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STATE OF WASHINGTON  
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NO. 97637-6

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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ARELY JIMENEZ,

Petitioner,

v.

WASHINGTON STATE DEPARTMENT OF HEALTH,

Respondent.

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**DEPARTMENT'S ANSWER TO PETITION FOR REVIEW**

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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. Following an administrative hearing, the Department issued a Final Order to Arely Jimenez finding that she engaged in the unlicensed practice of medicine and naturopathy and committed unprofessional conduct under the Uniform Disciplinary Act (UDA), RCW 18.130. The Final Order was based on evidence showing Jimenez opened a clinic where she diagnosed and treated patients for a variety of conditions, including high blood pressure, Parkinson's disease, and depression. She also represented herself as a naturopathic physician in newspaper advertisements, email communication with an insurance company, and statements made to the Department's investigators. The Final Order required Jimenez to permanently cease and desist the unlicensed practice of medicine and naturopathy and pay a \$5,000 fine.

In her petition for discretionary review, Jimenez does not argue that her case meets any of the criteria established in RAP 13.4(b). Instead, she repeats the same arguments that failed in the Superior Court and Court of Appeals. The Court of Appeals correctly affirmed the Final Order under the Administrative Procedure Act (APA), RCW 34.05. Review by this Court is unwarranted and should be denied.

## **II. COUNTERSTATEMENT OF THE ISSUES**

1. Was the Department's finding of fact that Jimenez represented herself as a licensed naturopath supported by substantial evidence?
2. Did Jimenez's conduct of diagnosing, advising, and prescribing remedies for her patients' medical conditions constitute the practice of medicine?
3. Did Jimenez's conduct of practicing medicine without a license and representing herself as a naturopath constitute moral turpitude or dishonesty under RCW 18.130.180(1)?
4. Was the monetary fine imposed by the Final Order arbitrary and capricious?

## **III. COUNTERSTATEMENT OF THE CASE**

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.

Jimenez holds a Washington State Marriage and Family Therapy (LMFT) License, which has been active since 2007. Administrative Record (AR) 852, Findings of Fact, Conclusions of Law, and Final Order (FFCL) 2.1. The FFCL is attached as Appendix A. She holds no other health care credential in Washington. *Id.*

In 2014, 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 was not licensed as a naturopathic physician in Washington. AR 852. 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.

In 2015, the Department issued a Notice of Intent to Issue Cease and Desist Order and Statement of Charges against Jimenez alleging she was practicing medicine and naturopathy without a license and that the conduct violated RCW 18.130.180(1), the prohibition against moral turpitude and dishonesty. Jimenez timely requested an adjudicative proceeding, and an administrative hearing was held before a Health Law Judge. On November 4, 2016, in an Initial Order, the Health Law Judge found that Jimenez represented herself as a licensed naturopath and 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, further, that this unlicensed practice constituted unprofessional conduct against her LMFT license under RCW 18.130.180(1). AR 591-615.

Jimenez timely requested administrative review of the Initial Order. AR 619-23. On January 9, 2017, after considering all of the testimony and other evidence, and evaluating the credibility of each witness, the Department issued its Final Order that found that Jimenez was engaged in the practice of medicine and naturopathy. AR 690-718. The Final Order



directed Jimenez 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, and receive a reprimand on her LMFT license. In addition, the Final Order put her LMFT license on probation until its requirements were completed. AR 690-718.

Jimenez sought judicial review in the Superior Court, which affirmed the Department's Final Order. Jimenez appealed, and the Court of Appeals affirmed in an unpublished opinion. Appendix B. Jimenez now seeks discretionary review by this Court.

#### **IV. REASONS THIS COURT SHOULD DENY REVIEW**

Under RAP 13.4, this Court will accept a petition for discretionary review only if one of the criteria in RAP 13.4(b) is met. Jimenez provides no analysis of how the issues raised in her petition satisfy any of the requirements of RAP 13.4(b) and offers no persuasive argument or legal authority justifying review by this Court. Her petition should be denied.

##### **A. There is Substantial Evidence that Jimenez Represented Herself as a Licensed Naturopath**

The record contains substantial evidence that Jimenez represented herself as a naturopath without a license to do so. RCW 18.36A.030 prohibits a person from practicing as a naturopath or representing herself as a naturopath without a license. 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. The Secretary of Health is responsible for bringing actions against individuals practicing a health care profession without a license.

RCW 18.130.190.

Jimenez argues that there is not substantial evidence to support the finding in the Final Order that she represented herself as a naturopath. 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 as evidence sufficient 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).

Evidence in the record establishes that Jimenez 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 name (AR 754), and attempted to get Premera Blue Cross to accept her as a naturopathic physician for insurance reimbursement by stating that she was a licensed naturopath. (AR at 748).

In addition to the substantial documentary evidence, the Department’s investigators testified that she held herself out to them as a licensed naturopath. AR 898, 915. Jimenez continues to argue that the Department’s investigators lied about her statements to them and altered the Premera Blue Cross email. The Presiding Officer believed the Department’s investigators and found their testimony to be credible. AR 707. Credibility determinations are not reversed on appeal because the Presiding Officer is in the best position to judge credibility. *Neravetla v. Dep’t of Health*, 198 Wn. App. 647, 669, 394 P.3d 1028, *review denied sub nom. Neravetla v. State Health Med. Quality Assurance Co.*, 189 Wn.2d 1010 (2017). The court will accept the factfinder’s determinations of witness credibility and, ordinarily, the weight to be given to reasonable but competing inferences. *Id.*

Jimenez further argues that none of her former patients testified that she held herself out as a naturopath and this somehow shows the Department's investigators must be lying. Pet. at 6. The Court of Appeals, on review of the record stated, "given Jimenez's email to Premera Blue Cross and the testimony by Anderson and Mills that Jimenez held herself out as a naturopathic doctor to them, there is substantial evidence that she held herself out as a naturopathic doctor despite the absence of testimony from her other clients." Slip Op. at 6. Jimenez's arguments otherwise are without merit and this Court should not accept review.

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

Jimenez diagnosed, treated, and prescribed remedies for patients with a variety of conditions. Jimenez argues that her conduct was not the practice of medicine, but was instead the practice of "necicine." She further argues that because she did not prescribe drugs, her conduct did not fit into the definition of the practice of medicine. Pet. at 5, 6. The arguments fail.

In Washington, the practice of medicine is defined in statute:

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. Jimenez focuses on subsection (2) of the statute regarding whether she prescribed drugs. She disregards the other sections. Specifically, she does not address the first element of the practice of medicine, “offers or undertakes to diagnose, cure, advise or prescribe for any human disease . . . .” RCW 18.71.011(1).

Regardless of what Jimenez chooses to call it, the evidence in the record clearly demonstrates 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). 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)).

The Court of Appeals correctly held that the Department's finding that Jimenez practiced medicine was supported by the substantial evidence of each patient record and testimony of four patients. Slip Op at 7. Jimenez's argument that she did not practice medicine continues to be without merit and need not be reviewed by this Court.

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

Representing oneself as a naturopathic physician and practicing medicine without the necessary license is dishonest. A health care provider commits unprofessional conduct through 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." RCW 18.130.180(1).

Washington courts have interpreted how acts of moral turpitude and dishonesty are defined in the context of the UDA. Moral turpitude is:

[C]onduct 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).

The Presiding Officer found that Jimenez's conduct was dishonest. 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.

Jimenez argues in two ways that she should not be found to have committed unprofessional conduct based on acts of moral turpitude and dishonesty. Pet. at 3, 6. First, Jimenez claims that her good intent and lack of actual patient harm mean 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. Her misrepresentations, untruthful advertising, disregard for the health and safety of the public, and knowingly practicing beyond the scope of her LMFT license, raise concerns that she may use her position to harm members of the public. Her conduct also tends to lower the standing of the LMFT profession in the public's eyes.

Second, Jimenez claims the conclusion that she committed unprofessional conduct was arbitrary and capricious because it was not supported by substantial evidence. This claim is also without merit. To support an argument that the Department's conclusion was arbitrary and capricious, Jimenez must 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 (1995). She cannot show this. Contrary to her argument, the conclusion was based on substantial evidence that Jimenez practiced medicine without a license and represented herself as a naturopath to the public and patients as discussed above. The conclusion that Jimenez committed unprofessional conduct was not arbitrary and capricious. The Court of Appeals agreed, holding that there was substantial evidence that Jimenez falsely held herself out as a naturopath. Slip Op. at 5. It further held her conduct in this regard was dishonest and constituted unprofessional conduct under RCW 18.130.180(1), and the Department's finding in this regard was not arbitrary and capricious. *Id.* Review of Jimenez's arguments is unwarranted.

**D. The Fine Imposed Was Authorized by Statute and Was Not Arbitrary and Capricious**



The sanctions imposed against Jimenez were clearly authorized by statute and lower than the maximum allowed. Jimenez argues that the fine she was ordered to pay was too high and therefore arbitrary and capricious. However, under the statute regulating unlicensed practice of health care professions, the Secretary can issue cease and desist orders and order civil fines in the amount of \$1,000 per day of violation. RCW 18.130.190(3). In this 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. Her medical treatment of these five patients was supported by substantial evidence including patient records and testimony. 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. The Court of Appeals upheld the fine, stating, “because the fine was authorized by statute and did not exceed the amount delimited by statute, we cannot hold that it was arbitrary and capricious.” Slip Op. at 7. Again, Jimenez’s arguments do not warrant review by this Court.

**E. There is no Basis for Review Under RAP 13.4(b)**

Finally, out of an abundance of caution and because Jimenez fails to identify any basis for review as required under RAP 13.4(b), the Department will briefly address each of the criteria.

**1. This unpublished case does not conflict with existing Washington case law**

Jimenez fails to identify any Supreme Court or published appellate case with which the decision in this case conflicts. RAP 13.4(b)(1) and (2). The Department is not aware of any conflicting cases.

**2. This case does not implicate any significant constitutional questions**

Jimenez attempts to raise several constitutional issues, all of which were raised before the Court of Appeals and dismissed as without merit.

Many of Jimenez's constitutional arguments relate to criminal proceedings. This case involves an administrative proceeding and not a criminal case. First, several times in her petition she argues that the allegations against her were not proven beyond a reasonable doubt. Pet. at 6, 8. The burden of proof of beyond a reasonable doubt applies to criminal proceedings. The standard of proof applied in an unlicensed practice action is preponderance of the evidence. WAC 246-10-606(3). In addition, Jimenez raises this argument for the first time in her petition before this Court and it should not be considered. RAP 2.5.

Second, Jimenez claims constitutional violations in her arrest by the police. Pet. at 7, 10. These claims 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.

Third, Jimenez claims the Department violated her Fourteenth Amendment due process rights under the Sixth Amendment because she was denied the right to present her defense to the case. Jimenez claims that her rights to due process were violated because the Health Law Judge did not issue subpoenas for her witnesses. Pet. at 7. 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 set in March of 2016. AR 327. On March 14, 2016, she retained new counsel. AR 373. Amended charges were later filed and the hearing was continued to October 2016. AR 330-365. Her attorney was authorized to issue subpoenas and had ample time to serve them for the October hearing. Under the applicable procedural rules, the presiding officer does not issue subpoenas for parties represented by counsel. WAC 246-10-123. Her claims that she was denied due process are without merit.

Fourth, Jimenez claims additional violations of the Sixth Amendment by claiming that her attorney was ineffective. Pet. at 7, 9, 10. 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. As the Court of Appeals held, “both the Sixth Amendment and article I, section 22 apply to only criminal prosecutions and Jimenez’s probation and fine is a civil penalty, not a criminal punishment.” Slip Op. at 9 (citing *Chmela v. Dept. of Motor Vehicles*, 88 Wn.2d 385, 392, 561 P.2d 1085 (1977)). Because she is not entitled to these constitutional protections in a civil case, Jimenez’s rights were not violated.

Finally, Jimenez claims her “rights” were violated because the Department sent letters to insurance companies informing them of the disciplinary action. Pet. at 8. As the Court of Appeals held, Jimenez first raised this argument in her reply brief and it declined to consider them. RAP 10.3(c). Slip Op. at 10. There is also no evidence in the record that such letters exist. This claim is without merit.

All of these constitutional arguments are without merit and do not constitute significant constitutional issues that warrant review by this Court.

**3. This case is a typical judicial review under the APA and does not involve an issue of substantial public interest**

This case does not involve an issue of substantial public interest, as the principal issues before the Court of Appeals were specific to the facts of this case—i.e., whether there was substantial evidence to support the findings. RAP 13.4(b)(4). The Court of Appeals’ affirmation of the

Department's Final Order breaks no legal ground and merely requires Jimenez to comply with the laws governing the licensing and discipline of health care professionals in Washington. The case is an unremarkable judicial review of an administrative order under the Administrative Procedure Act. It does not warrant review under RAP 13.4(b).

#### V. CONCLUSION

The Final Order in this case is supported by substantial evidence in the record and was not arbitrary and capricious. The Superior Court and Court of Appeals affirmed it. Jimenez has not demonstrated any basis for this Court's review. Her petition should be denied.

RESPECTFULLY SUBMITTED this 24 day of October 2019.

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**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 through the Washington State Appellate Courts'

Portal 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 24 day of October 2019, at Olympia, Washington.

/s/ Krystle Berry

KRYSTLE BERRY

Legal Assistant

**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  
 )

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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 11<sup>th</sup> 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

**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.

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FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND FINAL ORDER

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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.<sup>1</sup>

#### 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

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<sup>1</sup> 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.<sup>2</sup>

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

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<sup>2</sup> 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.<sup>3</sup> 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.

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<sup>3</sup> 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:<sup>4</sup>

- 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.<sup>5</sup>

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<sup>4</sup> 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.

<sup>5</sup> 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).<sup>6</sup> These institutions are accredited, which means the institution is recognized as having sufficient academic standards to qualify graduates for professional practice.<sup>7</sup> 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).<sup>8</sup> 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

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<sup>6</sup> Respondent did not identify the dates of these degrees.

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

<sup>8</sup> 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 “*nedicine*,” which she describes as an alternative medical practice based upon the science of information and quantum physics.<sup>9</sup> The *nedicine* 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.<sup>10</sup> 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 *nedicine* 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 *nedicine*.<sup>11</sup> The

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<sup>9</sup> According to Ms. Jackson, the term “*nedicine*” 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).

<sup>10</sup> 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).

<sup>11</sup> Ms. Jackson testified that the online *nedicine* 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. *Nedicine* 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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> There is no evidence that Respondent contacted the state of

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examinations.

<sup>12</sup> There are approximately 200 graduates holding medicine licenses.

<sup>13</sup> Ms. Jackson admits she is not licensed to practice law.

<sup>14</sup> 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 Physicians<sup>15</sup> 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.

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<sup>15</sup> 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.<sup>16</sup> 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 9-9 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

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<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup> 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,<sup>19</sup> 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

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<sup>17</sup> “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.

<sup>18</sup> “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).

<sup>19</sup> 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.”<sup>20</sup> 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

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<sup>20</sup> 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:

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FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND FINAL ORDER

Page 26 of 27

Master Case Nos. M2015-453 & M2015-629

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.

RICHARD D. JOHNSON,  
Court Administrator/Clerk

*The Court of Appeals*  
of the  
*State of Washington*  
*Seattle*

DIVISION I  
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August 5, 2019

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Arley Jimenez  
981 Diane Ave  
Oak Harbor, WA 98277

CASE #: 79690-9-1  
Arley Jimenez, Appellant v State Department of Health, Respondent  
Thurston County, Cause No. 17-2-03404-2

Counsel:

Enclosed is a copy of the opinion filed in the above-referenced appeal which states in part:

"We affirm."

Counsel may file a motion for reconsideration within 20 days of filing this opinion pursuant to RAP 12.4(b). If counsel does not wish to file a motion for reconsideration but does wish to seek review by the Supreme Court, RAP 13.4(a) provides that if no motion for reconsideration is made, a petition for review must be filed in this court within 30 days.

In accordance with RAP 14.4(a), a claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed waived.

Should counsel desire the opinion to be published by the Reporter of Decisions, a motion to publish should be served and filed within 20 days of the date of filing the opinion, as provided by RAP 12.3 (e).

Sincerely,



Richard D. Johnson  
Court Administrator/Clerk

LAW

Enclosure

c: The Honorable Christine Schaller

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ARELY JIMENEZ,	)	
	)	No. 79690-9-1
Appellant,	)	
	)	DIVISION ONE
v.	)	
	)	
WASHINGTON STATE DEPARTMENT	)	UNPUBLISHED OPINION
OF HEALTH,	)	
	)	FILED: August 5, 2019
Respondent.	)	
<hr/>		

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

FACTS

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

school to study the practice of Ñedicine.<sup>1</sup> At the end of the coursework, the “American Ñedicine Licensing Board, Inc.” issued Jimenez a license to practice Ñedicine and assured her that the license was valid to practice nationwide. Jimenez never obtained a license to practice medicine or naturopathy from the Department.

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

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

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<sup>1</sup> Beverly Jackson, who issued Jimenez’s doctorate of Ñedicine degree, described Ñedicine as a branch of alternative medicine that is based on quantum electrodynamics and quantum physics.

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

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

#### UNPROFESSIONAL CONDUCT

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

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

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

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

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

Here, the Department found that

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

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

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

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



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

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

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

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

#### SANCTIONS

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

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

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

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

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

### CONSTITUTIONAL VIOLATIONS

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

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

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

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

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

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

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

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

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

TRIAL COURT PROCEEDINGS


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

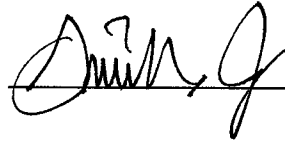
As the reviewing court, we sit in the same position as the superior court and apply the APA standards directly to the record before the agency. King County Pub. Hosp. Dist. No. 2 v. Dep't of Health, 178 Wn.2d 363, 372, 309 P.3d 416 (2013). "[W]e do not give deference to the superior court's rulings."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

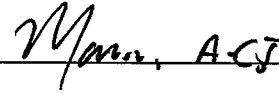
Jimenez argues that the trial court erred both in granting the Department's motion to strike exhibits attached to her briefing and in considering an unpublished federal court order attached as an appendix to the Department's brief. Additionally, Jimenez argues that the trial court misstated the record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

We affirm.

WE CONCUR:

  
\_\_\_\_\_

  
\_\_\_\_\_

  
\_\_\_\_\_

**ATTORNEY GENERAL'S OFFICE**

**October 24, 2019 - 10:47 AM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 97637-6  
**Appellate Court Case Title:** Arely Jimenez v. Washington State Department of Health  
**Superior Court Case Number:** 17-2-03404-2

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