

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

IN THE MATTER OF:

**DESIREE FELKER (HERNANDE)
LICENSE NO. 7343,
Respondent.**

CASE No. 15-20-COM

DEFAULT ORDER

THIS MATTER came before the New Mexico Massage Therapy Board (the “Board”) on August 30, 2017, for a decision pursuant to provisions of the Uniform Licensing Act, NMSA 1978, §§ 61-1-1 through 61-1-33 (“ULA”). After due deliberation, the Board finds that:

1. The Board has complied with all notice and hearing provisions of the ULA and has afforded Respondent Desiree Felker all applicable due process rights.
2. In accordance with NMSA 1978, § 61-1-4(D), the Board sent its Notice of Contemplated Action (“NCA”) in the above-captioned matter to Respondent at her last known address of record on June 2, 2017, via United States Postal Service Certified Mail, Return Receipt Requested, Article No. 9171 9690 0935 0079 1805 49. Exhibit 1 (Notice of Contemplated Action, Case No. 15-20-COM).
3. Subsequently, the Board’s NCA was returned by the United States Postal Service as “not deliverable as addressed.” Exhibit 2 (Return Envelope on Article No. 9171 9690 0935 0079 1805 49).
4. The NCA would have notified Respondent that the Board had before it sufficient evidence which, if not rebutted or satisfactorily explained at a formal hearing, would justify the Board taking disciplinary action. Exhibit 1.

5. The NCA would have further notified Respondent that 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 addressed to the Board and containing a request for a hearing.’” Exhibit 1.
6. NMSA 1978, § 61-1-4(E) authorizes the Board to take the action contemplated in the NCA if a licensee does not mail a request for a hearing within the time and in the manner prescribed by NMSA 1978, §61-1-4. It further provides that such action taken by the Board shall be final and not subject to judicial review. NMSA 1978, § 61-1-4(E).
7. Respondent did not request a hearing within the time and in the manner prescribed.
8. Respondent has not otherwise communicated with the Board or offered any evidence rebutting or explaining the violations alleged in the NCA.

Based on the above findings, the Board enters the following Default Order:

IT IS ORDERED that Respondent pay a civil penalty to the Board in the amount of \$500.00 pursuant to NMSA 1978, § 61-1-3.

This action is disciplinary action and as such is a public record subject to inspection. Pursuant to NMSA 1978, Section 61-1-4(E), this action shall be final and not subject to judicial review.

This Decision and Order shall be served upon Respondent in accordance with law.

IT IS SO ORDERED.

1/16/2018
DATE

/s/ Susan Andrews
SUSAN ANDREWS, CHAIR
NEW MEXICO BOARD OF MASSAGE THERAPY

*Signature executed via e-mail
authorization dated 1/16/2018*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document and attachments were sent via certified mail, return receipt requested to Ms. Desiree Felker, at her last known address of record on 1/16/2018.


Kathleen Roybal, Compliance Liaison

Certified Mail: 9171 9690 0935 0155 1578 54

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

IN THE MATTER OF:)	
)	
DESIREE FELKER (HERNANDE))	CASE NO. 15-20-COM
LICENSE NO. 7343)	
)	
Respondent.)	

NOTICE OF CONTEMPLATED ACTION

1. Desiree Felker (hereafter the "Respondent") is hereby notified that the New Mexico Massage Therapy Board (hereafter the "Board") has before it sufficient evidence which, if not rebutted or satisfactorily explained at a formal hearing, will justify the Board in taking disciplinary action against Respondent's license to practice as a massage therapist in New Mexico pursuant to NMSA 1978 § 61-12C-24.

2. Action is contemplated to impose disciplinary measures pursuant to the following statutes and regulations:

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

A. Pursuant to the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978], the board may take disciplinary action against a person licensed or registered pursuant to the Massage Therapy Practice Act.

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

- (1) is guilty of fraud, deceit or misrepresentation;
- (2) attempted to use as his own the license or registration of another;
- (3) allowed the use of his license or registration by another;
- (4) has been adjudicated as mentally incompetent by regularly constituted authorities;

(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;

(7) is habitually or excessively using controlled substances or alcohol;

(8) is guilty of false, deceptive or misleading advertising;

(9) is guilty of aiding, assisting or advertising any unlicensed or unregistered person in the practice of massage therapy;

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

(11) has had a license or registration to practice massage therapy revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for acts of the licensee or registrant similar to acts described in this section. A certified copy of the record of conviction shall be conclusive evidence of the conviction; or

(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.

16.7.2.8(C)(1),(9) and (F)(1) NMAC – CODE OF PROFESSIONAL CONDUCT

C. Client Welfare: Each licensee, instructor and applicant shall:

(1) conduct their business and professional activities with honest and integrity;

(9) not take unfair advantage of the client for financial gain.

F. Violation of the law: Each licensee, instructor and applicant shall not:

(1) violate any applicable statute or administrative regulation governing the practice of massage therapy

3. The Board has jurisdiction to hear this matter pursuant to the Massage Therapy Practice Act, NMSA 1978, Sections 61-12C-1 through 61-12C-28.

4. The general nature of the allegations is as follows:

a. Respondent was issued New Mexico Massage Therapist License Number 7343 (hereafter "License"), which authorized Respondent to practice massage therapy in the State of New Mexico.

b. Respondent, sold three gift certificates to Complainant, for massage services at Zia Therapeutic Arts at 1210 N. Main, Las Cruces, NM, 88005.

c. After selling the gift certificates, Respondent left the above listed address and would not return messages from Complainant, as Complainant attempted to redeem the gift certificates.

5. Unless rebutted or explained at a formal hearing, the evidence before the Board is sufficient to justify the Board in taking disciplinary action.

6. 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* MMSA § 61-1-4(E). A written request for a hearing should be sent to the following address:

**Elisa Salazar
Compliance Liaison
New Mexico Massage Therapy Board
P.O. Box 25101
Santa Fe, New Mexico 87504**

7. If requested, the formal hearing will be conducted in accordance with the New Mexico Uniform Licensing Act, NMSA 1978, § 61-1-4(D)(4). Respondent is advised that NMSA 1978, § 61-1-8 affords the following rights:

A. A person entitled to be heard under the Uniform Licensing Act [61-1-1 NMSA 1978] 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 therefore 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.

**STATE OF NEW MEXICO
MASSAGE THERAPY BOARD**

Date: June 2 2017

By: 
Board Chair
New Mexico Massage Therapy Board
2550 Cerrillos Road
Santa Fe, New Mexico 87505
(505) 476-4642

Prepared by:

/s/ Julia White

Julia White
Assistant Attorney General
Litigation Division
Post Office Drawer 1508
Santa Fe, NM 87504-1508
(505) 490-4060

CERTIFICATE OF SERVICE

A true copy of this Notice of Contemplated Action was mailed to Respondent by certified mail, return receipt requested, on this 2 day of June 2017.

New Mexico Massage Therapy Board