an agreement, because there’s two different philosophies.”<sup>225</sup> This description of the longstanding battle proved accurate when the legislature repealed the 2005 law, without adopting H.B. 181.<sup>226</sup> For many the repeal of the 2005 law was “a reset for the creation of something better.”<sup>227</sup>

#### iv. Legislative History: 2019

After the reset button was hit in 2015, many groups attempted to find a compromise. Initially, discussions between the various groups were unsuccessful. However, after four years without a licensure framework for educated and trained naturopathic medical doctors, the Idaho legislature sprang into action in 2019 and

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217. *Id.* at 1 (statement of Kris Ellis, the Idaho Chapter of the American Association of Naturopathic Physicians).

218. *Id.*

219. *Id.*

220. S.B. 1158, 58<sup>th</sup> Leg., 1<sup>st</sup> Sess. (Idaho 2005) (repealed 2015 pursuant to S.B. 1177).

221. Naturopathic Medical Physicians Licensing: Hearing on H. 181 Before the S. Health and Welfare Comm., 2015 Leg., 63<sup>rd</sup> Sess. (Idaho 2015).

222. S.B. 1158, 58<sup>th</sup> Leg., 1<sup>st</sup> Sess. (Idaho 2005) (repealed 2015 pursuant to S.B. 1177).

223. Kruesi, *supra* note 208.

224. John Miller, *Naturopath Licensing on the Rocks*, THE SPOKESMAN REV. (Jan. 22, 2009, 2:57 PM), <https://www.spokesman.com/blogs/boise/2009/jan/22/naturopath-licensing-rocks/>.

225. *Id.*

226. S.B. 1177, 63<sup>rd</sup> Leg., 1<sup>st</sup> Sess. (Idaho 2015).

227. *Naturopathic Medical Physicians Licensing: Hearing on S 1177 Before the H. Health and Welfare Comm.*, 2015 Leg., 63<sup>rd</sup> Sess. (Idaho 2015) (quoting Chairman Wood of the House Health & Welfare Committee).



passed H.B. 244.<sup>228</sup> However, as seen in prior legislative sessions, the battle to regulate the naturopathic profession was long and grueling.

The first piece of legislation introduced to regulate the profession was H.B. 152.<sup>229</sup> This bill set forth the scope of practice, licensing qualifications, and licensing exemptions.<sup>230</sup> Additionally, it established the Idaho State Board of Medicine as the governing board, but also included an advisory naturopathic licensure board.<sup>231</sup> It also set forth grounds for discipline of licensees.<sup>232</sup> Lastly, this bill prohibited certain acts and extended title protection for “licensed naturopathic physician,” “licensed physician of naturopathic medicine,” and “L-ND.”<sup>233</sup> But the bill lacked title protection for naturopath, naturopathic doctor, and ND, in a nod to the vocal objections of TNs practicing in the state.<sup>234</sup>

After closed-door negotiations, H.B. 196 replaced H.B. 152.<sup>235</sup> H.B. 196 was the second piece of legislation introduced to regulate the profession.<sup>236</sup> This bill modified H.B. 152’s exemptions section to include “or otherwise authorized,”<sup>237</sup> which provided greater protection to TNs not licensed but who wished to continue to practice.<sup>238</sup> Besides this change, the remainder of H.B. 196 was the same as H.B. 152, which means title protection was not extended to naturopath, naturopath doctor, or ND.<sup>239</sup>

Still, many TNs came forward in opposition to H.B. 196.<sup>240</sup> They argued that the bill stripped the rights of TNs and created a “government-endorsed monopoly” because the bill only allowed those with degrees from certain accredited schools to be licensed.<sup>241</sup> Those in favor of H.B. 196 countered and stated that the bill does not limit TNs because it allows them to continue to use the titles naturopathic doctor and ND as well as continue to provide the services they have offered all along.<sup>242</sup>

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228. H.B. 244, 65th Leg., 1st Reg. Sess. (Idaho 2019).

229. H.B. 152, 65th Leg., 1st Reg. Sess. (Idaho 2019).

230. *Id.*

231. *Id.*

232. *Id.* at 5–6.

233. *Id.* at 6.

234. *Id.*

235. Idaho H.B. 152; H.B. 196, 65th Leg., 1st Reg. Sess. (Idaho 2019).

236. Idaho H.B. 152; Idaho H.B. 196.

237. Idaho H.B. 152; Idaho H.B. 196.

238. Naturopathic Medical Physicians Licensing: Hearing on R.S. 26955 Before the H. Health and Welfare Comm., 2019 Leg., 65th Sess. (Idaho 2019).

239. Idaho H.B. 196.

240. Naturopathic Medicine: Hearing on H. 152 Before the H. Health and Welfare Comm., 2019 Leg., 65th Sess. 1 (Idaho 2019).

241. *Id.*

242. *Id.* at 2.

With the opposition so vocal, the NMDs returned to the drawing board and drafted H.B. 244.<sup>243</sup> This bill replaced H.B. 196 and changed the naturopathic physician protected title to naturopathic medical doctor.<sup>244</sup> NMDs and TNs agreed to change the title to naturopathic medical doctor to indicate licensed NMDs medical school training and national testing.<sup>245</sup> But the bill explicitly exempted the titles naturopathic doctor and ND from the title protection provision.<sup>246</sup> Additionally, like H.B. 152 and H.B. 196, this bill granted prescriptive, imaging, and laboratory authority to NMDs with the appropriate training and education.<sup>247</sup> It also kept the establishment of the Idaho State Board of Medicine as the governing board, included an advisory naturopathic licensure board, and set forth grounds for discipline of licensees.<sup>248</sup> With the TN lobby somewhat assuaged, the legislature passed H.B. 244.<sup>249</sup>

#### v. Idaho Code: Naturopathic Medical Doctors

On March 25, 2019, Governor Brad Little signed H.B. 244 into law.<sup>250</sup> As discussed above, this bill, now statute, grants the Idaho State Board of Medicine the power to license qualified naturopathic medical doctors.<sup>251</sup> This law defines naturopathic medical doctors' scope of practice, but does not differentiate it by describing a scope for TNs.<sup>252</sup> While there is not a designated scope for TNs, the law carves out exemptions to allow TNs to practice outside of the statutory scope.<sup>253</sup> This section allows the continued practice of "complementary and alternative healing methods and treatments" as described in the Idaho Medical Practice Act.<sup>254</sup> Such methods include the use of "natural elements such as air, heat, water, light,

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243. H.B. 244, 65th Leg., 1st Reg. Sess. (Idaho 2019).

244. Naturopathic Physicians: Introductory Hearing on RS27025C2 Before the H. Health and Welfare Comm., 2019 Leg., 65th Sess. (Idaho 2019).

245. *Id.*

246. Idaho H.B. 244.

247. *Id.* at 2.

248. *Id.* at 3–5.

249. House Bill 244, IDAHO LEG., <https://legislature.idaho.gov/sessioninfo/2019/legislation/H0244/> (last visited Dec. 19, 2021). The Idaho House passed H.B. 244 64-3-3 and the Idaho Senate passed it 32-2-1. *Id.* After decades of fighting of licensure, many NMDs were willing to make whatever concessions necessary to obtain the ability to be licensed and practice to the full extent of their education and training. Ultimately this legislation was a compromise, but it helped NMDs to practice to the full extent of their education, which was a victory for the profession.

250. *Id.*

251. Idaho H.B. 244.

252. IDAHO CODE § 54-5102 (2022).

253. *Id.* § 54-5103.

254. *Id.*

vitamins, minerals, herbs, natural food products, and nutritional supplements.”<sup>255</sup> Thus, it in no way limits the practice of TNs,<sup>256</sup> rather it allows for NMDs with the proper training and education to widen their scope of practice.<sup>257</sup>

To practice within the statutory scope, the law requires that an applicant: (1) graduate from “an approved naturopathic medical program,” (2) provide proof of passing NPLEX, and (3) submit “a fingerprint-based criminal history check.”<sup>258</sup> The statute also allows the Idaho State Board of Medicine to refuse to issue or renew a license, or discipline a licensee on multiple grounds, including, but not limited to, the use of fraud or deceit, gross negligence, incompetence, or misconduct when performing as a NMD, and failing to meet the community standard of care for naturopathic medical doctors.<sup>259</sup> Lastly, if one represents oneself as practicing naturopathic medicine or uses the titles licensed naturopathic physician, physician of naturopathic medicine, naturopathic medical doctor, or NMD, then that person can be charged with a misdemeanor.<sup>260</sup> But a county prosecutor, not the Idaho Board of Medicine, must bring the charges because the board has no jurisdiction over TNs.<sup>261</sup> Thus, to protect the public from those using restricted titles, county prosecutors, who may have limited time and resources, must bring forth charges.<sup>262</sup>

Idaho’s current naturopathic medical doctor statute provides some NMD title protection.<sup>263</sup> However, it fails to extend title protection to naturopath, naturopathic doctor, and ND,<sup>264</sup> leaving in place an outdated, confusing, and dangerous tilting convention, to the detriment of Idaho’s public.<sup>265</sup>

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255. *Id.* § 54-1804.

256. *See id.* § 54-5103.

257. *See id.*

258. IDAHO CODE § 54-5106 (2022).

259. *Id.* § 54-5109.

260. *Id.* § 54-5110.

261. *Compare id.*, with IDAHO ADMIN. CODE r.24.33.04 (2022).

262. *Compare* IDAHO CODE § 54-5110 (2022), with IDAHO CODE § 31-2604 (2022).

263. IDAHO CODE § 54-5110 (2022).

264. *Id.* At the time of submission of this Note, a bill impacting naturopathic licensure is pending in the Idaho legislature. S.B. 1330, 66th Leg., 2d Sess. (Idaho 2022). A person must have a valid and active license to otherwise practice as a doctor in healthcare. *Id.* It also creates the Idaho Board of Naturopathic Healthcare, which oversees licensees. *Id.* The bill creates a registration method for any practicing naturopath who wishes to be registered but is not licensed in Idaho. *See id.* This bill implements a framework to voluntarily license doctors licensed under other practice acts. *Id.* Additionally, it allows for a voluntary registration process for TNs. *Id.* The bill provides title protection for “Licensed Naturopathic Practitioner,” “LNP,” “Licensed Naturopathic Doctor,” and “LND” but it fails to provide title protection for “Naturopathic Doctor” and “ND.” Idaho S.B. 1330. Lastly, this bill in no way impacts NMDs licensure process, except that it allows NMDs licensed under Idaho Code § 54-5110 to also use the titles “Licensed Naturopathic Doctor” and “LND.” *Id.*

265. Farr et al., *supra* note 64.

## III. REGULATORY COMPARISON: IDAHO VS. OREGON &amp; WASHINGTON

Oregon and Washington have long regulated the naturopathic medical field and provided title protection for titles associated with naturopathic medicine.<sup>266</sup> In Oregon, licensees with similar qualifications to NMDs in Idaho, are the only individuals allowed to use the titles: doctor of naturopathy, ND, naturopath, naturopathic physician, naturopathic practitioner, naturopathic healer, naturopathic doctor, naturopathic consultant, or any other terms that may convey that a person practices naturopathy or naturopathic medicine.<sup>267</sup> In comparison, Washington protects the titles: naturopath, naturopathy, naturopathic, naturopathic physician, ND, and doctor of naturopathic medicine.<sup>268</sup> Additionally, when an individual's description of services "*incorporates one or more*" of the titles or terms, she represents herself as a naturopath.<sup>269</sup> Both Oregon and Washington protect the titles ND and naturopathic doctor.<sup>270</sup>

Meanwhile, in juxtaposition to Oregon and Washington, Idaho only protects the titles: licensed naturopathic physician, physician of naturopathic medicine, naturopathic medical doctor, and NMD.<sup>271</sup> There is no "catch-all" provision as seen in Washington's statute,<sup>272</sup> nor does Idaho's administrative rules protect the title naturopathic doctor, like seen in Oregon's administrative rules.<sup>273</sup>

Oregon and Washington not only provide greater title protection than Idaho, but they also have greater disciplinary action in place against unauthorized individuals like TNs who use protected titles.<sup>274</sup> Both Oregon and Washington have in place strong recourse.<sup>275</sup> Oregon law permits imposition of a fine up to \$5,000 against any TN that uses a protected title.<sup>276</sup> In contrast, Washington law allows the Washington Department of Health's Secretary to reprimand TNs using a protected title.<sup>277</sup>

Idaho's enforcement mechanisms also pales in comparison to those provided in Oregon and Washington. Oregon and Washington allow their respective board or department of health to discipline individuals using protected naturopath titles;

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266. See *supra* notes 92–96, 103–113 and accompanying text.

267. See *supra* notes 111–112 and accompanying text.

268. See *supra* notes 145–149 and accompanying text.

269. *Id.*

270. See *supra* notes 111–112, 144–147 and accompanying text.

271. See *supra* note 260 and accompanying text.

272. See *supra* notes 144–147 and accompanying text.

273. See *supra* notes 111–112 and accompanying text.

274. See *supra* notes 101, 139–146 and accompanying text.

275. See *supra* notes 139–146 and accompanying text.

276. See *supra* notes 101–116 and accompanying text.

277. See *supra* notes 139–146 and accompanying text. Such reprimand may include a variety of penalties. See *id.*

Idaho's statute does not.<sup>278</sup> In Idaho, only county prosecutors may bring criminal charges against individuals using such protected titles.<sup>279</sup> Thus, in Idaho, it is difficult to enforce even the inadequate title protection afforded to NMDs.

#### IV. IMPORTANCE OF REGULATION TO PROTECT CONSUMERS

An early 2000 case out of Colorado demonstrates the importance of regulating the naturopathic profession to protect consumers. Prior to Colorado regulating the profession of naturopathy, a person named Brian O'Connell advertised himself as an NMD.<sup>280</sup> He wore a white coat with "Dr. O'Connell" embroidered on it.<sup>281</sup> He also displayed diplomas from unaccredited distance learning institutions on his walls.<sup>282</sup> The use of *doctor* in this context led a seventeen-year-old girl to visit "Doctor" O'Connell.<sup>283</sup> She consented to a "photoluminescence treatment," where "Doctor" O'Connell drew blood, exposed it to ultraviolet light, and replaced it in the body.<sup>284</sup> He also gave the young girl injections of vitamins C and B12.<sup>285</sup> This young patient went into cardiac arrest and was rushed to the ER.<sup>286</sup>

But what is even more terrifying is the fact that this young girl was not the first of O'Connell's victims.<sup>287</sup> A few days prior to the young girl arriving at the hospital, another one of O'Connell's patients was at the same hospital.<sup>288</sup> This patient had colon-cancer and sought O'Connell's help.<sup>289</sup> Unfortunately, a few hours after O'Connell's treatment, the patient died.<sup>290</sup> Additionally, prior to these incidents, a nineteen-year-old died the day after O'Connell "treated" the patient by a photoluminescence treatment.<sup>291</sup>

O'Connell was criminally charged on multiple counts and plead guilty to "criminal negligent homicide, practicing medicine without a license, assault, theft,

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278. Compare WASH. REV. CODE § 18.130.020 (2022), and OR. REV. STAT. § 685.110 (2022), with IDAHO CODE § 54-5110 (2022).

279. See IDAHO CODE § 54-5110 (2022).

280. Amber Taufen, *Do No Harm*, WESTWORD (Aug. 4, 2005, 4:00 AM), <https://www.westword.com/news/do-no-harm-5085877>.

281. *Id.*

282. *Id.*

283. *Id.*

284. *Id.*

285. *Id.*

286. Taufen, *supra* note 280.

287. *Id.*

288. *Id.*

289. *Id.*

290. *Id.*

291. *Id.*

and perjury.”<sup>292</sup> This story demonstrates the need for regulation of the naturopathic profession. If regulation—like licensure and title protection—of the naturopathic profession would have been in place, these victims could have made informed decisions<sup>293</sup> before paying O’Connell thousands of dollars<sup>294</sup> to “treat” them. Regulation aims to protect the consumers and proactively allows discipline of healthcare professionals and those misrepresenting themselves as such.

“When a ‘doctor’ speaks, people [tend to] pay attention.”<sup>295</sup> If someone uses the title naturopathic doctor or ND, or any healthcare provider title with doctor in it, the public gives credibility to that title.<sup>296</sup> If there is a distinction in titles, then the public is much more likely to know the difference in providers’ trainings, which in turn allows the public to make more informed choices when choosing a naturopathic provider.<sup>297</sup> Because of the credibility associated with certain healthcare providers’ titles, the U.S. Supreme Court has long recognized the states’ power to protect the public when it comes to healthcare professions.<sup>298</sup>

Many states have long regulated the profession of naturopathic medicine to ensure consumer protection.<sup>299</sup> One method of regulation is granting jurisdictional authority to a board to discipline licensees who violate the profession’s ethical rules or fails to meet the appropriate standard of care. Oregon is one state with such jurisdictional authority who has exercised such authority and disciplined many licensees.<sup>300</sup> For example, Oregon’s Board of Naturopathic Medicine disciplined a licensee for having an inappropriate relationship with a patient.<sup>301</sup> This licensee developed a friendship with a patient.<sup>302</sup> The patient and licensee communicated

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292. Aly Vander Hayden, *Colorado ‘Doctor’ Caught Prescribing Flesh-Destroying Salve to Cure Cancer*, OXYGEN TRUE CRIME (Sept. 22, 2020, 3:09 PM), <https://www.oxygen.com/license-to-kill/crime-news/brian-oconnell-arrested-fake-cancer-treatments>.

293. Farr et al., *supra* note 64.

294. Hayden, *supra* note 292.

295. See Davey Alba & Sheera Frenkel, *Calls Grow to Discipline Doctors Spreading Virus Misinformation*, N.Y. TIMES (Aug. 27, 2021), <https://www.nytimes.com/2021/08/27/technology/doctors-virus-misinformation.html>; see also Dutton, *supra* note 184.

296. See Alba & Frenkel, *supra* note 295; see also Dutton, *supra* note 184.

297. See Thomas R. Clark, *Licensing Alternative Approaches to Medicine: The Naturopathic Doctors’ Act of 2003*, 35 MCGEORGE L. REV. 387, 395 (2004).

298. See *Watson v. Maryland*, 218 U.S. 173, 176 (1910).

299. *Naturopathic Doctor Licensure*, ASS’N OF ACCREDITED NATUROPATHIC MED. COLLS., <https://aanmc.org/licensure/> (last visited Jan. 17, 2022).

300. *Discipline*, OR. BD. OF NATUROPATHIC MED., <https://www.oregon.gov/obnm/Pages/Discipline.aspx> (last updated Sept. 1, 2022).

301. Zorn, Case No. 20-10-15, Board of Naturopathic Medicine State of Oregon (Apr. 12, 2021) (final order), <https://www.oregon.gov/obnm/Documents/Discipline/20-10-15%20Zorn%20Default%20Order%204.09.2021.pdf>.

302. *Id.* at 2.

via text and Facebook Messenger for a couple years.<sup>303</sup> At some point, the licensee began sending the patient sexual messages.<sup>304</sup> The patient explicitly stated that the licensee “overstepped boundaries and acted unprofessionally.”<sup>305</sup>

Because of this licensee’s behavior, a complaint was filed with Oregon’s Board of Naturopathic Medicine; the board found the licensee in violation of ORS 685.110(14) and ordered two years of probation, and during probation, 12 hours of continuing education that focused on maintaining appropriate doctor/patient relationships.<sup>306</sup> In this story, the board could take action because the naturopath was a licensee, whereas in the O’Connell story, no board could act because there was no board. Thus, these stories demonstrate the importance of regulating the naturopathic profession through licensure, title protection, and granting jurisdictional authority to a body of the state government.

In today’s world, an area of great concern regarding the unauthorized use of titles is healthcare professionals using the credibility of their titles to spread misinformation. Misinformation and disinformation are not new concepts to those practicing complementary medicine, including naturopathy.<sup>307</sup> For years, the National Center for Complementary and Integrative Health has tried to educate consumers about “high-quality” health information, including by creating an online resource called “Know the Science.”<sup>308</sup> However, even with tools such as “Know the Science,” misinformation and disinformation continue.<sup>309</sup> For instance, during the COVID-19 pandemic, TNs in Idaho spread false information about the vaccine.<sup>310</sup>

Idaho is no stranger to the spread of health misinformation; however, this issue has intensified due to the COVID-19 pandemic. Dave Jeppesen, Idaho Health & Welfare Director, confronted the issue of health misinformation spread during the COVID-19 pandemic when he stated that people are “needlessly suffering in

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303. *Id.*

304. *Id.*

305. *Id.*

306. *Id.* at 2–3.

307. Helen M. Langevin, *Vaccines and Complementary Health: It’s “And” Not “Or”*, NAT’L CTR. FOR COMPLEMENTARY AND INTEGRATIVE HEALTH (Nov. 2, 2021), <https://www.nccih.nih.gov/about/offices/od/director/past-messages/vaccines-and-complementary-health-its-and-not-or?nav=govd1>. Director Helen M. Langevin calls the issue of misinformation and disinformation an “infodemic.” *Id.*

308. *Know the Science*, NAT’L CTR. FOR COMPLEMENTARY AND INTEGRATIVE HEALTH, <https://www.nccih.nih.gov/health/know-science> (last visited Jan. 27, 2022).

309. Dutton, *supra* note 184; *see also* The Karlfeldt Center, *Have You Gotten Your Shot Yet?*, YOUTUBE (April 9, 2021), <https://www.youtube.com/watch?v=vo92jfmkvpo>.

310. *See* Audrey Dutton, *Idaho Public Health Board Invites Anti-mask Conspiracy Theorists to Talk COVID-19*, IDAHO STATESMAN (November 17, 2020), <https://www.idahostatesman.com/article247239429.html>; Dutton, *supra* note 184; *see also* The Karlfeldt Center, *supra* note 309.

hospitals and frankly, we have people dying because of misinformation that's out there. . . and that's a real tragedy."<sup>311</sup> Because COVID-19 patients overwhelmed the health system, Director Jeppesen activated Idaho's Crisis Standards of Care in September 2021.<sup>312</sup> Yet, in October 2021, while the Crisis Standards were still activated, a TN (using the titles ND and naturopathic doctor) and a local physician organized a "Healing America Medical Truth Symposium."<sup>313</sup>

At this event, the TN gave a "fusillade of misinformation, for at least 40 minutes."<sup>314</sup> This TN stated that "if somebody gets hit with the COVID, I urge them to get going on [an acute viral pack] immediately and with vitamin D, I bring dosages up to like 200,000 iu per day."<sup>315</sup> According to the National Institutes of Health this is 50 times more than the acceptable dose of vitamin D.<sup>316</sup> This local TN also spread misinformation about the COVID-19 vaccine on his YouTube channel<sup>317</sup> as well as when presenting before the Idaho Southwest District Health Board.<sup>318</sup> He ignored the proven benefits of the vaccine by spreading misinformation.<sup>319</sup> As discussed above, when TNs use the titles ND and naturopathic doctor, the public grants them credibility which allows misinformation to flourish like seen here.<sup>320</sup>

Although there have been calls for licensed health providers to be disciplined for spreading COVID-19 misinformation,<sup>321</sup> the state of Idaho grants no jurisdiction to state licensure boards like the Idaho Board of Medicine to discipline unlicensed TNs spreading such misinformation.<sup>322</sup> This terrifying reality of TNs spreading misinformation, while using the titles ND and naturopathic doctor, is just one reason that a state board (like in Oregon)<sup>323</sup> or a department of health & welfare (like in Washington)<sup>324</sup> should have some jurisdiction over TNs.

Without greater title protection and jurisdictional authority, Idaho continues to fail its citizenry by continuing to allow potential harm to the public's health. The

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311. Dutton, *supra* note 310.

312. Melissa Davlin, *Crisis Standards of Care Activated Statewide*, IDAHO REPORTS (Sept. 16, 2021), <https://blog.idahoreports.idahoptv.org/2021/09/16/crisis-standards-of-care-activated-statewide/>.

313. Dutton, *supra* note 310.

314. *Id.*

315. *Id.*

316. *Id.* (citing the National Institutes of Health Office of Dietary Supplements); see Off. of Dietary Supplements, *Strengthening Knowledge and Understanding of Dietary Supplements*, NAT'L INST. OF HEALTH (August 17, 2021), <https://ods.od.nih.gov/factsheets/VitaminD-HealthProfessional/#h2>.

317. The Karlfeldt Center, *supra* note 309.

318. Idaho Southwest Dist. Health Bd., *Southwest District Health Board of Health Meeting*, YOUTUBE (Nov. 17, 2020), <https://www.youtube.com/watch?v=vrSRI99kc30>.

319. Langevin, *supra* note 307.

320. See Dutton, *supra* note 184.

321. See Alba & Frenkel, *supra* note 295; see also Dutton, *supra* note 184.

322. IDAHO CODE § 54-1804 (2022).

323. See *supra* notes 114–115 and accompanying text.

324. See *supra* notes 154–157 and accompanying text.



need for action has always been there, but it is even more dire now with the COVID-19 pandemic continuing to linger and the spread of misinformation growing rapidly.

#### V. PROPOSED POLICY RECOMMENDATIONS

One day a 22-year-old female saw an Idaho NMD.<sup>325</sup> The young female patient shared with the NMD that she was concerned about her swollen lymph node.<sup>326</sup> The patient shared that she had previously seen a TN, who used the title ND.<sup>327</sup> This TN ordered no lab work, and instead sold the patient \$1,000 in branded supplements.<sup>328</sup> After a few minutes into the conversation, the NMD requested the TN's information from the patient, which revealed that the TN was not a licensed doctor.<sup>329</sup> The young patient had no idea that the TN was not licensed.<sup>330</sup>

This is yet another story of the confusion surrounding the distinction between ND and NMD. Sick and vulnerable patients, like the young female patient discussed above, fall victim to some TNs' "miracle" remedies, believing that the TN must be regulated and held to a certain standard of care. Stories like these are the reason that the Idaho legislature must take action now to protect the public from unqualified TNs using titles, like ND and naturopathic doctor. The Idaho legislature can take such action by (1) expanding NMD title protection to include ND and naturopathic doctor; (2) providing jurisdictional authority to either the Idaho Board of Medicine or the Idaho Department of Health & Welfare; and/or (3) amending the Medical Practice Act to require TNs to disclose that they are not NMDs (the act already requires this disclosure with respect to MDs and DOs).

#### A. Title Protection

Currently, in Idaho, TNs are allowed to use the titles naturopathic doctor and ND.<sup>331</sup> While this Note clearly focuses on greater title protection for NMDs, in the spirit of protecting public health, the Idaho legislature should also consider creating a mandatory licensure process for traditional naturopaths.<sup>332</sup> A mandatory licensure process would safeguard the integrity of their profession, and ethical providers should understand that licensure will ensure greater public safety. The

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325. E-mail from Diana Crumrine, President, Idaho Chapter of the American Ass'n of Naturopathic Physicians, to author (Jan. 11, 2022, 09:58 MST) (on file with author).

326. *Id.*

327. *Id.*

328. *Id.*

329. *Id.*

330. *Id.*

331. IDAHO CODE § 54-5110(2) (2022).

332. *See generally* IDAHO CODE § 54-5908(1) (2022). Currently, in Idaho, TNs have the option to register, but are in no way required to do so. *Id.*

legislature could license traditional naturopathy and provide title protection for terms not using *doctor* or *physician*. This distinction would allow consumers to identify naturopathic medical doctors with the requisite training and education from traditional naturopaths using “natural elements such as air, heat, water, light, vitamins, minerals, herbs, natural food products, and nutritional supplements.”<sup>333</sup> With that said, the subsequent policy recommendations focus on changes to NMD licensure.

First, the Idaho legislature should expand NMD title protection to include ND and naturopathic doctor in order to protect the public from potential injury. This measure would ensure that a TN can continue to practice as they always have but restricts them from using titles that are misleading to the public. Extending title protection to include ND and naturopathic doctor protects the public from TNs who may have little to no formal training or medical education.

As demonstrated in Part III of this Note, patients often erroneously believe that a TN using the title *naturopathic doctor* or *ND* must possess certain qualifications in order to use the title, but that is not the case in Idaho. Not only is this a threat to public health because of the continuing spread of misinformation surrounding the COVID-19 pandemic, but it is also a threat with the influx of people from border states like Oregon and Washington, which are states providing title protection for *ND* and *naturopathic doctor*.<sup>334</sup> Thus, action is needed to halt such public confusion.

#### B. Jurisdiction & Enforcement<sup>335</sup>

Currently, methods of enforcement for title protection for medical practitioners in Idaho include allowing boards to seek injunctive relief against individuals wrongfully using a protected title<sup>336</sup> and/or criminalizing the conduct.<sup>337</sup> Ultimately, all of these methodologies of enforcement should be incorporated or expanded upon in the Idaho Naturopathic Medical Act.

In addition to extending NMDs title protection to include ND and naturopathic doctor, the Idaho legislature should also grant either the Idaho Board of Medicine or the Idaho Department of Health & Welfare jurisdictional power over TNs illegally using a protected title. Pursuant to this power, either the board or the department should penalize TNs who illegally use a protected title. The first penalty should take the form of a warning letter. The letter would basically place the TN on notice and state that the TN could be found to be violating Idaho Code. The letter would notify the TN that if they continue to use a protected title that it could result in a civil

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333. See *supra* notes 255–256 and accompanying text.

334. See *supra* notes 111–112, 144–147 and accompanying text.

335. See IDAHO CODE § 54-5903–04 (2022) (granting power to a new board—Board of Naturopathic Health Care—to create rules for registered TNs and Licensed Naturopathic Doctors. But there are still no laws in place granting authority to a government body to discipline unregistered TNs).

336. *Id.* § 54-1815.

337. *Id.* §§ 54-1804, 54-5110.

penalty of up to \$5,000. The letter would demand the TN stop using such a title immediately. If the TN continues to use the title past 30 days of receipt of the letter, the board or department will issue a second penalty in the form of a \$5,000 civil fee and/or seek injunctive relief from a court. These civil penalties may be pursued without regard to the criminal prosecution discussed below. These recommendations will make it easier to protect vulnerable Idahoans seeking services from TNs misrepresenting themselves as qualified healthcare providers.

Additionally, for the above policies to make sense in the larger statutory scheme, the Idaho legislature should amend Idaho Code section 54-5110 (criminal penalty) to allow the county prosecutors to bring charges against those using the titles ND and naturopathic doctor. Currently, this provision makes it unlawful and a misdemeanor for any unlicensed person to represent oneself by using the title or designation: “licensed naturopathic physician, physician of naturopathic medicine, naturopathic medical doctor, or NMD . . . . The use of the term naturopath, naturopathic doctor, or ND by persons not licensed under this chapter shall not be restricted.”<sup>338</sup> The legislature should amend this provision by completely striking the second sentence and inserting the titles naturopathic doctor and ND in the first sentence. This amendment will provide greater title protection for NMDs and expand the state’s enforcement power.

### C. Mandatory Notice

Currently, under Idaho’s Medical Practice Act, individuals receiving services from TNs, who “use natural elements such as air, heat, water, and light,” must sign an informed consent form that includes the TN’s education and states that they are not a medical doctor (MD) or a doctor of osteopathic medicine (DO).<sup>339</sup> However, it excludes NMDs from that disclosure because NMDs are not licensed under Idaho’s Medical Practice Act.<sup>340</sup> While NMDs may not be licensed under the Medical Practice Act,<sup>341</sup> they do have an extended scope of practice.<sup>342</sup> For example, NMDs may (1) use physical and laboratory examinations (consistent with their education), (2) perform diagnostic and imaging testing, (3) dispense certain pharmaceutical drugs, (4) perform minor office procedures, (5) perform therapies that they are educated to do, and (6) admit patients to a hospital where they are credentialed.<sup>343</sup> This scope of practice goes far beyond that of a TN, who may only administer treatment or provide advice by using “natural elements such as air, heat, water,

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338. *Id.* § 54-5110.

339. IDAHO CODE § 54-1804(1)(l)(vi) (2022).

340. *Id.*

341. *Id.*

342. *Id.* § 54-5102.

343. *Id.*

and light.”<sup>344</sup> While NMD’s scope of practice is not the same as DOs or MDs, it is more similar to a MD/DO’s scope of practice<sup>345</sup> than to that of a TN.<sup>346</sup>

This is not to say that NMDs possess the same qualifications as MDs and DOs,<sup>347</sup> but the public should know when they are receiving treatment from a TN, rather than an MD, DO, or NMD. Thus, the Idaho legislature should amend the Medical Practice Act to include NMD in the notice requirement.<sup>348</sup> The amendment should require TNs to provide notice to patients that they are not the same as licensed NMDs. The consent form should include: (1) the TN’s training, (2) a disclosure that the TN is not licensed to practice naturopathic medicine, and (3) a citation to the Idaho Medical Practice Act and the Idaho Naturopathic Medicine statute.

In short, this recommendation serves to better protect Idahoans and ensure that they can make informed decisions when choosing health services.

## VI. CONCLUSION

To conclude, another story re-enforces the need for new legislation to protect the public from unqualified TNs. One day an Idaho NMD saw a new patient, a 41-year-old male who recently moved from Washington state.<sup>349</sup> He sought a “second opinion” from a medical professional because his Idaho TN (who advertised himself as a “naturopathic doctor”) recommended that he consume raw meat to improve his testosterone and blood sugar.<sup>350</sup> Upon investigation, the NMD learned that the TN had not drawn labs to ascertain testosterone or blood sugar levels, but had instead used an “energy machine” to “diagnose” the patient.<sup>351</sup> The patient had struggled with nausea and lack of appetite since starting the treatment prescribed by the TN, so he decided to seek a NMD’s opinion.<sup>352</sup> The TN was not licensed.<sup>353</sup> The patient could not understand how an unlicensed TN could advertise himself as a naturopathic doctor because, in Washington, the title naturopathic doctor means

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344. *Id.* § 54-1804(1).

345. *Compare* IDAHO CODE § 54-5102 (2022), *with* IDAHO CODE § 54-1803(1) (2022) (comparing NMD’s scope of practice with the definition of “practice of medicine” under the Idaho Medical Practice Act).

346. *Compare* IDAHO CODE § 54-5102 (2022), *with* IDAHO CODE § 54-1804(1)(l)(vi) (2022) (comparing NMD’s scope of practice with the scope of TN’s using natural remedies as defined in the Idaho Medical Practice Act).

347. *See* IDAHO CODE § 54-1804 (2022).

348. *Id.* § 54-1804.

349. Email from Diana Crumrine, President, Idaho Chapter of the American Ass’n of Naturopathic Physicians, to author (Jan. 11, 2022, 9:58 MST) (on file with author).

350. *Id.*

351. *Id.*

352. *Id.*

353. *Id.*

the person has the training, education, and license of an NMD.<sup>354</sup> This is yet another example of the confusion caused by allowing TNs in Idaho to use the titles naturopathic doctor, and ND.<sup>355</sup>

While some naturopaths may act in such a manner, there are others like NMDs who are qualified to practice complementary and alternative medicine.<sup>356</sup> Their education and training allow them to positively contribute to public health and consumers should be able to identify them.<sup>357</sup> The best way to avoid public confusion regarding titles of different naturopaths is to allow only NMDs to use the titles naturopathic doctor and ND.<sup>358</sup>

After years of training and education, NMDs like Joan Haynes have successfully helped consumers in need of alternative forms of medicine. Not only does Joan and NMDs like her positively contribute to public health, they do so in a manner that promotes public safety. And, if an NMD were to act negligently, the state is able to regulate such negligence because of licensure.<sup>359</sup> But Idaho is unable to effectively regulate TNs largely due to the *Smith* holding.

In 2019, still a hostage to the *Smith* holding, the Idaho legislature decided to continue to allow traditional naturopaths to use the titles ND and naturopathic doctor.<sup>360</sup> This causes public confusion about the credibility of these unlicensed and uneducated naturopathic doctors.<sup>361</sup> Such public confusion presents a serious danger to the citizens of Idaho because Idahoans can easily believe that a naturopathic doctor has been licensed, educated, and formally trained.<sup>362</sup>

Although the licensure battle of naturopathic medical doctors in Idaho has not been easy, NMDs are finally able to practice to the full extent of their education and training, which better protects the public. However, there is more work to be done. To ensure that the public is better protected, the Idaho legislature must (1) expand NMD title protection to include ND and naturopathic doctor; (2) grant jurisdictional authority to either the Idaho Board of Medicine or the Idaho Department of Health & Welfare; and (3) at a minimum, amend the Idaho Medical Practice Act to require unlicensed traditional naturopaths to notify patients that they are not receiving treatment from an NMD. The time for action is now, especially in light of COVID-19 pandemic.

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354. *Id.*

355. Email from Diana Crumrine, *supra* note 349.

356. See Farr et al., *supra* note 64.

357. *Id.*

358. *Id.*

359. H.B. 244, 65th Leg., 1st Reg. Sess. (Idaho 2019).

360. IDAHO CODE § 54-5110(2) (2022).

361. See Farr et al., *supra* note 64.

362. *Id.*

