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NO. 51482-6-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

ARELY JIMENEZ,

Appellant,

v.

WASHINGTON STATE DEPARTMENT OF HEALTH,

Respondent.

**WASHINGTON STATE DEPARTMENT OF HEALTH'S
RESPONSE BRIEF**

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I. INTRODUCTION

The Department of Health (Department) has a duty to protect the public from health care providers who are unqualified or commit unprofessional conduct. In order to practice medicine in Washington, a person must be licensed. RCW 18.71.021. In addition, to represent oneself as a naturopath, a person must be licensed. RCW 18.36A.030. Violations of these provisions can subject a person to disciplinary action brought by the Department.

The Administrative Procedure Act (APA), RCW 34.05, governs judicial review of the Department's Final Order, issued after an adjudicative proceeding alleging Arely Jimenez (Jimenez) engaged in the unlicensed practice of medicine and naturopathy and committed unprofessional conduct. Jimenez has a valid license to practice marriage and family therapy. However, in 2014, she opened a clinic and began to see patients and practice medicine. In newspaper articles, website listings, clinic paperwork, and communication with an insurance company, she represented herself as a naturopath. She has never held a medical or naturopath license. The Final Order subject to this judicial review ordered her to permanently cease and desist the unlicensed practice of medicine and naturopathy and found that this behavior was unprofessional conduct under her marriage and family therapist license. The Thurston County

Superior Court affirmed the Department's Final Order on January 26, 2018. Jimenez now seeks judicial review in this Court.

II. COUNTERSTATEMENT OF THE ISSUES

1. Were the Department's Findings of Fact that Jimenez practiced medicine without a license supported by substantial evidence?

2. Did the Department err in concluding that Jimenez's license to use the federal trademark "Doctor of Medicine" did not authorize her to practice medicine in Washington?

3. Was the Department's Finding of Fact that Jimenez represented herself as a licensed naturopath supported by substantial evidence?

4. Did the Department commit an error of law when it found that Jimenez's actions of practicing medicine without a license and representing herself as a licensed naturopath were acts of moral turpitude and dishonesty under the Uniform Disciplinary Act?

5. Was the Final Order arbitrary and capricious in concluding that Jimenez committed unprofessional conduct based on acts of moral turpitude and dishonesty?

6. Did the Final Order violate Jimenez's constitutional right to procedural due process?

7. Were the sanctions in the Final Order arbitrary and capricious?

III. STATEMENT OF THE CASE

A. Regulation of Health Care Professionals in Washington

The Department is the state agency that licenses and regulates health care professionals in Washington State. The goal of regulating health professionals is to protect the public from unqualified providers and professional misconduct. RCW 18.130.010.

Under the Health Professions Uniform Disciplinary Act (UDA), RCW 18.130, the Washington State Secretary of Health is responsible for bringing actions against individuals practicing a health care profession without a license. Actions for unlicensed practice are initiated with a Notice of Intent to Issue a Cease and Desist Order. *Id.* The Respondent may then request a full adjudicative hearing under the APA. RCW 18.130.100. The sanctions available include a permanent cease and desist order and civil fine not to exceed \$1,000 per day of unlicensed practice. RCW 18.130.190(3). The UDA also provides that the unlicensed practice of a health profession constitutes a crime. RCW 18.130.190.

The Secretary also regulates the practice of many licensed health care professionals, including licensed marriage and family therapists (LMFT). RCW 18.225. A LMFT can be disciplined for unprofessional

conduct under the UDA. RCW 18.130.180. Actions against an LMFT are initiated by filing a Statement of Charges. RCW 18.130.090. The LMFT may then request a full adjudicative hearing under the APA. *Id.* If a LMFT is found to have committed unprofessional conduct, the Secretary can order sanctions against their license. These sanctions include, but are not limited to, revocation, suspension, license restrictions, probation, corrective action, and fines. RCW 18.130.160.

B. Jimenez’s Practice and Clinic

Jimenez holds a Washington State Marriage and Family Therapy License. Administrative Record (AR) 852, Findings of Fact Conclusions of Law and Final Order (FFCL) 2.1. It has been active since 2007. *Id.* She holds no other health care credential in Washington. *Id.* In 2015, Jimenez completed online coursework from the American School of Medicine, an unaccredited school. AR 856, FFCL 2.7. The founder of the school received a certification trademark of “Doctor of Medicine” from the U.S. Patent and Trademark Office in 2013, and created the American Medicine Licensing Board, Inc. AR 720, FFCL 2.5, 2.6. In July 2014, Jimenez received a license to use the “Doctor of Medicine” certification trademark from the American Medicine Licensing Board, Inc. AR 749, FFCL 2.7. The Department does not recognize this school, trademark, or license to

use the trademark, nor is there evidence it is recognized in any state. FFCL 2.4, 2.5, AR 701, 702.

In December 2014, Jimenez and another individual, Clarence Hugh Jonson, opened a clinic in Oak Harbor, Washington. FFCL 2.8. Through newspaper articles and a website, Jimenez and Jonson held themselves out as board certified in naturopathy and as being able to treat patients for conditions such as diabetes, arthritis, fibromyalgia, hypertension, hepatitis, and more. AR at 750-52, 756-57, FFCL 2.9. Jimenez provided treatment to at least five patients and provided intake forms to the patients that indicated she was a naturopathic physician. AR at 765-830, FFCL 2.10. Jimenez described her evaluation and treatment process as using a computer to take energy readings of patients, informing the patient of their condition, and recommending treatment with diet changes, herbs, or infoceuticals. AR 853-857, 868-869, FFCL 2.10. Jimenez sells the patients infoceuticals (“mineral water injected with information”) to treat energy blockages. AR 854, FFCL 2.9, 2.10. She evaluated and diagnosed the patients and treated them for conditions such as high blood pressure, smoking cessation, thyroid issues, insomnia, back pain, and tremors. AR 765-830, FFCL 2.10.

On May 7, 2015, the Secretary of Health served a Notice of Intent to Issue Cease and Desist Order and accompanying documents on Jimenez

alleging she was practicing medicine and naturopathy without a license. On August 26, 2015, the Marriage and Family Therapy Program issued a Statement of Charges alleging Jimenez's conduct violated RCW 18.130.180(1), the prohibition against moral turpitude and dishonesty, by engaging in the unlicensed practice of medicine and naturopathy. The unlicensed practice case and the marriage and family therapist unprofessional conduct case were consolidated by Prehearing Order No. 4. AR 286.

A hearing was held in the consolidated matters on October 17, 2016. On November 4, 2016, the Presiding Officer signed the Initial Order which found that Jimenez had practiced medicine and naturopathy without a license in violation of RCW 18.71.021, RCW 18.36A.030, and RCW 18.130.020, and this unlicensed practice constituted unprofessional conduct against her LMFT license under RCW 18.130.180(1). AR 591-615.

On November 21, 2016, Jimenez requested administrative review of the Initial Order. AR 619-23. The Review Officer issued a Final Order on January 9, 2017. AR 690-718, attached as Appendix A. Jimenez was ordered to permanently cease and desist the unlicensed practice of medicine and naturopathy, pay a fine of \$5,000, complete three hours of continuing education in law and ethics, receive a reprimand on her LMFT

license, and her license was put on probation until the requirements were completed. *Id.*

Jimenez sought judicial review of the Final Order in the Thurston County Superior Court. The Superior Court affirmed the Department's Final Order. Jimenez then filed a Notice of Appeal in this Court.

IV. STANDARD OF REVIEW

Judicial review of the administrative adjudication in this case is governed by the Administrative Procedure Act (APA), RCW 34.05. RCW 34.05.510. The burden is on Jimenez to demonstrate the invalidity of the agency action and to show she is substantially prejudiced by the action. RCW 34.05.570(1)(a), (d). *King Cty. Pub. Hosp. Dist. No. 2 v. Wash. State Dep't of Health*, 178 Wn.2d 363, 372, 309 P.3d 416 (2013). This Court sits in the same position as the Superior Court and applies the APA standards directly to the record before the agency. *King Cty. Pub. Hosp. Dist.*, 178 Wn.2d at 372 (citing *Tapper v. Emp't Sec. Dep't*, 122 Wn.2d 397, 402, 858 P.2d 494 (1993)). Since this Court applies the standards of review directly to the agency record, the Court does not need to address any errors that Jimenez assigns to the Superior Court.

Review of agency orders under the APA is limited to the provisions of RCW 34.05.570(3). Jimenez does not cite the APA, but her

arguments appear to invoke four subsections of RCW 34.05.570(3).

RCW 34.05.570(3) provides in relevant part:

(3) Review of agency orders in adjudicative proceedings.

The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied; . . .

(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter; . . .

(i) The order is arbitrary or capricious.

RCW 34.05.570(3).

Jimenez appears to allege that the Review Officer erroneously interpreted or applied the law, the Final Order is not supported by substantial evidence, the order violates constitutional due process provisions, and the order is arbitrary or capricious. RCW 34.05.570(3)(a), (d), (e), (i).

A. The Substantial Evidence Standard

Findings of fact are subject to review under the “substantial evidence” standard. RCW 34.05.570(3)(e); *Terry v. Emp’t Sec. Dep’t*, 82

Wn. App. 745, 748, 919 P.2d 111 (1996). Under the “substantial evidence” standard, an agency finding of fact will be upheld if supported by “evidence that is substantial when viewed in light of the whole record before the court . . .” RCW 34.05.570(3)(e). “Substantial evidence” as used in RCW 34.05.570(3)(e), has been defined in most court decisions as evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise. *See, e.g., Heinmiller v. Dep’t of Health*, 127 Wn.2d 595, 903 P.2d 433 (1995); *In re Elec. Lightwave, Inc.*, 123 Wn.2d 530, 869 P.2d 1045 (1994).

The substantial evidence standard is “highly deferential” to the agency fact finder. *ARCO Prods. Co. v. Wash. Utils. & Transp. Comm’n*, 125 Wn.2d 805, 812, 888 P.2d 728 (1995). The court will view the evidence in the light most favorable to the party who prevailed in the highest administrative forum to exercise fact-finding authority. *City of Univ. Place v. McGuire*, 144 Wn.2d 640, 652, 30 P.3d 453 (2001). The court will accept the fact finder’s determinations of witness credibility and the weight to be given to reasonable but competing inferences. *Id.* Credibility determinations will not be reversed on appeal. *Id.* As the fact finder, the Review Officer was in the best position to assess the evidence and enter accurate findings in this case. In addition, uncontested findings

are verities on appeal. *In re Interest of Mahaney*, 146 Wn.2d 878, 895, 51 P.3d 776 (2002).

Therefore, the court is to review the whole record and if there are sufficient facts in that record from which a reasonable person could make the same finding as the agency, the agency's finding should be upheld. This is so even if the reviewing court would make a different finding from its reading of the record. *Callegod v. Wash. State Patrol*, 84 Wn. App. 663, 929 P.2d 510.

B. The Error of Law Standard

Alleged errors of law are reviewed de novo. *Ames v. Wash. State Health Dep't Med. Quality Health Assurance Comm'n*, 166 Wn.2d 255, 260, 208 P.3d 549 (2009). Although the court may substitute its judgment for that of an administrative agency, the court accords substantial weight to the agency's interpretation of the law it administers—especially when the issue falls within the agency's expertise. *Id.* at 260-61. Courts also give substantial weight to the agency's interpretation of its own rules. *Lang v. Wash. State Dep't of Health*, 138 Wn. App. 235, 243, 156 P.3d 919 (2007) (citing *Federated Am. Ins. Co. v. Marquardt*, 108 Wn.2d 651, 656, 741 P.2d 18 (1987)).

C. The Arbitrary and Capricious Standard

An appellate court can reverse an order if it finds that it is arbitrary and capricious. “[T]he scope of review of an order alleged to be arbitrary or capricious is narrow, and the challenger carries a heavy burden.” *Brown v. State, Dep’t of Health, Dental Disciplinary Bd.*, 94 Wn. App. 7, 16, 972 P.2d 101, 107 (1998), citing *Keene v. Board of Accountancy*, 77 Wn. App. 849, 859, 894 P.2d 582, review denied, 127 Wn.2d 1020, 904 P.2d 300 (1995). “Arbitrary and capricious action has been defined as willful and unreasoning action, without consideration and in disregard of facts and circumstances. Where there is room for two opinions, action is not arbitrary and capricious even though one may believe an erroneous conclusion has been reached.” *Heinmiller v. Dep’t of Health*, 127 Wn.2d 595, 609, 903 P.2d 433, 440 (1995), amended, 909 P.2d 1294 (1996).

D. The Constitutional Due Process Standard

The standard of review of a constitutional due process challenge is de novo. *State v. Nelson*, 158 Wn.2d 699, 702, 147 P.3d 553. Procedural due process requires notice and an opportunity to be heard prior to final agency action. *City of Redmond v. Arroyo–Murillo*, 149 Wn.2d 607, 612, 70 P.3d 947 (2003). To establish a procedural due process violation, the party must establish that he or she has been deprived of notice and

opportunity to be heard prior to a final determination. *State v. Storhoff*, 133 Wn.2d 523, 527, 946 P.2d 783 (1997).

V. ARGUMENT

The Department's Final Order should be affirmed. First, there is substantial evidence in the record establishing Jimenez practiced medicine without a license and represented herself as a naturopath. Second, the Review Officer correctly applied the law in making the finding that the unlicensed practice constituted unprofessional conduct based on moral turpitude and dishonesty. The application of this statute to Jimenez was not arbitrary and capricious. Finally, there were no violations of Jimenez's procedural due process rights.

A. **Jimenez Practiced Medicine Without a License by Diagnosing, Advising, and Prescribing Remedies for Her Patient's Medical Conditions**

1. **The Final Order is Supported by Substantial Evidence**

In this case, after considering all of the testimony, evidence, and evaluating the credibility of each witness, the Department issued its Final Order. AR 690-718. It specifically found that Jimenez was engaged in the practice of medicine. Jimenez does not identify any specific findings of fact that she contests, but does argue generally that the findings that she practiced medicine are an error.

First, in Washington the practice of medicine is defined as:

A person is practicing medicine if he or she does one or more of the following:

- (1) Offers 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;
- (2) Administers or prescribes drugs or medicinal preparations to be used by any other person;
- (3) Severs or penetrates the tissues of human beings;
-

RCW 18.71.011.

Regardless of what Jimenez chooses to call it, the evidence at hearing clearly demonstrated that Jimenez diagnosed, treated, and prescribed remedies for her patients. She treated them for high blood pressure, thyroid conditions, Parkinson's disease, celiac disease, and other ailments. FFCL 3.9, AR 711. The evidence is clear in the patient records of five patients she treated (AR at 758-830) and the testimony of patients D, E, F, and G at the hearing (AR at 924-958). Findings of Fact 2.10 and 2.14, that Jimenez's acts constitute the practice of medicine, are clearly supported by substantial evidence in the record.

Jimenez appears to contest the legal conclusion in the Final Order that her practice of what she calls "medicine" is the practice of medicine or naturopathy. However, in Washington State, the practice of medicine is

defined by *conduct and acts*, not the labels used to describe it. “Whether actions constitute the practice of medicine is dependent upon the facts and not upon the name of the procedure, its origins, or legislative lack of clairvoyance.” *State v. Pac. Health Ctr., Inc.*, 135 Wn. App. 149, 166, 143 P.3d 618 (2006), citing *People v. Amber*, 76 Misc.2d 267, 273, 349 N.Y.S.2d 604 (1973). Jimenez also claims that all the patients testified they were looking for “alternatives to medicine,” so this somehow proves that she was not practicing medicine. Amended Opening Brief at 24-25. The Review Officer considered this fact, stating, “[t]he patients who testified all indicated they were looking for alternative approaches in the treatment of their various conditions. The fact that patients were looking for alternative medicine solutions to their issues does not control the outcome of Respondent’s case.” FFCL 3.9, AR 711. Again, it is the conduct of Jimenez that controls whether or not she practiced medicine, not that the patients wanted an alternative to medicine.

Jimenez also argues that Judge Schaller stated incorrectly that she treated nine patients when she only treated five. Appellant’s Amended Opening Brief at 23. Judge Schaller is the Thurston County Superior Court Judge who heard the Petition for Judicial Review. This Court applies the review standards to the agency record, not the Superior Court. The administrative record reflects the correct number of patients Jimenez

treated was five. FFCL 2.10, AR 698, 705, 706, 708. This Court should not consider Jimenez's arguments related to statements of the Superior Court. In this case, the Review Officer correctly applied RCW 18.71.011 and found that Jimenez's conduct of offering and undertaking to diagnose and advise/recommend treatment for five patients was the practice of medicine. FFCL 3.6.

2. The Department did not Err by Concluding that a Trademark does not Authorize the Holder to Practice Medicine

Jimenez next appears to argue that her license to use the "Doctor of Medicine" trademark authorized her to practice medicine. She argues that she operated under an active "Doctor of Medicine" license and this authorized her to operate the clinic and diagnose and treat patients. She claims that the Department made an error of law by not recognizing this trademark's authority. However, Jimenez misinterprets the authority conveyed by the trademark license. A license to use a trademark is not a license to practice a medical profession; it only provides the owner with protections over the mark itself.

It has long been held that the states have the exclusive police power to regulate the practice of medicine within each state. "The police power of the State includes the power to enact comprehensive, detailed, and rigid regulations for the practice of medicine, surgery, and dentistry."

Douglas v. Noble, 261 U.S. 165, 43 S. Ct. 303, 67 L. Ed. 590 (1923); *Dent v. W. Va.*, 129 U.S. 114, 9 S. Ct. 231, 32 L. Ed. 623 (1889); *People v. Witte*, 315 Ill. 282, 146 N.E. 178 (1925). There is no right to practice medicine which is not subordinate to the police power. *Lambert v. Yellowley*, 272 U.S. 581, 47 S. Ct. 210, 71 L. Ed. 422 (1926); *People v. Walsh*, 346 Ill. 52, 178 N.E. 343 (1931); *Garcia v. Tex. State Bd. of Med. Exam'rs*, 384 F. Supp. 434, 437 (W.D. Tex. 1974).

Jimenez clearly misinterprets the “authority” conveyed by the mark. A certification trademark certifies only that “its owner has a bona fide intention to permit a person other than the owner to use in commerce and files an application to register on the principle register established by this Act, to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of such person’s goods or services or that the work or labor on the goods or services was performed by members of a union or other organization.” 15 U.S.C.A. § 1127 (2012). In other words, the owner of the certification mark allows individuals the use of its certification mark if the individual meets its requirements to do so. In solely allowing the use of its mark, the owner does not and *cannot* license an individual to practice medicine in Washington State.

In fact, this same “Doctor of Nedicine” trademark and license has been litigated in Federal Court in both Washington and Connecticut. In

both cases, the Courts held that the license to use the “medicine” mark does not authorize the holder to practice medicine as defined by state law. In *Jonson v. State of Washington*, the Court dismissed Hugh Jonson’s (Jimenez’s partner in Whidbey Naturals clinic at issue in this case) claim with prejudice and the Ninth Circuit affirmed that the registration of trademarks “does not even arguably conflict with state regulation of medicine.” *Jonson*, No. 2:15-cv-00501 (W.D. Wash. 2015) at Doc. 30 (unpublished “Order on Motion to Dismiss,” dated June 23, 2015). *See also Jackson v. State of Conn. Dep’t of Pub. Health*, 2016 WL 3460304, No. 3:15-cv-750 (D. Conn. 2016) at Doc. 28 (“Ruling on State Defendants’ Motion to Dismiss,” dated June 20, 2016). Therefore, the Department correctly interpreted the law concerning the limited authority granted in a trademark license and finding Jimenez practiced medicine without a license.

B. There is Substantial Evidence that Jimenez Represented Herself as a Licensed Naturopath

The naturopath licensure statute contains a title protection provision that Jimenez clearly violated. It provides:

- (1) No person may practice naturopathy or represent himself or herself as a naturopath without first applying for and receiving a license from the secretary to practice naturopathy.

(2) A person represents himself or herself as a naturopath when that person adopts or uses any title or any description of services that incorporates one or more of the following terms or designations: Naturopath, naturopathy, naturopathic, naturopathic physician, ND, or doctor of naturopathic medicine.

RCW 18.36A.030.

Violation of this statute is the unlicensed practice of naturopathy. Jimenez claimed multiple times and in multiple ways, that she was a naturopathic physician. Evidence at hearing established that she advertised in the newspaper and on a website that she was a naturopathic physician (AR at 750-752 and 756-757), gave patients intake forms stating she was a naturopathic physician (AR at 765-830), used business cards with the initials “N.D.” after her name¹ (AR 754), and attempted to get Premera Blue Cross to accept her as a naturopathic physician for insurance reimbursement (AR at 748).

Despite the substantial documentary evidence, Jimenez continues to argue that the Department’s investigators lied and that she did not prepare the materials, newspaper articles, or website where she states she is a licensed naturopath. The Presiding Officer believed the Department’s investigators and found their testimony to be more credible than the Respondent. Credibility determinations are not reversed on appeal because

¹ The “N” in the “N.D.” on the business card has an accent mark above it.

the Presiding Officer is in the best position to judge credibility. *Russell v. Human Rights Comm'n*, 70 Wn. App. 408, 421, 854 P.2d 1087 (1993). In addition, Jimenez testified that she did not participate in preparing some of the materials and this is part of the Final Order. FFCL 2.9, 2.13. However, Jimenez also admitted that she could have, but did not, review the materials published or given to her patients. *Id.*

Therefore, the finding of fact that Jimenez represented herself as a naturopath and violated RCW 18.36A.030 is supported by substantial evidence in the record.

C. Jimenez Committed Unprofessional Conduct Based on Acts of Moral Turpitude and Dishonesty

Jimenez argues that she should not be found to have committed the unprofessional conduct based on acts of moral turpitude and dishonesty because “to do something illegal goes against all her beliefs and violates all that she stands for.” Amended Opening Brief at 30. She argues that her “intent has always been to do good by others.” *Id.* at 14. She claims that the Review Officer made an error of law in concluding she committed moral turpitude. She also attempts to argue that this conclusion was not supported by substantial evidence and was arbitrary and capricious.

The Final Order found that Jimenez committed an act of moral turpitude or dishonesty and therefore violated RCW 18.130.180(1). FFCL 3.14.

RCW 18.130.180(1) states:

The following conduct, acts, or conditions constitute unprofessional conduct for any license holder under the jurisdiction of this chapter:

(1) The 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. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action.

.....

A finding that Jimenez violated this statute constitutes unprofessional conduct against her LMFT license.

1. The Department did not Err in Concluding the Unlicensed Practice of Medicine and Naturopathy is Unprofessional Conduct

Washington courts have interpreted how acts of moral turpitude and dishonesty are defined in the context of the Uniform Disciplinary Act, RCW 18.130. Moral turpitude is “conduct that may indicate unfitness to practice the profession either by raising concerns that the individual may use the professional position to harm members of the public, or by tending to lower the standing of the profession in the public's eyes, thereby affecting the quality of public health which is a legitimate public concern.”

Haley v. Med. Disciplinary Bd., 117 Wn.2d 720, 738, 818 P.2d 1062 (1991).

Jimenez claims that her good intent means she did not commit any act of moral turpitude or dishonesty. However, the definition of moral turpitude provided in *Haley* focuses on conduct rather than intent. Jimenez's conduct in practicing medicine without a license and falsely representing herself as a naturopathic physician are dishonest and misleading. In addition, the unlicensed practice of medicine is a crime under RCW 18.130.190(7)(a). Her misrepresentations, untruthful advertising, disregard for the health and safety of the public, and knowingly practicing beyond the scope of her LMFT license raises concerns that she may use her position to harm members of the public or tends to lower the standing of the profession in the public's eyes. This constitutes moral turpitude and dishonesty under the UDA and requires discipline against her LMFT license. Clearly, the Review Officer correctly applied these facts to the law when she found Jimenez had committed unprofessional conduct and took action against her LMFT license.

2. The Conclusion that Jimenez Committed Unprofessional Conduct is not Arbitrary and Capricious and is Supported by Substantial Evidence

Jimenez claims the conclusion that she committed unprofessional conduct was arbitrary and capricious. This claim is also without merit; she

cannot show that the Department took “willful and unreasoning action, without consideration and in disregard of facts and circumstances.” *Heinmiller v. Dep't of Health*, 127 Wn.2d 595, 609, 903 P.2d 433, 440 (1995), amended, 909 P.2d 1294 (1996). Contrary to Jimenez’s argument, the conclusion was based on the substantial evidence that Jimenez practiced medicine without a license and represented herself as a naturopath to the public and patients as discussed above. The reasoning and consideration of the facts are well stated and outlined in the Final Order.

“Here, Respondent’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 and 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.”

FFCL 3.15.

Therefore, the finding of unprofessional conduct of moral turpitude and dishonesty is supported by substantial evidence and is not arbitrary and capricious. The Final Order should be affirmed.

D. The Final Order does not Restrict Jimenez from Claiming she is a Doctor of Medicine

Jimenez further argues that the Final Order violated her First Amendment rights by restricting her from advertising. Jimenez's Brief at 28. She refers to her "Doctor of Medicine" trademark license or medicine degree. First, her argument is not supported by case law or briefing. Courts will not address constitutional arguments that are not supported by adequate briefing. *State v. Hill*, 123 Wn.2d 641, 648, 870 P.2d 313 (1994). She also does not identify the portion of the Final Order she believes restricts her display or claim to any license or degree. In fact, the Final Order does not prohibit or restrict Jimenez from displaying or claiming her unaccredited degrees or her "Doctor of Medicine" trademark license. Instead, the Final Order prohibits Jimenez from the *acts*, which constitute the practice of medicine and her claim to being a *naturopathic physician*. Since there is no restriction on the display or claim of her degree or trademark, there can be no constitutional violation. Therefore, the Final Order must be affirmed.

E. Jimenez was Provided Procedural Due Process

Jimenez makes several arguments interspersed throughout her brief that her constitutional due process rights were violated. These arguments include claims that evidence was excluded from the hearing, she was

denied subpoenas for her witnesses, she had ineffective assistance of counsel, and that the police unlawfully arrested her. Again, because these constitutional arguments are not supported by adequate briefing, the Court should not consider them. *State v. Hill*, 123 Wn.2d 641, 648, 870 P.2d 313 (1994). However, even if considered, they fail because these claims are not supported by facts in the record or by the law.

First, Jimenez claims constitutional violations in her arrest. These are criminal issues not before this Court on judicial review of the administrative record. Jimenez was arrested by the City of Oak Harbor Police, not the Department. Any challenges to the arrest must be brought against the City of Oak Harbor.

Second, she claims that her attorney was ineffective and therefore due process was denied. The constitutional right to effective assistance of counsel applies only to matters where a defendant has a right to counsel in criminal cases. U.S. Const. amend. VI and XIV. This is not a criminal case and Jimenez has no right to counsel before an administrative tribunal. Therefore, her claims of due process violations due to ineffective assistance of counsel are not before this Court on administrative judicial review.

Third, she claims that her “rights have been violated” by the courts not considering RCW 34.05.570(b)(1). Amended Opening Brief at 32. It

appears she is referring to the standards for review of rules under RCW 34.05.570(2)(b)(i) and (2)(c). It is unclear what rule Jimenez is claiming should be invalidated. In any event, this is a judicial review of an administrative order and not a rule challenge. Any argument that a rule was not properly invalidated is not before this Court on judicial review of an adjudicative order.

Fourth, Jimenez claims that her rights to due process were violated because the Presiding Officer did not issue subpoenas for her witnesses and she could not prove her case. Amended Opening Brief at 18-19. The record does not support this argument. Jimenez was pro se when she requested issuance of five subpoenas on February 26, 2016, for a hearing in March of 2016. AR 327. On March 14, 2016, she retained new counsel. AR 373. The hearing date was continued due to amended charges being filed. AR 330-365. The Presiding Officer did not issue Jimenez's witness subpoenas because shortly after her request, the hearing was continued and she retained counsel. The hearing eventually took place in October 2016, seven months after she retained counsel. Her attorney was authorized to issue subpoenas and had ample time to serve them. In fact, the procedural rule for issuance of subpoenas in cases before the Department specifically gives attorneys for parties authority to issue subpoenas. It goes on to state that a presiding officer shall issue subpoenas

for parties *not represented by counsel*. WAC 246-10-123. Jimenez was represented by counsel and did not need the Presiding Officer to issue subpoenas. In fact, three of the individuals on her earlier subpoena list did testify for Jimenez at the hearing. FFCL 1.3, AR 698.

Jimenez also claims that she needed one of the subpoenas to obtain information from Homestead Company (a webpage provider) to show that she did not own or control the clinic's website. Amended Opening Brief 19. First, her attorney could have issued a subpoena to this company. It is unclear if he did. However, information about creation of the website materials is in the record, was considered by the Review Officer, and is part of the Final Order. FFCL 2.9, AR 703.

Lastly, Jimenez argues that evidence and certain exhibits were excluded. Amended Opening Brief at 20-21. She appears to make several different claims of exclusion of evidence. Some of her claims are regarding evidence that was excluded at the Superior Court level. Amended Opening Brief at 21. As she did with this Court, Jimenez attempted to admit several new exhibits in the Superior Court. The Superior Court granted the Department's Motion to Strike her additional exhibits. She also argues that the Department admitted Appendix A²,

² It appears that the "Appendix A" that Jimenez is referring to is attached to the Department's responsive brief filed in Thurston County Superior Court. Appendix A is a copy of an unpublished Federal Court Order cited in the Department's Response Brief.

which was new evidence. Both of these decisions and any “exclusion” or admission of evidence at the Superior Court should not be considered here since this Court sits in the same position as the Superior Court and applies the APA standards directly to the record before the agency. *King Cty. Pub. Hosp. Dist. No. 2 v. Wash. State Dep’t of Health*, 178 Wn.2d 363, 372, 309 P.3d 416 (2013).

Jimenez does make one argument related to exclusion of evidence at the administrative hearing level. She claims that the materials she attempted to have admitted at Superior Court and to the Court were excluded improperly at the administrative hearing. Amended Opening Brief at 21-22. However, this is not the case. Jimenez submitted and then withdrew six exhibits at hearing. FFCL 1.6, AR 699. The six withdrawn exhibits were duplicate patient medical record files and are not the exhibits she attempted to admit to the Superior Court or this Court. As is common at administrative hearings, both parties proposed some of the same exhibits. The duplicate exhibits were already admitted as some of the Program’s exhibits. FFCL 1.4, 1.5, 1.6. Since they were duplicates, Jimenez withdrew her copies. No evidence was excluded. Duplicates were withdrawn. For these reasons, Jimenez’s claims of due process violations are without merit.

F. The Sanctions Issued Against Jimenez Were Appropriate

Finally, Jimenez apparently argues that the sanctions issued against her were too severe and therefore arbitrary and capricious. Amended Opening Brief at 23, 28. In fact, Jimenez received sanctions clearly authorized by statute and did not lose her right to practice her licensed profession. Since this was a consolidated proceeding, the Department was required and authorized to issue sanctions under two statutes; unlicensed practice under RCW 18.130.190 and unprofessional conduct under RCW 18.130.180.

Under the statute for unlicensed practice, the Secretary can issue cease and desist orders and order civil fines in the amount of \$1,000 per day of violation. In the unlicensed practice action, Jimenez was ordered to cease and desist and pay a fine of \$5,000. This amount was based on the number of patients she treated. However, this was not the maximum fine authorized by law. In this case, the fine could have been as high as \$8,000 since there is evidence in the record that she treated patients on eight different days. FFCL 2.10, 2.11, AR 704-707.

With regard to Jimenez's sanctions against her LMFT license for unprofessional conduct, she was given a reprimand, ordered to complete three hours of continuing education on jurisprudence and ethics, and the license put on probation until all conditions are met. These sanctions did

not suspend or revoke her license in any way and she was never prohibited from practicing as a marriage and family therapist.

As the arbitrary and capricious standard requires, Jimenez must show that the sanctions were a “willful and unreasoning action, without consideration and in disregard of facts and circumstances.” *Heinmiller v. Dep't of Health*, 127 Wn.2d 595, 609, 903 P.2d 433, 440 (1995), amended, 909 P.2d 1294 (1996). Jimenez attempts to argue that the sanctions are arbitrary because her partner at the clinic, Hugh Jonson, received a “stayed order from DOH”. Amended Opening Brief 23. This is factually incorrect. Unlike Jimenez, clinic partner Hugh Jonson had no health care license in Washington and therefore could only be charged with unlicensed practice. He agreed to a cease and desist order and was ordered to pay a fine. He signed an Agreed Order and did not take the case to a hearing. As part of the Agreed Order, a portion of the *finer* were stayed if the balance was paid within 24 months and no other provisions of the order were stayed. In this case, all the sanctions were well reasoned and within the Department’s authority and the sanction schedules found in WAC 246-16-800-890. While they may be slightly different sanctions than those imposed on Mr. Jonson, this does not make Jimenez’s sanctions arbitrary. Jimenez makes no showing that the sanctions were made without reasonable

consideration of the facts and circumstances. The Department's sanctions were not arbitrary and capricious and should be affirmed.

VI. CONCLUSION

When Jimenez opened a clinic, represented herself as a licensed naturopath, and began treating patients for medical conditions, she violated the law by practicing medicine and naturopathy without a license. These illegal actions also constituted unprofessional conduct under her LMFT license. The Department's Final Order is supported by substantial evidence in which the Review Officer correctly applied and interpreted the law. The charges and sanctions were not applied in an arbitrary and capricious way and Jimenez was provided procedural due process throughout the adjudicative proceeding. The Department's Final Order should be affirmed.

RESPECTFULLY SUBMITTED this 28th day of June 2018.

ROBERT W. FERGUSON
Attorney General

/s/ Heather Carter
HEATHER CARTER, WSBA 30477
Assistant Attorney General
Agriculture and Health Division
PO Box 40109 Olympia, WA 98504
Phone: (360) 586-6474

PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

- Via email to areshealth@yahoo.com
- US Mail Postage Prepaid via Consolidated Mail Service, and
- Federal Express Priority Overnight Delivery to:

ARELY JIMENEZ
981 DIANE AVENUE
OAK HARBOR, WA 98277

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 28th day of June 2018, at Olympia, Washington.

/s/ Krystle Berry
KRYSTLE BERRY
Legal Assistant



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

RECEIVED *ck*

JAN 12 2017

ATTORNEY GENERAL'S OFFICE
AGRICULTURE & HEALTH DIVISION

January 11, 2017

Arley Jimenez
981 Diane Ave
Oak Harbor, WA 98227-8224

RE Master Case Nos. M2015-453 and M2015-629

Dear Ms. Jimenez:

Enclosed please find Declaration of Service by Mail and Findings of Fact, Conclusions of Law, and Final Order dated January 9, 2017.

Any questions regarding the terms and conditions of the Order should be directed to Paige Fury, Compliance Officer at (360) 236-4855.

Sincerely,

Michelle Singer, Lead Adjudicative Clerk
Adjudicative Clerk Office
PO Box 47879
Olympia, WA 98504-7879

cc: Kristi Weeks, Review Officer
Heather Carter, AAG
Tammy Kelley and Deonna Chartrey, Case Manager
Paige Fury, Compliance Officer
Alexander Lee, Staff Attorney

Enclosure



RECEIVED *ckg*

JAN 12 2017

ATTORNEY GENERAL'S OFFICE
AGRICULTURE & HEALTH DIVISION

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
ADJUDICATIVE SERVICE UNIT

In the Matter of:)	
)	Master Case Nos. M2015-453
ARLEY JIMENEZ)	
Credential No. MFT.LF.00002661)	
)	DECLARATION OF SERVICE
Respondent.)	BY MAIL
)	

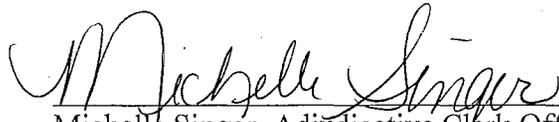
I declare under penalty of perjury, under the laws of the state of Washington, that the following is true and correct:

On January 11, 2017, I served a true and correct copy of the Findings of Fact, Conclusions of Law, and Final Order, signed by the Review Officer on January 9, 2017 by placing same in the U.S. mail by 5:00 p.m., postage prepaid, on the following parties to this case:

Arely Jimenez
981 Diane Ave
Oak Harbor, WA 98227-8224

Heather Carter, AAG
Office of the Attorney General
PO Box 40109
Olympia, WA 98504-0109

DATED: This 11th day of January, 2017.


Michelle Singer, Adjudicative Clerk Office
Lead Adjudicative Clerk

cc: Kristi Weeks, Review Officer
Tammy Kelley and Deonna Chartrey, Case Manager
Paige Fury, Compliance Officer
Alexander Lee, Staff Attorney

RECEIVED ^{CS}

JAN 12 2017

ATTORNEY GENERAL'S OFFICE
AGRICULTURE & HEALTH DIVISION

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
OFFICE OF THE SECRETARY

In the Matter of:

ARLEY JIMENEZ

Credential No. MFT.LF.00002661

Respondent.

Master Case Nos. M2015-453
M2015-629

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND FINAL ORDER

This matter has come before the Review Officer for administrative review of the Findings of Fact, Conclusions of Law, and Initial Order (Initial Order) dated November 4, 2016, of the Presiding Officer, John Kuntz. The Initial Order found unlicensed practice of medicine and naturopathy, as well as unprofessional conduct, issued a permanent cease and desist order, and imposed sanctions on the credential to practice as a licensed marriage and family therapist in the state of Washington of Arely Jimenez (Respondent).

RESPONDENT'S PETITION FOR REVIEW

On November 21, 2016, Respondent, appearing *pro se*, filed a Request for an Administrative Review (Petition) of the Initial Order. Respondent presented the following objections to findings she characterizes as "arbitrary and capricious":

- (1) Respondent's practice of "medicine" was not under the authority of a naturopathic license or psychotherapy license;
- (2) A Washington State issued license is not required to practice medicine;
- (3) "Infoceuticals" are not homeopathic medicines; and
- (4) Respondent did not commit an act of moral turpitude.

ORIGINAL

THE PROGRAM'S RESPONSE TO RESPONDENT'S PETITION

The Program, represented by Assistant Attorney General Heather Carter, filed a response to Respondent's Petition on December 12, 2016. The Program requests that the Initial Order be affirmed but that Finding of Fact 1.10(B) should be corrected as there was no testimony to support a finding that Respondent treated patients with homeopathic remedies.

REVIEW OFFICER'S ANALYSIS OF RESPONDENT'S PETITION

Practice of Medicine or Naturopathy

Respondent states she "has never claimed to be practicing medicine...under the authority of a naturopathic license or psychotherapy license...[R]espondent was not seeking to obtain a license for either medicine or naturopathy nor was [R]espondent practicing either profession" Pet. at page 1. However, Respondent's intent is not the controlling factor.

A person practices medicine when 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. A person may only practice medicine if she holds a license to do so under chapter 18.71 RCW or another chapter within Title 18 RCW specifically authorizing the practice of a subset of medicine.

Respondent holds a marriage and family therapist license under chapter 18.225 RCW. The scope of this license does not include the practice of physical medicine. See RCW 18.225.010(8) ("Marriage and family therapy" means the diagnosis and treatment of *mental and emotional disorders...*) (emphasis added). By offering and undertaking to diagnose, cure, or advise for physical human disease, ailment, injury, deformity, pain, or other condition, real or

imaginary, by any means or instrumentality (including medicine), Respondent practiced medicine without a license.

Likewise, no person may practice naturopathy or represent herself as a naturopath without first applying for and receiving a license from the Secretary of Health. RCW 18.36A.030. A person represents herself as a naturopath when she “adopts or uses any title or any description of services that incorporates one or more of the following terms or designations: Naturopath, naturopathy, naturopathic, naturopathic physician, ND, or doctor of naturopathic medicine.” *Id.*

Respondent represented herself as a naturopath in several ways. First, Respondent identified herself as “a licensed Naturopath” in an email to Premera Blue Cross. Exhibit P-1 at page 3. Second, Respondent used forms that identified her as a naturopathic physician. Exhibit P-8 at page 10, Exhibit P-11 at page 8. Third, Respondent knew or should have known by exercising due diligence that the website for Whidbey Naturals referred to her as “Board Certified in Naturopathy.” Exhibit P-2. Finally, Respondent’s business card listed her as “Arely Jimenez, DNH, N.D.” Exhibit P-3. Although there was a line over the “N” in “N.D.” on the business card, that line could not reasonably be expected to explain to an average consumer the difference between a licensed naturopath and a doctor of medicine. Based on any one of these four factors Respondent represented herself as a naturopath without first obtaining a license to do so.

Requirement for a License

Respondent asserts she was not practicing without a license because she was “operating with a valid Medicine license, which the state of Washington does not recognize” but

is valid under the authority of the federal government. Pet. at page 2. She further claims finding otherwise results in a violation of her First Amendment right. *Id.*

As the Programs correctly point out, it has long been held that the states have the exclusive police power to regulate the practice of medicine within the state. "The police power of the State includes the power to enact comprehensive, detailed, and rigid regulations for the practice of medicine, surgery, and dentistry." *Douglas v. Noble*, 261 U.S. 165, 43 S. Ct. 303, 67 L. Ed. 590 (1923); *Dent v. W. Va.*, 129 U.S. 114, 9 S. Ct. 231, 32 L. Ed. 623 (1889); *People v. Witte*, 315 Ill. 282, 146 N.E. 178, 37 A.L.R. 672 (1925). One cannot circumvent this power by creating a new profession with a different name and claiming it is no longer the practice of medicine even though it fits entirely within the existing statutory definition.

Nor does the existence of a federally issued certification mark allow Respondent to practice without appropriate state licensure. The certification mark merely indicates that she has met all the requirements of the owner, in the case the American Medicine Licensing Board. It does not convey the ability to practice medicine without a state-issued license.

Nor does this action violate Respondent's First Amendment right to free speech. In her Reply, Respondent cites *Strang v. Satz*, 884 F. Supp. 504 (S.D. Fla. 1995) as support for the proposition that the First Amendment allows her actions in this case. In *Strang*, the plaintiff held a Ph.D. in neurobiology from an unaccredited educational institution. Florida law made it a misdemeanor to claim, orally or in writing, an academic degree that was granted by an unaccredited institution even if the claim was true. The Court held the statute violated the First Amendment because it was not narrowly tailored to achieve a substantial governmental interest.

In this case, there is no First Amendment violation because Respondent is free to communicate orally or in writing that she holds a Doctor of Medicine or any other educational degree she may possess. However, Respondent is prohibited from conduct that falls under the definition of the practice of medicine. She is also barred from untruthfully communicating that she is a licensed naturopath as defined under Washington law.¹

Infoceuticals v. Homeopathic Remedies

Respondent claims the Presiding Officer erred by referring to infoceuticals as homeopathic remedies. Pet. at page 2. The Programs concede the error. Resp. at pages 7-8. Although this is corrected in this Final Order, the Review Officer does not fault the Presiding Officer for his confusion given the vague description of what infoceuticals actually are.

Moral Turpitude

Finally, Respondent objects to the finding of unprofessional conduct by based on an act or acts of moral turpitude. She claims she has lived a “pristine life” and has “been a role model, a person who has always helped human beings.” She equates moral turpitude to criminal activity rather than “a person who is trustworthy, honest and transparent” such as herself. Pet. at pages 2-3.

Moral turpitude includes conduct that raises reasonable concerns that the individual may abuse the status of being a healthcare provider in such a way to harm members of the public or conduct that lowers the standing of the profession in the eyes of the public. *Haley v. Medical Disciplinary Board* 117 Wash.2d 720, 738, 818 P.2d 1062 (1991). The evidence in this case supports a finding of moral turpitude under either *Haley* prong. Respondent’s practice of

¹ In any event, the Review Officer is not permitted to declare any statute invalid, i.e. unconstitutional. WAC 246-10-602(3)(c).

medicine without necessary licensure and misrepresentation of her status as a naturopath show a significant lack of judgment, as well as disregard for the health and safety of the public. In addition to potentially harming patients who came to her for treatment of very real physical ailments, Respondent's actions reflect poorly on the profession of marriage and family therapy and could lower the standing of that profession in the eyes of the public.

ISSUES

- A. Did Respondent engage in unlicensed practice under RCW 18.130.020(12)(a) and (b) and RCW 18.130.190, of medicine as defined in RCW 18.71.021 or naturopathy as defined in RCW 18.36A.030?
- B. If the Program proved Respondent engaged in the unlicensed practice of medicine or naturopathy, what are the appropriate sanctions under RCW 18.130.190?
- C. Did Respondent commit unprofessional conduct as defined by RCW 18.130.180(1)?
- D. If the Program proves Respondent engaged in unprofessional conduct, what are the appropriate sanctions under RCW 18.130.160?

I. SUMMARY OF PROCEEDINGS

1.1 Hearing in this matter was held on October 17, 2016. Health Law Judge John F. Kuntz served as Presiding Officer. The Marriage and Family Therapist Program and Unlicensed Practice Program (Programs) were represented by Heather Carter, Assistant Attorney General. Respondent was represented by Ragnar Bloom, Attorney at Law.²

1.2 The hearing consolidated Master Case Nos. M2015-453 and M2015-629. Under M2015-453, Respondent was alleged to have engaged in the unlicensed practice of medicine

² Mr. Bloom withdrew from this case following issuance of the Initial Order and does not represent Respondent on the administrative review. See Notice of Withdrawal of Counsel filed November 18, 2016.

and/or naturopathy. Under M2015-629, Respondent was alleged to have committed unprofessional conduct while holding a marriage and family therapist license.

1.3 At the hearing, the Program presented the testimony of Respondent, Health Care Investigator Mitchell Anderson, Health Care Investigator Kathleen Mills, Patient D, Patient E, Patient F, and Patient G.³ Respondent testified as part of her case in chief and presented the testimony of Alicia Acuna and Beverly Jackson.

1.4 The Presiding Officer admitted the following exhibits offered by the Program:

- Exhibit P-1: Copy of the complaint form, emailed February 9, 2015.
- Exhibit P-2: Copy of Whidbey Naturals website, visited December 18, 2014.
- Exhibit P-3: Copy of Whidbey Naturals business cards for Dr. Hugh Jonson, N.D., and Arely Jimenez, DNH, N.D.
- Exhibit P-4: Copy of Whidbey News-Times article "Former Navy Doctor Opens New Holistic Clinic in Oak Harbor," updated December 19, 2014.
- Exhibit P-5: Copy of Barbara Fragale's handwritten letter to DOH.
- Exhibit P-8: Copy of Patient C's medical records.
- Exhibit P-9: Copy of Patient D's medical records.
- Exhibit P-10: Copy of Patient E's medical records.
- Exhibit P-11: Copy of Patient F's medical records.
- Exhibit P-12: Copy of Patient G's medical records.

1.5 The Presiding Officer admitted the following exhibit offered by Respondent:

- Exhibit R-1: Medicine license for Beverly Jackson.
- Exhibit R-2: Letter from R. Bruce Jonson, Attorney, dated December 23, 2014 (AGO 0013-16).
- Exhibit R-3: Business card, Arely Jimenez.
- Exhibit R-4: Clayton College Certificate of Natural Health.

³ The names of the patients are confidential and cannot be released without the consent of the individual or individuals. See RCW 42.56.240(1).

- Exhibit R-5: Medicine license for Arely Jimenez (AGO 0064).
- Exhibit R-6: Letter from Group Health, dated May 22, 2015.
- Exhibit R-7: Letter from MHN, dated January 28, 2016.
- Exhibit R-8: Letter from Allen Williams, Attorney, dated December 9, 2012.
- Exhibit R-9: Whidbey News-Times article, dated December 18, 2014.
- Exhibit R-10: Letter from Beverly Jackson, dated March 4, 2015 (AGO 0114).

1.6 The following exhibits were withdrawn:⁴

- Exhibit P-6: Copy of Patient A's medical records.
- Exhibit P-7: Copy of Patient B's medical records.
- Exhibit R-11: Patient chart notes, Patient D.
- Exhibit R-12: Patient chart notes, Patient E.
- Exhibit R-13: Patient chart notes, Patient E.
- Exhibit R-14: Patient chart notes, Patient F.
- Exhibit R-15: Patient chart notes, Patient G.
- Exhibit R-16: Patient chart notes, Patient G.

1.7 The Presiding Officer issued an Initial Order dated November 4, 2016, which was served on the parties on November 8, 2016.

1.8 On November 21, 2016, Respondent filed a Request for an Administrative Review (Petition).

1.9 On December 12, 2016, the Programs filed a Response to Respondent's Petition.

1.10 On December 27, 2016, Respondent filed a Reply to the Programs' Response.⁵

⁴ The Program withdrew Exhibits P-6 and P-7 during the February 24, 2016, prehearing conference. Respondent withdrew Exhibits R-11 through R-16 at the hearing because they were duplicates of the Program's exhibits.

⁵ WAC 246-10-701 sets forth the time requirements for a petition for administrative review to be filed, as well as any response. It does not address the opportunity to reply or the timeframe for a reply. However, the exhibits attached to Respondent's reply were untimely and will not be considered unless they are duplicates of exhibits admitted at hearing.

II. FINDINGS OF FACT

2.1 Respondent was granted a license to practice as a marriage and family therapist in the state of Washington on November 5, 2007. Respondent's license is currently active. Respondent does not possess any other healthcare credential issued by the state of Washington.

2.2 Respondent possesses degrees from several institutions of higher learning, including Harvard University (a Master's degree in education) and California State University (a Master's degree in counseling and child therapy).⁶ These institutions are accredited, which means the institution is recognized as having sufficient academic standards to qualify graduates for professional practice.⁷ The state of Washington does not recognize non-accredited institutions for licensure purposes because the degrees offered by those institutions do not provide proof that an applicant meets the state licensure requirements.

2.3 Respondent also possesses degrees from non-accredited institutions. Respondent chose to attend the non-accredited institutions because of her interest in the practice of alternative medicine. Among the non-accredited institutions Respondent has attended are Lea (a Swedish alternative medicine school) and Clayton College of Natural Health (an online natural health college based in Alabama).⁸ Respondent obtained a Doctor of Natural Health (DNH) degree from Clayton College. See Exhibit R-4. The state of Washington does not currently accept the Clayton College degree as proof that an applicant can meet the qualifications for either a medical license or a naturopathy license in Washington. Respondent

⁶ Respondent did not identify the dates of these degrees.

⁷ See Black's Law Dictionary, Sixth Edition, page 20 (1990).

⁸ Respondent spoke of another non-accredited alternative medicine school. She could not remember the name of the school and did not present an evidence of the degree received from the school.

was advised by Clayton College that its natural health degree would not permit its graduates to engage in the practice of natural medicine in any state.

2.4 Beverly Jackson is a graduate of Trinity School of Natural Health, a non-accredited alternative health school of medicine that is not licensed by any state in the United States. There is no evidence that Ms. Jackson holds a state-issued healthcare credential in Washington or any other state. Dissatisfied with the evolving nature of naturopathy in the United States, Ms. Jackson invented “medicine,” which she describes as an alternative medical practice based upon the science of information and quantum physics.⁹ The medicine philosophy is based on the theory that the human body has an energy field that contributes to or controls the individual’s overall health. Ms. Jackson explained that the energy field can be measured in a manner similar to that of an electrocardiogram.¹⁰ If the energy field is blocked, it can result in illness or affect a person’s internal organs. Correcting the energy field blockage will result in fixing the illness or addressing the issue created in the internal organ by the blockage. Ms. Jackson describes medicine as the process to diagnose and treat informational systems of the body to restore the individual’s energy field, and not diagnose or treat diseases of the body.

2.5 Ms. Jackson created an online school to teach the practice of medicine.¹¹ The

⁹ According to Ms. Jackson, the term “medicine” is written using a diacritic mark (resembling a check mark) above the “N”. A “diacritical mark” is defined as mark added to a letter or symbol to indicate its pronunciation or to distinguish it in some way. See Webster’s New College Dictionary, page 397 (2009).

¹⁰ An “electrocardiogram” is defined as a record of the electrical activity of the heart, and it gives important information concerning electricity to the different parts of the hearing. See Taber’s Cyclopedic Medical Dictionary, 21st Edition, page 733 (2009).

¹¹ Ms. Jackson testified that the online medicine course normally took four years to complete, but it could be completed in a shorter period of time depending on credit granted for an applicant’s doctoral degrees. Medicine school tuition (four-year course) was \$49,000. No evidence was presented regarding the curriculum, text books, or other information regarding what a person needed to complete to graduate other than passage of three

school of medicine is not accredited in the state of Washington. In fact, there is no evidence that any state in the United States recognizes the school of medicine. Ms. Jackson admitted at hearing that the operation of the school is on hold due to legal actions in several states.

2.6 Ms. Jackson created a licensing, examination and disciplinary structure to govern the practice of medicine. Each part of the structure has its own separate board (that is, a licensing board, an examination board, and a disciplinary board), which are governed by previous graduates of the school of medicine.¹² Ms. Jackson did not take an examination to obtain her medicine degree. However, she and the medicine examination board created the examinations that are given to other applicants who apply for a medicine license. After performing her own legal research, Ms. Jackson applied for and obtained a certification mark for the term medicine. In Ms. Jackson's opinion, receipt of this certification mark authorizes the issuance of medicine licenses and the medicine license authorizes individuals to practice medicine nationally.¹³ Exhibit P-1 at page 4 and Exhibit R-5.

2.7 Respondent attended Ms. Jackson's school of medicine and completed the coursework in about two years. Ms. Jackson's American Medicine Licensing Board, Inc. issued the Respondent a license to practice medicine. *Id.* Respondent was given License No. ND100219. *Id.* She relied on Ms. Jackson's assurances that the medicine license was valid nationwide. Exhibit R-10.¹⁴ There is no evidence that Respondent contacted the state of

examinations.

¹² There are approximately 200 graduates holding medicine licenses.

¹³ Ms. Jackson admits she is not licensed to practice law.

¹⁴ Ms. Jackson wrote to Health Care Investigator Mitchell Anderson to state that the state of Washington could not interfere with the use of the federal certification mark. See Exhibit R-10 (where Ms. Jackson relies on the U.S. Supreme Court holding in *Park N Fly v. Dollar Park and Fly*, U.S. 469 U.S. 189, 198 (1985)). However, the issue in this hearing is not related to trademark law. Rather it related to the police power of the state of Washington to regulate the practice of medicine and naturopathy.

Washington to verify that information.

2.8 Respondent was looking for an opportunity to help people using her medicine license. Respondent met Hugh Jonson and his wife at her church. Mr. Jonson advised Respondent that he was both an attorney and a board-certified naturopathic physician. He reinforced Respondent's belief that the American Medicine Licensing Board license authorized her to practice alternative medicine in the state of Washington. Mr. Jonson's plan was to open an alternative medicine clinic in Oak Harbor, Washington. Respondent agreed to be a part of the new clinic. They opened Whidbey Naturals, Alternative Medicine (Whidbey Naturals) in December of 2014. They were assisted in opening the practice by Barbara Fragale, a retired registered nurse. Respondent and Mr. Jonson advertised the opening of the Whidbey Naturals clinic in the local newspaper (Whidbey News Times) and online. Exhibits P-2 (newspaper) and P-4 (online version).

2.9 Mr. Jonson created the newspaper release and the online website materials, which stated both he and the Respondent were board certified in Naturopathy. The Respondent admits that she could have reviewed the material before its release and did not do so. Mr. Jonson and Ms. Fragale also created a number of forms for use in the Whidbey Naturals clinic practice, including: a patient information form to obtain patient history; an individualized treatment plan to record vital signs, diagnosis and treatment plans for the patient; a progress note sheet; a physical examination form; and a laboratory report sheet for recording laboratory test results. The Whidbey Naturals practice provided patients with a Consent for Treatment form that read in relevant part:

I [patient name], the undersigned, hereby give consent for treatment at Whidbey Naturals Inc.

I have been informed and fully understand that Whidbey Natural Inc. is an Alternative Medicine provider and will use predominately natural forms of medication and treatments when appropriate and utilize mainstream medicine when required.

The licensed physicians at this facility are Doctors of Medicine and will treat and prescribe according to their scope of practice as defined by the provisions of the American Medicine Licensing Board.

The practice also provided patients with a Whidbey Naturals, Inc. Mission Statement that read:

Dr. Jonson and Dr. Jimenez are Naturopathic Physicians¹⁵ utilizing an Eastern as well as a Western approach to patient care. Our modalities of treatment will include but not be limited to diet, medications, dietary supplements, physical therapy, acupuncture, and ultrasound treatments.

Dr. Jonson and Dr. Jimenez are dedicated to delivering the highest level of care in a natural method of delivery. Included in our care will be a complete evaluation of you, your primary reason for seeking medical care and your ongoing medical issues. A complete medical history and exam will be conducted by our treating physicians, from that information a plan of care developed. You, the patient, have a major role in determining your health care.

We will strive to return you to a state of balance and wellness both physically and mentally.

Respondent testified she didn't really read the forms. She also testified she wanted to use different forms but Mr. Jonson and the Ms. Fragale insisted so Respondent used them in her practice at Whidbey Naturals.

2.10 Respondent provided treatment to Patients C, D, E, F, and G.

¹⁵ Exhibit P-8 at page 10, Exhibit P-11 at page 8. In other exhibits containing patient records, the mission statement used the phrase "Natural Pathic Physicians."

See generally Exhibits P-8 through P-12. Patients D, E, F, and G were all looking for alternative medicine solutions to their respective issues.¹⁶ Respondent posted her medicine degree on the wall of her treatment office. She also wore a white coat, which was embroidered with her name and the title "doctor." In the course of treating patients, Respondent measured the patient's energy readings using a computer. Respondent would have the patient place his or her hand on a device that resembled a computer mouse. She would then obtain the patient's energy reading through the computer and make recommendations based on that information. Respondent also obtained traditional vital signs (blood pressure and heart rate) through tests performed by herself or Ms. Fragale. On some occasions, Respondent ordered lab work for a patient and subsequently informed the patient of the results. Respondent billed for the services or treatment provided to each patient. In all, Respondent provided treatment or services to at least five different patients in the period December 2014 through February 2015.

Treatment or services included:

A. Respondent treated Patient C at the Whidbey Naturals clinic on February 5 and 12, 2015. Patient C received treatment for her high blood pressure condition. Respondent treated Patient C's condition using nutrition and supplements and recommending that Patient C engage in exercise. Exhibit P-8 at page 2. Respondent recommended Patient C use fenugreek, cayenne, garlic and a fourth illegible product. Exhibit P-8 at page 11.

B. Respondent treated Patient D at the Whidbey Naturals clinic beginning on January 6, 2015. Patient D was seeking help to stop smoking. Respondent treated Patient D to assist the patient to stop smoking and for also for thyroid issues. Exhibit P-9 at page 2. Respondent performed energy readings for Patient D and determined that she had energy blockages that affected her pineal gland, heart, tonsils, and toes. Exhibit P-9 at page 7. She provided

¹⁶ Patient C was not available to testify so findings regarding that patient are based on information in the treatment record only.

Patient D with dietary information, "infoceuticals" and energy treatments.¹⁷ Exhibit P-9 at page 2. Patient D testified that Respondent ordered a urine test to determine Patient D's pH level.

C. Respondent provided treatment to Patient E at the Whidbey Naturals clinic on January 5 and 8, 2015, and on February 5, 2015. Exhibit P-10 at page 9. Patient E had a history of celiac disease and complained of insomnia.¹⁸ On January 8, 2015, Respondent gave Patient E an energy treatment. On February 5, 2015, Respondent placed Patient E on an infoceutical protocol, with the goal of improving the patient's insomnia. Exhibit P-10 at page 5.

D. Respondent treated Patient F at the Whidbey Naturals clinic on February 12, 2015. Patient F complained of back pain and the Respondent gave her medication to relieve the pain. Exhibit P-11 at page 3. The medication consisted of L-Dopa,¹⁹ hypert, and garlic. Exhibit P-11 at page 7. Respondent considered that the back complaints might be the result of a kidney issue and scheduled a follow-up appointment with Patient E. Exhibit P-11 at page 3.

E. Respondent initially treated Patient G at the Whidbey Naturals clinic on December 22, 2014. Exhibit P-12 at page 12. Respondent then conducted a follow up visit with Patient G on December 26, 2014. *Id.* Patient G testified she sought treatment for fatigue, tremors, and balance issues and she received an energy treatment from Respondent. Respondent recommended nutritional supplements to Patient G as well.

2.11 What Respondent did not know at the time she entered into business with Mr. Jonson was that Mr. Jonson was a fraud. He did not have any license or credential to practice either medicine or naturopathy in Washington. During the relevant period, the Department of Health received complaints from Premera Blue Cross and a Seattle attorney regarding the

¹⁷ "Infoceuticals" were described by Respondent as mineral water injected with information to treat energy blockages. Respondent testified she ordered infoceuticals from a company in California.

¹⁸ "Celiac disease" results from an immunological intolerance to dietary wheat products. Patients with this disease may suffer from weakness, anemia, malnutrition, and vitamin and mineral deficiencies. See Taber's Cyclopedic Medical Dictionary, 21st Edition, page 394 (2009).

¹⁹ L-Dopa is an isomer of dopa that is converted in the brain to dopamine and is used in synthetic form to treat Parkinson's disease. See The American Heritage Medical Dictionary, copyright 2007, 2004 by Houghton Mifflin Company.

Respondent's and Mr. Jonson's practice at Whidbey Naturals. Exhibit P-1, Exhibit R-2. Department Health Care Investigators Mitchell Anderson and Kathleen Mills conducted an undercover investigation of the clinic under the guise that they were husband and wife. At the first visit on January 2, 2015, Ms. Mills asked for help with her fibromyalgia and chronic fatigue symptoms. Respondent advised her that she could assist her with these conditions. The two investigators then appeared unannounced at the Whidbey Naturals clinic on February 5, 2015. They were assured by the Respondent she could treat both Ms. Mills and their fictional son whom the investigators described to Respondent as suffering from post-traumatic stress disorder.

2.12 On February 17, 2015, the Oak Harbor police arrested Respondent for practicing medicine without a license. The Oak Harbor police executed a search of the Whidbey Naturals clinic on April 27, 2015, during which the police seized the treatment records for Patients C, D, E, F, and G.

2.13 Although Respondent took some steps to indicate that she was practicing medicine, such as hanging her medicine license on the wall of the clinic, evidence shows she did not consistently do so. Respondent sent an email communication to Premera Blue Cross to update her contact information with that organization wherein she stated "I am also a licensed Naturopath..." Exhibit P-1 at page 3. The mission statement used by the Respondent for at least two patients stated that she was a naturopathic physician. Exhibit P-8 at page 10, Exhibit P-11 at page 8. The clinic's website indicates that Respondent was "Board Certified in Naturopathy." Exhibit P-2 at page 1. Respondent's business cards listed her as "Arelly

Jimenez, DNH, N.D."²⁰ These statements or representations were each untrue because Respondent was not a licensed or board certified naturopathic physician.

2.14 Respondent 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. Respondent advised these patients that she could treat or cure these conditions. Respondent did not have a valid license to practice medicine in the state of Washington. Respondent's credential to practice marriage and family therapy does not authorize her to practice medicine or naturopathy in the state of Washington.

2.15 Respondent blames many of the issues here on her reliance of the information she received from Ms. Jackson and Mr. Jonson regarding the legality of practicing in the state of Washington using the medicine license. However, the Respondent holds a credential to practice as a marriage and family therapist in the state of Washington. She is familiar with the licensing process. Nothing prevented her from contacting the state of Washington to ensure that the information she received from Ms. Jackson and Mr. Jonson was accurate. She did not do so.

III. CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Review Officer makes the following Conclusions of Law:

3.1 The Secretary of Health (and by designated authority, the Review Officer) has jurisdiction over Respondent and the subject matter of this proceeding. Chapter 18.130 RCW.

3.2 The Secretary of Health is authorized to designate a Review Officer to review

²⁰ The "N" in N.D. had a " " over it.

initial orders and to enter final orders. RCW 34.05.464(2), RCW 43.70.740.

3.3 In reviewing Findings of Fact by a Presiding Officer, the Review Officer shall give due regard to the Presiding Officer's opportunity to observe the witnesses. RCW 34.05.464(4).

Unlicensed Practice

3.4 The Program bears the burden of proving the allegations set forth in the Second Amended Notice of Intent to Issue Cease and Desist Order by a preponderance of the evidence. WAC 246-10-606.

3.5 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).

3.6 The Program proved by a preponderance of the evidence that Respondent engaged in the unlicensed practice of medicine as defined in RCW 18.71.021 and RCW 18.130.020(12)(a) and (b), which state:

RCW 18.71.021 License required.

No person may practice or represent himself or herself as practicing medicine without first having a valid license to do so.

RCW 18.130.020 Definitions.

(12) "Unlicensed practice" means:

(a) Practicing a profession or operating a business identified in RCW 18.130.040 without holding a valid, unexpired, unrevoked, and unsuspended license to do so; or

(b) Representing to a consumer, through offerings, advertisements, or use of a professional title or designation, that an individual is qualified to practice a profession or operate a business identified in RCW 18.130.040, without a valid, unexpired, unrevoked, and unsuspended license to do so.

3.7 The Program proved by a preponderance of the evidence that the Respondent engaged in the unlicensed practice of naturopathy as defined in RCW 18.36A.030(1) and (2), and RCW 18.130.020(12)(a) and (b), which state:

RCW 18.36A.030 License required.

(1) No person may practice naturopathy or represent himself or herself as a naturopath without first applying for and receiving a license from the secretary to practice naturopathy.

(2) A person represents himself or herself as a naturopath when that person adopts or uses any title or description of services that incorporates one or more of the following terms or designations: Naturopath, naturopathy, naturopathic, naturopathic physician, ND, or doctor of naturopathic medicine.

RCW 18.130.020 Definitions.

(12) "Unlicensed practice" means:

(a) Practicing a profession or operating a business identified in RCW 18.130.040 without holding a valid, unexpired, unrevoked, and unsuspended license to do so; or

(b) Representing to a consumer, through offerings, advertisements, or use of a professional title or designation, that an individual is qualified to practice a profession or operate a business identified in RCW 18.130.040, without a valid, unexpired, unrevoked, and unsuspended license to do so.

3.8 The violations described in Paragraphs 3.6 and 3.7 above constitute grounds for the issuance of a permanent cease and desist order pursuant to RCW 18.130.190, which states in relevant part:

RCW 18.130.190 Practice without a license—Investigation of complaints—Cease and desist orders—Injunctions—Penalties.

(1) The secretary shall investigate complaints concerning practice by unlicensed persons of a profession or business for which a license is required by the chapters specified in RCW 18.130.040. In the investigation of the complaints, the secretary shall have the same

authority as provided the secretary under RCW 18.130.050.

(2) The secretary may issue a notice of intention to issue a cease and desist order to any person whom the secretary has reason to believe is engaged in the unlicensed practice of a profession or business for which a license is required by the chapters specified in RCW 18.130.040. The person to whom such notice is issued may request an adjudicative proceeding to contest the charges. The request for hearing must be filed within twenty days after service of the notice of intention to issue a cease and desist order. The failure to request a hearing constitutes a default, whereupon the secretary may enter a permanent cease and desist order, which may include a civil fine. All proceedings shall be conducted in accordance with chapter 34.05 RCW.

(3) If the secretary makes a final determination that a person has engaged or is engaging in unlicensed practice, the secretary may issue a cease and desist order. In addition, the secretary may impose a civil fine in an amount not to exceed 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 by one or more of the chapters specified in RCW 18.130.040. The proceeds of such fines shall be deposited to the health professions account.

3.9 The patients who testified all indicated that they were looking for alternative approached in the treatment of their various conditions. The fact the patients were looking for alternative medicine solutions to their issues does not control the outcome in the Respondent's case. What controls the outcome of Respondent's case is her conduct in treating and communicating with these patients. Respondent engaged in the diagnosis and treatment of high blood pressure, thyroid conditions, Parkinson's disease, celiac disease, and other physical ailments. Respondent admits that she wanted to help people using an alternative medical approach. She obtained a medicine degree to accomplish this. Whether actions constitute the practice of medicine is dependent upon the facts and not upon the name of the procedure or its origins. See *State v. Pacific Health Center, Inc*,

135 Wn. App. 149, 163-64 (2006). The medicine degree does not afford her the legal authority to practice medicine. Respondent's medicine degree does not insulate her from the consequences of her actions, nor does her good intentions to help people. Respondent did not have a license or credential to practice medicine or naturopathy in the state of Washington.

3.10 The Unlicensed Practice Program requested a permanent cease and desist order. The Unlicensed Practice Program further requested a \$1,000 fine for each of the nine days Respondent engaged in the unlicensed practice, for a total of \$9,000. Respondent did not oppose the permanent cease and desist order because she has no intention of practicing under her medicine license in the future. Respondent did request no monetary fine in the matter. In relevant part, Respondent makes this request because of the monetary cost that she has suffered. The monetary cost includes the \$11,000 she paid for the medicine schooling and licensure and the amount she incurred in mounting a legal defense to the unlicensed practice charges.

Unprofessional Conduct

3.11 Except as otherwise required by law, the Program bears the burden of proving the allegations set forth in the Notice of Statement of Charges by a preponderance of the evidence. WAC 246-10-606. The Washington Supreme Court has held the standard of proof in disciplinary proceedings against physicians is proof by clear and convincing evidence. *Nguyen v. Department of Health*, 144 Wn.2d 516, 534 (2001), cert. denied, 535 U.S. 904 (2002). In 2006, the Washington Supreme Court extended the *Nguyen* holding to all professional disciplinary proceedings. *Ongom v. Dept. of Health*, 159 Wn.2d 132 (2006), cert. denied 550

U.S. 905 (2007). However, in 2011, the Washington Supreme Court overruled *Ongom*, but declined to overrule *Nguyen. Hardee v. Dept. of Social and Health Services*, 172 Wn.2d 1, 256 P.3d 339 (2011).

3.12 Given the legal uncertainty regarding the standard of proof for disciplinary proceedings, the evidence in this matter will be evaluated under both the clear and convincing standard, as well as the preponderance of the evidence standard.

3.13 RCW 18.180.130(1) prohibits conduct indicating unfitness to practice the profession. *Haley* at 742. Conduct may indicate unfitness to practice the profession by either: (1) raising concerns that the individual may use the professional position to harm members of the public; or (2) tending to lower the standing of the profession in the eyes of the public, thereby affecting the quality of public health. *Id* at 738. Actions relate to a profession when they indicate unfitness to bear the responsibilities of, and enjoy the privileges of, a profession. *Id* at 731.

3.14 The Program proved by a preponderance of the evidence and clear and convincing evidence that Respondent committed unprofessional conduct as defined in RCW 18.130.180(1), which states:

The 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. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section

abrogates rights guaranteed under chapter 9.96A RCW;

3.15 Here, Respondent'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.

3.16 Safeguarding the public's health and safety is the paramount responsibility of every disciplining authority. In determining what sanctions are appropriate, the disciplining authority must first consider what sanctions are necessary to protect or compensate the public. Only after such provisions have been made may the disciplining authority consider requirements designed to rehabilitate the license holder. RCW 18.130.160.

3.17 The disciplining authority may impose the full range of sanctions listed in RCW 18.130.160 for orders. WAC 246-16-800(2)(b).

3.18 Respondent's unprofessional conduct does not fall within an established sanction schedule. In that case, the Review Officer must use her judgment to determine appropriate sanctions. WAC 246-16-800(2)(d).

3.19 In considering the appropriate sanctions in this case, the Review Officer considered the following aggravating factors:

- Potential for harm to be caused by the unprofessional conduct; and
- Ill repute on the profession.

3.20 In considering the appropriate sanctions in this case, the Review Officer

considered the following mitigating factors:

- Respondent's lack of prior discipline; and
- Respondent's potential for successful rehabilitation.

3.21 The Program requested Respondent be reprimanded for her unprofessional conduct. In addition, the Program requests that Respondent's marriage and family therapist license be placed on probation pending Respondent's completion of a Program-approved continuing education course in the area of ethics and jurisprudence. Respondent requested that no sanction be issued against her marriage and family therapist license.

IV. ORDER

Based on the preceding Findings of Facts and Conclusions of Law, the Review Officer hereby issues the following FINAL ORDER:

Unlicensed Practice

4.1 Pursuant to RCW 18.130.190(3), Respondent shall PERMANENTLY CEASE AND DESIST from the practice of medicine or naturopathy unless she holds or possesses a valid license to do so under RCW 18.71.021 or RCW 18.36A.030(1).

4.2 Pursuant to RCW 18.130.190, Respondent shall pay a \$5,000 administrative fine, which represents \$1,000 for each of the five patients with whom she engaged in unlicensed practice of medicine and/or naturopathy. Payment shall be by check, made out to the State Treasurer, mailed to the Unlicensed Practice Program, P.O. Box 1099, Olympia, Washington 98504-1099. Payment shall be made within one year of the effective date of this Final Order. The effective date of this Final Order is the date the Adjudicative Clerk Office places the signed Final Order into the United States mail. Failure to

remit the fine within the specified time shall constitute a violation of this Final Order.

Unprofessional Conduct

4.3 Respondent is REPRIMANDED for her unprofessional conduct under RCW 18.130.180(1).

4.4 Respondent's license to practice as a marriage and family therapist in the state of Washington is placed on PROBATION, pending her completion of the terms and conditions set forth below in paragraph 4.5.

4.5 Respondent shall complete a Marriage and Family Therapist Program-approved continuing education course in the areas of jurisprudence and ethics. The course must be a minimum of three hours. This continuing education must be in addition to the continuing education requirements for re-credentialing in the state of Washington.

4.6 Respondent shall inform the Program Manager and the Adjudicative Clerk Office, in writing, of changes in her residential and/or business address within 30 days of such change.

4.7 Respondent shall assume all costs of complying with all requirements, terms, and conditions of this Final Order.

4.8 Protecting the public requires practice under the terms and conditions imposed in this Final Order. Failure to comply with the terms and conditions of this order may result in suspension and/or revocation of Respondent's license after a show cause hearing. If Respondent fails to comply with the terms and conditions of this Final Order, the Secretary may hold a hearing. At that hearing, the Respondent must show cause why her credential should not be suspended. Alternatively, the Secretary may bring additional

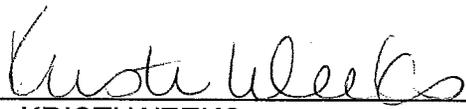
charges of unprofessional conduct under RCW 18.130.180(9). In either case, Respondent will be given notice and an opportunity for a hearing on the issue of non-compliance.

4.9 Respondent shall obey all federal, state and local laws and all administrative rules governing the practice of marriage and family therapy in Washington.

4.10 The effective date of this Final Order is the date the Adjudicative Clerk Office places the signed Final Order into the United States mail.

Dated this 9th day of January, 2017

JOHN WIESMAN, DrPH, MPH
SECRETARY OF HEALTH


By KRISTI WEEKS
REVIEW OFFICER

CLERK'S SUMMARY

<u>Charge</u>	<u>Action</u>
RCW 18.130.190	Violated
RCW 18.130.180(1)	Violated

NOTICE TO PARTIES

Either Party may file a petition for reconsideration. RCW 34.05.461(3); RCW 34.05.470. The petition must be filed within ten (10) days of service of this Final Order with:

Adjudicative Clerk Office
Adjudicative Service Unit
PO Box 47879
Olympia, WA 98504-7879

and a copy must be sent to:

Washington State Department of Health
Office of Legal Services
P.O. Box 47873
Olympia, WA 98504-7873

The petition must state the specific grounds upon which reconsideration is requested and the relief requested. WAC 246-10-704. The petition for reconsideration is considered denied twenty (20) days after the petition is filed if the Adjudicative Clerk Office has not responded to the petition or served written notice of the date by which action will be taken on the petition.

A petition for judicial review must be filed and served within thirty (30) days after service of this Final Order. RCW 34.05.542. The procedures are identified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. A petition for reconsideration is not required before seeking judicial review. If a timely petition for reconsideration is filed, the thirty (30) day period for requesting judicial review does not start until the petition is resolved. RCW 34.05.470(3).

The Final Order remains in effect even if a petition for reconsideration or petition for judicial review is filed. "Filing" means actual receipt of the document by the Adjudicative Clerk Office. RCW 34.05.010(6). This Final Order was "served" upon you on the day it was deposited in the United States mail. RCW 34.05.010(19).

Final Orders will be reported to the National Practitioner Data Bank (45 CFR Part 60) and elsewhere as provided by law. Final Orders will be placed on the Department of Health's website, otherwise disseminated as required by the Public Records Act, (chapter 42.56 RCW) and the Uniform Disciplinary Act (RCW 18.130.110). All orders are public documents and may be released.

**WASHINGTON STATE ATTORNEY GENERAL'S OFFICE AGRICULTURE & HEALTH
DIVISION**

June 28, 2018 - 1:28 PM

Transmittal Information

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Appellate Court Case Title: Arley Jimenez, Appellant v State Department of Health, Respondent
Superior Court Case Number: 17-2-03404-2

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