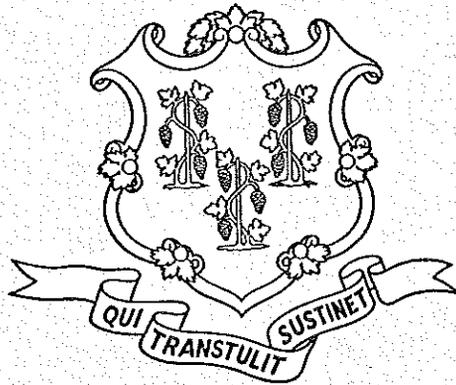


Connecticut General Assembly



Legislative Program Review and Investigations Committee

SUNSET REVIEW

Board of Natureopathic Examiners

Vol. I-13

January 1, 1980

CONNECTICUT GENERAL ASSEMBLY

LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

The Legislative Program Review and Investigations Committee is a joint, bipartisan, statutory committee of the Connecticut General Assembly. It was established in 1972 as the Legislative Program Review Committee to evaluate the efficiency and effectiveness of selected state programs and to recommend improvements. In 1975 the General Assembly expanded the Committee's function to include investigations and changed its name to the Legislative Program Review and Investigations Committee. During the 1977 session, the Committee's mandate was again expanded by the Executive Reorganization Act to include "Sunset" performance reviews of nearly 100 agencies, boards, and commissions, commencing on January 1, 1979.

The Committee is composed of twelve members, three each appointed by the Senate President Pro Tempore and Minority Leader, and the Speaker of the House and Minority Leader.

This is the first of five annual reviews emerging from the first round of "Sunset" research.

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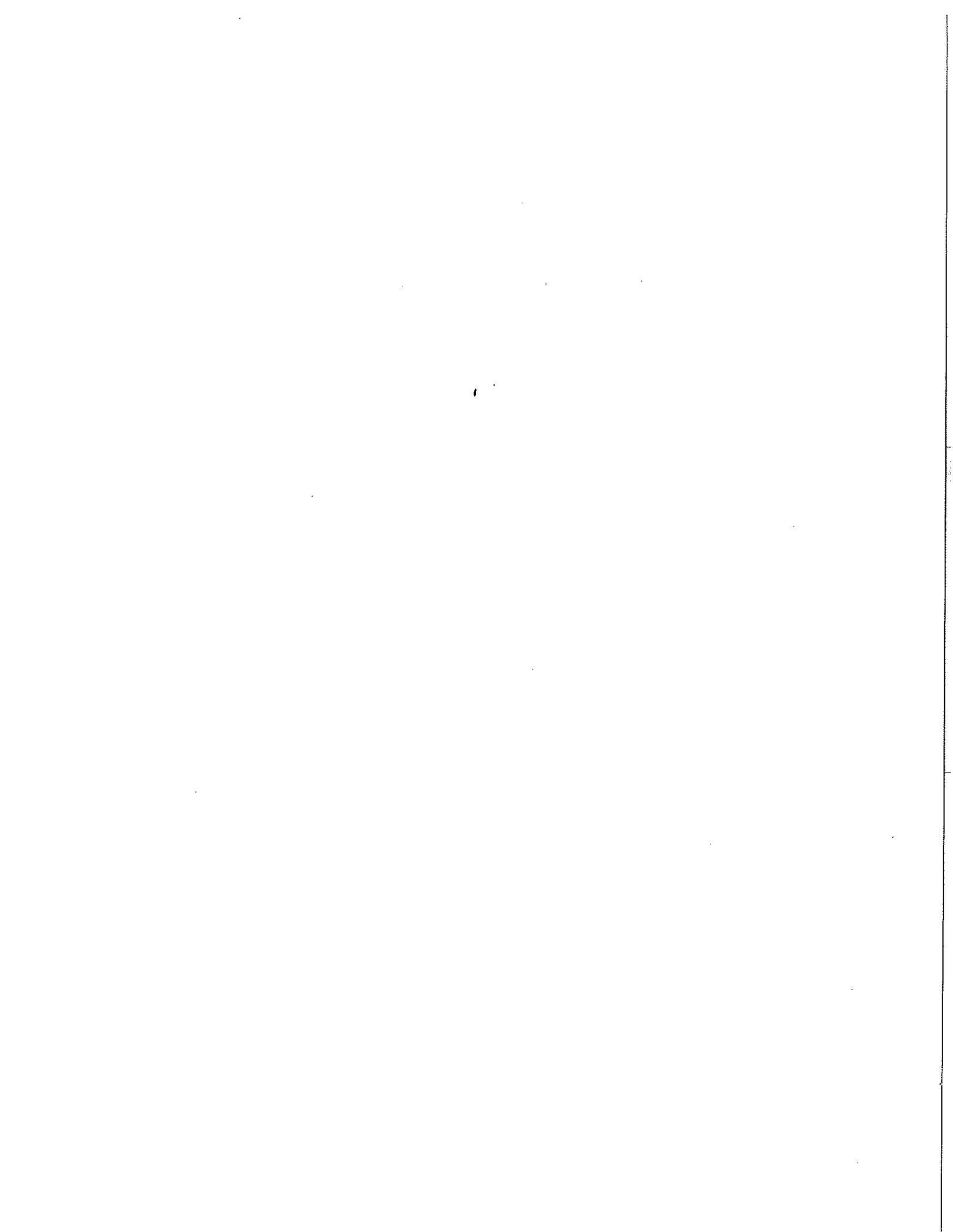
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SUNSET REVIEW 1980

STATE BOARD OF NATUREOPATHIC EXAMINERS

Vol. I-13



STATE BOARD OF NATUREOPATHIC EXAMINERS

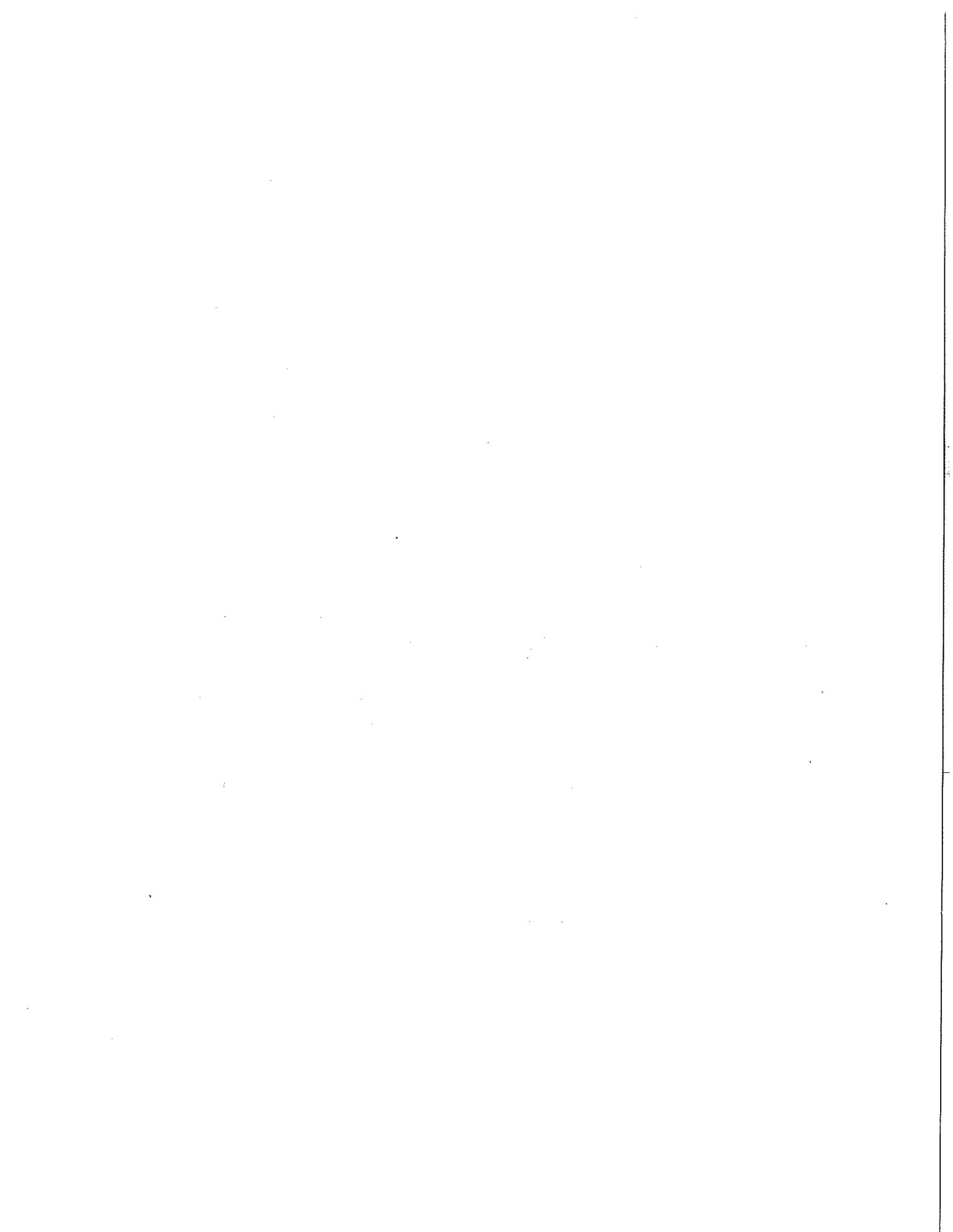
The State Board of Natureopathic Examiners was reviewed by the Legislative Program Review and Investigations Committee in compliance with the Sunset mandate of P.A. 77-614. The nine criteria outlined in that act (Title 2c, Chapter 28) provided the basis upon which committee decisions were made. These criteria required legislators to address three fundamental questions in evaluating the boards and commissions slated for 1980 Sunset review:

1. Is regulation of the occupation or profession necessary to protect the public from harm?
2. What is the appropriate level of regulation?
3. Who should regulate the occupation or profession and how should it be regulated?

This board-specific report is supplemental to the Sunset Review 1980 - General Report which contains the background, methods, and recommendations of Sunset Review 1980. To appreciate fully the contents of this board-specific report, it is necessary to review and refer to the General Report, particularly the section "Model Legislation" which provides a single statutory framework to be applied uniformly and consistently to all regulated entities under Sunset review.

This specific report contains the following sections:

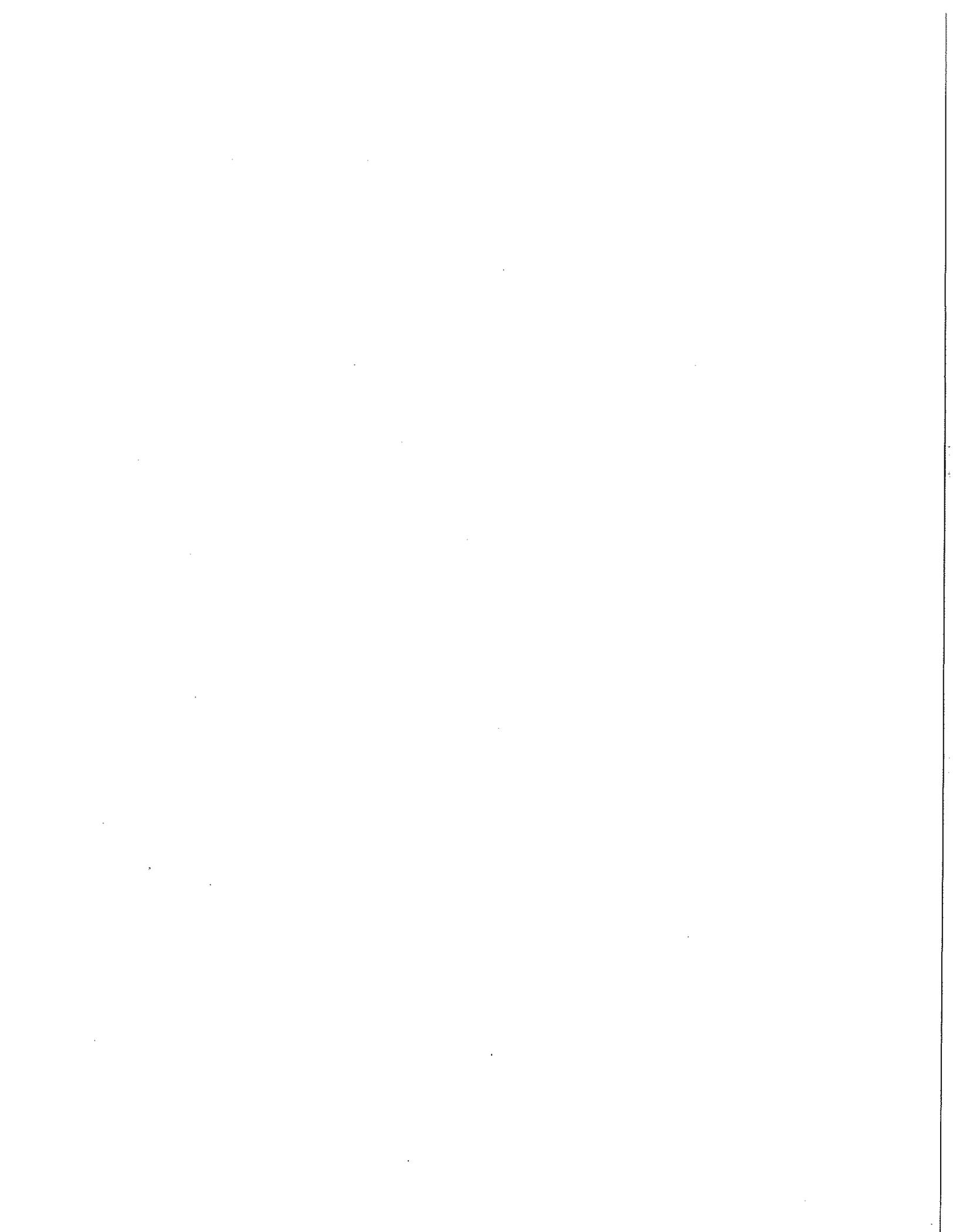
- Description of entity reviewed;
- Recommendations and discussion for entity reviewed; and
- Entity survey and analysis.



SECTION I

DESCRIPTION OF ENTITY

Definition and Background
Structure
Functions
Entry Requirements



Definition and Background

Natureopathy is the practice of the psychological, mechanical and material science of healing. The range of modalities and treatments may include psychotherapy, mechanotherapy, articular manipulation, corrective and orthopedic gymnastics, neurotherapy, physiotherapy, hydrotherapy, electrotherapy, thermotherapy, phototherapy, chromotherapy, vibrotherapy, concussion, pneumatotherapy dietetics, and external applications. The administration of internal medication or any substance simulating medicine is expressly excluded from natureopathic practice.

As one of the healing arts which employs a holistic approach to health, natureopathy enjoys the legal authority to perform independently, employing discretion and judgment in diagnosis and treatment. While the possible effects of malfeasance in natureopathy may not be as serious as those in a practice which uses drugs and surgery, significant health hazards can result from incompetent natureopathic practice. Therefore, licensure is the necessary and appropriate level of regulation for this profession.

Natureopathy has been regulated in Connecticut since 1923. The original law was and continues to be the foundation for natureopathic practice. Interestingly, this first piece of legislation provided for a three member board with staggered terms and reciprocity with states whose requirements were "substantially equal" to Connecticut's. These provisions, changed and deleted over the years, are again viewed as desirable statutory inclusions.

Currently, 13 natureopaths hold valid licenses to practice in Connecticut.

Structure

Three members, appointed by the Governor, comprise the state board of natureopathic examiners. Two of these members are state residents who have practiced natureopathy for a minimum of three continuous years. One public member completes the board.

Functions

The board has the following statutory powers and duties to fulfill its regulatory functions:

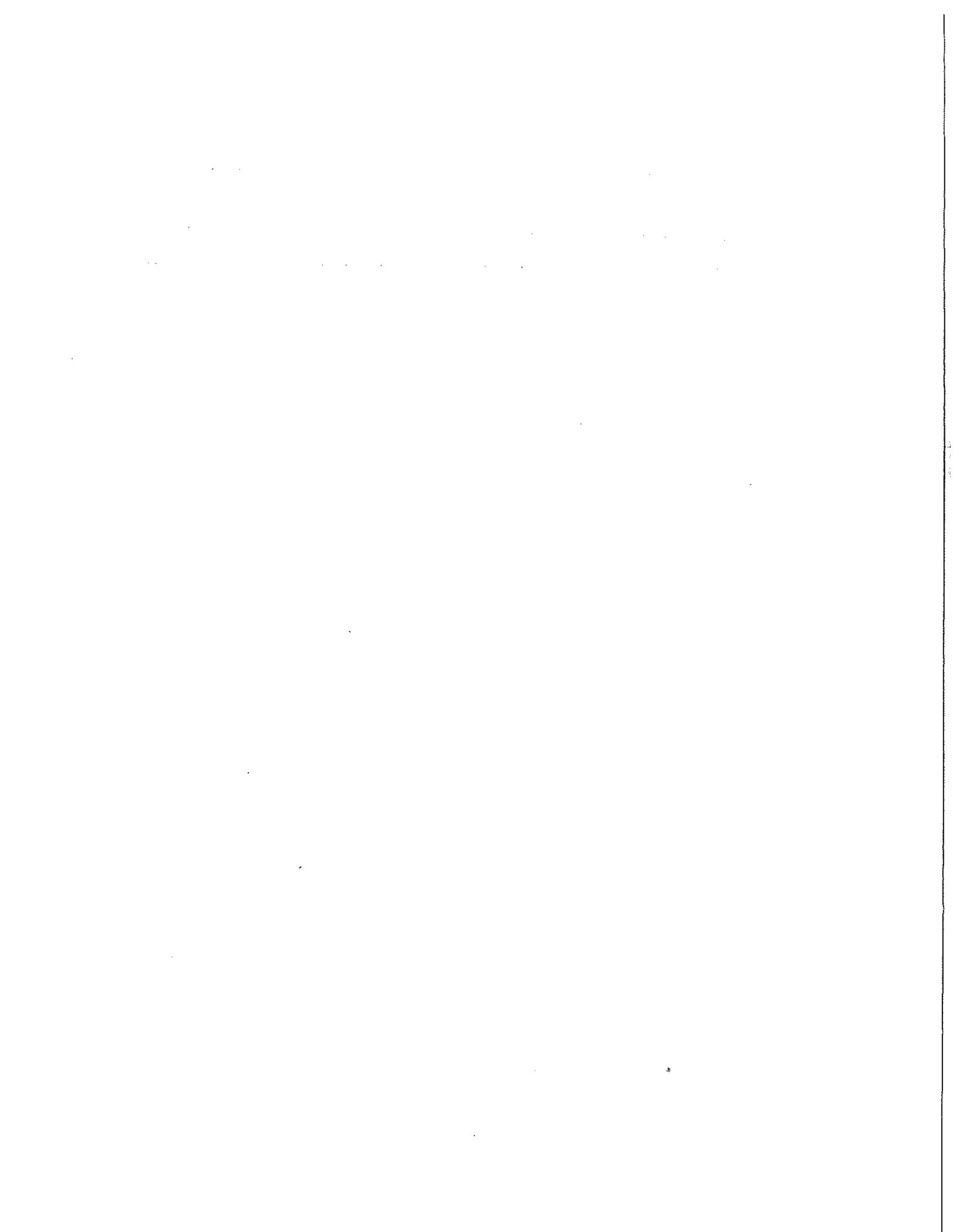
- advises and assists the Commissioner of Health Services in the adoption of educational requirements;
- prescribes the examination with the consent of the Commissioner of Health Services;
- files annually with the Department of Health Services a list of natureopathic institutions or colleges that the board recognizes as legal and reputable;
- approves applicants for licensure; and
- presides over and prescribes sanctions in disciplinary hearings.

Requirements for Licensure

Applicants for licensure must be or intend to be state residents and have graduated from an approved high school and satisfied the academic requirements stipulated by statute. In addition, applicants must satisfactorily pass an examination and submit a fee of \$150.00.

SECTION II

RECOMMENDATIONS AND DISCUSSION



Recommendations for the Regulation of
Natureopathy (Chapter 373)

1. Continue license.

Licensure has been found to be the most appropriate and necessary level of regulation for this healing art.

2. Continue the State Board of Natureopathic Examiners.

Retention of this board is necessary to provide the professional expertise required in the entry and enforcement functions of licensure. The board is to be retained as an individual regulatory entity to preserve the distinction between natureopathy and the other healing arts.

3. Amend Chapter 373 to include Model Legislation standards, procedures, responsibilities, appropriate repealed sections and all other relevant sections.

Model Legislation addresses and ameliorates previous and potential concerns about regulatory procedures and policies. By providing a single regulatory framework for all boards under the aegis of the Department of Health Services (DOHS), the Model Legislation insures consistency, objectivity and uniformity in the execution of regulatory functions. Specific areas of concern in the natureopathic board and the solution offered by the Model Legislation are listed below.

a. Powers and Duties of the Department of Health Services -

Professional board members and others expressed concern about the perceived unilateral control and authority by this single agency after Executive Reorganization. Model Legislation delineates the Commissioner's powers and duties relative to the regulatory boards and provides mechanisms for countervailing powers and board input where necessary.

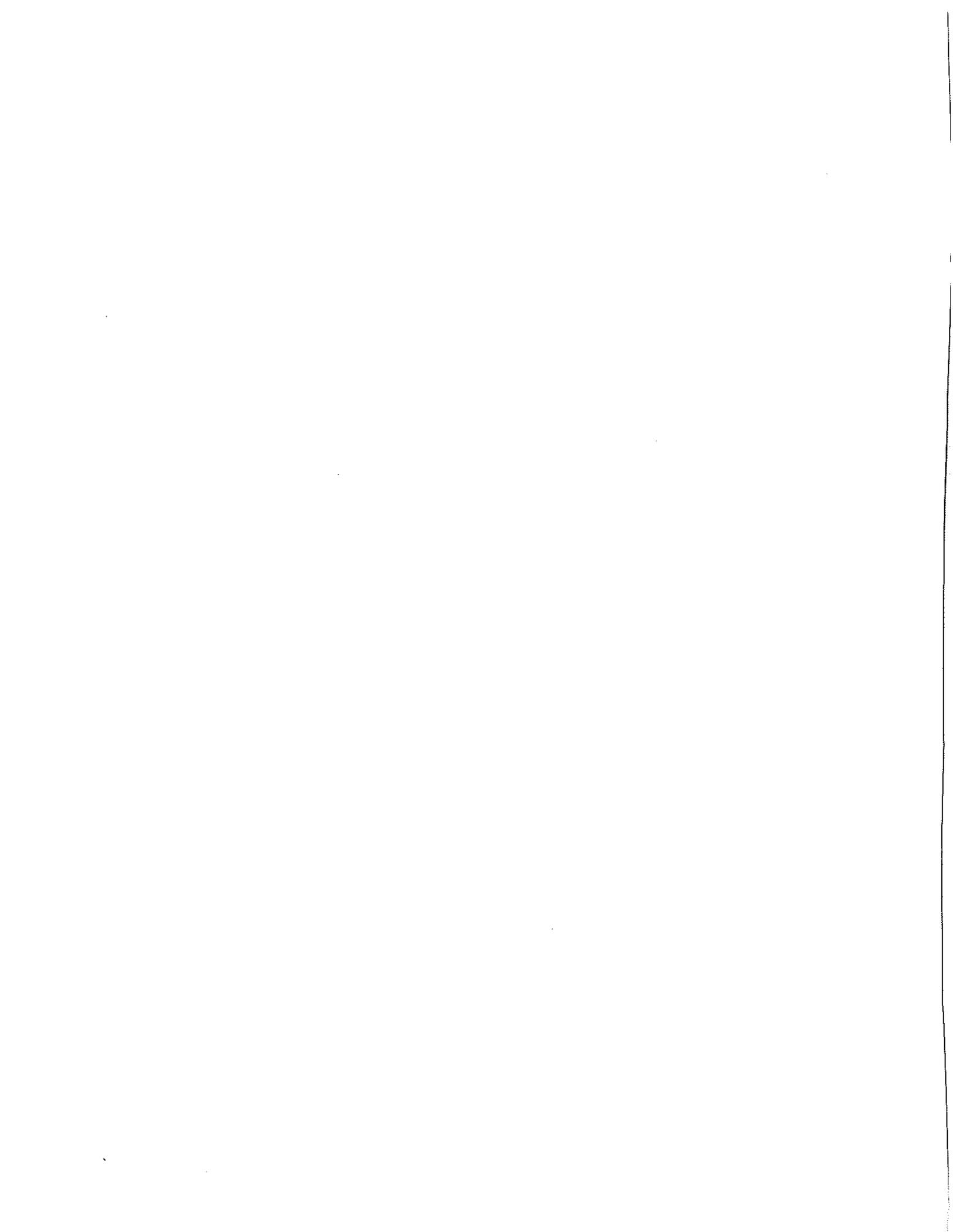
b. Powers and Duties of the Boards - Critics of the boards
prior to Executive Reorganization maintained that they had too much authority and lacked a necessary system of checks and balances in their powers and duties. After Executive Reorganization, however, board members and other professionals in particular believed that the board's regulatory role was overly diluted and not clearly specified with respect to the Department of Health Services.

Model Legislation delineates the board's powers and duties and provides mechanisms to insure professional expertise and input where necessary.

- c. Business Practices - *The Committee found that regulation of business practices and statutory restrictions on business practices were not relevant to ensuring and enforcing minimum standards of competence. Such business practices are recommended for statutory repeal (See Model Legislation - Business Practices).*
- d. Entry Requirements - *The Committee found that the natureopathic statutes governing entry requirements contained certain qualifications not relevant to determining an applicant's competence. Such requirements--state residency and age--are recommended for deletion. Model Legislation also provides for an intensive review and revision of entry requirements by the board and the Department of Health Services to bring them in conformance with the principles outlined in the Model Legislation and the current state of the art in the practice of natureopathy.*
- e. Renewal Standards - *The Committee found that standards for licensure renewal required review and revision to bolster the enforcement of continued competence. Model Legislation (Required Reports) provides for such updating.*
- f. Grounds for Professional Discipline - *The Committee found a great variance among the statutes in this area. Model Legislation provides grounds for professional discipline which are focused on the delivery of service and quality of care rendered by the practitioner. Application of these grounds to all regulatory boards under the aegis of the DOHS insures a rational and uniform basis for peer review and imposition of disciplinary sanctions.*
- g. Receiving and Processing Complaints - *An area of considerable controversy, mechanisms for receiving and processing complaints in the Model Legislation are delineated to provide the professional board with necessary information and input at appropriate states, while maintaining the separation of powers and duties necessary in this regulatory aspect.*
- h. Disciplinary Sanctions - *Model Legislation explicates a range of disciplinary sanctions and requires consistency and uniformity in their application.*

SECTION III

ENTITY DATA AND ANALYSIS



ENTITY DATA AND ANALYSIS

Section 2c-6 of Connecticut's Sunset Law mandates that the entity reviewed demonstrate a "public need for (its) reestablishment" and that "it has served the public interest and not merely the interests of the persons regulated." All boards, commissions and departments evaluated in Sunset Review 1980 received a questionnaire which addressed the nine statutorily specified Sunset criteria.

This questionnaire, the primary instrument used to evaluate the entity's "burden of proof," was followed by staff interviews with key board members and members of the professional associations for further clarification and amplification:

The following section contains the questionnaire sent to the State Board of Natureopathic Examiners. Where appropriate, Committee staff has edited the agency response without altering or diluting the argument. Committee staff then analysed the agency response. Because of the methodological constraints posed by Sunset evaluation and implementation of Executive Reorganization occurring simultaneously, manageable quantitative data were difficult to obtain. Qualitative analysis, based on relevant information and data derived from a variety of sources, was used primarily in the Committee staff comment. This annotation appears in italics below the agency response.

1. WOULD THE TERMINATION OF LICENSING REQUIREMENTS FOR YOUR PROFESSION SIGNIFICANTLY ENDANGER THE PUBLIC HEALTH, SAFETY, OR WELFARE? PLEASE EXPLAIN.

Yes, as it would reduce the quality and lower the standards of the physicians desiring to secure licensure in our state. This, alone, would endanger the public health.

While physical harms which may result from incompetent natureopathic practice may not be as severe as those in medicine and surgery, natureopaths can employ treatments which may be lengthy and expensive and may result in health hazards. It is reported by a board representative that up until recent years, the typical patient was an elderly person discouraged with traditional medicine. Some national indications are that more and more people are seeking drugless approaches to health care. The elderly, a particularly vulnerable patient group, and a growing patient population require state assurance of the competency of natureopaths. Licensure is the most appropriate level of regulation for this healing art.

2. COULD THE PUBLIC BE ADEQUATELY PROTECTED BY ANOTHER STATUTE, OFFICE, OR PROGRAM? IF SO, WHICH ONE(S)?

No. In a specialty field of medicine such as ours, it is necessary to have a physician trained in our profession to oversee and represent the profession. Our present statutes provide for this.

Current regulatory structure in Connecticut provides for professional expertise and peer review in the entry and enforcement of standards through a professional/public board. Unless or until other systems are in place to tap professional expertise when needed, the board structure and functions are necessary.

Merger of the natureopathic board with other boards was considered not feasible due to the distinct theoretical and, in some cases, political differences among the various healing arts. Natureopathy is a healing art which challenges some of the fundamental tenets of traditional medicine. A noted medical sociologist observes that,

"Some practitioners, although they ordinarily treat nearly the entire range of human disease, have attained only marginal professional status because their whole approach to the problem of health and disease conflicts with that of orthodox medicine.... They tend to reject such basic tenets of modern medicine as that disease is caused by bacterial agents which can be treated by drugs or prevented by inoculation, or they espouse a monocausal theory of illness and

*therapy.... For these reasons the relationships between marginal practitioners and organized medicine are usually unstable, and the overall professional standing of these groups tends to be ambiguous."*¹

3. COULD THE PUBLIC BE ADEQUATELY PROTECTED BY A LESS RESTRICTIVE METHOD OF REGULATION THAN THE CURRENT LICENSING REQUIREMENTS, SUCH AS CERTIFICATION OR REGISTRATION? PLEASE EXPLAIN.

No. We have to be careful to regulate our board on a strict basis. Anything less, when health care is involved, could be dangerous.

Licensure is the state's method of insuring and enforcing minimum levels of competency. Certification would allow anyone to practice and only identifies levels of competency for those practitioners who voluntarily seek it. Registration would not provide for a necessary demonstration of competence. Other states that do not regulate natureopaths indicate that the practice continues under other names.² Danger to the public health can occur if paramedics or other individuals not specifically trained or skilled in natureopathy perform natureopathic diagnosis and treatment.

4. DOES YOUR BOARD OR COMMISSION HAVE THE EFFECT OF INCREASING THE COSTS OF GOODS OR SERVICES TO THE PUBLIC EITHER DIRECTLY OR INDIRECTLY? PLEASE EXPLAIN THE BASIS FOR YOUR ANSWER.

No.

In 1978 the board expended \$338.24 and generated a total of \$1,420 through licensing and examination fees. Clearly, the costs of board functions did not outweigh revenue.

Indirect costs to the public, which may result from the increased prestige and educational requirements and costs which licensure of natureopaths incurs, are difficult to quantify at present.

¹ Walter Wardell, "Limited, Marginal, and Quasi-Practitioners," in Handbook of Medical Sociology, Freeman, Howard and Levine, Sol, eds. 1972.

² Conversations with staff of the Senate Governmental Operations Committee, Florida. Also, see Review of Chapter 462, Florida Statutes Natureopathy, October 1977.

However, research on the economic effects of regulation indicates that licensing does have the effect of increasing earnings in the licensed occupations and that licensing of an occupation reduces the number who practice in that occupation.¹ These effects can produce increased consumer costs.

5. IF YOUR BOARD HAS THE EFFECT OF INCREASING COSTS, IS THE ADDITIONAL COST JUSTIFIED THROUGH PUBLIC BENEFITS ATTRIBUTABLE TO THE ACTIONS OF THE BOARD? PLEASE EXPLAIN.

6. IS THE EFFECTIVENESS OF YOUR BOARD OR COMMISSION HAMPERED BY EXISTING STATUTES, REGULATIONS OR POLICIES, INCLUDING BUDGET AND PERSONNEL POLICIES. IF SO, PLEASE BE SPECIFIC IN YOUR ANSWER.

No.

Because of the few complaints (1 in 1978), the small numbers of applications for licensure (15 in 1978) and even smaller numbers taking the examination (2 in 1978), the board's ability to perform its tasks was not hampered by the replacement of a professional member with a public member (under Executive Reorganization Act).

7. WHAT STATUTES AND REGULATIONS IMPINGE DIRECTLY ON THE OPERATIONS OF YOUR BOARD? PLEASE LIST OR ATTACH COPIES.

None.

8. TO WHAT EXTENT HAVE QUALIFIED APPLICANTS BEEN PERMITTED TO ENGAGE IN THE PROFESSION(S) OR OCCUPATION(S) LICENSED BY YOUR BOARD? PLEASE COMMENT ON WAITING PERIODS, DELAYS, PAPERWORK, ETC.

They are provided full privileges as designated by the State Statutes governing the practice of Natureopathy.

Statutes require that applicants file the necessary information and certification of credentials to the board at least fifteen days prior to a board meeting or examination.

¹ For an excellent overview of recent literature on the topic, see Simon Rottenberg, A Review of the Professional Literature on Occupational Licensing, conference paper, Crotonville, New York, April 28, 1978.

In turn, the board is required to file with the Department of Health Services within thirty days of each examination, a list of applicants examined stating those who have failed and annually file a list of schools it recognizes as "legal and reputable."

While the board has no obvious violations of these requirements, the procedures for development of both the written and oral examinations are questionable. The board does not use a national exam. The individual board member who wrote last year's exam also graded the exam. Though the exam was passed to other board members for approval before it was administered, these procedures do not insure objectivity and fairness in the development or grading of the written examination. The oral examination, reportedly more of an "interview" than a test, was intended to assess the character of the applicant. This part of the application process is not formalized in any way and raises serious concerns about board members assessing prospective licensees on the basis of "vibrations."

Distinct from other boards, the board of examiners of natureopathy recognizes only one school of natureopathy and receives applications from and examines a very small number of applicants. There is rarely a failure in achieving licensure. Finer measures of discriminating competency may be in order to offset concerns about what may be an inadequate screening system.

Since the Executive Reorganization Act, the Department of Health Services has hired a psychometrician whose duties include technical assistance to boards developing and administering exams. It is believed that this added expertise will mitigate concerns about test objectivity.

9. WHAT ACTIONS HAS YOUR BOARD OR COMMISSION TAKEN TO INSURE COMPLIANCE WITH FEDERAL AND STATE AFFIRMATIVE ACTION POLICIES AND TO ENCOURAGE ACCESS BY WOMEN AND MINORITIES INTO YOUR PROFESSION?

There has been no discrimination in our profession. We have always complied with Federal and State affirmative policies.

Committee staff found nothing to the contrary.

10. WITHIN THE PAST FIVE (5) YEARS, WHAT CHANGES IN STATUTE RULES OR REGULATIONS HAS YOUR BOARD OR COMMISSION RECOMMENDED WHICH WOULD BENEFIT THE PUBLIC AS OPPOSED TO LICENSEES?

None

11. WHAT HAS YOUR BOARD OR COMMISSION DONE TO ENCOURAGE PUBLIC PARTICIPATION IN THE FORMULATION OF YOUR RULES, REGULATIONS AND POLICIES?

Up to the present time, none.

12. WHAT HAS BEEN YOUR PROCESS THROUGH DECEMBER 31, 1978 TO RESOLVE PUBLIC COMPLAINTS CONCERNING PROFESSIONALS REGULATED BY YOUR BOARD OR COMMISSION?

The doctor in question appeared before our board and was informed of the complaint filed against him. He was given an opportunity to defend himself and was reprimanded by our board. The Health Department and the complainant were notified of our action.

Like other boards prior to the Executive Reorganization Act, the board of natureopathic examiners maintained its own informal complaint procedure. Complaints were screened, investigated and adjudicated by a single board. Though the Board has reported only one complaint in the last 9 years, their system lacked consistency and the necessary countervailing powers to insure objectivity, equitable treatment and accountability. Executive Reorganization and the recommendations made under this Sunset review are designed to provide and refine these essential aspects of the complaint process and to insure that appropriate steps of the Uniform Administrative Procedures Act (Chapter 54) are followed.

13. WITHIN THE PAST FIVE (5) YEARS WHAT STATUTES, RULES, OR REGULATIONS HAS YOUR BOARD OR COMMISSION PROPOSED OR ADVOCATED TO PROTECT YOUR PROFESSION FROM THE LICENSURE OF UNQUALIFIED PERSONS?

We go by strict statutory compliance of our board and the statutes governing our profession. Applicants are screened and must pass a basic science and clinical examination.

The board reported no instance of advocating or proposing new rules, regulations or statutes within the last five years.