

Submitter: Patricia Durkin
On Behalf Of:
Committee: House Committee On Behavioral Health and Health Care
Measure, Appointment or Topic: HB3042

I oppose: here is why , corrections listed.

Legal & Constitutional Concerns Regarding HB 3042

Overview:

House Bill 3042 expands the Oregon Board of Naturopathic Medicine's disciplinary powers by adding new grounds for discipline and allowing the board to compel naturopathic physicians (NDs) under investigation to undergo mental, physical, chemical dependency, or competency evaluations at their own expense. While intended to enhance oversight, the bill raises significant constitutional and legal concerns that may lead to legal challenges.

Key Legal & Constitutional Concerns:

Due Process Violations (5th & 14th Amendments):

The bill lacks clear standards of proof before compelling a medical evaluation, allowing potential arbitrary enforcement.

No judicial review process is outlined before imposing penalties, raising concerns about fairness and procedural safeguards.

Equal Protection Clause (14th Amendment):

The bill targets naturopathic physicians specifically while other healthcare providers are not subject to similar disciplinary standards.

Unequal treatment could lead to discrimination claims by affected practitioners.

Unreasonable Search & Seizure (4th Amendment):

Mandated medical evaluations could be challenged as government-mandated searches without proper warrant protections.

Lacks safeguards ensuring evaluations are narrowly tailored and necessary.

Self-Incrimination & Privilege Violations (5th Amendment):

The bill allows the results of a forced medical evaluation to be used against a practitioner in disciplinary proceedings, despite potential self-incrimination risks.

Vague & Overbroad Language (Void for Vagueness Doctrine):

Terms such as “any other reason that renders the applicant unfit” and “recognized standard of ethics” are not clearly defined, leading to subjective enforcement.

Courts may strike down such provisions for failing to provide clear legal guidelines.

Retaliation & First Amendment Issues:

The bill lacks safeguards against politically or ideologically motivated investigations, which could suppress alternative medical viewpoints.

Financial Burden & Economic Due Process:

Requiring practitioners to pay for their own evaluations could impose an excessive financial burden, discouraging fair defense.

The bill does not provide for reimbursement if the accused is cleared, potentially deterring practitioners from contesting false claims.

Recommended Amendments to Strengthen Legal Standing:

Add an appeal process before compelling evaluations.

Clarify legal standards for determining when an evaluation is necessary.

Ensure consistent enforcement across all healthcare professions.

Provide financial protections for unjustly accused practitioners.

Refine vague terminology to prevent arbitrary disciplinary actions.

Conclusion:

While HB 3042 aims to enhance regulatory oversight, it presents serious constitutional risks related to due process, equal protection, privacy, and financial fairness. Without amendments, the bill is vulnerable to legal challenges from affected naturopaths and professional associations. Addressing these concerns will improve fairness, enforceability, and compliance with constitutional protections.