

BEFORE THE
BOARD OF NATUROPATHIC MEDICINE
STATE OF OREGON

In the Matter of the License of:

Aaron Hubbs, N.D.,

Licensee.

Case Nos. N16-10-031

**NOTICE OF PROPOSED DISCIPLINARY
ACTION 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. Aaron Hubbs, N.D. (Licensee) is a licensed naturopathic physician in Oregon, and is subject to the jurisdiction of the Board.

2.

The Board conducted an investigation based on a complaint received regarding Licensee. Based on the results of the investigation and pursuant to ORS 685.110(8), ORS 685.110 (14), OAR 850-050-0010(1)(a)(B), OAR 850-050-0010(1)(c)(A), 850-050-0010(1)(c)(A), OAR 850-050-0010(1)(c)(B) and OAR 850-050-0010(1)(c)(C), 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.

Opiates are commonly prescribed for short-term, acute conditions. Long term opiate use carries a risk of patient harm due to abuse or addiction. Long term prescription of opiates requires a higher degree of assessment, screening, documentation, and record keeping to mitigate this risk. Patients should be pre-screened for risk of opioid abuse, multi-drug use, and other risk

factors. Pain progress should be monitored and re-assessed on a monthly basis. Periodic physical exams and blood chemistry should be performed to assess toxicity risks. Patients should be screened monthly for compliance and for multi-drug use through exam and drug screening.

4.

The Oregon Health Authority maintains a Prescription Drug Monitoring Program (PDMP) for monitoring and reporting prescription drugs dispensed by pharmacies in Oregon that are classified in schedules II through IV under the federal Controlled Substances Act, 21 USC §§ 811, 812, as modified under ORS 475.035. ORS 431.962. The PDMP became fully operative and accessible to naturopathic practitioners in September 2011.

5.

Patient KH sought treatment from Licensee on or about October 16, 2014, for treatment of strep and fevers, and then again on or about January 16, 2015, for hormone imbalance and chronic pain. Licensee began prescribing Testosterone to patient on January 22, 2015, with additional refills.

6.

Licensee authorized refills through at least June 2016, without seeing the patient post January 2015. Patient KH's record for refills from October 2015 through June 2016, varied from the information in the PDMP, and prescriptions were not charted.

7.

Patient BM sought treatment from ND on July 16, 2015. At the time of the visit, patient BM was seeking long term management of her pain. Patient BM advised Licensee she was being treated for anxiety by another provider. Licensee prescribed Oxycodone 10mg, 42# count on July 16, 2015.

8.

Per the PDMP Patient BM had been prescribed controlled substances since 2014. Per the PDMP Patient BM had been prescribed Oxycodone 5mg, 60# count on June 13, 2015, Tramadol 50mg, 30# count on July 9, 2015. The PDMP report also shows she received other controlled substance medications from other providers at the same time ND was prescribing.

9.

Patient BM saw Licensee regularly for acupuncture, cupping and refills of her Oxycodone medication from October 2015-October 2016. During this period Licensee continued to increase the dosage of the Oxycodone prescription, more than doubling the initial dosage. Licensee also wrote Patient BM a prescription for Diazepam with refills during this period. Further, the PDMP report noted that Patient BM was prescribed Oxycodone 5mg, 100# count for a period of eight (8) days and Oxycontin 20mg, 14# count for 7 days in January of 2016, by another provider.

10.

Licensee's chart notes record one conversation regarding the risks of medication dependence in November of 2015, and one conversation initiated by patient BM in October of 2016, in which she was concerned she was taking too many pain medications, although her pain remained intense.

11.

Licensee did not consistently chart when he wrote prescriptions to patient BM. Licensee did not chart an additional Oxycodone 30mg, 90# count prescription written on January 8, 2015, and a Diazepam 10mg, 60# count with 2 refills prescription on Sunday, January 17, 2016.

12.

Licensee chart notes fail to show that licensee adequately screened for drug abuse potential or multi-drug use. Licensee increased doses of oxycodone without routine drug monitoring. Licensee did not check the PDMP to determine if she was being prescribed medications by another provider.

13.

Patient AM sought treatment from Licensee on July 15, 2016, for depression, anxiety, opioid dependence, fatigue and chronic pain. Patient AM listed a history and current concern of alcohol and drug use. (Per the PDMP report in February 2015 she was prescribed Oxycodone, Morphine, Hydrocodone and was taking Oxycodone calculated to be at 180 MED, but by July 2016 her MED was 70). Licensee notes a detox plan and regular house calls for the first two (2) weeks, with acupuncture, cupping and counseling / mentorship. Licensee notes no other concerns.

14.

Licensee made daily house call visits to patient AM from the initial visit through July 26, 2016. Per patient AM's PDMP report, she was prescribed a 21-day supply of Diazepam 5mg, 21# count on July 24, 2016, by a different provider. During a subsequent house call visit on August 8, 2016, patient AM stated she was out of a Valium and Licensee notes increasing the dose from 5mg to 10mg and prescribed Diazepam 10mg, 30# count.

15.

Licensee's chart notes state that Licensee traveled to North Carolina to engage in a "family therapy week" with patient AM. Licensee chart notes report that he brought his minor child to North Carolina from September 1-7, 2016. Chart notes also summarize the week, including instances of his minor child playing with patient AM's minor child, and also notes that Licensee and minor child were invited to travel to North Carolina again for another family counseling week. Licensee billed patient \$6,000 for the week.

16.

Licensee did not screen for drug abuse potential or multi-drug use when Licensee knew of patient AM's history and current concerns regarding addiction and abuse. Licensee did not maintain proper doctor-patient boundaries when attending patient AM's "family therapy week," including, but not limited to, allowing his minor child to engage with patient AM's minor child.

17.

Patient RM sought treatment from Licensee on or about October 1, 2015. Patient RM disclosed a history of seizures, BRCA, joint pain, anxiety, history of cancer, a motor vehicle accident, and use of Xanax in the past to manage her anxiety and seizures. At the initial visit, Licensee performed acupuncture and prescribed TCBD topicals for pain.

18.

Licensee did not see patient RM again until on or about April 8, 2016. Patient RM reported two seizures in the prior two weeks. Licensee noted performing acupuncture and wrote a prescription for Alprazolam, 1mg, 60# count. Licensee wrote prescriptions for Alprazolam, 1mg, 60# count again on May 2, 2016 and June 2, 2016.

19.

On June 16, 2016, Licensee made a house call to patient RM after patient fell down a flight of stairs. Licensee noted bruising and prescribed Oxycodone 30mg, 10# count. Patient RM requested a refill of Oxycodone on July 4, 2016. Licensee noted denying request and would reassess in one week, but wrote a prescription for Alprazolam, 1mg, 60# count. On July 11, 2016 Licensee wrote Patient RM a prescription for Oxycodone, 30mg, 20# count. Licensee wrote patient prescriptions for Alprazolam, 1mg, 60# count and Oxycodone, 30mg, 20# count on August 13, 2016 and 31, 2016; and October 10, 2016.

20.

Licensee did not screen for drug abuse potential or multi-drug use. Licensee prescribed Oxycodone without routine urine drug monitoring.

21.

VIOLATIONS:

Licensee records for patients BM, AM, and RM do not contain objective findings to support the prescription of controlled substances to patients BM, AM, and RM, the dosage, nor the continued chronic use. Licensee prescribed these controlled substances without routine urine drug monitoring consistent with the standard of care in chronic pain management.

22.

Licensee did not obtain PDMP records for patients KH, BM, AM, and RM prior to prescribing controlled substances as detailed in this Notice.

23.

Licensee did not account for the risk factors for opioid abuse for patients BM, AM, and RM while he prescribed and continued to refill prescriptions. There are several standardized and validated tools available and in common use to streamline and quantify the assessment of pain and the assessment of opioid abuse risk, including but not limited to the Opioid Risk Tool, the Screeener and Opioid Assessment for Patients with Pain-Revised, the Screening Tool for Addiction Risk and the Screening. There are no chart notes indicating that Licensee used any such tools.

24.

Licensee's conduct in treating patients KH, BM, and AM, and RM was below the standard of care, and he was negligent in the treatment of patients KH, BM, AM, and RM,

including his prescribing practices with patients BM, AM, and RM and inadequate charting regarding for patients KH, and AM. This conduct constitutes a violation of ORS 685.110(8), OAR 850-050-0010(1)(c)(A) and 850-050-0010(1)(c)(B).

25.

Licensee's conduct in attending patient AM's family therapy week, including but not limited to allowing his minor child to engage with members of patient AM's family was not in keeping with the recognized standard of ethics and was unprofessional and a violation of ORS 685.110(14), OAR 850-050-090(3)(a) and OAR 850-050-0010(1)(c)(C).

26.

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

1. Civil penalties in the total amount of twenty-five thousand dollars (\$25,000);
2. Five years of probation, with the following conditions:
 - a. In addition to the Board's regular continuing education requirements, during the first year of probation, Licensee shall complete (a) 20 continuing education hours that are pre-approved by the Board on professional ethics, and (b) 10 hours focusing on responsible prescribing practices of opioids.
 - b. During the five years of probation, Licensee shall submit 10 patient charts to a naturopathic physician, who is pre-approved by the Board, for review every six months at Licensee's expense, and within thirty days of the end of each quarter provide the Board with a report from the reviewing doctor noting any concerns with Licensee's patient care during the prior quarter, including a checklist for each patient chart he or she reviews that answers at least the following questions:
 - i) Does the patient chart contain an adequate objective assessment of the patient?

- ii) Did Licensee order and evaluate appropriate laboratory tests?
- iii) Was a physical examination necessary for a patient visit, and if necessary, did Licensee complete an adequate physical exam?
- iv) Did Licensee adequately document and chart any drugs prescribed or administered?

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

27.

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.

28.

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.

29.

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.

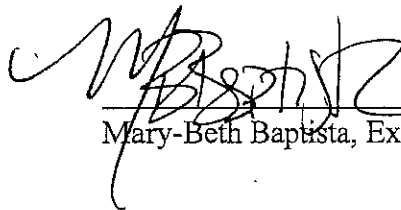
30.

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 3 day of Oct 2017.

BOARD OF NATUROPATHIC MEDICINE
State of Oregon



Mary-Beth Baptista, Executive Director

CERTIFICATE OF SERVICE

I, Mary-Beth Baptista, certify that on October 3, 2017, I served the foregoing NOTICE OF PROPOSED DISCIPLINARY ACTION AND OPPORTUNITY FOR HEARING upon the party hereto by regular and certified mail, postage prepaid, a true, exact and full copy thereof to:

Amber Zupancic-Albin
Client: Aaron Hubbs

Zupancic Albin Law, P.C.
8 N. State Street, Suite 301
Lake Oswego, OR 97034



Mary-Beth Baptista, Executive Director
Oregon Board of Naturopathic Medicine

Certified Mail No: 7016 2070 0000 3883 2614