

**BEFORE THE STATE OF NEW MEXICO
BOARD OF DENTAL HEALTH CARE**

IN THE MATTER OF:

**ELIVER KESTLER
a.k.a. Eliver Lopez, a.k.a. El Dentista
License Number: UNLICENSED**

Case No. 13-52-COM

Respondent.

DEFAULT ORDER

THIS MATTER came before a quorum of the New Mexico Board of Dental Health Care (the “Board”), at a regular meeting held on July 17, 2015, for a decision in the above-referenced matter. With a quorum present and a unanimous vote in the affirmative, with Board Member Ermelinda Baca, RDH abstaining, the Board renders this Order.

FINDINGS OF FACT

1. On April 6, 2015, the Board issued an NCA against Respondent Eliver Kestler (“Respondent”) in case number 13-52-COM. The NCA notified Respondent that the Board had sufficient evidence to justify taking action to fine Respondent \$1,000.00 for practicing dentistry without a license in violation of the New Mexico Board of Dental Health Care Act (hereafter “Act”), NMSA 1978, Sections 61-5A-1 to -30 (1994, as amended through 2011), and the Board’s rules and regulations.

2. The NCA stated that, unless explained or rebutted at a formal hearing, Respondent’s alleged conduct justified the Board in imposing a civil penalty in an amount not to exceed one thousand dollars (\$1,000) for each violation.

3. On April 6, 2015, the Board mailed Respondent an NCA in case number 13-52-COM via certified mail, return receipt requested, to his address of record – Central New Mexico Correctional Facility, PO Drawer 1328, Los Lunas, New Mexico 87031-1328.

4. The United States Postal Service (“USPS”) delivered the NCA to Respondent’s address on April 10, 2015.

5. Respondent did not request a hearing within twenty (20) days of service of the NCA, as contemplated by Sections 61-1-4(D)(3) and 61-1-5 of the Uniform Licensing Act (“ULA”), NMSA 1978, Sections 61-1-1 through 61-1-31 (1957, as amended through 2003).

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 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”. NMSA 1978, § 61-1-5.

3. In accordance with Sections 61-1-4 and 61-1-5 of the ULA, Respondent received service of the NCA on April 10, 2015.

4. The Board may take the action contemplated in the NCA if the Respondent 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. See NMSA 1978, §§ 61-1-4(D)(3) and (E).

5. 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.

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

7. 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** as follows:

1. Respondent shall **CEASE AND DESIST** from any and all activities requiring a dental license; and
2. Respondent shall **PAY** the Board a fine in the amount of one-thousand dollars (\$1,000.00) for practicing dentistry without a license.

IT IS SO ORDERED.

FOR THE NEW MEXICO
BOARD OF DENTAL HEALTH CARE



Dr. Charles Schumacher, DDS
Board Chair

__8/19/2015
Date

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent to the following parties of record, in the manner indicated below, on this 24th day of August, 2015:

Via certified mail, return receipt requested:

Eliver Kestler, NMCD # 79667
Central New Mexico Correctional Facility
PO Drawer 1328
Los Lunas, New Mexico 87031-1328
Certified # 7011 2970 0003 9314 9941

Via Email:

Rebecca Parish
Assistant Attorney General
Board Administrative Prosecutor
PO Drawer 1508
Santa Fe, NM 87504-1508
rparish@nmag.gov

By: _____



Regulation and Licensing Department