

BEFORE THE
BOARD OF NATUROPATHIC MEDICINE
STATE OF OREGON

In the Matter of the License of:

Stephen Albin, ND

Licensee.

Case No. N17-03-11

**NOTICE OF PROPOSED DISCIPLINARY
ACTION AND
OPPORTUNITY FOR HEARING -
AMENDED**

1.

The Board of Naturopathic Medicine (Board) is the state agency responsible for licensing, regulating and disciplining naturopathic physicians in the State of Oregon, pursuant or Oregon Revised Statutes (ORS) chapter 685 and Oregon Administrative Rules (OAR) chapter 850. Stephen Albin, N.D. (Licensee) is a licensed naturopathic physician in Oregon, and is subject to the jurisdiction of the Board.

2.

Pursuant to ORS 685.110(8), ORS 685.110(14), 850-050-00120(5)(d), OAR 850-050-0010(1)(a)(B), OAR 850-050-0010(1)(c)(B), OAR 850-050-0010(1)(c)(C), OAR 850-0500010(1)(c)(D), the Board hereby proposes to take disciplinary action against Licensee's license to practice naturopathic medicine, on the grounds described in the following paragraphs. For each violation, the Board may impose a civil penalty up to \$5,000, a term of probation, a letter of reprimand and license limitation, suspension or revocation.

3.

Licensee started treating Patient in May of 2014 for low thyroid, panic attacks, insomnia, low back pain and Fibromyalgia. Patient asked Licensee for assistance in getting off Fentanyl and Percocet for pain.

4.

Patient had office visits with Licensee on average every three to four days from June 2014- April 2017.

5.

On August 1, 2014; Licensee treated Patient for kidney stones and per Patient's Prescription Drug Monitoring Report (PDMP), Licensee prescribed Patient Zolpidem Tartrate (Ambien) 5mg, 20#. Licensee did not write any chart notes relating to that prescription.

6.

On August 8, 2014; per Patient's PDMP report, Licensee prescribed Patient Zolpidem Tartrate (Ambien) 5mg, 20#. Licensee did not write any chart notes relating to that prescription.

7.

On or about August 22, 2014; per Patient's PDMP report, Licensee prescribed Patient Zolpidem Tartrate (Ambien) 5mg, 60#. Licensee did not write any chart notes relating to that prescription.

8.

On September 19, 2014; per Patient's PDMP report Licensee prescribed Patient Zolpidem Tartrate (Ambien) 5mg, 60#. Licensee did not write any chart notes relating to that prescription.

9.

On November 18, 2014; per Patient's PDMP report Licensee prescribed Patient Zolpidem Tartrate (Ambien) 5mg, 60#, plus an additional refill. Licensee did not write any chart notes relating to that prescription.

10.

On December 8, 2014; Licensee received a request from Bi-Mart pharmacy to authorize a refill of Zolpidem Tartrate (Ambien) 5mg, 60# for CO. Per Patient's PDMP report, Licensee prescribed the medication. Licensee did not write any chart notes relating to refilling that prescription.

11.

Licensee treated Patient on November 1, 2016 and wrote the exact same chart note from Patient's previous two appointments regarding pain in the lower lumbar, vibrator massage, Bowen, adjust 3 (three) areas, ultrasound 15 minutes. Licensee failed to write a subjective chart note regarding Patient at the visit, nor did he state his objective assessment or include a plan and/or explanation for treatment.

12.

On or about December 13, 2016, and January 23, 2017, Licensee personally transported Patient to two (2) cataract surgery appointments. On both occasions, Licensee charted the transport of Patient as an office visit and did not write chart notes related to transporting her to and from cataract eye surgery.

13.

On December 13, 2016, Licensee wrote the exact same chart note from Patient's previous three (3) appointments regarding pain in the lower lumbar, vibrator massage, Bowen, adjust 3

(three) areas, ultrasound 15 minutes. Licensee failed to write a subjective chart note regarding Patient at the visit, nor did he state his objective assessment or include a plan and/or explanation for treatment.

14.

On January 23, 2017, Licensee wrote the exact same chart note from Patient's previous four (4) appointments regarding pain in the lower lumbar, vibrator massage, Bowen, adjust 3 (three) areas, ultrasound 15 minutes. Licensee failed to write a subjective chart note regarding Patient at the visit, nor did he state his objective assessment or include a plan and/or explanation for treatment.

15.

Licensee treated Patient on February 23, 2017 and wrote the exact same chart note from Patient's previous appointments regarding pain in the lower lumbar, vibrator massage, Bowen, adjust 3 (three) areas, ultrasound 15 minutes. Licensee failed to write a subjective chart note regarding Patient at the visit, nor did he state his objective assessment or include a plan and/or explanation for treatment.

16.

Between March 2015-September 2015, Licensee wrote several letters attesting to the need for accommodations and assistance for Patient. The dates of the letters do not correlate to office visits or treatments by Licensee and Licensee did not write, or wrote minimal chart notes during that time period to explain or support the letters.

17.

Licensee and Patient engaged in multiple email and text conversations related to her health and treatment during the June 2014-April 2017 treatment period. Licensee wrote minimal chart notes referencing the multiple text and email messages exchanged with Patient.

18.

Board Patient Charting Guidelines state that "Each [patient] visit must be entered in the patient's chart and must consistently reflect the format chosen by the ND to record time spent at the visit, an evaluation, planning and follow-up intervals. Documentation of each visit must reflect the SOAP [subjective, objective, assessment, plan], or other format of the practitioners choosing, which includes all pertinent information to support patient care. Telephone and written communications, including electronic communications, must be kept as part of the patient chart.

19.

The above conduct constitutes a violation of OAR 850-050-0010(1) (a) (B) – Inadequate Charting and ORS 685.110(8) – Committing negligence related to the practice of naturopathic medicine.

20.

On or about May 16, 2014, Patient received a prescription from a different provider for Levothyroxine 25 mcg, 30# (a medication to treat low thyroid activity and to treat or suppress different types of goiters). On or about November 3, 2014, Licensee prescribed the same medication with a dosage of 12.5mcg, 30#. Licensee did not perform additional / updated labs prior to prescribing the medication.

21.

TSH (thyroid stimulating hormone) is a hormone that the pituitary gland produces in varying amounts in order to stimulate the thyroid gland to produce hormones called thyroxine (T4) and triiodothyronine (T3). Lab tests are necessary to determine the Patient's level of TSH in order to ensure the most effective medication and dosage is prescribed. Licensee failing to order lab tests prior to prescribing constitutes a violation of OAR 850-050-0010(1)(c)(B) – Negligent Treatment.

22.

Licensee engaged in unprofessional conduct by not ensuring proper boundaries of the doctor patient relationship. On several occasions during the June 2014-April 2017 treatment period Licensee and CO exchanged gifts, personal emails and texts. Licensee also did personal favors for Licensee and saw Patient socially outside of the office. The Patient stated repeatedly she felt emotionally harmed by Licensee's actions.

23.

Per ORS 676.150 (B)(d); Unprofessional conduct means conduct unbecoming a licensee or detrimental to the best interest of the public, including conduct contrary to the recognized standards of ethics of the licensee's profession or conduct that endangers the health, safety or welfare of a patient or client.

24.

Licensee's conduct constitutes violations of ORS 685.110(8) – Committing negligence related to the practice of naturopathic medicine and OAR 850-050-0010(1)(c)(C) – Conduct contrary to the recognized standards of ethics.

25.

On or about February 28, 2017 in an email to Licensee, Patient asked Licensee for a referral to a psychiatrist. Licensee did not refer Patient to another physician as requested.

26.

Licensee did not refer Patient to another provider once the doctor patient relationship was breached.

27.

The above conduct constitutes two violations of OAR 850-050-0010(1)(c)(D) – Failure to refer when referral is appropriate.

28.

On April 24, 2017, a Temporary Stalking Order was filed by Patient in Polk County Circuit Court against Licensee.

29.

On April 25, 2017, Licensee was served with the above referenced Stalking Protective Order.

30.

Licensee did not report to the Board that he was served with a Stalking Protective Order filed by Patient, constituting a violation of OAR 850-050-0120(5)(d) – Licensee must self-report within 10 business days, any official action brought against licensee by a patient or former patient.

31.

The Oregon Prescription Drug Monitoring Program (PDMP) is a tool to help healthcare providers and pharmacists provide patients better care in managing their prescriptions. It contains information provided by Oregon-licensed retail pharmacies.

32.

Pharmacies submit prescription data to the PDMP system for all Schedules II, III and IV controlled substances dispensed to Oregon residents. The protected health information is collected and stored securely.

33.

The program supports the appropriate use of prescription drugs. The information is intended to help people work with their healthcare providers and pharmacists to determine what medications are best for them.

34.

Licensee admitted that he prescribed medication to Patient without being enrolled in PDMP. Failing to check the Patient's PDMP to ensure Patient was not being prescribed medication from another provider could have led to over prescribing and/or prescribing medication that could have adversely affected Patient's health and safety. This conduct constitutes a violation of ORS 685.110(8) – Committing negligence related to the practice of naturopathic medicine.

35.

For the foregoing violations, the Board proposes the following discipline:

- A. Civil penalties in the total amount of two thousand five hundred dollars (\$2,500); with \$2,500 suspended, and to be forgiven upon successful completion of the probation term referenced below. Should Licensee fail to successfully complete the conditions of the probation term described below, all \$2,500 in civil penalties shall become due and payable immediately.

- B. One year of probation, with the following conditions:
 - i. In addition to the Board's regular continuing education requirements, Licensee shall complete:
 - a. "Introduction of Professional Ethics Boundaries & Crossings" provided by Professional Boundaries, Inc.
 - b. Two (2) hours relating to best practices in writing patient chart notes.

 - ii. Licensee shall submit to the Board or Board representative 10 patient charts for review within 15 days of the end of each quarter.

 - iii. Licensee shall comply with the statutes, rules and orders of the Board.

36.

NOTICE OF OPPORTUNITY FOR HEARING

Licensee is entitled to a hearing as provided by the Administrative Procedures Act (ORS Chapter 183). If you want a hearing, you must file a written request for hearing with the Board within 21 days from the date this notice was mailed. You must mail any request for hearing to

Oregon Board of Naturopathic Medicine, 800 NE Oregon Street, Suite 407, Portland, OR 97232.

The request for hearing must be received by the Board within 21 days from the date of mailing of this notice, and must be accompanied by a written answer to the charges contained in this Notice. If a request for hearing is not received within 21 days, the right to hearing is waived.

37.

If you request a hearing, you will be notified of the time and place of the hearing. Before the hearing, you will receive information on the procedures, right of representation, and other rights of parties related to the conduct of the hearing. An administrative law judge from the Office of Administrative Hearings will preside at any hearing. ORS 183.635.

38.

An answer is required to this Notice, pursuant to OAR 850-001-0015, due to the complexity of the matters alleged above. The answer shall be made in writing to the Board and shall include an admission or denial of each factual matter alleged in this Notice, and a short plain statement of each relevant affirmative defense Licensee may have. Except for good cause, factual matters alleged in this notice and not denied in the answer shall be presumed admitted; failure to raise a particular defense in the answer will be considered a waiver of such defense; and new matters alleged in the answer (affirmative defenses) shall be presumed to be denied by the agency and evidence shall not be taken on any issue not raised in the Notice and answer.

39.

If you fail to request a hearing within 21 days, withdraw a request for a hearing, notify the Board or administrative law judge that you will not appear or fail to appear at a scheduled

hearing, the Board may issue a final order by default revoking your license. If the Board issues a default order, the contents of the Board's file automatically becomes part of the evidentiary record of this disciplinary action for the purpose of proving a prima facie case.

NOTICE TO ACTIVE DUTY SERVICEMEMBERS: Active duty service members have a right to stay these proceedings under the federal Service members Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

DATED this 14 day of Feb 2018.

BOARD OF NATUROPATHIC MEDICINE
State of Oregon

SIGNATURE ON FILE


Mary-Beth Baptista, Executive Director.