



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

TELEPHONE  
(208) 334-2400

JIM JONES  
ATTORNEY GENERAL

September 27, 1989

The Honorable Pete Cenarrusa  
Secretary of State  
STATEHOUSE MAIL

THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE  
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Naturopathic Physicians Association  
A.G. Reference No. 7823

Dear Mr. Cenarrusa:

You have asked our office to address the issue of whether Idaho naturopaths should be allowed to be reinstated as an Idaho corporation under the name "Idaho Association of Naturopathic Physicians, Incorporated." We conclude the association should be reinstated.

The group first incorporated in 1936 under the name "The Idaho Naturopathic Association, Incorporated," but changed its name to the current wording in 1955. This is the first time in 30 years that the name has been challenged. Because the issue pertains to the legality of the organization's name, and not to the legality of the individual naturopath's advertising or conduct, the Medical Practice Act, the Chiropractic Practice Act, and statutes pertaining to podiatrists, optometrists, or any other similar profession, do not apply to the current analysis. Those statutes are relevant to the issue of whether the practice of an individual naturopath is lawful, not whether the naturopaths may incorporate under a particular name.

1. The Statutory Test.

Idaho Code § 30-1-8 prescribes the limitations that the Secretary of State must adhere to in ruling on the validity of corporate names:

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§ 30-1-8. Corporate name. - The corporate name:

- (a) Shall contain the word "corporation," "company," "incorporated," or "limited," or shall contain an abbreviation of one of such words; provided, however, that if the word "company" or its abbreviation is used, it shall not be immediately preceded by the word "and" or by an abbreviation of or symbol representing the word "and."
- (b) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one (1) or more of the purposes contained in its articles of incorporation.
- (c) Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in this act, or the name of a corporation which has in effect a registration of its corporate name as provided in this act, except that this provision shall not apply if the applicant files with the Secretary of State either of the following: (1) the written consent of such other corporation or holder of a reserved or registered name to use the same or deceptively similar name and one (1) or more words are added to make such name distinguishable from such other name, or (2) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this state.

In the case of the naturopaths, the requirement of subsection (a) is satisfied. Subsection (b) requires the corporate name be consistent with the purposes of incorporation. Article II of the Articles of Incorporation for the naturopathic association states in full:

That the purposes for which this corporation is formed are as follows:

1. To become the official organization of the naturopaths in the State of Idaho.
2. To act as the Idaho Branch of the National Naturopathic Association.

3. To educate and regulate the members of the association to the end that Naturopathy shall be recognized and approved as a branch of healing science.
4. To associate the naturopaths of the State of Idaho for the purposes of mutual help, that the public in general and the members of the association may benefit thereby.
5. To prescribe qualifications for schools which may in the future teach Naturopathy in the State of Idaho.
6. To prescribe qualifications previous to professional study for those who in the future may aspire to practice Naturopathy in the State of Idaho.
7. To prescribe qualifications of professional training for those who in the future may aspire to practice Naturopathy in the State of Idaho.
8. To work with the government of the State of Idaho to the end that those who in the future shall be admitted to the practice of Naturopathy may be trained and qualified to so practice.
9. To act as a clearing house of information relative to the practice of Naturopathy in Idaho, to the end that the public health may be better served.
10. To cultivate social and professional intercourse among the members of the association, and to inculcate [sic] the principles of charity, justice, brotherly love, fidelity, and professional consciousness, and to promote the welfare and enhance the happiness and usefulness of its members.
11. To lease, purchase, hold, have, use and take possession of and enjoy in fee simple or otherwise any personal or real property necessary for the uses and purposes of the corporation, and to sell, lease, deed in trust, alien [sic] or dispose of the same at the pleasure of the corporation, and for the uses and purposes for which said corporation is formed, and to buy and sell real or personal property and to apply the

proceeds of sale, including any and all income,  
to the uses and purposes of the corporation.

This corporation is one which does not contemplate  
pecuniary gain or profit to the members thereof.

The name "Idaho Association of Naturopathic Physicians, Inc." is  
consistent with the stated purposes of the organization. There  
is nothing in the name that implies anything contrary to the  
mandate of Article II of the Articles of Incorporation.  
Therefore, subsection (b) of Idaho Code § 30-1-8 is satisfied.

Subsection (c) of Idaho Code § 30-1-8 merely proscribes the  
use of a name that is the same as or "deceptively similar to"  
the name of another corporation. In other words, the intent is  
to prevent the public from confusing two different, but  
similarly named, corporations. In the case of the  
naturopaths, there is no allegation that another Idaho  
corporation has a similar name that would be "deceptively  
similar to" the "Idaho Association of Naturopathic Physicians."  
Therefore, the naturopaths' corporate name does not trigger  
subsection (c) of the statute.

## 2. The Unlawfulness Test.

Aside from noncompliance with the technical  
requirements of Idaho Code § 30-1-8, the only other valid basis  
for denial of a certificate of incorporation is unlawful  
corporate purposes. While the statutes do not expressly empower  
the Idaho Secretary of State to reject a filing on this basis,  
such authority may be inferred from Idaho Code § 30-1-3, which  
states that "Corporations may be organized under this act for  
any lawful purpose or purposes. . . ."

A similar finding was reached in Smith v. Director,  
Corporation and Securities Bureau, 261 N.W.2d 228 (Mich. 1978),  
where the bureau director rejected articles of incorporation of  
an organization that proposed to incorporate for the purpose of  
charging usurious interest rates, in contravention of Michigan  
law. The Michigan Court of Appeals held that the bureau  
director was authorized to reject articles of incorporation that  
expressly propose to engage in unlawful activities:

We agree that proposed articles of incorporation which  
state an unlawful corporate purpose do not  
substantially conform to the requirements of the  
BCA. We also agree that the defendant [bureau  
director] has no duty to accept and file such articles.

It must be noted precisely how this "unlawfulness" test operates. The unlawfulness is measured by the purposes announced in the proposed articles of incorporation. The purposes enunciated by the Idaho Naturopathic Association, Incorporated, when the organization first incorporated in 1936 are contained in Article II of the articles of incorporation and are set forth in full above. These purposes have remained unchanged since 1936.

We have reviewed the literal statement of purposes of the corporation. Generally, they urge recognition of naturopathy, and contemplate a licensing regime that would take effect should a lobbying effort prove successful in the future. It is not unlawful to associate for these purposes. We stress that we do not read the list of purposes to include an intent presently to engage in, abet or facilitate the diagnosis and treatment of human diseases, ailments and other such conditions. Such conduct constitutes the "practice of medicine" under Idaho Code § 54-1803(1)(a), and, in the opinion of this Office, may be lawfully rendered only by those authorized to do so under the Idaho Medical Practice Act, chapter 18, title 54, of the Idaho Code.

We stress the limited nature of this finding. We do not find that the association has never engaged in unlawful activity. We do not find that individual naturopaths are engaged in lawful activity. We do not find that advertising by individual naturopaths is lawful and non-deceptive. We find only that the announced purposes of the association's articles of incorporation, when literally read, are lawful and, as such, that the articles must be accepted for filing by the Secretary of State.

### 3. The Public Policy Test.

It was formerly the law in some jurisdictions that the Secretary of State, or other reviewing officer, was "at liberty to grant or deny applications based on his personal notion of what is contrary to public policy or injurious to the community." Association for Preservation of Freedom of Choice v. Shapiro, 174 N.E.2d 487, 489 (N.Y. 1961). This policy was enunciated in 1925 in the case of Matter of Daughters of Israel Orphan Aid Society, 210 N.Y.S. 541, and remained in effect until the Shapiro case in 1961 when the New York Court of Appeals found it necessary to overrule the public policy approach:

We feel impelled to hold these views erroneous. In the first place the public policy of the State is not violated by purposes which are not unlawful. To hold otherwise would be a contradiction in terms. In the

Second place the test as to what may be injurious to the community is too vague, indefinite and elusive to serve as an objective judicial standard. Within such a scope [the Secretary of State] would be at liberty to indulge in his own personal predilections as to the purposes of a proposed corporation, and impose his own personal views as to the social, political and economic matters involved.

Shapiro, 174 N.E.2d at 489.

In 1973, the New York Court of Appeals again held that the discretion of the Secretary of State is strictly limited in reviewing proposed articles of incorporation. In Gay Activists Alliance v. Lomenzo, 292 N.E.2d 255, the court reiterated the standard to be applied:

The Not-For-Profit Corporation Law mandates the Secretary of State to accept for filing a certificate of incorporation which meets the formal requirements of the statute and sets forth corporate purposes that are lawful.

292 N.E.2d at 256. The court therefore overturned the action of the Secretary of State in rejecting the articles of incorporation of a controversial organization:

the Secretary of State lacked the authority to label those purposes violative of "public policy." (Citation omitted.) Nor does he possess the power to reject a certificate on the ground, asserted by him, that the proposed corporate name is "not appropriate"; the provision dealing with corporate names contains no such criterion or standard.

Id. It is our opinion that the Idaho Supreme Court, like the New York Court of Appeals, would rule that the Secretary of State has no authority to reject articles of incorporation, otherwise lawful, on the grounds that he finds them violative of "public purpose," or "inappropriate," or "injurious to the public."

#### Conclusion.

We conclude that the Secretary of State must accept the articles of incorporation of the Idaho Association of Naturopathic Physicians, Incorporated, for purposes of reinstatement. The association has had this name since 1955. The name meets the statutory requirements of Idaho Code § 30-1-8: it is formally correct; it contains no wording which indicates it is organized for other than its announced corporate

purposes; and it is not deceptively similar to the name of any other domestic corporation. Further, the purposes enumerated in the association's articles of incorporation are not, on their face, unlawful. The authority of the Secretary of State to accept or reject articles of incorporation is at an end once these determinations are made. The Secretary of State has no discretion to accept or reject articles of incorporation because he deems them to be violative of public policy, inappropriate or injurious to the public.

We stress once again that this opinion concerns only the authority of the Secretary of State to accept or reject for reinstatement the articles of incorporation of this association. The Secretary of State's acceptance of these articles of incorporation and reinstatement of this corporation carries with it no endorsement of the so-called profession of naturopathy. Nor does it endorse the practice of naturopathy by any individual. Nor does it imply state approval of any individual's use of the term "physician" in advertising his or her practice.

Sincerely,



JOHN J. McMAHON  
Chief Deputy Attorney General

JJM/mkf