IN THE SUPREME COURT OF THE STATE

OF

WASHINGTON

97637-6

WASHINGTON STATE DEPARTMENT OF HEALTH

Respondent,

v.

ARELY JIMENEZ

Appellant

ON APPEAL FROM APPEALS COURT DIVISION I

Number 79690-9-1

Appellant's request for review

Arely Jimenez, LMFT, Pro-se

981 Diane Avenue

Oak Harbor, WA. 98277

360-421-9715

STATEMENT OF CASE

This case was heard on July 30th, 2019, in the Appeals Court Division I, the Court's decision was mailed to Appellant on August 6, 2019 and was received by Appellant on August 10, 2019.

Appellant is requesting a review of her case because the Appeals Court was unable to address some issues; they stated as their reason for not addressing those points, that the Department of Health did not have an opportunity to respond? Or the case was not properly before the court.

Appellant is offering the Appeals Court Unpublished Opinion as a point of reference. It is requested that Appellant's Opening brief and Reply brief accompany this request as well as all of Appellant's records.

Evidence: Division I, Unpublished Opinion, Filed August 5, 2019

Table of Authorities

Sixth Amendment, Art. I, Sec. 22

Attached is also the Court's $200.00 filing fee

This is a request for a review of the Appeals Court D-I decision to affirm Respondent's charges. The Appeals Court, on Page 2 of the UNPUBLISHED OPINION (UO), last paragraph, cites the incident with the two investigators, Mitchell Anderson and Kathleen Mills. The Appeals Court, with their written opinion continues to perpetuate the same lie told by Kathleen Mills. Appellant never represented herself as a Naturopath to anyone including the two investigators. Since the same lie continues to be invoked, there is no room for the truth.

Appellant has stated in writing and verbally, that her degree and license as and MFT allows her to treat PTSD; as a point of fact, it is one of her areas of expertise; however, Appellant did NOT offer to treat their fictitious son. The investigators spoke to Johnson who did volunteer to treat their fictitious son. The investigators spoke to Johnson for a long time and came back to the office to speak with him for a second time. Does the Appeals court prefer to believe the investigators claim and not be bother with the facts?

Appellant's Appeal, in terms of RCW 18.130.180 is that: cases where RCW 18.130.180 has been used are all criminal matters. *The Board of Immigration Appeals (BIA)* states that "moral turpitude is a "Nebulous concept" One that shocks the public conscious as being inherently base, vile or depraved, contrary to the rules of morality. It is the INTENT, the BIA holds, *EVIL INTENT IS A REQUISETE ELEMENT WHEN USING MORAL TURPITUDE.* In affirming DOH's decision to label Appellant as someone with "moral turpitude" issues, the Court

is stating that this definition accurately describes Appellant's conduct. There hasn't been any proof, beyond reasonable doubt that backs up the DOH or the Appeals court conclusion. It is for this reason that Appellant seeks a review of the Supreme Court.

The United States ex rel. *Skladzien v Warden of Eastern State Penitentiary 45 F 2d 204 (RD.Pa. 1930)* states: *"Thus we have acknowledged that the violation of status which merely license or regulate and impose criminal liability without regard to evil intent do not involve moral turpitude.* The Appeal Court, UO DOCUMENT, adds in their conclusions that the Department of health did not act capriciously or arbitrary (UO. p.3). With all due respect, when the DOH has many options to choose and selects the most damming adjective to describe a conduct in which Appellant engaged, without any consideration to circumstances, motives/intent, and where the department chose not to charge Johnson, a convicted felon, with "moral turpitude", it gives the appearance of being, not only capricious but racist and misogynist. When an entity has many choices and selects the worst possible alternative, as stated by the Superior Court (UO, p5, last paragraph) that behavior is arbitrary.

The Appeals Court uses these two cases: Faghih v. Dental Quality Assur. COMM, 148 Wn. A pp.836,842,202 P.3d 962 (2009) and Crosswhite v, Dept. of Soc. & Health Servs. 197 Wn. App. 539, 548,389 P.3d 731. Even though these are not "criminal cases" they do involve physical harm to their victims. The Crosswhite case appears to be a physical attack on the victim, where police

placed in custody the supposed perpetrator. Is the relevancy of these two cases to Appellant's case, the fact that the Courts did not believed the accused? and were unwilling or unable to be bothered with the facts? Clearly Appellant is not trying to absolve or in any way be condemnatory of the defendants in this case or any other case; Appellant only wants to reiterate the validity of her claim.

What is salient in the two cases cited by the Appeals Court, without taking into account the veracity of the witnesses or the accused, is that: there was physical harm done to the victims and that the Court was unwilling to take the later testimony of the boyfriend in the case of Crosswhite. Not sure if the Court's cites these cases to make the point that the Court, regardless of the facts, like in the above example or any other, adhere to their own code that is, the Court will not change their mind? Is the comparison to Appellant's case that those people were convicted of RCW 18.130.180? Again, those accused were charged with perpetrating physical harm to their victims and further alleged that it was the perpetrators "intent." Does the Court cite Crosswhite 197. Wn.App at 548 to make the point that: "Finding of fact from the agency's final order are reviewed under the substantial evidence test and will be upheld if supported by a sufficient quantity of evidence to persuade a fair-minded person of the order's truth or correctness."?

The administrative court subpoena five witnesses who were compelled to testify for DOH, 5(five). Their testimony was not taken into consideration by the Administrative court or the Appeal Court which states that they looked at the

administrative record(?). It is unheard of that a court brings their witnesses and then states: "we do not weigh the credibility of witnesses or substitute our judgement for the agency's findings of fact." (p6 D1 UO). What happened to the "fair minded person" argument that the court quoted? (p4, DI, UO). What are witnesses for?

Appellant provided business cards that stated that she practiced Ñedicine, the advertisement said, Ñedicine, in the "license" that was conspicuously displayed, in the main hallway of the office, it was written: Ñedicine, the application sent via facsimile to Premera said Ñedicine. When Appellant first communicated with Premera, the man who answered the call at Premera, asked what was Ñedicine, then a woman, the one who eventually changed the content of the request, got on the phone. She was extremely harsh and spoke very disrespectfully to Appellant. When asked to speak to her superior she was somewhat nervous as she accused Appellant of lying about her MFT License and that was her motivation for changing the memorandum. The courts, however, decided that the e-mailed she wrote, is a substantial evidence (UO,p5 p2). The court's foundational premise is that Appellant is a liar and everything else about her life has been discounted.

The Appeals court accuses Appellant of practicing medicine (p4) but Ñedicine is all about health. Drugs, which is the main definition of medicine has never been a part of Appellant and is not a part of Ñedicine. In the original request for review, Appellant points out that DOH never did, beyond a reasonable

doubt, proved that Appellant practiced medicine. The Appeals Court is now again accusing Appellant of practicing medicine, (UO, p7,par. 1) but the Appeals Court (D-I) did not define the kind of medicine Appellant practice. This charge has never been proven "beyond a reasonable doubt". How then can the Court use it against Appellant? What was the medicine that she practiced?

The Court asserted that Appellant argued "that none of her former clients testified that she held herself out as a naturopath or a doctor of medicine." (UO, p6, 1par). The Appeals Court as well as the Superior court had the Verbatim record with the witnesses' testimonies. These witnesses were people who went to the office where Ñedicine was offered. The Appeals Court (UO, p5 2nd Par) miss-states the actions taken by Appellant when she closed her counseling practice. When Appellant closed her counseling practice, she did not wish to use the counseling clients to become clients at the Ñedicine office. It was her desire to keep them completely separate. It worked out because originally, she was going to leave the country. DOH's assertion that Appellant is dishonest was never substantiated. The charge that Appellant "lower the standard of the marriage and family profession in the eyes of the public" was not substantiated with anything other than desire of the people who came up with that charge. The local newspaper asked for people to come out and testify for almost 9 months, and not one person came out. In the contrary Appellant had many ex-psychotherapy clients who wrote e-mails stating that they were willing to testify. The offers were not accepted mainly because of client's privacy and Appellant's quest to protect that privacy.

In terms of the fine, the superior court agreed that the fine given by DOH, "under the circumstances was on the high side". The Appeals court does not even concede that. Again if an entity has discretion in the amount of fine issued, as demonstrated in the case of Clarence Johnson, where the fine was stayed, giving Appellant a higher fine and demanding payment in full even before all proceedings are over, is arbitrary and capricious.

The Appeals court states (UO,p8, 4thpar) That the "actions of the Oak Harbor police, ... are not properly before the court." Perhaps is an issue that the Supreme Court can address. Appellant sustains that all the issues brought up to the Appeals Court have been brought up in earlier hearings, they have never been addressed.

The Appeals Court states that because the present proceedings are not criminal, Appellant is not eligible for protection under the "6th Amendment to the United States Constitution and article I, section 22 of the Washington Constitution," (UO, p8, last paragraph). That the fact that the hearing officer failed to issue Appellant subpoenas and excluded exhibits without being requested by the AAG and not having effective assistance of counsel were not violations of Appellant's rights (UO, p9,1st par). It is mind bugling how Appellant is eligible to be branded by DOH with a criminal statute RCW 18.130.180? But not eligible to be protected by the law?

The issue of DOH sending letters to insurance companies was brought up by Atty. Tarutis early in the process but nothing was done. DOH notified

insurance companies of Appellant's charges when the legal process had just begun. The Department has copies of the letters given by the insurance companies to Appellant. This was not the first time that this issue was brought up by Appellant. This is a violation of Appellant's rights. The move to notify the Insurance Companies was calculated by DOH to bring monetary damage to Appellant, and it did.

Appellant seeks a review because her basic human rights are being violated many times over. Since the Appeals court is not addressing the violations listed above; Appellant must appeal to the Supreme Court as the only entity that can remedy the issues that Appellant presented. For example, the issue of the fine needs to be address because the view of the Appeals Court is that "they reverse it only if the Department's decision to impose it was arbitrary and capricious. Again, according to the Superior Court, (VRP 1/26/18 at 22-23 lines 24-25, 1-2) when speaking of the fine said, "under all these circumstances it seemed high to me". If the court utter this statement, it means that the amount assessed was arbitrarily imposed.

The Court of Appeals states that Appellant "Falsely held herself out as a licensed naturopath." In order for the Appeals Court to make this claim they would have to have proved it beyond a reasonable doubt; and this has never been done. Is this an issue that the Supreme Court can address?

CONCLUSION

Appellant wants the court to know how sorry she is to have believed Hugh and Bonnie Johnson that the Ñedicine license was a real license. One of the exhibits that has been excluded over and over, was a screen picture of the Federal website, PTSO, that states that the Ñedicine license was a national license. Since Appellant read it, she believed that it was all good, she just accepted it. Words cannot express the sorrow that she experiences each day for making that mistake.

Appellant seeks a review of the issues as presented in her opening and reply briefs. Appellant respectfully requests that the Supreme Court of the State of Washington reviews all the above stated concerns. Since DOH was pivotal in Appellant's economic ruin, the harm caused shall suffice as the payment of their fine. Appellant did contact DOH to request a payment plan but DOH has turn the fine to a collection agency who in turn will charge for the services of collecting the money. DOH stated that they cannot wait until this matter is resolved to get their money But they were the ones in a hurry to have Appellant unemployed.

Appellant hired attorneys to deal with DOH unfortunately the attorneys were not versed on administrative matters and the attorney who did the trial was not even capable of defending Appellant's right to have all her exhibits entered in the record. Appellant is also not doing a great job in representing herself, she is definitely not an attorney. As stated above, the Appeals Court states that it cannot do anything. The Appeals Court even found that Appellant does not have

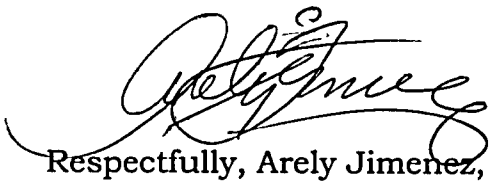
any protections under the law. The Appeals court states that "both the Sixth Amendment and article I, section 22 apply to only criminal prosecutions" (UO p 9 1st par). Is the Appeals Court asserting that all human rights can be violated in administrative proceedings? Again, can a code that describes a criminal behavior be used for an administrative proceeding while taking away the rights of the accused?

Appellant is surprised to read that the court does not find the fact that Appellant was arrested without being convicted first, offensive, but their reaction must be a sign of the times that we are living in. Appellant worked for the Department of Corrections for 14 (fourteen) years so she understands that respecting human rights is important.

The main idea that Appellant wants to convey when pointing out the Superior Court's mistake in the number of cases that Appellant saw, is that everyone makes mistakes. Appellant is also human and makes mistakes. The astonishing part is that the penal system makes room only for mistakes committed by people in their system; NOT for those accused by that system.

Appellant appreciates the Supreme Court reviewing this case. Appellant is most grateful for the opportunity to address this court and to have her grievances address.

Submitted this 3rd day of September 2019



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FILED
8/5/2019
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ARELY JIMENEZ, Appellant, v. WASHINGTON STATE DEPARTMENT OF HEALTH, Respondent.	No. 79690-9-I DIVISION ONE UNPUBLISHED OPINION FILED: August 5, 2019

SMITH, J. — Arely Jimenez appeals an order by the Department of Health (Department) finding that she engaged in the unlicensed practice of medicine and naturopathy and committed unprofessional conduct by doing so. She argues that the Department violated her constitutional rights and acted arbitrarily and capriciously in entering its findings and assessing sanctions against her. Finding no errors, we affirm.

FACTS

Jimenez is a state-licensed marriage and family therapist (MFT). Jimenez obtained a doctor of natural health degree from Clayton College, a nonaccredited institution, which the Department does not recognize as a credential for obtaining a license to practice natural medicine. She also attended a nonaccredited online

school to study the practice of Ňedicine.[1] At the end of the coursework, the "American Ňedicine Licensing Board, Inc." issued Jimenez a license to practice Ňedicine and assured her that the license was valid to practice nationwide. Jimenez never obtained a license to practice medicine or naturopathy from the Department.

In December 2014, Jimenez opened Whidbey Naturals Alternative Medicine (Whidbey Naturals) with Clarence Hugh Jonson, a man she met at her church who represented himself as an attorney and board-certified naturopathic physician. From December 2014 through February 2015, Jimenez saw five patients and treated them for varying ailments, including high blood pressure, thyroid issues, celiac disease, insomnia, back pain, fatigue, tremors, and balance issues. She treated these patients with natural supplements, energy treatments, and diet and exercise recommendations.

Unfortunately for Jimenez, Jonson was a fraud. Unbeknownst to her, he did not have any license or credential to practice medicine or naturopathy in Washington. The Department received two complaints about Whidbey Naturals and opened an investigation. On January 2, 2015, investigators Mitchell Anderson and Kathleen Mills posed as husband and wife during an appointment with Jimenez, and Jimenez stated that she could help Mills with her fibromyalgia and chronic fatigue symptoms. When Anderson and Mills dropped by without an appointment on February 5, 2015, Jimenez told them that she could treat their

[1] Beverly Jackson, who issued Jimenez's doctorate of Ňedicine degree, described Ňedicine as a branch of alternative medicine that is based on quantum electrodynamics and quantum physics.

fictional son's posttraumatic stress disorder. Oak Harbor police arrested Jimenez on February 17, 2015, for practicing medicine without a license.

After a hearing, the Department issued an initial order finding that Jimenez engaged in the unlicensed practice of medicine and naturopathy and that her actions constituted unprofessional conduct. It issued a permanent cease and desist order, imposed $5,000 in sanctions, and placed her MFT license on probation until the fines were paid in full. Jimenez appealed the initial order and a review officer affirmed and issued findings of fact, conclusions of law, and a final order. The trial court affirmed the Department's final order. Jimenez appeals to this court.

UNPROFESSIONAL CONDUCT

Jimenez argues that the Department acted arbitrarily and capriciously in accusing her of unprofessional conduct under RCW 18.130.180. We disagree.

"The Washington Administrative Procedure Act (APA), chapter 34.05 RCW, governs judicial review of agency decisions." Faghih v. Dental Quality Assur. Comm'n, 148 Wn. App. 836, 842, 202 P.3d 962 (2009). "We review agency action from the same position as the superior court and review the administrative record rather than the superior court's findings or conclusions." Crosswhite v. Dep't of Soc. & Health Servs., 197 Wn. App. 539, 548, 389 P.3d 731, review denied, 188 Wn.2d 1009 (2017).

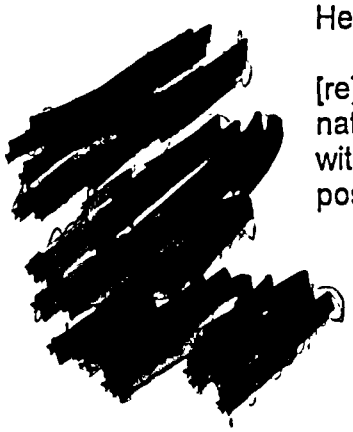
"To find an agency's decision to be arbitrary and capricious we must conclude that the decision is the result of willful and unreasoning disregard of the facts and circumstances." Providence Hosp. of Everett v. Dep't of Soc. & Health

Servs., 112 Wn.2d 353, 356, 770 P.2d 1040 (1989). "Judging whether the [agency's] decision was arbitrary and capricious requires an evaluation of the evidence produced at the hearing." Pierce County Sheriff v. Civil Serv. Comm'n for Sheriff's Emps., 98 Wn.2d 690, 695, 658 P.2d 648 (1983). "The scope of court review should be very narrow, however, and one who seeks to demonstrate that action is arbitrary and capricious must carry a heavy burden." Pierce County Sheriff, 98 Wn.2d at 695. "Findings of fact from the agency's final order are reviewed under the substantial evidence test and will be upheld if supported by a sufficient quantity of evidence to persuade a fair-minded person of the order's truth or correctness." Crosswhite, 197 Wn. App. at 548.

Under RCW 18.130.180(1), "[t]he commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not," constitutes unprofessional conduct. "The principal question that arises in applying this statute concerns the relationship between the practice of the profession and the conduct alleged to be unprofessional." Haley v. Med. Disciplinary Bd., 117 Wn.2d 720, 731, 818 P.2d 1062 (1991). "To serve as grounds for professional discipline under RCW 18.130.180(1), conduct must be 'related to' the practice of the profession . . . meaning that the conduct must indicate unfitness to bear the responsibilities of, and to enjoy the privileges of, the profession." Haley, 117 Wn.2d at 731.

Here, the Department found that

> [re]spondent's conduct in falsely holding herself out as a licensed naturopath was an act of dishonesty. Her practice of medicine without a license raises concerns that she may use her professional position to harm members of the public (in this case, her clients or



> patients). Respondent's conduct also tends to lower the standing of the marriage and family therapy profession in the eyes of the public. Therefore, Respondent's conduct meets the definition of moral turpitude.

Jimenez takes issue with the term of art "moral turpitude." Even though she does not assign error to the Department's finding on appeal, she argues that she did not commit moral turpitude because her "intent has always been to do good by others," she believed her Medicine license was valid, she "believes in doing good works," and she closed her counseling practice. Even so, substantial evidence supports the Department's finding that Jimenez held herself out as a licensed naturopath when she had no such license. Specifically, Jimenez sent an e-mail to Premera Blue Cross to update her contact information with that insurance provider and stated, "I am also a licensed Naturopath." Additionally, both Anderson and Mills testified that during their undercover investigation, Jimenez held herself out to them as a naturopathic doctor. This is substantial evidence that she falsely held herself out as a licensed naturopath, conduct that was dishonest and constituted unprofessional conduct. Therefore, the Department's finding that she violated RCW 18.130.180(1) was not arbitrary and capricious.

Jimenez argues that reversal of the Department's final order is necessary because the trial court "acknowledged that charging Appellant with [RCW] 18.130.180(1) was abusive." But the trial court simply opined that sometimes "the law uses the worst terms possible to describe conduct" and that was true of the term "moral turpitude" to describe dishonest behavior. The trial court held that the Department's finding that Jimenez committed unprofessional

conduct was supported by substantial evidence. The trial court's comment does not require reversal.

Jimenez also argues that none of her former clients testified that she held herself out as a naturopath or a doctor of medicine. But given Jimenez's e-mail to Premera Blue Cross and the testimony by Anderson and Mills that Jimenez held herself out as a naturopathic doctor to them, there was substantial evidence that she held herself out as a naturopathic doctor despite the absence of testimony from other clients.

Jimenez asserts that Anderson and Mills lied and that the e-mail to Premera Blue Cross was altered. But because the Department's hearing officer was in the best position to observe the evidence and witness testimony, we do not weigh the credibility of witnesses or substitute our judgment for the agency's findings of fact. Port of Seattle v. Pollution Control Hr'gs Bd., 151 Wn.2d 568, 588, 90 P.3d 659 (2004). Therefore, this assertion does not warrant reversal.

Finally, Jimenez argues that application of RCW 18.130.180 to her constitutes a violation of RCW 34.05.570(2), which addresses judicial review of the validity of an agency rule. But because the Department found that Jimenez violated RCW 18.130.180 in an agency order and not during a rule-making process, RCW 34.05.570(2) does not apply.

SANCTIONS

Jimenez argues that the sanctions imposed by the Department should be reversed. We disagree.

Under RCW 18.71.021, "[n]o person may practice or represent himself or herself as practicing medicine without first having a valid license to do so." A person practices medicine if she "[o]ffers or undertakes to diagnose, cure, advise, or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, by any means or instrumentality." RCW 18.71.011(1). RCW 18.130.190(3) authorizes the Department to "impose a civil fine in an amount not exceeding one thousand dollars for each day upon which the person engaged in unlicensed practice of a business or profession for which a license is required."

Here, the review officer found that Jimenez "diagnosed, advised and treated Patients C, D, E, F, and G for medical conditions such as high blood pressure, thyroid issues, celiac disease, tremors, back pain, possible kidney issues, and depression." This finding is supported by each patient's records and the testimony of patients D, E, F, and G, which constitute substantial evidence to support the finding. The Department ordered Jimenez to pay a $5,000 administrative fine: $1,000 for each of the five patients she treated.

Jimenez argues that the amount of the fine was excessive because she has not worked since February 2015 due to the administrative proceedings and health issues caused by the stress of those proceedings. While we acknowledge that the fine may pose a financial burden to her, we can reverse only if the Department's decision to impose it was arbitrary and capricious. Because the fine was authorized by statute and did not did not exceed the amount delimited by the statute, we cannot hold that it was arbitrary and capricious.

For the first time in her reply brief, Jimenez argues that there is no evidence that she practiced medicine. But she does not address the actions described in RCW 18.71.011(1), only the actions in RCW 18.71.011(2)-(4). Because there is substantial evidence that Jimenez took some of the actions described in RCW 18.71.011(1), her argument is not persuasive.

CONSTITUTIONAL VIOLATIONS

Jimenez argues that her constitutional rights were violated at various times throughout the investigation and administrative process and reversal is necessary. We disagree.

Constitutional questions are issues of law and are reviewed de novo. McDevitt v. Harborview Med. Ctr., 179 Wn.2d 59, 64, 316 P.3d 469 (2013).

First, Jimenez argues that the Oak Harbor police violated her constitutional rights when they arrested her. Because this action involves an administrative proceeding between Jimenez and the Department and not a criminal proceeding or a civil lawsuit under 42 U.S.C. § 1983, the actions of the Oak Harbor police, however offensive to Jimenez, are not properly before this court. Therefore, we decline to address them as a basis for reversing the Department's final order.

Next, Jimenez argues that the Department violated her Fourteenth Amendment due process right to a fair trial by denying her rights under the Sixth Amendment to the United States Constitution and article I, section 22 of the Washington Constitution. She claims that she was denied her right to present a defense under the Sixth Amendment and article I, section 22 when the hearing

officer failed to issue subpoenas to three witnesses and when the hearing officer excluded some of her exhibits at the hearing. She also argues that her Sixth Amendment right to effective assistance of counsel was violated. We note that both the Sixth Amendment and article I, section 22 apply to only criminal prosecutions and Jimenez's probation and fine is a civil penalty, not a criminal punishment. See Chmela v. Dep't of Motor Vehicles, 88 Wn.2d 385, 392, 561 P.2d 1085 (1977) (article I, section 22 and the Sixth Amendment are inapplicable in civil cases). Therefore, her due process rights were not violated because she is not entitled to protection under the Sixth Amendment or article I, section 22. Any grievances Jimenez has against her attorney must proceed as a separate malpractice claim.

Jimenez also argues that the Department's final order violates her First Amendment right to list her accomplishments as a doctor of natural health and of Ňedicine. But the Department has not restricted Jimenez's right to list her degrees among her accomplishments. Rather, it issued a cease and desist order that restricted her from practicing medicine and naturopathy without a license. Because Jimenez does not have a license to practice medicine or naturopathy, the Department did not violate her First Amendment rights by issuing the cease and desist letter.

Finally, Jimenez argues that the Department has violated her right to freedom of religion under the First Amendment to the United States Constitution and article I, section 11 because her practice of Ňedicine was related to her religious beliefs. Article I, section 11 "parallels the First Amendment's religious

Establishment and Free Exercise Clauses." Open Door Baptist Church v. Clark County, 140 Wn.2d 143, 151, 995 P.2d 33 (2000). "If government action burdens the exercise of religion, but the State demonstrates that it has a compelling interest in enforcing its enactment, that interest will justify the infringement of First Amendment rights." First Covenant Church of Seattle v. City of Seattle, 120 Wn.2d 203, 222, 840 P.2d 174 (1992). "[C]ompelling interests are based in the necessities of national or community life such as clear threats to public health, peace, and welfare." Munns v. Martin, 131 Wn.2d 192, 200, 930 P.2d 318 (1997). Here, even assuming that the Department's actions have infringed on Jimenez's right to freedom of religion, the Department has a compelling public health and welfare interest in limiting the practice of medicine and naturopathy to individuals licensed by the Department. To the extent that Jimenez's practice of medicine without a Washington license burdened her exercise of religion, the Department's interest in public health and safety justified any infringement of her constitutional rights.

For the first time in her reply brief, Jimenez argues that the Department violated her due process rights by notifying insurance companies about the charges against her before a final order was issued. Also for the first time in her reply, she argues that the Department violated her due process rights because it did not apply a clear and convincing standard of proof to the evidence presented. But because these issues were raised in her reply brief and there was no opportunity for the Department to respond, we decline to consider them. RAP 10.3(c).

TRIAL COURT PROCEEDINGS

Jimenez argues that the trial court erred during its review of the Department's final order. But any errors by the trial court do not affect our review.

As the reviewing court, we sit in the same position as the superior court and apply the APA standards directly to the record before the agency. King County Pub. Hosp. Dist. No. 2 v. Dep't of Health, 178 Wn.2d 363, 372, 309 P.3d 416 (2013). "[W]e do not give deference to the superior court's rulings." Verizon Nw., Inc. v. Emp't Sec. Dep't, 164 Wn.2d 909, 915, 194 P.3d 255 (2008).

Jimenez argues that the trial court erred both in granting the Department's motion to strike exhibits attached to her briefing and in considering an unpublished federal court order attached as an appendix to the Department's brief. Additionally, Jimenez argues that the trial court misstated the record when it said that she had nine clients, rather than the actual number of five. Finally, she argues that the trial court erred in concluding that she was not really Jonson's victim. The trial court did not actually say that Jimenez was not a victim. Even assuming it did, because we apply the APA standards directly to the administrative record and do not give deference to the superior court's rulings, none of these alleged errors affect our analysis on appeal and they are not a basis for reversal.

PROOF OF SERVICE

I declare under penalty of perjury, under the laws of the State of Washington that the following is true and correct:

I certify that I Served a copy of this document on all parties or their counsel of record on September 3, 2019.

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