

BEFORE THE  
BOARD OF NATUROPATHIC MEDICINE  
STATE OF OREGON

In the Matter of the License of:	Case No. 22-11-29
Dr. Nesbitt Durr Elmore, ND	NOTICE OF PROPOSED DISCIPLINARY ACTION
Licensee	AND OPPORTUNITY FOR HEARING

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 to Oregon Revised Statutes (ORS) chapter 685 and Oregon Administrative Rules (OAR) chapter 850. Dr. Nesbitt Durr Elmore, ND (Licensee) is a licensed naturopathic physician in Oregon and is subject to the jurisdiction of the Board.

2.

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.

Dr. Nesbitt Durr Elmore was first licensed in Oregon in 1984. Licensee got his first DEA license and began prescribing controlled substances in 2020. Licensee treated Patient 1 from January 2021-November 2022. Licensee prescribed concurrent doses of different opioids (Oxycodone and Hydrocodone) of varying strengths to Patient 1 during this time. Due to Licensee's prescribing, Patient 1's morphine milligram equivalents (MME) ranged from 95 in January 2021, to its highest of 389.05 on August 23, 2022.

4.

During the January 2021-November 2022, period of treatment Licensee did not enter a pain contract with Patient 1, did not give Patient 1 urine drug screens, nor did he check Patient 1's PDMP record.

5.

Per Oregon Chronic Opioid Prescribing Guidelines, when opioids are started, clinicians should prescribe the lowest effective dosage. Clinicians should use caution when prescribing opioids at any dosage, should carefully reassess evidence of individual benefits and risks when increasing dosage to  $\geq 50$  MME/day, and should avoid increasing dosage to  $\geq 90$  MME/day or carefully justify a decision to titrate dosage to  $\geq 90$  MME/day.

6.

Per Oregon Chronic Opioid Prescribing Guidelines, clinicians should review the patient's history of controlled substance prescriptions using state Prescription Drug Monitoring Program (PDMP) data to determine whether the patient is receiving opioid dosages or dangerous combinations that put him or her at high risk for overdose. Clinicians should review PDMP data when starting opioid therapy for chronic pain and periodically during opioid therapy for chronic pain, ranging from every prescription to every three months.

7.

Per Oregon Chronic Opioid Prescribing Guidelines, when prescribing opioids for chronic pain, clinicians should use urine drug testing before starting opioid therapy and consider urine drug testing at least annually to assess for prescribed medications as well as other controlled prescription drugs and illicit drugs.

8.

Per Oregon Acute Opioid Prescribing Guidelines, Licensee should provide patient education about pain and expected duration before procedures or after injuries. Review with patient the risks and side effects of opioids. Provide an opioid safety handout and review with patient before prescribing. A signed agreement with the patient – a "pain contract" – is likewise essential. These should be readdressed and updated periodically, at least annually.

9.

Licensee treated Patient 1 from January 2021-November 2022. Licensee prescribed concurrent doses of different Opioids, Oxycodone and Hydrocodone of varying strengths to Patient 1 during this period. Patient 1's MME was 95 at its lowest in January 2021, to its highest of 389.05 on August 13, 2022. During this period of treatment Licensee did not conduct urine drug screens to assess for prescribed medications as well as other controlled prescription drugs and illicit drugs. Licensee did not check Patient 1s PDMP record to determine whether Patient 1 was receiving opioid dosages or dangerous combinations that put them at high risk for overdose. Licensee did

not enter a written pain management contract with Patient 1, to set forth the expected duration of prescribing and acknowledge the risks and side effects of opioids. The aforementioned practice and inaction is a violation of 850-050-0010(1)(c)(A) – Negligent Prescribing.

10.

Licensee began treating Patient 2 in 2019, by continuing a prescription for Oxycodone Patient 2 said was initiated by their previous medical provider to treat their peripheral neuropathy. Patient 2 also requested Licensee prescribe Diazepam because they had previously taken it and wanted to try it again. Licensee wrote concurrent prescription for Oxycodone and Diazepam on October 26, 2022. Licensee did not request Patient 2's prior medical charts to confirm their stated diagnosis or previous prescriptions for Oxycodone or Diazepam. Licensee did not note in Patient 2's chart his discussion with Patient 2 the risks of concurrent use of opioids and benzodiazepines.

11.

Licensee prescribed various amounts of Oxycodone 5 mg tabs to Patient 2, every 45 days from October 2021 through October 2022. During this period, Patient 2 MME ranged from 22.50 to 90. Licensee did not make a chart note providing the basis for prescribing, did not chart a sufficient subjective / objective link for the nature of the diagnosis, or sufficient information to support the duration of prescribing. During the period of treatment, Licensee did not check Patient 2's PDMP record, did not conduct urine screens, nor did they enter a pain management contract.

12.

The CDC, Oregon Acute Oregon Acute Opioid Prescribing Guidelines and Oregon Chronic Opioid Prescribing Guidelines recommend doctors avoid prescribing opioids and benzazepines at the same time, because the combination heightens the chances for side effects or overdosing. Oregon Acute Opioid Prescribing Guidelines and Oregon Chronic Opioid Prescribing Guidelines also recommend clinicians should review the patient's medical history and history of controlled substance prescriptions.

13.

Licensee did not request Patient 2's medical history to confirm Patient 2's peripheral neuropathy and central sensation disorder diagnosis or previous prescriptions for Oxycodone and Diazepam. Licensee wrote concurrent prescription for Oxycodone and Diazepam on October 26, 2022. Oxycodone is not indicated for peripheral neuropathy and central sensation disorder diagnosis. Licensee's prescribing Oxycodone and Diazepam together, without confirming prior prescriptions, and prescribing Oxycodone for peripheral neuropathy is a violation of 850-050-0010(1)(c)(A) – Negligent Prescribing and 850-050-0010(1)(c)(B) Negligent Treatment.

14.

OHA guidelines state clinicians should strongly consider additional evaluation of the benefits and risks of higher dose opioid therapy, document clinical justification for the higher dose in the medical record and obtain and document pain management consultation. Accepted method of documentation employed by healthcare providers to write out notes in a patient's chart in SOAP format - subjective, objective, assessment, and plan. Documenting patient encounters in the medical record is an integral part of practice.

15.

Licensee failure to make a chart note providing the basis for prescribing, with sufficient subjective / objective link for the nature of the diagnosis, or sufficient information to support the duration of prescribing is a violation of 850-050-0010(1)(a)(B) – Inadequate Charting.

16.

While Licensee prescribed to Patient 2 from October 2021 through October 2022, Patient 2's MME ranged from 22.50 to 90. In that time, Licensee did not check Patient 2's PDMP record, did not conduct urine screens, or enter a pain management contract. This conduct is a violation of 850-050-0010(1)(c)(A) – Negligent Prescribing.

17.

For the violations described above; the Board proposes the following discipline:

- Civil penalty \$5,000
- Probation: Three (3) years – with the following conditions:
  - Practice Restriction: Cease prescribing Opioids and Benzodiazepines immediately. Facilitate immediate referrals for all patients you are currently prescribing Opioids and Benzodiazepines.
  - Continuing Education: Within 6 months of the start of probation, complete the following education with prior course approval from the Board:
    - Four (4) hours of pain management and prescribing
    - Two (2) hours of patient boundaries
    - Two (2) hours of patient charting
  - Register with PDMP

18.

**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 submit request for hearing to either via email [Naturopathic.Medicine@obnm.oregon.gov](mailto:Naturopathic.Medicine@obnm.oregon.gov) or U.S. Mail 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.

19.

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.

20.

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.

21.

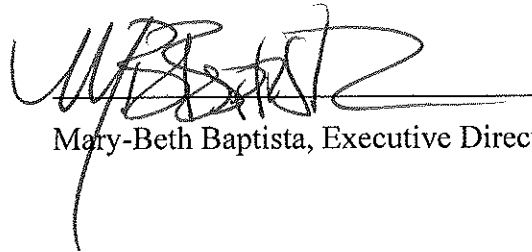
If you fail to request a hearing within 21 days, withdraw a request for a hearing, notify the Board or administrative law judge that you will not appear or fail to appear at a scheduled

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 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

DATED this 28 day of August 2023.

BOARD OF NATUROPATHIC MEDICINE  
State of Oregon

A handwritten signature in black ink, appearing to read 'Mary-Beth Baptista', with a long horizontal stroke extending to the right.

Mary-Beth Baptista, Executive Director