BEFORE THE
BOARD OF NATUROPATHIC MEDICINE
STATE OF OREGON

In the Matter of the License of: Rose Ann Arouh, N.D., Licensee.	Case No. N15-09-22 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. Ann Arouh, 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 concerns with Licensee's professional practices, which arose during the review of a complaint received by the Board. Based on the results of this investigation, the Board hereby proposes to take disciplinary action against Licensee's license to practice naturopathic medicine and assess a civil penalty against Licensee for violations of ORS 685.110(8) and (14), OAR 850-050-0190(3) and OAR 850-050-0010(1)(c)(A) as described in the following paragraphs. For each violation, the Board may impose a civil penalty up to $5,000 and take license discipline including revocation.

3.

Negligence and Negligent Prescribing (ORS 685.110(8) and OAR 850-050-0010(1)(c)(A)).

3.1 Community Standards

The recognized community guidelines for chronic and acute, non-cancer pain management include: the Interagency Guideline on Opioid chronic Dosing for Chronic Non-Cancer Pain (2010 Update) issued by the Washington Agency Medical Directors' Group (hereafter referred to as Washington Guideline); the Opioid Prescribing Guidelines (August

2014) issued by Oregon Pain Guidance of Southern Oregon (hereafter referred to as the Opioid Prescribing Guidelines); and, the Guideline for Safe Chronic Opioid Therapy Prescribing for Patients with Non-Cancer Pain (2013) issued by Oregon Health and Sciences University (hereafter referred to as the OHSU Guideline). All three guidelines establish an opioid dosing guideline of 120 milligrams (mg) as the maximum allowable morphine equivalent daily dose (MED) over a 24 hour period. All three guidelines provide the equianalgesic dose to convert other opioids to the morphine equivalent. A higher dose than 120 mg MED must be documented and if the dose is not decreased, further explanation must be provided.

Opiates are commonly prescribed for short-term, acute conditions. Long term opiate use carries a risk of patient harm due to abuse or addiction. As all the community guidelines note, long-term use of opiates to treat chronic pain 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.

Crucially, when patients who are monitored, screened, examined and re-assessed are found to be non-compliant, non-compliance is not merely to be noted; non-compliance must be appropriately managed. All community guidelines provide consistent direction for how to manage patients addicted to opioids, including, titrating patients down and tapering them off of opioid use, making specialty referrals, and treating withdrawal on outpatient or inpatient bases.

3.2 Patient A

According to a review of Patient A's Prescription Drug Monitoring Program Report (PDMP) obtained through the Oregon Health Authority (OHA), Licensee began prescribing controlled substance medications to Patient A on or about October 17, 2014. The initial prescriptions included Alprazolam 1mg, 45#; Carisoprodol 350mg, 45#; and Hydrocodone-

Acetaminophen 10-325, 110#. Patient A's PDMP report revealed that Patient A had moved from provider to provider, and at the same time Licensee was prescribing medications to him, Patient A was also receiving medications from other providers.

Over the course of Licensee's treatment of Patient A, Licensee would consult with Patient A over the phone, and following the telephonic consultation with Patient A, Licensee would issue a prescription for Patient A. This occurred (1) on or about May 4, 2015 when Licensee wrote a prescription for Percocet 7.5/325, 120#, with the notation that it "must last 30 days"; (2) on or about June 1, 2015 when Licensee called Patient A's pharmacy for two refills each of Ambien, Gabapentin, Soma, Xanax, and Clonadine, as well as a handwritten prescription for Percocet 7.5/325, 120#, with the notation that it "must last 30 days"; (3) on or about June 8, 2015 when Licensee wrote Patient A a prescription for Oxycodone 15mg, 28#; (4) on or about June 15, 2105 when Licensee wrote Patient A a prescription for Oxycodone 15mg, 45# and Percocet 7.5/325, 45#, with instructions not to take them together and to alternate between them over 14 days; (5) on or about June 29, 2015 when Licensee's chart notes indicate she spoke with a pharmacist and Patient A, and wrote a prescription for Oxycodone 10mg, 32# to last through July 6, 2015 – however, the chart notes do not indicate a reason for issuing the prescription; (6) on or about July 6, 2015 when Licensee spoke with Patient A and Patient A reported he had taken Oxycodone 10mg and Oxycodone-Acetaminophen 7.5/325 together; Licensee wrote Patient A prescriptions for Oxycodone 10mg, 120# and Percocet 7.5/325, 90# with instructions not to take them together and to alternate between them for 30 days; (7) on or about July 27, 2105 when after receiving a voicemail from Patient A regarding a seizure Patient A had suffered, Licensee noted that Versed had been prescribed, she referred Patient A to a neurologist, and requested Patient A bring all of his medications to an in-person meeting with Licensee on August 3, 2015; (8) on or about August 31, 2015 when Licensee spoke with Patient A about his knee being drained and physical therapy, she wrote Patient A prescriptions for Oxycodone 10mg, 100# and Percocet 7.5/325, 90#, and called in a prescription for Gabapentin 300mg, 10# with

two refills; (9) on or about September 28, 2015 when after speaking with patient A Licensee wrote Patient A prescriptions for Oxycodone 10mg, 90# and Percocet 7.5/325, 90#, and that they must last 30 days.

When Licensee was asked on or about May 11, 2016 if she was aware Patient A was receiving medications from other sources when she was prescribing medications to him, Licensee responded in the affirmative. Licensee also stated that on or about November 27, 2015, she received a call from a nurse practitioner and medical doctor, after which she made it clear Patient A that he should only receive prescriptions from one source, whether that was Licensee or another provider.

In prescribing Patient A Licensee pain medications, Licensee did not properly account for risk factors, signs of drug diversion, current symptoms, or changes in medical condition while she prescribed and continued to refill prescriptions. Licensee prescribed Patient A with high quantities of prescription medications, including opiates, for over a year and on multiple occasions based on phone consultations, and despite the demonstration by Patient A of behaviors indicating a risk of prescription drug seeking behavior Based on this conduct, Licensee committed negligence related to the practice of naturopathic medicine, in violation of ORS 685.110(8), and engaged in negligent prescribing in violation of OAR 850-050-0010(1)(c)(A).

4.

Conduct or Practice which might Constitute a Danger to the Health or Safety of a Patient or the Public (ORS 685.110(14)).

4.1 Community Standards

The Washington Guideline, the Opioid Prescribing Guidelines, and the OHSU Guideline all establish how to manage patients with evidence of opioid diversion, including specialty referral if necessary, immediate discontinuation of opioid prescriptions, and institution of opioid withdrawal therapies if called for.

4.2 Drug Diversion – Danger to Public Health or Safety

Patient drug diversion, or the unlawful sale or gift of a prescription drug from the patient to an individual to whom the drugs provided were not prescribed, presents significant public health risks for many reasons including unreliability of dosages, absence of physician monitoring of the person(s) to whom the drugs are diverted, and potential harmful interaction with prescribed drugs or existing health conditions. Potential risks of drug diversion to the public receiving the diverted drugs include drug abuse, addiction, subsequent heroin addiction after opioid diversion, and death. Signs of drug diversion include repeated reports of those drugs being lost or stolen, absence of prescribed drugs from the urinary drug screens of the person to whom they are prescribed; and, obtaining multiple, simultaneous prescriptions from multiple providers.

4.3 Patient A

When Licensee was asked on or about May 11, 2016 if she was aware Patient A was receiving medications from other sources when she was prescribing medications to him, Licensee responded in the affirmative. Licensee also stated that on or about November 27, 2015, she received a call from a nurse practitioner and medical doctor, after which she made it clear Patient A that he should only receive prescriptions from one source, whether that was Licensee or another provider. By failing to discontinue prescribing Patient A even though Licensee had actual knowledge that Patient A was obtaining multiple, simultaneous prescriptions from multiple providers, Licensee created a danger to public health and safety, in violation of ORS 678.110(14).

5.

Charting Omissions and Errors

A naturopathic physician must maintain complete and accurate patient charts to ensure a patient receives proper care from his or her treating naturopath and from a subsequent health provider. Preparing or maintaining an inaccurate or incomplete patient chart is conduct in violation of ORS 685.110(8), (14) and OAR 850-050-0190(3). On or about May 16, 2016,

Licensee was asked why there were no diagnosis, treatment plans, labs, etc. in her charting. Licensee replied that most of her patients diagnosis were available in their prior records and with regard to charting, Licensee stated that she was used to charting as a homeopathic during her extended period of time away from Oregon. When asked what other providers would be able to determine about her patients should they transfer care, Licensee replied that her preference would be to talk to the new provider and give them the information that was not included in the charts. Given the circumstances, discipline is proposed for the charting violations listed above.

5.1 Patient A

On or about June 29, 2015 when Licensee's chart notes indicate she spoke with a pharmacist and Patient A, and wrote a prescription for Oxycodone 10mg, 32# to last through July 6, 2015. However, the chart notes do not indicate a reason for issuing the prescription. By failing to chart why she was prescribing medications, Licensee committed charting omissions in violation of ORS 685.110(8) and OAR 850-050-0190(3).

5.2 Patient B

On February 16, 2015, chart notes by Licensee indicated Patient B needed a lab order and prescriptions for Alprazolam 1mg and Meprobamate 20mg. No quantity was indicated. According to Patient B's PDMP report, no prescriptions were written on this date. By failing to chart the amount of drugs prescribed and a treatment plan and/or date by which to make the lab order in regard to Patient B, Licensee committed charting omissions in violation of ORS 685.110(8) and OAR 850-050-0190(3).

6.

Definitions that may be relevant to this Notice are contained in ORS 685.010 and OAR 850-010-0005.

7.

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

1. Civil penalties in the total amount of ten thousand dollars ($10,000);

The following discipline is appropriate for each of the foregoing violations individually; however, for all of the foregoing violations, the Board proposes:

2. Within 45 days of the issuance of a Final Order in this matter, Licensee's Federal Drug Enforcement Agency license and registration will be revoked, prohibiting Licensee from prescribing opiates, or any schedule Federal Drug Enforcement Agency Schedule II, IIN, III, or IIIN drugs.

3. Five (5) years probation with the following conditions:

a. Licensee will submit 10 patient charts per quarter to the Board for review; Licensee shall submit ten (10) patient charts to a ND, pre-approved by the Board, for review every three months at Licensee's expense. Reviewing licensee shall provide the Board with a report 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?

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

4. In addition to the Board's regular continuing education requirements, 35 Continuing Education credits to be obtained by License during the five year probation term, 15 of which must be obtained in the first year of probation and 5 credits in each of the remaining four years of the probation term, as follows: (a) 10 in general charting; (b) 5 specific to patient record keeping on current software used.

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.

9.

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.

10.

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.

11.

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 1st day of February 2017.

BOARD OF NATUROPATHIC MEDICINE
State of Oregon

Anne Walsh, Executive Director