

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

IN THE MATTER OF:

**ANTHONY ARAGON,
License No. 6754**

Case No.: 11-04-05

Respondent.

DEFAULT ORDER

THIS MATTER came before the New Mexico Massage Therapy Board (hereinafter “Board”) during its regularly scheduled meeting on April 16, 2014, for a decision in the above-referenced matter. With board members Elizabeth Harris, Claudio Lopez, and Dawn Saunders present, and a unanimous vote of 3-0 in the affirmative, the Board finds as follows:

FINDINGS OF FACT

1. On or about April 13, 2013, the Board issued an NCA against Respondent. The NCA stated that the Board had sufficient evidence to justify the Board in imposing discipline, including taking action to suspend or revoke Respondent’s license to practice massage therapy, based on alleged violations of the Massage Therapy Practice Act (hereinafter “Practice Act”), NMSA 1978, Sections 61-12C-1 to -28, and Title 16, Chapter 7 of the New Mexico Administrative Code (hereafter, “NMAC”).

2. The NCA stated that, unless explained or rebutted at a formal hearing, Respondent’s alleged conduct justified the Board in taking action to revoke Respondent’s massage therapy license.

3. On or about December 27, 2013, the Board mailed Respondent an NCA in case number 11-07-06, via certified mail, return receipt requested, to his address of record – 10912 Arboles NE, Albuquerque, NM 87112.

4. The United States Postal Service (“USPS”) delivered the NCA on December 27, 2013. See, Exhibit A, attached hereto.

5. Respondent did not request a hearing within twenty (20) days of service of the NCA, as contemplated by Sections 61-1-4 and 61-1-5 of the Uniform Licensing Act (“ULA”), NMSA 1978, Sections 61-1-1 to -34.

6. Respondent failed to otherwise respond to the NCA.

CONCLUSIONS OF LAW

Based on the findings of fact, the Board reaches the following conclusions of law:

1. The Board has jurisdiction over Respondent and the subject matter of this proceeding pursuant to the Practice Act and the ULA.

2. Section 61-1-5 of the ULA provides that, where notice is served via certified mail, “it shall be deemed to have been served on the date borne by the return receipt showing delivery or the last attempted delivery[.]” NMSA 1978, § 61-1-5.

3. In accordance with Section 61-1-5 of the ULA, service of the NCA upon Respondent was accomplished on December 27, 2013.

4. More than twenty (20) days have passed since Respondent was served with the NCA and Respondent has failed to request a hearing. Thus, the Board is authorized to take the action contemplated in the NCA pursuant to Section 61-1-4(E) of the ULA.

5. The Board has complied with all notice and other procedural requirements of the Practice Act and the ULA.

6. This order is final and not subject to judicial review. See NMSA 1978, § 61-1-4(E).

ORDER

Based on the above findings of fact and conclusions of law, the Board **THEREFORE ORDERS** that Respondent's massage therapy license is **REVOKED**.

FOR THE NEW MEXICO
MASSAGE THERAPY BOARD

DATE: May 6, 2014

Elizabeth Harris
Elizabeth Harris, LMT
Board Chair

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

IN THE MATTER OF:

ANTHONY ARAGÓN
License No. 6754,

Respondent.

Case No. 11-04-05

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 suspending or revoking your license to practice as a Massage Therapist, and in imposing such other penalties as may be permitted by law.

The Board has jurisdiction to hear this matter and to take disciplinary action against you pursuant to the Massage Therapy Practice Act, NMSA 1978, § 61-12C-1 through § 61-12C-28, (the "Act"), and pursuant to the rules and regulations of the Board promulgated in Title 16, Chapter 7 of the New Mexico Administrative Code at 16.7.1 through 16.7.16 NMAC (the "Rules" or "Regulations"). Specifically, the Board has jurisdiction to regulate the massage therapy practice, to wit:

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.

The Act provides that the Board has the power to conduct administrative hearings to suspend, revoke, or impose other penalties as permitted by law, to wit:

61-12C-8. Board powers.

The board has the power to:

A. adopt and file, in accordance with the State Rules Act [14-4-1 NMSA 1978], rules necessary to carry out the provisions of the Massage

Therapy Practice Act, in accordance with the provisions of the Uniform Licensing Act [NMSA 1978, § 61-1-1, *et seq.*];

* * *

F. pursuant to the Uniform Licensing Act, conduct hearings on charges against applicants, licensees or registrants and take actions described in Section 61-1-3 NMSA 1978; [and]

* * *

K. provide for the investigation of complaints against licensees[.]

NMSA 1978, § 61-12C-8 (F) and (K). Further, the Act provides:

61-12C-24. Denial, suspension, revocation and reinstatement of licenses.

* * *

B. The board has authority to take an action set forth in Section 61-1-3 NMSA 1978 [of the Uniform Licensing Act] upon a finding by the board that the licensee, registrant or applicant:

* * *

(5) has been convicted of any offense punishable by incarceration in a state penitentiary or federal prison. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence of conviction;

(6) is guilty of unprofessional or unethical conduct or a violation of the code of ethics;

* * *

(10) is grossly negligent or incompetent in the practice of massage therapy;

* * *

(12) is guilty of failing to comply with a provision of the Massage Therapy Practice Act or rules of the board adopted pursuant to that act and filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978]

C. Disciplinary proceedings may be instituted by sworn complaint of any person, including members of the board, and shall conform with the provisions of the Uniform Licensing Act.

D. The board may establish the guidelines for the disposition of disciplinary cases. Guidelines may include but shall not be limited to minimum and maximum fines, periods of probation, conditions of probation or reissuance of a license or registration.

E. License and registration holders who have been found culpable and sanctioned by the board shall be responsible for the payments of all costs of the disciplinary proceedings.

NMSA 1978, § 61-12C-24 (B) (6), (10) and (12), and paragraphs (C) through (E). In turn, Section 61-1-3 of the Uniform Licensing Act provides:

61-1-3. 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 a 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; or
- N. a refund to the consumer of fees that were billed to and collected from the consumer by the licensee.

NMSA 1978, § 61-1-3 (E) through (N).

The Regulations that authorize the Board to take action against a licensee are:

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. . .

16.7.1.7 (EE) NMAC. The Board is authorized by the Regulations to engage in the process of disciplining licensees by issuing a Notice of Contemplated Action:

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.

16.7.14.11 (C) NMAC. The following Regulations also provide:

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.

16.7.14.13 NMAC.

The Board has the power to take action against the Respondent, a licensee, for failing to comply with a provision of the Massage Therapy Practice Act or the rules and regulations adopted by the Board. Specifically, licensed massage therapists are prohibited from engaging in sexual conduct with clients. With respect to the present matter, the following Regulations apply:

16.7.1.7 DEFINITIONS:

* * *

RR. "Sexual conduct" includes, but is not limited to, sexual intercourse, indecent exposure, sexual assault, non-therapeutic ano-genital contact or any offer or agreement to engage in any such activities. . . .

16.7.1.7 (RR) NMAC. Additionally, the Board may take action against a licensee for unprofessional or unethical conduct or for a violation of the code of ethics. The relevant Regulations on this point are:

16.7.2.8 CODE OF PROFESSIONAL CONDUCT:

* * *

B. Dual relationship: It is presumed that a power imbalance exists in professional relationships between licensees and clients. Therefore each licensee, in interacting with a client or former client to whom the licensee has at anytime within the previous three (3) months rendered massage therapy services or instruction, shall not:

* * *

(2) engage in sexual conduct[.]

C. Client welfare:

(1) Licensees will conduct their business and professional activities with honesty and integrity.

* * *

G. Resolving professional conduct issues:

(1) Each licensee has an obligation to be familiar with this part. Lack of knowledge of professional conduct standard is not itself a defense to a charge of unethical conduct.

(2) Each licensee will cooperate with investigations, proceedings, and resulting requirements of this part. Failure to cooperate is itself an ethics violation.

16.7.2.8 (B) (2), (C) (1), and (G) (1) and (2) NMAC.

Based on the state statutes and regulations cited above, the Board contemplates imposing a fine of one thousand dollars (\$1,000.00) and contemplates taking action against the massage therapy license of Respondent ANTHONY ARAGÓN including, but not limited, license revocation or suspension, or the imposition of other corrective action as ordered by the Board pursuant to law.

NATURE OF EVIDENCE AGAINST RESPONDENT

1. On or about May 31, 2010, Respondent ANTHONY ARAGÓN was a licensed Massage Therapist in New Mexico. His massage therapy license at that time was license number 6754.

2. License number 6754 became inactive on October 31, 2012, and the license remains inactive.

3. On or about May 31, 2010, Respondent ANTHONY ARAGÓN was employed at

a spa as a professional massage therapist.

4. On that morning, Respondent ANTHONY ARAGÓN performed a fifty (50) minute Swedish massage on the client Complainant.

5. During the performance of that massage, Respondent ANTHONY ARAGÓN engaged in sexual conduct with the client Complainant.

6. A Complaint was lodged with the Massage Therapy Board on April 30, 2011.

7. A certified letter was mailed to Respondent ANTHONY ARAGÓN on July 13, 2011 advising him of the filing of the Massage Therapy Board Complaint, and requesting a response from the Respondent.

8. Respondent ANTHONY ARAGÓN did not respond to the July 13, 2011 letter.

9. A second certified letter was mailed to Respondent ANTHONY ARAGÓN on September 21, 2011 advising him of the filing of the Massage Therapy Board Complaint, and requesting a response from the Respondent.

10. A new address was identified, and the second certified letter was re-mailed to Respondent ANTHONY ARAGÓN on September 28, 2011 to the new address, advising him of the filing of the Massage Therapy Board Complaint, and requesting a response from the Respondent.

11. On or about October 6, 2011, a written response was provided by Respondent ANTHONY ARAGÓN. The Respondent denies the allegations in the Complaint.

12. Separate but factually related to this matter, the client Complainant filed a criminal complaint, arising from the same incident that occurred on or about May 31, 2010. The criminal complaint was filed against Respondent ANTHONY ARAGÓN in the Bernalillo County Metropolitan Court alleging criminal sexual contact. This incident was reported to the

police on or about June 4, 2010. On or about January 13, 2012, Respondent ANTHONY ARAGÓN entered a no contest plea agreement on the criminal complaint.

RESPONDENT'S RIGHT TO A HEARING

The hearing, if requested, will be conducted in accordance with the Uniform Licensing Act ("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.

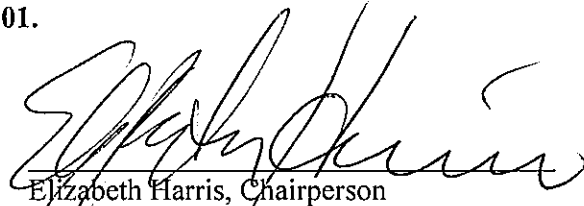
NMSA 1978, § 61-1-8.

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, revoking or suspending your license to practice as a Massage Therapist in the State of New Mexico, and imposing 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 Jackie Holmes, Administrator; New Mexico Massage Therapy Board; P.O. Box 25101; Santa Fe, NM 87504-5101.

April 13 2013
Date



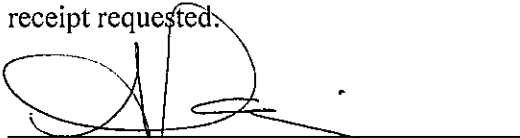
Elizabeth Harris, Chairperson
Massage Therapy Board
New Mexico Regulation and Licensing Department
Toney Anaya Building
2550 Cerrillos Road, Second Floor
Santa Fe, New Mexico 87505-3260
(505) 476-4870

Administrative Prosecutor:

David Dayog Black
Assistant Attorney General
New Mexico Attorney General's Office
408 Galisteo Street
Santa Fe, NM 87501-2645
(505) 827-6624

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Notice of Contemplated Action was mailed to the Respondent Anthony Aragón on this 13 day of April, 2013, via certified mail return receipt requested.



Ms. Amanda Lewis
Massage Therapy Board Administrator
New Mexico Massage Therapy Board
Toney Anaya Building
2550 Cerrillos Road, Second Floor
Santa Fe, New Mexico 87505-3260