

**BEFORE THE NEW MEXICO
ACCUPUNCTURE AND ORIENTAL MEDICINE PRACTICE BOARD**

**IN THE MATTER OF
CARL LABADIE, DOM
Expired License NO. 241,**

CASE NO. AOM-13-01

RESPONDENT.

DEFAULT ORDER

THIS MATTER came before the New Mexico Board of Acupuncture and Oriental Medicine Practice (“Board”) on May 2, 2014 and the Board finds as follows:

1. A Notice of Contemplated Action was issued on November 21, 2013 pursuant to a complaint dated January 23, 2013, alleging sexual misconduct and illegal activities by Respondent while licensed as a Doctor of Oriental Medicine.
2. The complaint alleged that a newspaper article dated January 12, 2013, reported that Respondent had pled guilty to a charge of possession of child pornography and may face jail time.
3. The Judgment from the U.S. District Court for the District of New Mexico in case number 1:12CR02826-001MCA reads that Respondent pled guilty to charges of Possession of a Matter Containing Visual Depictions of Minors and Engaged in Sexual Explicit Conduct in violation of 18 U.S.C. sections 2252(4)(B), 2252(b)(2) and 2256.
4. The NCA was served on Respondent in accordance with the Uniform Licensing Act, NMSA 1978, Section 61-1-5 at Respondent’s last known address as shown by the records of the Board.

5. The NCA was returned by the USPS with the caption "RETURN TO SENDER UNABLE TO FORWARD".
6. A second attempt was made to serve the NCA on Respondent at the federal correctional institute.
7. The NCA was returned by the USPS with the caption "RETURN TO SENDER UNABLE TO FORWARD".

IT IS THEREFORE ORDERED that, pursuant to Section 61-1-4(E), the license of Carl Labadie, DOM, is hereby revoked by default. This final action shall be reported to the Board to the Health Integrity Protection Data Bank (HIPDB) and other entities as required by law.

This order is final and not subject to judicial review.

Dated: 6/18/2014

FOR THE BOARD OF ACCUPUNCTURE
AND ORIENTAL MEDICINE PRATICICE
BOARD


Babette Saenz, Chair

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing Default Order via Certified Mail, Return Receipt Requested to the Respondent at the following addresses: Carl Labadie, DOM, 3310 Kassler PL, Westminster, CO 80031-2747 and Carl Labadie, DOM, Federal Correctional Institute, Federal Satellite Low, PO Box 6000, Anthony, TX 88021.

**BEFORE THE STATE OF NEW MEXICO
BOARD OF ACCUPUNCTURE AND ORIENTAL MEDICINE**

IN THE MATTER OF:

**CARL LABADIE DOM
LICENSE # 241**

Respondent.

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CASE NO. AOM-13-01

1. CARL LABADIE DOM, (“Respondent”), is licensed under the New Mexico Acupuncture and Oriental Medicine Practice Act, NMSA 1978, §§61-14A-1 to 61-14A-22 (1993 as amended through 2007), and, as such, was subject to the jurisdiction of the New Mexico Board of Acupuncture and Oriental Medicine (“Board”) at the time of the violations alleged in this Notice of Contemplated Action and is currently subject to the jurisdiction of the Board.

2. Respondent is hereby notified that the Board has before it sufficient evidence which, if not rebutted or satisfactorily explained at a formal hearing, will justify the Board in taking action to deny, revoke, or suspend, or take other disciplinary action against Respondent’s license to practice as a Doctor of Oriental Medicine in New Mexico pursuant to NMSA 1978 § 61-14A-17 A (2) and (5), Regulation 16.2.12.32 NMAC (04/11/89 as amended through 11/28/09), Regulation 16.2.12.34 (B) NMAC (08/13/01) and the Uniform Licensing Act, § 61- 1-1 through 61-1-33 (2003) .

3. **Authority:** Action is contemplated to revoke Respondent’s license and/or to impose other disciplinary measures pursuant to the following statutes and regulations:

A. Statutes: The New Mexico Acupuncture and Oriental Medicine Practice Act [NMSA, 1978, §61-14A-1 to §61-14A-22] mandates that the board protect the interest of public health, safety and welfare and to protect the public from the unprofessional,

improper, incompetent and unlawful practice of acupuncture and oriental medicine [Section 61-14A-2 NMSA 1978]. More specifically:

NMSA 1978, §61-14A-8 (2003) Board; powers.

The Board has the power to:

(A) Enforce the provisions of the Acupuncture and Oriental Medicine Practice Act [Chapter 61, Article 14A NMSA 1978];

(B) Adopt, publish and file, in accordance with the Uniform Licensing Act [61-1-1 NMSA 1978] and the State Rules Act [Chapter 14, Article 4 NMSA 1978], all rules necessary for the implementation and enforcement of the provisions of the Acupuncture and Oriental Medicine Act [Chapter 61, Article 14A NMSA 1978];

(I) Conduct hearings upon charges relating to the discipline of licensees, including the denial, suspension or revocation of a license in accordance with the Uniform Licensing Act [61-1-1 NMSA 1978]; and

(J) grant, deny, renew, suspend or revoke licenses to practice acupuncture and oriental medicine...in accordance with the provisions of the Uniform Licensing Act for any cause stated in the Acupuncture and Oriental Medicine Practice Act [Chapter 61], Article 14A NMSA 1978] or the rules of the board.

As a result the Board may order:

NMSA 1978, §61-1-3 (L) (1993) Opportunity for Licensee to have hearing:

Payment of a fine for a violation not to exceed one thousand dollars (\$1,000) for each violation, unless a greater amount is provided by law;

NMSA 1978, §61-1-4(G) (2003) Notice of contemplated board action; request for hearing; notice of hearing

Licensees shall bear all costs of disciplinary proceedings unless they are excused by the board from paying all or part of the fees or if they prevail at the hearing and an action specified in Section 61-1-3 NMSA 1978 is not taken by the board.

NMSA 1978, § 61-14A-17 D (1993) Disciplinary Proceedings.

The licensee shall bear the costs of disciplinary proceedings unless exonerated.

It is alleged that Respondent has violated the following statute:

NMSA 1978, § 61-14A-17. Disciplinary proceedings; judicial review; application of Uniform Licensing Act (1997).

A. In accordance with the procedures contained in the Uniform Licensing Act [61-1-1 NMSA 1978], the board may deny, revoke or suspend any permanent or temporary license held or applied for under the Acupuncture and Oriental Medicine Practice Act [Chapter 61, Article 14A, upon findings by the board that the licensee or applicant:

(2) has been convicted of a felony. A certified copy of the record or conviction shall be conclusive evidence of such conviction;

(5) is guilty of unprofessional conduct, as defined by board rule;

B. Regulations: Title 16, Chapter 2, Part 1, of the New Mexico Administrative Code delineates the duties of the Board. Title 16, Chapter 2, Part 12 of the New Mexico Administrative Code delineates the procedures for disciplinary actions by the Board in regard to licensees of Acupuncture and Oriental Medicine. The regulation provides in pertinent part:

16.2.12.2 NMAC (07/01/1996 as amended through 2/15/2005) Scope.

The provisions of 16.2.12 NMAC apply to all license holders

16.2.12.8 NMAC (03/19/1991 as amended through 11/28/2009)

Authority and Procedure.

The board may refuse to issue, or may suspend, or revoke any license, in accordance with the Uniform Licensing Act, 61-1-1 to 61-1-31 NMSA 1978, for reasons authorized in the Act and clarified in 16.2.12 NMAC.

16.2.12.34 NMAC (08/13/01) Disciplinary Actions and Fines.

A licensee...is subject to disciplinary proceedings, including fines, in accordance with the Uniform Licensing Act, NMSA 1978...for violations of 16.2.12 NMAC (Part 12 of the rules). Fines may be assessed for each violation. Fines may be assessed in addition to other disciplinary action taken by the board for repeated or serious violations or for providing false or misleading information to the board.

(B) A license, temporary license, applicant, applicant for temporary licensure, extern or an extern Supervisor is subject to disciplinary proceedings in accordance with the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 through 61-1-35, as amended, for

violations of the act, Section 61-14A-17 NMSA 1978, or the Rules. The board has authority to take action that may result in denial of a license, failure to renew a license, suspension of a license, revocation of a license, restriction or limitation on the scope of practice, requirement to complete remedial education, monitoring of the practice by a supervisor approved by the board, censure or reprimand, compliance with conditions of probation or suspension for a specified period of time, corrective action as specified by the board, or payment of a fine not to exceed one thousand dollars (\$1,000.00) for each violation.

It is alleged that Respondent has violated the following regulation:

Regulation 16.2.12.32 NMAC (04/11/89 as amended through 11/28/09)
Incompetence and Unprofessional Conduct:

The specifications of incompetence and unprofessional conduct defined in the act and 16.2.12 NMAC shall not be exclusive of the types of acts and omissions which may be found by the board to constitute incompetence or unprofessional conduct.

4. **Evidence:** The general nature of the evidence before the Board is summarized as follows:
 - A. Respondent was issued a New Mexico Doctor of Oriental Medicine License (“License”) number 241, which authorized Respondent to practice oriental medicine in the state of New Mexico. Respondent is therefore subject to the New Mexico Acupuncture and Oriental Medicine Practice Act and the Board’s rules and regulations.
 - B. Respondent was indicted on counts of possession of a Matter Containing Visual Depictions of Minors Engaged in Sexually Explicit Conduct by a Grand Jury on November 5, 2012. (Indictment CR 12-2826).
 - C. A complaint was filed by the Board based on information obtained through the local press. [Attachment 1 – Bates Stamped 1 – 8].
 - D. On April 11, 2013, Respondent signed a Plea and Disposition Agreement whereby he pled guilty to possession of a matter containing visual depictions of minors, engaging in sexually explicit conduct, a Class E felony as charged in the indictment. [18 U.S.C § 3559]. The Judgment and Sentencing sets out Respondent’s plea and sentencing. [Attachment 2 – Bates Stamped 9 – 16].

5. The general nature of the evidence is contained in the Attachments 1 and 2 - Bates Stamped 1 – 16).

6. By engaging in the above-referenced conduct, Respondent violated NMSA 1978, § 61-14A-17 A (2) NMSA 1978, §61-14A-17A (5), and Regulation 16.2.12.32 NMAC.

7. Unless rebutted or explained at a formal hearing, the evidence before the Board is sufficient to justify the Board in suspending or revoking Respondent's Acupuncture and Oriental Medicine license in New Mexico and/or take other disciplinary action.

8. The formal hearing, if requested, will be conducted pursuant to NMSA 1978, §§ 61-1-1 through 61-1-33 (2003) of the New Mexico Uniform Licensing Act. Pursuant to NMSA 1978, § 61-1-8 the licensee is specifically advised as follows:

NMSA 1978, §61-1-3 (1993) Opportunity for licensee or applicant to have hearing.

Every licensee or applicant shall be afforded notice and an opportunity to be heard, before the board has authority to take any action, which would result in:...

- E. suspension of license;
- F. revocation of a license;
- G. restrictions or limitations on the scope of a practice;
- H. the requirement that the applicant complete a program of remedial education or treatment;
- I. monitoring of the practice by a supervisor approved by the board;
- J. the censure or reprimand of the licensee or applicant;
- K. compliance with conditions of probation or suspension for a specific period of time;
- L. payment of a fine for a violation not to exceed one thousand dollars (\$1,000) for each violation, unless a greater amount is provided by law;
- M. corrective action, as specified by the board;
- N. a refund to the consumer of fees that were billed to and collected from the consumer by the licensee;

NMSA 1978, §61-1-8 (1981) Rights of person entitled to hearing.

A. A person entitled to be heard under the Uniform Licensing Act [NMSA 1978, § §61-1-1 to 61-1-31] shall have the right to be represented by counsel or by a licensed member of his own profession or occupation, or both; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefor to the board or the hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the board or hearing officer. All notices issued pursuant to NMSA 1978, § 61-1-4 shall contain a statement of these rights.

B. Upon written request to another party, any party is entitled to:

- (1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and
- (2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

The party to whom such a request is made shall comply with it within ten days after the mailing or delivery of the request. No such request shall be made less than fifteen days before the hearing.

C. Any party may take depositions after service of notice in accordance with the Rules of Civil Procedure for the District Courts. Depositions may be used as in proceedings governed by those rules.

9. Unless the foregoing evidence is explained or rebutted at a formal hearing, it constitutes justification and cause for the New Mexico Board of Acupuncture and Oriental Medicine to take the contemplated action as stated herein. A revocation of a license issued by the New Mexico Board of Acupuncture and Oriental Medicine and held by you, or other remedies available to the Board will occur unless you request a formal hearing by mailing a certified, return receipt requested letter requesting a hearing within twenty (20) days after service of this Notice of Contemplated Action to:

CERTIFICATE OF SERVICE BY CERTIFIED MAIL

Return Receipt Request No: _____

I, _____, do hereby certify that I mailed a true and correct copy of the above provided Notice of Contemplated Action in **Case No. AOM-13-01** before the New Mexico Board of Acupuncture and Oriental Medicine to the Respondent/Licensee at his last known address of record, as shown by the records of the Board and to his current address as known by the Board this _____ day of November, 2013.

Barbara Maddoux

Print the Name of Individual Certifying Service

RLD

Title/Organization

BTM Maddoux

Signature

Such written request should be submitted by certified mail (return receipt requested) to:

**New Mexico Board of Acupuncture and Oriental Medicine
P.O. Box 25101
Santa Fe, New Mexico 87505
ATTN: Nicole Montoya Jones, Compliance Liaison**

10. If you, the Respondent “does not mail a request for a hearing within the time and in the manner required by this section, the Board may take the action contemplated in the notice and such action shall be final and not subject to judicial review.” See NMSA § 61-1-4(E) (2003).

**STATE OF NEW MEXICO
BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE**

Date: 11-15-13

By: 

Dr. Barbara Maddoux, Chairperson
New Mexico Board of Acupuncture & Oriental Medicine
Post Office Box 25101
Santa Fe, New Mexico 87505
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Prepared by:

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