

**BEFORE THE MASSAGE THERAPY BOARD
OF THE STATE OF NEW MEXICO**

IN THE MATTER OF:

**RAMON VALLEJOS,
Temporary MT License #4644
(Expired 09/30/11) and
Expired MT License Application,**

Respondent.

Case No. 12-07-10

NOTICE OF CONTEMPLATED ACTION

YOU ARE HEREBY NOTIFIED that the New Mexico Massage Therapy Board (the "Board") has before it sufficient evidence that, if not rebutted or explained at a formal administrative hearing, will justify the Board in imposing such penalties as may be permitted by law.

The Board has jurisdiction to hear this matter and to take action against you pursuant to the Massage Therapy Practice Act, NMSA 1978, § 61-12C-1 *et seq.* (the "Act"), and pursuant to the rules and regulations of the Board promulgated in Title 16, Chapter 7 of the New Mexico Administrative Code ("NMAC") at 16.7.1 through 16.7.16 NMAC (the "Regulations"). Specifically, the Act gives the Board the power to regulate massage therapy practice:

§ 61-12C-2. Legislative purpose.

In the interest of public health, safety and welfare and to protect the public from unlawful, improper and incompetent practice of massage therapy, it is necessary to regulate that practice.

NMSA 1978, § 61-12C-2.

The Uniform Licensing Act, NMSA 1978, § 61-1-1 through 61-1-31 (the "ULA") provides that the Board has the power to take action against unlicensed practitioners and to impose upon a Respondent the costs of the disciplinary proceeding:

§ 61-1-3.2. Unlicensed activity; disciplinary proceedings; civil penalty.

A. A person who is not licensed to engage in a profession or occupation regulated by a board is subject to disciplinary proceedings by the board.

B. A board may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against a person who, without a license, engages in a profession or occupation regulated by the board. In addition, the board may assess the person for administrative costs, including investigative costs and the cost of conducting a hearing. 61-12C-24. Denial, suspension, revocation and reinstatement of licenses.

See the ULA at NMSA 1978, § 61-1-3.2.

Under the Act, the Board has the power to regulate unlicensed massage therapy:

§ 61-12C-5. License or registration required.

A. A person shall not provide or offer to provide massage therapy for compensation unless that person is a massage therapist.

B. A person shall not use the title of or represent himself to be a massage therapist or use any other title, abbreviations, letters, figures, signs or devices that indicate the person is a massage therapist unless he is a massage therapist[.] ...

NMSA 1978, § 61-12C-5 (A) and (B). This portion of the Act requires that a Board-issued license is required before massage therapy services can be performed for monetary compensation in New Mexico.

Also, the Regulations require that a person must be licensed by the Board before they can provide or offer to provide massage therapy services for payment:

**TITLE 16 - OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER - 7 MASSAGE THERAPISTS
PART 4 - REQUIREMENTS FOR LICENSURE**

16.7.4.8 LICENSE OR REGISTRATION REQUIRED:

A. Massage therapists: A person must be licensed by the board in order to legally provide or offer to provide massage therapy services for compensation, as defined in 16.7.1.7 NMAC; or to use the title or represent him/herself to be a massage therapist; or to use any other title, abbreviations, letters, figures, signs or devices that indicate the person is a massage therapist.

* * *

NMAC 16.7.4.8 (A).

The Regulations that authorize the Board to conduct administrative proceedings against an unlicensed practitioner, and to impose on the unlicensed practitioner the administrative, investigation and hearing costs, are:

**TITLE 16 - OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 7 - MASSAGE THERAPISTS
PART 12 - LICENSE/REGISTRATION RENEWAL**

* * *

16.7.12.16 UNLICENSED PRACTICE PROHIBITED:

A. Massage therapists, massage therapy instructors, and massage therapy schools may not render or attempt to render massage therapy services, instruction as a massage therapy instructor, or training and

instruction as a massage therapy school without the required current and valid license or registration issued by the board as provided in NMSA 1978, Section 61-12C-27 of the Massage Therapy Practice Act.

B. In accordance with the Uniform Licensing Act, Section 61-1-3.2, NMSA 1978 (2003 Repl. Pamp), any person, company, firm, or entity who is not licensed or registered by the board is subject to disciplinary actions and proceedings by the board if it is determined that he, she, or it, has been offering or providing massage therapy, offering or providing massage therapy instruction; or offering or providing educational training in massage therapy in New Mexico without a valid New Mexico license or registration.

C. The board may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against any person, company, firm, or entity that violates the Massage Therapy Practice Act by practicing without a valid New Mexico license.

D. In addition, the board may assess the person, company, firm, or entity engaging in the unlicensed practice of massage therapy, massages therapy instruction, or massage therapy education, the administrative costs, including investigative costs and the costs of conducting a hearing.

E. Reports of unlicensed practice may be reported to the board for investigation by phone, fax, mail, or e-mail. An approved complaint form is available from the board office or downloadable from the board's website at www.rld.state.nm.us/b&c/massage.

NMAC 16.7.12.16.

By Regulation, the Board may take action against the unlicensed Respondent. Specifically, the Board has the power to issue a Notice of Contemplated Action against an unlicensed practitioner:

**TITLE 16 - OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 7 - MASSAGE THERAPISTS
PART 14 - COMPLAINTS**

* * *

16.7.14.11 BOARD ACTION:

* * *

C. If the board determines that there is sufficient evidence or cause to issue a notice of contemplated action, the board may vote to issue a notice of contemplated action.

* * *

E. The board may take any other action with regard to a complaint which is within its authority and which is within the law, including referring the complaint to the attorney general for injunctive proceedings, or referring the complaint to district attorneys for prosecution of persons alleged to be practicing massage therapy without a proper license or registration.

NMAC 16.7.14.11 C. and E.

The following Regulations, also contained in Part 14, explain the hearing procedures:

16.7.14.13 NOTICE OF CONTEMPLATED ACTION:

A. All disciplinary proceedings will be conducted in accordance with the Uniform Licensing Act.

B. The board chair, or his/her designee, will serve as hearing officer for disciplinary proceedings for the purpose of administering pre-hearing procedural matters. The hearing officer will be fully authorized to make all necessary procedural decisions on behalf of the board, including, but not limited to, matters related to discovery, continuances, time extensions, amendments, pre-hearing conferences, and proposed findings of fact and conclusions of law.

C. The hearing officer may make such orders as he or she determines may be necessary to implement the authority conferred by Subsection B of 16.7.14.13 NMAC above, including but not limited to discovery schedules, pleading schedules, and briefing schedules.

D. No party will engage in ex-parte communications with the hearing officer or any member of the board in any matter in which a notice of contemplated action has been issued.

E. Licensees and registrants who have been found culpable and sanctioned by the board will be responsible for the payments of all costs of the disciplinary proceedings.

F. Any license or registration, including a wall certificate, issued by the board and subsequently suspended or revoked will be

promptly returned to the board office, but no later than 30 days of receipt by the licensee or registrant of the board's order suspending or revoking the license.

NMAC 16.7.14.13.

A "Notice of Contemplated Action" is defined in the Regulations to mean:

**TITLE 16 - OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 7 - MASSAGE THERAPISTS
PART 1 - GENERAL PROVISIONS**

* * *

16.7.1.7 DEFINITIONS:

* * *

EE. "Notice of contemplated action" means the administrative process used by the board for a licensee, registrant or applicant for licensure or registration to be afforded notice and an opportunity to be heard in a formal hearing before the board, before the board has authority to take any action which would result in denial, suspension, revocation, restriction, probation, monitoring, censuring, etc., of a license, registration, application or licensure or registration. . . .

NMAC 16.7.1.7 (EE).

The Board has the power to take action against the Respondent, an unlicensed practitioner, for failing to comply with the provisions of the Act or with the Regulations adopted by the Board.

The Board contemplates imposing a civil penalty of one thousand dollars (\$1,000.00) against the Respondent. In addition, the Board contemplates imposing the payment of the administrative, investigative, and hearing costs if the Respondent is shown to have engaged in the unlicensed practice of massage

therapy.

NATURE OF EVIDENCE AGAINST RESPONDENT

A Complaint was filed against the Respondent and was received by the Board on July 19, 2012. In the Complaint, the Complainant alleges that the Respondent has provided massage therapy services without a license. The Complaint was investigated by the New Mexico Regulation and Licensing Department (the "RLD").

In a letter dated August 7, 2012 which was sent by certified mail, the RLD provided the Respondent with a copy of the Complaint, and requested a written response from the Respondent. In a second letter dated October 10, 2012 which was sent by certified mail, the RLD again provided a copy of the Complaint to the Respondent, this time through his place of business. A third letter, dated November 21, 2012, was sent to the Respondent with a copy of the Complaint, to an updated Albuquerque address, via certified mail. Finally, the RLD prepared and mailed a cease and desist letter to the Respondent, but that letter was returned by the U.S.P.S. to RLD as unclaimed.

The Complaint alleges that the Respondent was not licensed in July of 2011 despite the fact that a temporary license (which was expired) was posted at a business that provided spa services. The Complaint alleges that the Complainant

was told by a spa manager that the putative licensee was in the process of obtaining a Board license.

The Complaint further alleges that the same licensing violation remained uncorrected approximately one (1) year later in July of 2012, when the Complainant was looking for a massage at the same spa. In sum, the evidence contained in the investigations file will show that the Respondent performed massage therapy services without a valid license from the Board.

RESPONDENT'S RIGHT TO A HEARING

The hearing, if requested, will be conducted in accordance with the ULA. A licensee entitled to a hearing has the following rights under the ULA:

§ 61-1-8. Rights of person entitled to hearing.

A. A person entitled to be heard under the Uniform Licensing Act 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 hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the board or the hearing officer. All notices issued pursuant to Section 61-1-4 NMSA 1978 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.

NMSA 1978, § 61-1-8.

CONCLUSION

The evidence before the Board, summarized above, if not rebutted or explained at a formal hearing, is sufficient to justify the Board imposing a fine and such other penalties as may be permitted by law.

The Board will take the contemplated action unless, within twenty (20) days after service of this Notice, the Respondent requests a formal hearing by certified mail return receipt requested. Such a request for a formal hearing should be mailed to:

**Vanessa Montoya
Compliance Liaison
New Mexico Massage Therapy Board
P.O. Box 25101
Santa Fe, NM 87504-5101**

July 17, 2014
Date

Elizabeth A. Harris
Elizabeth A. Harris, LMT, Chairperson
NM Massage Therapy Board
c/o Laura Romero Halama,
Compliance Team Leader
NM Regulation & Licensing Department
2550 Cerrillos Road, Second Floor
Santa Fe, New Mexico 87505-3260
(505) 476-4870

Administrative Prosecutor:

David Dayog Black
Assistant Attorney General
NM Attorney General's Office
408 Galisteo Street
Santa Fe, NM 87501-2645
(505) 827-6624
dblack@nmag.gov

CERTIFICATE OF SERVICE

A true copy of this Notice of Contemplated Action was sent to the

Respondent by certified mail, return receipt requested, on this 18 day of July,

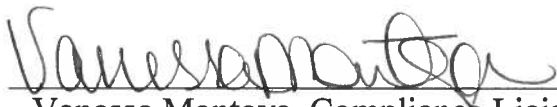
2014 as follows:

Ramon Vallejos
c/o Center for Ageless Living
3316 Highway 47 S
Los Lunas, NM 87031

Certified Mail No.: 7010-0780-0002-3928-9431
Return Receipt Requested

Ramon Vallejos
5532 Cleo Road, SW
Albuquerque, NM 87121

Certified Mail No.: 7010-0780-0002-3928-9449
Return Receipt Requested

By: 
Vanessa Montoya, Compliance Liaison
NM Massage Therapy Board
2550 Cerrillos Road, Second Floor
Santa Fe, New Mexico 87505-3260

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 Albuquerque, NM 87121**

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PS Form 3800, August 2006 See Reverse for Instructions

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