

STATE OF CONNECTICUT
STATE BOARD OF NATUREOPATHIC EXAMINERS

Re: Whether A Natureopathic Physician Licensed In Connecticut Is Authorized To Perform Diagnostic Procedures Utilizing Substances Other Than Natural Substances As Defined By Connecticut General Statutes § 20-34(b).

DECLARATORY RULING

PROCEDURAL BACKGROUND:

The Connecticut State Board of Natureopathic Examiners (the "Board") received a letter dated October 2, 1998, from Samuel Masini, N.D., for its opinion as to whether the use of a chelating agent "meso-2,3-dimercaptosuccinic acid", a disulph-hydryl compound sold as "Succimer" or "Chemet" for diagnostic use is within the scope of practice of a natureopathic physician. The Board decided to conduct a declaratory ruling hearing in accordance with Connecticut General Statutes § 4-176 based on Dr. Masini's request, but phrased the issue more broadly to determine whether a natureopathic physician licensed by the Department of Public Health is authorized to perform diagnostic procedures utilizing substances other than natural substances^{1/} as defined by Connecticut General Statutes § 20-34(b).

A notice of hearing was published in the Connecticut Law Journal, scheduling a hearing for February 19, 1999. The hearing was continued and rescheduled to April 16, 1999.

Party status was given to the Connecticut State Medical Society, the Connecticut State Natureopathic Society and to Dr. Andrew Rubman as legislative chairperson of the

^{1/} For purposes of this declaratory ruling, "natural substances" means as defined by Connecticut General Statutes § 20-34(b).

Connecticut Society of Naturopathic Physicians. Prefiled testimony was submitted by the parties and adopted under oath at the hearing. The Connecticut State Medical Society also filed a request for Summary Disposition. Oral argument was heard on this request at the hearing and the Board deferred a decision on the Motion until factfinding.

For the parties, William Ward, Director of the Drug Control Division within the Department of Consumer Protection and Donald Timmerman, M.D., Director of Medical Services at a private hospital and a Board certified family physician appeared for the Connecticut State Medical Society, provided pre-filed testimony, which they adopted under oath, and were available for questioning and cross-examination. For the Connecticut Society of Naturopathic Physicians, Enrico Liva, N.D., its President and Andrew Rubman, N.D., Chair of its legislative committee appeared, adopted their pre-filed testimony under oath and were questioned and cross-examined.

For the intervenors, Jennifer Brett, N.D. and a member of the American Association of Naturopathic Physicians Board, Robin Ritterman, N.D. , Samuel Masini, N.D., all of whom practice in Connecticut, and Ronald Hobbs, a naturopathic physician, licensed in Washington State and Dean of the College of Naturopathic Medicine at the University of Bridgeport testified, submitted exhibits and/or prefiled testimony and were available for questions. Unsworn, prefiled testimony was submitted by Jeffrey J. Klass, N.D., a naturopath who was unavailable to testify at the hearing.

Additionally, letters from several interested persons were considered by the Board from Dennis O'Neill, M.D., Chair of the Connecticut Medical Examining Board, from Mrs. Eloise M. Gelinas, Gretel Eddy and from Stephen Piechota, P.D.

Waivers of the statutory time frame for rendering a decision were received from all parties.

DISCUSSION AND LAW

By law, a declaratory ruling constitutes a statement of agency law which is binding upon those who participate in the hearing and may also be utilized by the Board, on a case by case basis, in future proceedings before it concerning licensed natureopathic physicians. This ruling is intended to provide guidance to individual licensed natureopaths and others on the issue of the utilization of substances other than natural substances for diagnostic purposes. If a licensed natureopath follows the guidance provided by this ruling, the Board will presume that a respondent has acted appropriately when adjudicating a specific case before it which contains an issue with respect to the use of substances other than natural substances for diagnostic purposes. In situations where a respondent has departed from the guidance provided by this ruling, the Board will consider the issue under the facts of the particular case.

It was argued at the hearing that because Connecticut General Statutes § 20-34 does not specifically mention whether the natureopathic physician is restricted to natural substances for purposes of diagnosis and because natureopaths receive training in the use of substances other than natural substances, they should be able to effectively use legend substances in the diagnosis of certain conditions. (Testimony of Enrico Liva, Tr. p. 38).

The Board agrees with Dr. Liva and with the other testimony at the hearing that natureopathic physicians are currently receiving training sufficient to prepare them to utilize certain substances other than natural substances such as metal chelators (e.g. DMSA or DMPS) and the PPD for diagnostic purposes. Many other states authorize

natureopaths to prescribe substances beyond those defined in Connecticut General Statutes § 20-34(b). It also concurs with the testimony at the hearing that the public health of the citizens of Connecticut would be better served if patients of natureopathic physicians were able to have such physicians utilize a wider range of diagnostic substances, including DMSA and PPD instead of having the continuity of their care interrupted by having such tests performed by another provider. It does not, however, find legal support for the proposition that the natureopathic physicians' practice act (Conn. Gen. Stat. § 20-34 et seq.) currently authorizes the utilization of substances other than natural substances for diagnostic purposes by natureopathic physicians.

Connecticut General Statutes § 20-34(a) defines the practice of natureopathy, in pertinent part, as follows:

the science, art and practice of healing by natural methods... and shall include (1) counseling and (2) the practice of the mechanical and material sciences of healing as follows: The mechanical sciences such as mechanotherapy, articular manipulation, corrective and orthopedic gymnastics, physiotherapy, hydrotherapy, electrotherapy and phototherapy; and the material sciences such as nutrition, dietetics, phytotherapy, treatment by natural substances and external applications.

“Natural substances” are defined as

Substances which are not narcotic substances as defined in subdivision (30) of section 21a-240, do not require the written or oral prescription of a licensed practitioner to be dispensed and are only administered orally.

Connecticut General Statutes § 20-34(b).

Nowhere in this statute did the legislature authorize a natureopathic physician to utilize substances other than natural substances for diagnostic purposes. Rather such physicians are limited to the practice of healing by natural methods and to the administration of natural substances administered orally. It is not reasonable to argue that

Even if, Connecticut General Statutes § 20-34 could support an argument that the legislature's failure to specifically limit diagnostic procedures to natural methods impliedly authorizes the use of substances other than natural substances for such purposes, Chapter 370 clearly prohibits such a construction. Connecticut General Statutes § 20-9 prohibits the practice of medicine and surgery except by licensed allopathic physicians. It exempts licensed natureopaths defined as licensed practitioner of the healing arts, "who does not use or prescribe in his practice any drugs, medicines, poisons, chemicals, nostrums or surgery." This provision is very clear. The use of prescriptive substances such as Chemet or Succimer in any part of a natureopath's practice, including diagnosis, would constitute the illegal practice of medicine in violation of Connecticut

Social Services, 249 Conn. 503, 507 (1999). "When two statutes relate to the same

subject matter every effort should be made to find a reasonable field for the operation of both statutes ...[and] where there is a reasonable field of operation for each statute which does not impinge on the domain of the other, it is the court's duty to give them concurrent effect." (Internal quotation marks omitted.) Gallant v. Cavallaro, 50 Conn. App. 132, 135 (1998). Here, the only way in which Connecticut General Statutes §§ 20-9 and 20-34 can be rationally read together is to conclude that natureopathic physicians do not have the authority to use substances other than natural substances for diagnostic purposes.

CONCLUSION AND RULING:

The Board concludes that natureopathic physicians have not been authorized by the legislature to utilize substances other than natural substances for diagnostic purposes, although the Board is of the opinion that natureopaths are sufficiently trained to appropriately utilize certain substances other than natural substances such as Chemet and Succimer and the PPD test. The Board is also of the opinion that the public health would be well served if the legislature were to grant such authority to the natureopathic physicians licensed in Connecticut.

9/26/00
Date

Robert M. Murphy, N.D.

Robert Murphy, N.D.
Chair, Connecticut State
Board of Natureopathic
Physicians

