

**OREGON BOARD OF NATUROPATHIC EXAMINERS**  
**OF THE STATE OF OREGON**

In the Matter of the License to Practice as a Naturopathic Physician of:  <b>RICHARD M. FINLEY, N.D.</b>	) <b>FINAL ORDER</b> ) ) OAH Case No.: 800385 ) Agency Case No.: N07-07-07
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The Oregon Board of Naturopathic Examiners hereby adopts and incorporates by reference the attached proposed order, dated April 1, 2008. The proposed order is adopted in its entirety, but with the following correction of a typographical error:

The word "of" is deleted from the fifth paragraph of the Opinion Section, so that the paragraph reads, "Licensee violated ORS 685.110(23) by failing to respond in a timely manner to a request for information regarding a complaint or the investigation of a complaint by the Board."

**ORDER**

Dr. Finley's license to practice naturopathic medicine, license number 0321, is hereby **REVOKED**.

Dated this 15<sup>th</sup> day of May, 2008.

Signature on file

Dr. Rick Marinelli, N.D.

Chair

Oregon Board of Naturopathic Examiners

Date of Mailing: May 2, 2008

**NOTICE OF OPPORTUNITY FOR JUDICIAL REVIEW**  
**(COURT OF APPEALS)**

You are entitled to judicial review of this Order pursuant to ORS 183.482. Judicial Review may be initiated by filing a petition for review with the Oregon Court of Appeals within 60 days from the date this Order was mailed to you.



**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
BOARD OF NATUROPATHIC EXAMINERS**

In the Matter of the License to Practice as a Naturopathic Physician of:	) <b>PROPOSED ORDER</b> ) ) OAH Case No.: 800385 ) Agency Case No.: N07-07-07
<b>RICHARD M. FINLEY, N.D.</b>	

**HISTORY OF THE CASE**

On January 15, 2008, the Board of Naturopathic Examiners (Board) issued a Notice of Proposed Disciplinary Action (License Revocation) to Richard M. Finley N.D. (Licensee). On or about January 30, 2008, Licensee requested a hearing.

On February 7, 2008, the Board of Naturopathic Examiners referred the hearing request to the Office of Administrative Hearings (OAH). Administrative Law Judge (ALJ) Robert L. Goss was assigned to preside at the hearing. On March 17, 2008, the Board issued an Amended Notice of Proposed Disciplinary Action (License Revocation) to Licensee. The only change from the original January 15, 2008 notice was an additional statutory reference to the authority of the Board to conduct investigations.

A hearing was held on March 24, 2008, in Portland, Oregon. Licensee appeared without counsel and testified. Anne Walsh appeared as the authorized representative of the Board. The Board was represented by Assistant Attorney General Johanna Matanich. Testifying on behalf of the Board was Shane Riedman (Investigator Riedman), an investigator with the Board at the time of the Board's investigation and original action. The record closed on March 24, 2008.

**ISSUES**

1. Whether Licensee violated ORS 685.110(23) by disregarding the Board's requests for information regarding the Board's investigation of a complaint involving Licensee.
2. If the above violation occurred, whether a revocation of Licensee's license to practice as a naturopathic physician is the appropriate sanction.

**EVIDENTIARY RULING**

Exhibits A1 through A11, offered by the Board, were admitted into the record. Licensee offered no exhibits.

## FINDINGS OF FACT

1. Licensee is a licensed naturopathic physician currently practicing in Tigard, Oregon and is subject to the jurisdiction of the Board. (Ex. A11, Test. of Licensee and Investigator Riedman.)

2. On July 16, 2007, the Board received a complaint regarding Licensee, the substance of which was that Licensee had suffered a stroke and as a result, Licensee's cognitive abilities were disabled. The complaint also specifically questioned whether Licensee could safely practice as a naturopathic physician. (Test. of Investigator Riedman.)

3. To investigate the complaint further, Investigator Riedman issued a subpoena duces tecum for Licensee's inpatient medical records from Meridian Park Hospital and when those records were obtained he learned that Licensee had been admitted to that hospital on June 25, 2007 and was diagnosed as having suffered a stroke. The medical records also included several references to concerns raised by the physicians at Meridian Park Hospital regarding Licensee's cognitive abilities. Specifically, Licensee's physicians were concerned that Licensee insisted on leaving the hospital but was thought to be somewhat unsafe, that rehabilitation was recommended and that it was their opinion that Licensee had some cognitive disability. According to the medical records, Licensee admitted in the hospital that he had fallen and had been experiencing dizziness before coming to the hospital. The treating physician also expressed specific concerns about Licensee resuming his medical practice. (Exs. A1 and A2-Pages 2,3, 13 and 29.)

4. Investigator Riedman contacted Licensee's treating physician at Meridian Park Hospital (Dr. Ash), who is a neurologist. Dr. Ash was convinced after treating Licensee in June 2007 that Licensee should not be practicing medicine. Dr. Ash was concerned that Licensee was not able to make decisions about his health care, and that Licensee's wife was making those decisions for Licensee. Dr. Ash also stated to the investigator that he believed that Licensee needed a neurological examination. (Test. of Investigator Riedman.)

5. Investigator Riedman was unable to find any evidence that Licensee had obtained any outpatient services after he left the hospital. (Test. of Investigator Riedman, Ex. A3.)

6. Following the receipt of the above information, Investigator Riedman believed that further investigation was warranted. He sent a letter to Licensee dated October 4, 2007, by certified mail. Licensee's wife signed for the letter. The letter indicated the Board's concern that Licensee's stroke may have had an adverse impact on his intellectual processes. The letter asked for information about the status of Licensee's recovery and the current state of his medical practice. The letter gave Licensee the option to respond by either writing or calling Investigator Riedman. Licensee did not respond to the letter. (Ex. A4, test. of Investigator Riedman.)

7. Concerned that he had received no response to his earlier letter, on October 25, 2007, Investigator Riedman sent another letter requesting information to Licensee, via certified and first class mail, this time indicating that Licensee was required under ORS 685.110(23) to respond in a timely manner to a request for information regarding an investigation of a

complaint. Licensee's wife signed for that letter as well. This letter also provided Licensee with another copy of the October 4, 2007 letter. The letter gave a deadline of 3 PM, November 1, 2007 for Licensee's written response. (Ex. A5.)

8. Licensee sent the Board a letter dated November 2, 2007, which the Board received on November 6, 2007. The letter was not responsive to Investigator Riedman's two previous letters and did not contain the information requested, other than general statements that "everything is fine here" and that "all patients that call are well taken care of." (Ex. A6.)

9. Following Licensee's November 2, 2007 letter to the Board, Investigator Riedman had concerns that Licensee was not going to cooperate with the Board's investigation, so he prepared a subpoena duces tecum and mailed it to Licensee on November 16, 2007. The subpoena specifically asked that Licensee provide the Board with all chart notes and medical records, including but not limited to initial intake forms, consent forms, patient visit records, all diagnostic tests and the results, correspondence with other practitioners, drug prescriptions, and hospital records for all patients, clients, customers or other persons that received an services from Licensee or any other practitioner at Licensee's clinic from June 27, 2007 through November 16, 2007. The reference to "other practitioners" was an indication of the Board's concerns that Licensee's wife may be providing services at the clinic. As far as Investigator Riedman could determine, Licensee's wife is not licensed to offer any medical services. (Ex. A7, test. of Investigator Riedman.)

10. Licensee, through counsel, moved to quash the subpoena duces tecum. Licensee's counsel also suggested that Licensee undergo a medical examination. (Ex. A8.)

11. By letter dated December 5, 2007, the Assistant Attorney General representing the Board responded to the motion to quash by stating the Board's authority to compel production of the asked for documents, but also indicating that Licensee would not be required to comply with the subpoena if he underwent a neuro-psychological evaluation. Licensee declined the opportunity to undergo the evaluation and, as of the date of the hearing, had not complied with any requests for information sent to him by the Board regarding their investigation. (Ex. A9, test. of Investigator Riedman.)

12. Licensee does not intend to provide the information requested by the Board. (Test. of Licensee, Exs. A6 and A11.)

## CONCLUSIONS OF LAW

1. Licensee violated of ORS 685.110(23) by disregarding the Board's requests for information regarding the Board's investigation of a complaint involving Licensee.

2. Revocation of Licensee's license to practice as a naturopathic physician is the appropriate sanction.

## OPINION

In a contested case, the proponent of a fact or position has the burden of producing evidence to support that fact or position. ORS 183.450(2). In this case, the Board has the burden of proving Licensee violated Board statutes or rules and that his license should be revoked. Proof must be by a preponderance of the evidence. *Gallant v. Board of Medical Examiners*, 159 Or App 175, 180 (1999).

### Violation

ORS 685.110(23) grants the Board the authority to sanction a licensee, including suspending or revoking a license, when the licensee fails to respond in a timely manner to a request for information regarding a complaint or the investigation of a complaint by the board.

In this case, the Board received a complaint that Licensee may not be able to safely practice medicine due to a stroke. The Board investigated further and obtained medical records regarding Licensee's admission to a hospital, following an episode of dizziness and falling down. Those medical records substantiated the complaint and included the diagnosis of a stroke and the treating physician's own opinion that Licensee may not be able to resume his practice. The Board's investigator also contacted the treating physician, who provided further corroboration.

The Board has the authority to conduct investigations of any alleged violations of its statutes. ORS 685.225<sup>1</sup>. Also, see generally, ORS 676.165 to 676.180. The Board needs that investigative capability to determine whether there may be naturopathic physicians whose ability to safely practice is compromised. For those investigations to be meaningful, the Board expects and requires its licensees to fully cooperate. As more fully described in the Findings above, the Board attempted several times to investigate the complaint by first asking, then requiring Licensee to provide the relevant information it needed to complete its investigation. Licensee has never provided an appropriate response to the two letters and the subpoena duces tecum issued to him by Board, nor did he agree to undergo a neuro-psychological evaluation that the Board offered in lieu of providing the requested information about his practice. Those requests from the Board were reasonable in scope and were essential to the Board's completion of its investigation.

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#### <sup>1</sup> 685.225 Investigation of complaints and alleged violations; subpoenas.

(1) Upon the complaint of any citizen of this state, or upon its own motion, the Board of Naturopathic Examiners may investigate any alleged violation of this chapter.

(2) In the conduct of investigations, the board may:

(a) Take evidence;

\* \* \*

(d) Require answers to interrogatories; and

(e) Compel the production of books, papers, accounts, documents and testimony pertaining to the matter under investigation.

(3) In exercising its authority under subsection (2) of this section, the board may issue subpoenas over the signature of the board chairperson and the seal of the board in the name of the State of Oregon.

Licensee violated of ORS 685.110(23) by failing to respond in a timely manner to a request for information regarding a complaint or the investigation of a complaint by the Board.

As an aside, let me address an issue that consumed a lot of time at the hearing: Licensee's contention that he is not cognitively impaired. Licensee intended to offer at hearing several witnesses who could testify about their opinion of Licensee's cognitive abilities. Effort was made at hearing to explain to Licensee that the issue presented by the Board in this case was not whether Licensee's cognitive abilities were impaired. This record suggests that the Board has not yet made a determination of whether Licensee is impaired. Rather, the issue was Licensee's failure to respond to the Board's requests for information regarding their investigation of the complaint. Because the issue at hearing was limited to Licensee's failure to cooperate with the Board's investigation, testimony from witnesses regarding their opinion of whether Licensee is cognitively impaired was not relevant and I sustained the Board's objection at hearing to such testimony being part of this record.

### **Sanction**

As described above in ORS 685.110(23), the Board has discretion to, among other things, suspend or revoke the license when a violation such as the one established here has occurred. The Board proposes in this case to revoke the license, rather than suspend. The Board argues that there are aggravating circumstances that warrant a revocation of the license, based on the fact that Licensee deliberately and repeatedly failed to properly respond to the Board's requests for information and has stated that he has no intention of responding to Board's request for information about this investigation in the future. I find these aggravating factors to be persuasive and conclude that revocation is an appropriate sanction in this case.

### **ORDER**

I propose the Board of Naturopathic Examiners issue an order revoking Licensee's license as a naturopathic physician.

**Robert L. Goss**

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Administrative Law Judge  
Office of Administrative Hearings

ISSUANCE AND MAILING DATE: April 1, 2008

## EXCEPTIONS

Exceptions in writing may be filed with the Board no later than 20 days after a Proposed Order is issued. Oral argument on the written exceptions may be requested when written exceptions are filed with the Board. The Board may grant or deny a request for oral arguments on the written exceptions. Exceptions must be delivered or mailed to:

Anne Walsh, Executive Officer  
Board of Naturopathic Examiners  
800 NE Oregon Street, Ste. 407  
Portland OR 97232-2162

**APPENDIX A  
LIST OF EXHIBITS CITED**

- Ex. A1: Subpoena duces tecum for Licensee medical records dated July 23, 2007.
- Ex. A2: Medical records for Licensee from Meridian Park Hospital dated July 30, 2007.
- Ex. A3 Subpoena duces tecum for Licensee's out-patient records dated August 16, 2007 and response dated August 31, 2007.
- Ex. A4 Letter from Board investigator to Licensee dated October 4, 2007.
- Ex. A5 Letter from Board investigator to Licensee dated October 25, 2007.
- Ex. A6 Letter from Licensee to Board dated November 2, 2007.
- Ex. A7 Subpoena duces tecum to Licensee dated November 16, 2007.
- Ex. A8 Email to Board from counsel for Licensee dated November 28, 2007.
- Ex. A9 Letter from AAG Matanich to counsel for Licensee dated December 5, 2007.
- Ex. A10 Letter from Licensee to Board dated February 2, 2008.
- Ex. A11 License verification.

**CERTIFICATE OF MAILING**

On April 1, 2008, I mailed the foregoing Proposed Order in OAH Case No. 800385.

By: First Class Mail

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