

**BEFORE THE STATE OF NEW MEXICO
COUNSELING AND THERAPY PRACTICE BOARD**

IN THE MATTER OF:

JOHNNIE VIGIL

**Case Number: CT-17-26-APP
CT-19-03-APP**

Applicant.

DECISION AND ORDER

THIS MATTER came before the New Mexico Counseling and Therapy Practice Board (hereafter, “Board”) during its regularly scheduled meeting on October 4, 2019, for a decision in the above-referenced case. With a quorum present and a vote in the affirmative, the Board voted to render this Decision and Order.

FINDINGS OF FACT

1. On or about July 19, 2019, the Board, issued a Notice of Contemplated Action (“NCA”) to JOHNNIE VIGIL. The NCA stated that the Board may deny any license. Applicant was informed that the Board could deny a licensee pursuant to the Counseling and Therapy Practice Act, NMSA 1978, Section 61-9A-26(A)(3) and (4) and the Uniform Licensing Act (“ULA”), NMSA 1978, Section 61-1-1 to 61-1-34.

2. The NCA stated that Applicant has the burden of satisfying the Board of the Applicant’s qualifications pursuant to Section 61-1-4(C) of the ULA

3. The NCA further informed Applicant that, if he would like the opportunity for a formal hearing in this matter he must deposit in the mail a certified return receipt requested letter addressed to the board containing a request for a hearing “**within twenty (20) days**

after services of this notice.” “A written request for a hearing should be sent to the following address:”

Sheila Harris
Compliance Liaison
New Mexico Counseling and Therapy Practice Board
New Mexico Regulation and Licensing Department
P O Box 25101
Santa Fe, NM 87504

4. On or about July 19, 2019, the U. S. Postal Service (“USPS”) received an envelope containing the NCA that was sent to Applicant’s last known addresses, as shown in the Board’s records, via certified mail, return receipt requested (No. 9171-9690-0935-0079-1172-24). On or about July 25, 2019, the certified return receipt card was returned to the Board signed by “John Vigil” on July 23, 2019.

5. Applicant did not request a hearing within twenty (20) days of service of, the last attempted delivery of, or Applicant’s refusal to accept delivery of, the NCA as contemplated by Sections 61-1-4(D)(3) (2003) and 61-1-5 (1957) of the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 to -34 (1957, as amended through 2013) (“ULA”).

6. Applicant 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 Applicant and the subject matter of this proceeding pursuant to the Counseling and Therapy Practice Act, NMSA 1978, §§ 61-9A-4 and 61-9A-9 and ULA, NMSA 1978, §§ 61-1-1 and 61-1-31.

2. When served by certified mail, the NCA is deemed to have been served on the date borne by the return receipt showing delivery or the last attempted delivery of the NCA

to the addressee or refusal of the addressee to accept delivery of the NCA. NMSA 1978, § 61-1-5.

3. Service of the NCA upon Applicant via certified mail was accomplished in accordance with Sections 61-1-4 and 61-1-5 of the ULA.

4. The Board may take the action contemplated in the NCA if the Applicant does not deposit in the mail a certified return receipt requested letter addressed to the Board containing a request for a hearing within twenty (20) days after service of the NCA. NMSA 1978, §§ 61-1-4(D)(3) and (E).

5. More than twenty (20) days have passed since Applicant was served, or deemed to have been served, with the NCA and Applicant 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.

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

7. The Board may deny the license pursuant to Section 61-9A-26(A)(3) and (4) of the Counseling and Therapy Practice Act.

8. The Board's Decision and Order in this matter is final and is not subject to judicial review. NMSA 1978, § 61-1-4(E).

ORDER

Based on the above Findings of Fact and Conclusions of Law, the Board renders this Order.

IT IS THEREFORE ORDERED that the Applicant JOHNNIE VIGIL is denied a license.

IT IS SO ORDERED.

Chairwoman Bentley Oliver is designated by the Board to sign this Order on behalf of the Counseling and Therapy Practice Board.

**NEW MEXICO COUNSELING AND
THERAPY PRACTICE BOARD**

Approved via email on 10/31/2019
DATE

/s/ Bentley Oliver
Bentley Oliver, Chair

**BEFORE THE NEW MEXICO COUNSELING & THERAPY BOARD
FOR THE STATE OF NEW MEXICO**

IN THE MATTER OF:

**Case Nos. CT-17-26-APP;
CT-19-03-APP**

**JOHNNIE VIGIL
Unlicensed,**

Respondent(s).

NOTICE OF CONTEMPLATED ACTION

TAKE NOTICE that the New Mexico Counseling & Therapy Board (“Board”) has before it sufficient evidence that, if not rebutted or satisfactorily explained at a formal hearing, will justify the Board taking action to deny licensure or taking other disciplinary action against Johnnie Vigil (“Respondent”) as permitted by law. If Respondent does not request a hearing within twenty (20) days after service of this Notice of Contemplated Action (“Notice”), the Board will take this contemplated action by default and such action will be final and not subject to judicial review.

APPLICABLE LAW

1. Respondent has applied to be licensed pursuant to the New Mexico Counseling & Therapy Act, NMSA 1978, Sections 61-9A-1 to -30 (“Act”), and as such is subject to the jurisdiction of the New Mexico Counseling & Therapy Board (“the Board”). The Board has jurisdiction over this disciplinary action pursuant to the New Mexico Counseling & Therapy Act, and the Uniform Licensing Act (“ULA”), NMSA 1978, Sections 61-1-1 to -34 (1957, as amended through 2017).
2. Respondent has the burden of satisfying the Board of the applicant’s qualifications pursuant to Section 61-1-4(C).
3. This Notice is based upon the following alleged statutory or regulatory violation(s):

§ 61-9A-26. License and registration; denial, suspension and revocation

A. In accordance with the procedures established by the Uniform Licensing Act, the board may deny, suspend or revoke any license or registration held or applied for under the Counseling and Therapy Practice Act, or take any other action provided for in the Uniform Licensing Act, upon grounds that the licensee, registrant or applicant:

(3) is found guilty of a felony or misdemeanor involving moral turpitude;

(4) is found guilty of unprofessional or unethical conduct;

B. A certified copy of the record of conviction shall be conclusive evidence of such conviction.

NMAC 16.27.18.16 PROFESSIONAL COMPETENCE, CONDUCT & INTEGRITY:

E. A licensed or registered individual is in violation of this code and subject to loss of licensure or other disciplinary action if they:

(1) are convicted of a felony or misdemeanor related to their qualifications or functions, or;

(2) are disciplined by other state licensing boards for acts which would be a violation under this code of ethics, statutes or regulations, or;

(3) are no longer competent to practice, or;

(4) fail to cooperate with the state at any point from the inception of a conduct complaint through the completion of all proceedings regarding that complaint.

SUMMARY OF THE EVIDENCE AGAINST RESPONDENTS

4. The general nature of the evidence before the Board is as follows:
 - a. Respondent applied for licensure as a Licensed Alcohol and Drug Abuse Counselor with the New Mexico Board of Counseling & Therapy in June of 2017 (CT-17-26-APP) and again in December 2018 (CT-19-03-APP).
 - b. Respondent was convicted of a Felony Robbery by Threats in Bell County, Texas, in 1978 and Misdemeanor Driving While Intoxicated in 1982.
 - c. In a letter dated January 8, 2008, Respondent outlined 9 (nine) separate instances of being a named Defendant in Medical Malpractice lawsuits spanning from 1998 to 2005. These lawsuits were brought against Respondent in his capacity as a Medical Doctor.
 - d. In October of 2003, Respondent appeared before the Impaired Physician's Panel of the New Mexico Medical Board. In November 2003, the New Mexico Medical Board limited Respondent's Medical License.

- e. In a letter dated June 11, 2014, Respondent stated that in December 2013, he entered into a Memorandum of Understanding with the Drug Enforcement Administration restricting him from prescribing Schedule II medications. The same letter also outlined three instances of being named as a Defendant in a wrongful death lawsuit related to opioid overdose deaths and one instance of being a named Defendant in a Negligent Supervision lawsuit.

RIGHTS AND OBLIGATIONS OF RESPONDENT

5. **Unless Respondent requests a formal hearing, the evidence before the Board is sufficient to justify the Board in taking the contemplated action.**
6. The formal hearing, if requested, will be conducted pursuant to the ULA as provided by Section 61-1-8. Section 61-1-8 provides that:
 - A. A person entitled to be heard under the Uniform Licensing 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 (10) days after the mailing or delivery of the request. No request shall be made less than fifteen (15) 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.
7. **If Respondent does not request a hearing in this matter, the Board will take the contemplated action by default. See § 61-1-4(D)(3). If no hearing is requested, this disciplinary action will not be subject to judicial review. See § 61-1-4(E).**

8. In order to request a hearing in this matter Respondent must deposit in the mail a certified return receipt requested letter addressed to the Board containing a request for a hearing within twenty (20) days after services of this notice. See § 61-1-4(D)(3). A written request for a hearing should be sent to the following address:

Sheila Harris
Compliance Liaison
New Mexico Counseling and Therapy Practice Board
Regulation and Licensing Department
P.O. Box 25101
Santa Fe, NM 87504

DATED: 19th day of July, 2019



Stewart Sroufe, Board Chair
New Mexico Counseling and Therapy Practice Board

Prepared by:

/s/Mark F. Swanson

Mark F. Swanson
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed on July 19, 2019, by United States Postal Service Certified Mail, return receipt requested, to:

Johnnie Vigil
3150 Carlisle NE, Suite 107
Albuquerque, NM 87110

Certified Mail No. 9171 9690 0935 0079 1172 24



Sheila Harris, Compliance Liaison
New Mexico Counseling and Therapy Practice Board