

**From:** [Wallace, Felicia](#)  
**To:** [ST\\_RegulatoryCounsel](#)  
**Cc:** [Kauffman, Rob](#); [Dawn Keefer](#); [Zimmerman, David](#); [Fink, Wendy](#); [Gleim, Barbara](#); [Borowicz, Stephanie](#)  
**Subject:** From the Office of Senator Doug Mastriano - Proposed Rule Change - Naturopathic Doctors  
**Date:** Thursday, June 29, 2023 5:01:55 PM  
**Attachments:** [Response Naturopathic Proposed Rule Change...pdf](#)  
**Importance:** High

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Good Afternoon Attorney Walter,

Please see the attached letter in response to the **Proposed Rule Change (PA Bulletin 21-2112) Naturopathic Doctors- 16A-4953 – Registration of Naturopathic Doctors**. We trust this letter will also be forwarded to

Mark B. Woodland, MS, M.D. Chair of the State Board of Medicine, accordingly.

Sincerely,

Felicia M. Wallace

Felicia M. Wallace | Executive Assistant  
Senator Doug Mastriano  
170 Main Capitol Building | Senate Box 203033  
Harrisburg PA 17120-3033  
Phone: 717.787.5806 | Fax: 717.772.2753  
[fwallace@pasen.gov](mailto:fwallace@pasen.gov)

**RECEIVED**

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Independent Regulatory  
Review Commission

**33RD SENATORIAL DISTRICT**

- SENATE BOX 203033  
HARRISBURG, PA 17120-3033  
PHONE: 717-787-4651  
FAX: 717-772-2753
- 37 SOUTH MAIN STREET, SUITE 200  
CHAMBERSBURG, PA 17201  
PHONE: 717-264-6100  
FAX: 717-264-3652
- 33 YORK STREET  
GETTYSBURG, PA 17325  
PHONE: 717-334-4169  
FAX: 717-334-5911



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**DOUG MASTRIANO  
SENATOR**

June 29, 2023

Mark B. Woodland, M.S., M.D., Chair  
c/o Shana Walter, Esq., Counsel  
State Board of Medicine  
P.O. Box 69523  
Harrisburg, PA 17106-9523

Re: Follow up to letter OPPOSING proposed rule change (PA Bulletin 21-2112) Naturopathic Doctors -  
16A-4953 - Registration of Naturopathic Doctors

Dear Dr. Woodland:

On January 14, 2022, I wrote to you during the initial comment period opposing the proposed **rule** change to **16A-4953 - Registration of Naturopathic Doctors** and have yet to receive a response from your office. This letter incorporates by reference, as if fully set forth herein, our prior letter of opposition and submits both prior to the July 3, 2023, final comment period deadline.

Your rule change proffer is in direct contravention to Pennsylvania statutory law and the rights of thousands of Pennsylvanians to access traditional naturopathic medicine because it bans recognized and certified naturopathy doctor programs and degrees and as such acts as a prior restraint on speech and not mere conduct. Indeed, no actual concerns for practice, procedures, specific remedies or other matters are even mentioned in your rule change.

PA statute does not confer upon you the right to make new law and limit the use of the terms Doctor of Naturopathy or N.D. as you intend to do. Such action by your office is *ultra vires* and violates the rights of naturopathy doctors and the People of Pennsylvania to make their own health choices in accessing their own therapies and treatments for the pain, illnesses, disabilities and conditions that they alone are experiencing.

Instead of considering our reasonable requests for you to follow the law and not override the use of terms not prohibited by the Commonwealth nor delegated to your office to limit, this rule change will harm thousands of Pennsylvanians. Your attempt to ban a broad spectrum of modalities, including vagueness of language that could

be interpreted by an overzealous board to ban services of which include referrals to “non-licensed” professionals and creating an allopathic model that totally guts the traditional naturopathic medicine approach, is requested to be immediately suspended. More careful and legitimate word crafting is needed prior to the passage of such a sloppily written regulation change clearly violating WOODLAND, Re: letter OPPOSING proposed rule change (PA Bulletin 21-2112) Naturopathic Doctors

Supreme Court precedent on procedure and proscriptions on administrative and statutory restraint on liberty interests via licensing procedures. This rule proposal is leaving thousands in the dark because of its vagueness and prior restraint violations of the constitutional proscriptions on state burdens on fundamental liberty interests. The Supreme Court has repeatedly ruled in support of those burdened by improper statutory and administrative rulemaking:

The State asserts that if the licensing officer acts arbitrarily, capriciously, or corruptly, his action is subject to judicial correction. Counsel refers to the rule prevailing in Connecticut that the decision of a commission or an administrative official will be reviewed upon a claim that 'it works material damage to individual or corporate rights, or invades or threatens such rights, or is so unreasonable as to justify judicial intervention, or is not consonant with justice, or that a legal duty has not been performed.' It is suggested that the statute is to be read as requiring the officer to issue a certificate unless the cause in question is clearly not a religious one; and that if he violates his duty his action will be corrected by a court.

To this suggestion there are several sufficient answers. The line between a discretionary and a ministerial act is not always easy to mark, and the statute has not been construed by the State court to impose a mere ministerial duty on the secretary of the welfare council. Upon his decision as to the nature of the cause, the right to solicit depends. Moreover, the availability of a judicial remedy for abuses in the system of licensing still leaves that system one of previous restraint which, in the field of free speech and press, we have held inadmissible. **A statute authorizing previous restraint upon the exercise of the guaranteed freedom by judicial decision after trial is as obnoxious to the Constitution as one providing for like restraint by administrative action.**

*Cantwell, et al v. Connecticut*, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940), (citing, *Near v. Minnesota*, 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357 (1931))(bold emphasis added).

The Court further issued a binding limitation on rule making which makes practitioners such as Naturopathy Doctors liable to the state, mandating constitutional guarantees which are not met here in these proposed rule changes:

“in the absence of a statute narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State, the petitioner's communication, considered in the light of the constitutional guarantees, raised no such clear and present menace to public peace and order as to render him liable to conviction of the common law offense in question.

*Id.*; citing, *Schenck v. United States*, 249 U.S. 47, 52, 39 S.Ct. 247, 249, 63 L.Ed. 470 (1919). WOODLAND, Re: letter OPPOSING proposed rule change (PA Bulletin 21-2112) Naturopathic Doctors

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As you are aware, Doctors of Naturopathy, or N.D., have specific training and expertise not studied or trained by those who are granted their M.D.s. Yet the proposed rules also propose to change and limit the scope of naturopathic knowledge, arrogating to the licensure Board consisting of M.D.s a system that excludes the N.D.'s wholistic naturopathy individualistic approach, and thereby creates a vagueness in violation of the constitution and laws of PA. Where in the state statute is the Board granted the authority to define and limit the title earned by non-PA institutions?

Additionally, where in the statute is your office authorized to prevent referrals by N.D.'s to herbalists who specialize in offering whole plant foods and remedies? Finally, upon what standard of care is the Board resting its decisions when such an action undermines the very nature of individualized naturopathy medicine?

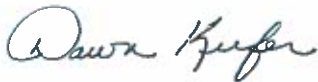
Your immediate suspension of the planned rules and learned responses to this inquiry is requested. Thank you.



Senator Doug Mastriano  
33<sup>rd</sup> District



Representative Rob Kauffman  
89<sup>th</sup> Legislative District



Representative Dawn Keefer  
92<sup>nd</sup> Legislative District



Representative Barbara Gleim  
199<sup>th</sup> Legislative District



Representative Dave Zimmerman  
99<sup>th</sup> Legislative District



Representative Stephanie Borowicz  
76<sup>th</sup> Legislative District



Representative Wendy Fink  
94<sup>th</sup> Legislative District