

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

IN THE MATTER OF:

CHRISTINA M. WHITAKER,

CASE NO. BAOM 13-07-APP

Respondent.

FINAL DECISION & ORDER

This matter came before a quorum of the Board of Acupuncture and Oriental Medicine (Board) on April 1, 2015 in Santa Fe, New Mexico, for a decision pursuant to the provisions of the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 through 61-1-33 (as amended through 2003) and the Acupuncture and Oriental Medicine Practice Act, NMSA 1978, Sections 61-14A-1 to -22 (1999, as amended through 2007). The Board members having familiarized themselves with the record voted unanimously to adopt the Hearing Officer's report reproduced below; and made the Conclusions of Law and rendered its Order granting Respondent a license to practice Oriental Medicine and Acupuncture.

FINDINGS OF FACT

1. The Board of Acupuncture and Oriental Medicine ("the Board") has jurisdiction over Respondent and the subject matter.
2. Respondent is a former Licensed Doctor of Oriental Medicine, having initially been licensed by the Board in 2006.
3. Respondent's license expired on July 31, 2010.
4. In February 2011, Respondent falsified her license by changing the expiration date on her certificate from July 31, 2010, to July 31, 2011.
5. Several months later, on October 3, 2011, Respondent mailed her 2011 annual

DOM license renewal application to the Board, including a late fee. [Exhibit 4]

6. The Board had received information regarding the license date falsification, and as a result of the complaint filed against Respondent, issued a Notice of Contemplated Action. The Respondent requested a hearing, which was initially set for February 3, 2012. The Respondent was notified of the hearing via email on January 17, 2012. [Exhibit 3, Attachment 1, Pages 12 and 13].

7. On January 28, 2012, Respondent's father passed away.

8. The hearing was re-scheduled for February 22, 2012 in Albuquerque. The certification indicates that the Amended Notice of Hearing was sent to Respondent at the email address Respondent provided on the License renewal form application. [Exhibit3, Attachment 7]

9. A Stipulated Motion to Vacate the Hearing was submitted to the Board noting that Respondent did "not oppose the continuance." [Exhibit 3, Attachment 7]

10. Respondent testified that she had been notified by email, return read receipt, that the Order to Vacate was granted. [Exhibit 3, Attachment 7]

11. However, Respondent denies receiving the actual Amended Notice of Hearing set for February 22, 2012.

12. Respondent did not appear on the day of the Hearing. The hearing officer called Respondent inquiring as to her whereabouts, and then proceeded to hearing despite Respondent's inability to make it to the hearing in 15 minutes.

13. The Hearing Officer's Report was mailed to Respondent who testified that she did receive a copy of the Hearing Officer Report and was aware of its contents.

14. On April 19, 2012, the Board issued its Final Decision and Order, adopting

the Hearing Officer Report in its entirety and ordering Respondent's license revoked effective May 1, 2012. [Exhibit 3, Attachment 1] The Board provided Respondent with the opportunity to convert the revocation into a six-month suspension should she take a remedial course in Ethics, re-take and pass the New Mexico Board Jurisprudence Exam and pay a fine of \$1000.00 “all within 180 days from May 1, 2012.”[Exhibit 3].

15. Respondent signed the return receipt acknowledging service of the Board’s Final Decision and Order on April 26, 2012. [Exhibit 3, Attachment 3].

16. Respondent enrolled and successfully completed the required Ethics course, “The Five Elements of Acupuncture Medical Ethics” in April 2012. Exhibit 3. After contacting the Board Administrator for a copy of the Jurisprudence Examination for Initial Licensure Applicants, Respondent completed it scoring 100% on or about May 7, 2012.

17. Respondent testified she was aware that the 180- day limitation for complying with all requirements ended in October 2012.

18. After receiving the Board’s Final Decision and Order, Respondent’s cousin, Christopher Gallegos, represented to Respondent that he would find an attorney to help Respondent resolve her issues with the Board.

19. Respondent testified that she received a \$1,000.00 loan from her mother in April or early May 2012.

20. Respondent testified that she gave Mr. Gallegos the \$1,000 fine, the proof of taking an ethics course, and a copy of the Jurisprudence Exam. Respondent testified that she gave all these items to Mr. Gallegos to give to an attorney, who would then supply them to the Board Office.

21. Mr. Gallegos never turned over the documents or money to the Board or to an

attorney; he later testified that the money had been lost or stolen.

22. Respondent acknowledged in her application for re-licensure dated July 29, 2013, that she had been found guilty of unprofessional conduct or incompetency. [Exhibit 3, Attachment 6; Respondent's testimony]

23. Respondent was truthful on her application when she stated that because she had been found guilty of unprofessional conduct the Board had the discretion to deny her licensure. [Exhibit 3, Attachment 6; Respondent's testimony].

24. On July 29, 2013, nine months after the date set in the Final Order, the Board received Respondent's submission of the Ethics Continuing Education course and the completed Jurisprudence Exam.[Exhibit 3, Attachment 5; Respondent's testimony]

25. On November 8, 2013, the Board received Respondent's payment of the \$1,000.00 fine. [Exhibit 3, Attachment 5]

26. Respondent's 2013 re-application for licensure with the Board was denied as the Board found that Respondent's failure to provide proof of completing an Ethics course in the time frame established, failure to provide proof of successfully completing the jurisprudence exam in the time frame established, and lack of payment of the \$1,000.00 fine was unprofessional pursuant to Section 16.2.12.32 NMAC and actionable under NMSA 1978, §61-14A-17(A)(5) & (16).

27. Respondent paid the \$1,000.00 fine in the Fall of 2013.

28. Although Respondent had all items to convert the revocation into a suspension in her possession in May 2012, five months prior to the expiration of the 180 day deadline for submission to the Board, Respondent testified she gave all the items to her cousin to give to an attorney to supply to the Board.

29. Respondent accepted responsibility for falsifying her license, changing the date from 2010 to 2011. [Respondent's testimony].

30. Respondent testified that her cousin, Mr. Gallegos, failed to timely submit the required material within 180 days to the Board to allow conversion of the license revocation into a six month suspension; she further testified that she found out in May or June of 2013 that her cousin had not sent the funds to the Board.

CONCLUSIONS OF LAW

31. The Board has jurisdiction over Respondent, an applicant for licensure as a Doctor of Acupuncture and Oriental Medicine.
32. The Board provided Respondent with all due process required by law.
33. The Board finds that there is a preponderance of the evidence that Respondent is remorseful.
34. The Board finds that there is a preponderance of the evidence that Respondent is deserving of a second chance.

ORDER

1. The Board hereby grants Respondent's application for licensure.
2. Respondent will be on probation for twelve months.
3. During the twelve-month period, Respondent must complete all three conditions listed below and submit proof to the Board.
4. Respondent must submit the names of two Doctors of Oriental Medicine (DOM) willing to serve as mentor/supervisor to Respondent for twelve months. The names of DOM's must be submitted within 15 days of receipt of this Order, for Board pre-approval.
5. Respondent must attend weekly meetings, in person or over the telephone, with the Board approved DOM. For the first three months, the DOM shall submit monthly written reports to the Board; thereafter, the DOM shall submit quarterly reports at the conclusion of each quarter.
6. Respondent must sign up for and attend a ten-week Financial Literacy course offered by West Corp. with proof of completion submitted to the Board.
7. Respondent must also attend and complete a ten-week Al Anon program with proof of completion submitted to the Board.
8. Respondent must fulfill these terms within twelve months that begin to run fourteen days after receipt of this Order.

IT IS SO ORDERED

Dated: 4/8/2015



Barbara Maddoux, RN DOM
NM Board of Acupuncture & Oriental Medicine

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing
pleading was mailed this 14th day of April, 2015 to
the following counsel of record.



Brian McBain
Compliance Liaison
RLD-Boards and Commissions
505-476-4667

Cert US Mail No. 7011 2970 0003 9314 2133

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

IN THE MATTER OF:)	
)	
CHRISTINA M. WHITAKER)	CASE NO. AOM 13-07-APP
LICENSE NO. 918 [revoked])	
)	
Respondent.)	

NOTICE OF CONTEMPLATED ACTION

1. Christina M. Whitaker (“Respondent”), was licensed pursuant to the Acupuncture and Oriental Medicine Practice Act, NMSA, 1978 §§ 61-14A-1 through 61-14A-22, (“Act”) and seeks to be licensed pursuant to the Act. Therefore, she is subject to the jurisdiction of the New Mexico Board of Acupuncture and Oriental Medicine (“Board”).

2. The 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 licensure or take other disciplinary action against Respondent’s application for re-licensure to practice as a Doctor of Oriental Medicine in New Mexico pursuant to NMSA 1978 § 61-14A-17.

3. **Authority:** Action is contemplated to deny licensure and/or to impose other disciplinary measures pursuant to the following statutes and regulations:

A. Statutes: The Act empowers the Board to deny licensure and otherwise discipline Doctors of Oriental Medicine for “any cause stated in the Acupuncture and Oriental Medicine Practice Act [chapter 61, Article 14A NMSA 1978] or rules of the board.” NMSA 1978, § 61-14A-8 (J). 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];
- 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.

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.

It is alleged that the Respondent has violated the following statutes:

61-14A-17 LICENSE DENIAL, SUSPENSION OR REVOCATION

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 NMSA 1978], upon findings by the board that the licensee or applicant:

- (5) is guilty of unprofessional conduct, as defined by board rule;
- (16) has had a license, certificate or registration to practice as a doctor of oriental medicine revoked, suspended or denied in any jurisdiction of the United States or a foreign country for actions of the licensee similar to acts described in this subsection. A certified copy of the record of the jurisdiction taking the disciplinary action will be conclusive evidence thereof;

The Board also has authority through regulations it has enacted:

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

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 (08/13/2001) Disciplinary Action and Fines

A licensee, temporary licensee, application...is subject to disciplinary proceedings, including fines, in accordance with the Uniform Licensing Act, NMSA 1978, Section 61-1-1 through 61-1-35, as amended, for violations of the act or for violations of 16.2.12 NMAC... 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 licensee, temporary licensee, application... 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 violation 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 of a specific 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 regulations:

16.2.12.12 NMAC – False Reporting (04/11/89 as amended through 08/13/01):

Pursuant to the Act, Section 61-14A-17.A (5) NMSA 1978, a doctor of oriental medicine temporary licensee, applicant, applicant for temporary licensure, extern, educational program or applicants for approval of an educational program shall be guilty of unprofessional conduct who willfully makes or files false reports or records in his or her practice of acupuncture and oriental medicine, or who files false statements for collection of fees for services that were not rendered.

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

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. On November 10, 2011, a Notice of Contemplated Action (“NCA”) was mailed to the last reported address for Respondent. The NCA was based on the Respondent changing the date on an expired license such that it would appear that she remained an active licensee. On December 27, 2011 and received by the board on January 1, 2012, the Respondent requested a hearing. [Attachment 1, Bates Stamped 1 - 10]

B. On January 17, 2012, an Amended Notice of Hearing setting the hearing date for February 3, 2012, was emailed to the Respondent. On February 8, 2012, a second Amended Notice of Hearing setting the hearing February 22, 2012 was emailed to the Respondent at the same email address. [Attachment 2, Bates Stamped 11 - 15].

C. On February 22, 2012, the hearing was held. The Respondent failed to appear. A Hearing Officer Report and Recommendation was issued February 23, 2012. A Final Decision and Order was issued by the Board on April 19, 2012 and mailed to and received by the Respondent on April 26, 2012. The Decision and Order notified the Respondent that her license was revoked. However, the Decision and Order provided that should Respondent complete a remedial course in Ethics, re-take and pass the jurisprudence exam and pay a fine of \$1,000.00 within 180 days of May 1, 2012, the revocation would be considered a six month suspension.[Attachment 3, Bates Stamped 16 - 25].

D. The Respondent failed to comply with the Board’s Final Decision and Order and as of the date of the issuance of this NCA her license remains revoked. [Attachment 4, Bates Stamped 26 – 27].

E. On April 30, 2012, the Board’s Administrator mailed to the Respondent a copy of the jurisprudence exam and the rules and regulations promulgated by the Board. The documents were received and signed for by the Respondent on May 7, 2012. The 180 days

allowance for completion of and receipt by the Board of payment of the fine and documentation as to completing the required courses expired the end of October 2012. On July 29, 2013, the Board received documentation showing the Respondent completed “The Five Elements of Acupuncture Medical Ethics” on April 2012 and that she was returning the answered jurisprudent exam dated May 7, 2012. On November 8, 2013, the Board received a bank check for full payment of the fine. [Attachment 5, Bates Stamped 28 - 37].

F. Prior to payment of the fine and on the same date she provided evidence of completion of the classes to the Board the Respondent completed an application for licensure, including a statement as to why she failed to timely fulfill the Final Decision and Order requirements. Additionally on November 6, 2013, the Board received a request from Respondent to allow her to appear and explain all circumstances which resulted in her license being revoked and her failure to timely fulfill the terms of the Final Order. The Respondent alleges that her cousin failed to ensure that the money was timely paid and that the documentation was timely received by the Board. [Attachment 6, Bates Stamped 38 - 57].

G. In order to guarantee that her license was suspended for six months rather than revoked the Respondent had the responsibility to ensure that the Board received the fine payment and the evidence of completion of classes by the end or the 180 day period or request additional time for completion. Respondent failed to complete the requirements. Respondent provided the Attorney General’s Office documentation as to her license. [Attachment 7, Bates Stamped 58 - 81].

5. The general nature of the evidence before the Board is contained in the Attachment 1 through 7, Bates Stamped 1 - 81.

6. By engaging in the above-referenced conduct, Respondent violated NMSA 1978, §61-14A-17 A (5), NMSA 1978, §61-14A-17A (16), and Regulation 16.2.12.8 NMAC and Regulation 16.2.12.34 NMAC of the New Mexico Acupuncture and Oriental Medicine Practice Act and its regulations.

7. The statements above are general in nature and the evidence adduced at the hearing will not be limited by this summary but will concern the violations as indicated by the reference to the above statutes and regulations.

8. 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 Oriental Medicine license in New Mexico and/or take other disciplinary action.

9. 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:

- A. denial of permission to take an examination for licensing for which application has been properly made as required by board rule;
- B. denial of a license after examination for any cause other than failure to pass an examination;
- C. denial of a license for which application has been properly made as required by board rule on the basis of reciprocity or endorsement or acceptance of a national certificate of qualification;
- 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.

10. The Board shall take the contemplated action by default, unless Respondent “within twenty days after service of the notice deposits in the mail a certified return receipt requested letter address to the Board and containing a request for a hearing. *See* NMSA § 61-1-

4(D)(3). If 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). A written request for a hearing should be sent to the following address:

New Mexico Board of Acupuncture & Oriental Medicine
ATTN: Cynthia Graystone
P.O. Box 25101
Santa Fe, New Mexico 87505

**STATE OF NEW MEXICO
BOARD OF ACUPUNCURE &
ORIENTAL MEDICINE**

Date: 11/19/2014

By: Barbara Maddoux R, DOM

Chairperson, Dr. Barbara Maddoux
New Mexico Board Acupuncture &
Oriental Medicine
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CERTIFICATE OF SERVICE BY CERTIFIED MAIL

Return Receipt Request No: 7010 1670 0000 8693 2529

I, Sheila Harris, do hereby certify that I mailed a true and correct copy of the above provided Notice of Contemplated Action in **Case No. AOM 13-07-APP** before the New Mexico Acupuncture and Oriental Medicine Practice Board to the Respondent at her last known address of record, as shown by the records of the New Mexico Acupuncture and Oriental Medicine Practice Board and to the address noted below this 24th day of November, 2014.

Sheila Harris
Print the Name of Individual Certifying Service

Compliance Liaison
Title/Organization

Sheila Harris
Signature

Additional Address for Respondent
10516 D 4th St. NW Albuquerque, New Mexico 87114