

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

IN THE MATTER OF:

**CAM DANG NGUYEN (unlicensed),
Respondent.**

CASE No. MT 15-10-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 Cam Dang Nguyen 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 his last known address of record on April 17, 2017, via United States Postal Service Certified Mail, Return Receipt Requested, Article No. 9171 9690 0935 0079 1802 04. Exhibit 1 (Notice of Contemplated Action, Case No. MT 15-10 COM).
3. Subsequently, the Board received the Return Receipt for Article No. 9171 9690 0935 0079 1802 04, which had been signed by Respondent on or about April 19, 2017. Exhibit 2 (Return Receipt, Article No. 9171 9690 0935 0079 1802 04).
4. The NCA notified Respondent that the Board had before it sufficient evidence which, if not rebutted or satisfactorily explained at a formal hearing, would justify the imposition of a civil penalty in an amount not to exceed one thousand dollars (\$1000). Exhibit 1.

5. The NCA further notified Respondent that unless Respondent requested a hearing within twenty days of service, the Board would take the contemplated action. 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, § 61-1-3.2.

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 Mr. Cam Dang Nguyen, at his last known address of record on January 16, 2018.


Kathleen Roybal, Compliance Liaison

Certified Mail: 9171 9690 0935 0155 1578 61

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

IN THE MATTER OF

Case No. MT 15-10-COM

CAM DANG NGUYEN (unlicensed),
RESPONDENT.

NOTICE OF CONTEMPLATED ACTION

1. Cam Dang Nguyen (Respondent) was providing unlicensed massage therapy services. Respondent was not licensed to perform massage therapy services in the State of New Mexico, as required, pursuant to the Massage Therapy Practice Act (MTPA), NMSA 1978, Sections 61-12C-1 through -28, and Uniform Licensing Act, NMSA (ULA), Sections 61-1-1 through -31.

2. **NMSA 61-12C-24. (B)&(D) provides that:**

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 [14-4-1 NMSA 1978].

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.

3. NMAC 16.7.2.8(E)&(F) provides that:

- E. Representation of services:** Each licensee, instructor and applicant shall:
- (1) disclose to the client the schedule of fees for services prior to treatment;
 - (2) not misrepresent directly or by implication of his professional qualifications such as type of licensure, education, experience, or areas of competence;
 - (3) not falsify professional records;
 - (4) include in any advertisement for massage;
 - (a) his full name as licensed with the board and license number; and
 - (b) the designation or abbreviation as a “licensed massage therapist” or “LMT”; “registered massage therapy instructor” or “RMTI”; and “registered massage therapy school” or “RMTS”.
 - (5) When offering gratuitous services or discounts in connection with professional services, each licensee must clearly and conspicuously state whether or not additional charges may be incurred by related services and the possible range of such additional charges; and
 - (6) not advertise massage therapy services or instruction, which contains:
 - (a) a false, fraudulent, misleading, deceptive statement; or
 - (b) suggestion of sexual stimulation.
- 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;
 - (2) use fraud, misrepresentation, or deception in obtaining a massage therapy license or renewal, in passing a massage therapy licensing examination, in assisting another to obtain a massage therapy license or to pass a massage therapy licensing examination, in providing massage therapy services, or in conducting any other activity related to the practice of massage therapy.

4. NMAC 16.7.4.8(A) provides that:

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 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.

5. The Board has before it sufficient evidence, which if not rebutted or satisfactorily explained, will justify the Board in taking action against Respondent pursuant to NMSA 1978, Section 61-1-3.2, which provides that “[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.” Also, NMSA 1978, Section 61-12C-27(A), provides that it is a misdemeanor act to violate a provision of the MTPA or the rules adopted pursuant to the MTPA.

6. This action is based on the following allegations:

Respondent was offering Massage Therapy services without a Massage Therapy license. The inspector was unable to find any history of a license with the Massage Therapy Board.

7. The allegations contained in paragraph number six, above, would constitute a violation of NMAC 16.7.4.8(A) (“A person must be licensed by the board in order to legally provide or offer to provide massage therapy 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.”).

RIGHTS OF THE RESPONDENT

You have a right to request a formal hearing in this matter. In order to exercise that right, **you must respond to this Notice of Contemplated Action with a request for a hearing within twenty (20) days of the service of this Notice**, pursuant to the ULA, NMSA 1978, Section 61-1-4, which governs the formal hearing proceeding. *See* NMSA 1978, § 61-12C-24. **The hearing request must be made in writing, sent to the Board by certified receipt requested letter to the address provided below.** Failure to respond in this prescribed manner (requesting a hearing) will result in the Board taking the contemplated action; and, such action shall be final, without any opportunity to appeal for judicial review. Please send any request for a formal hearing to:

Elisa Salazar, Compliance Liaison
New Mexico Massage Therapy Board
Toney Anaya Building
2550 Cerrillos Road
Santa Fe, NM 87505
(505) 476-4622

If that hearing is requested, it will be conducted in accordance with the ULA. With respect to any formal hearing, as the respondent you have the following rights under NMSA 1978, Section 61-1-8:

- 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

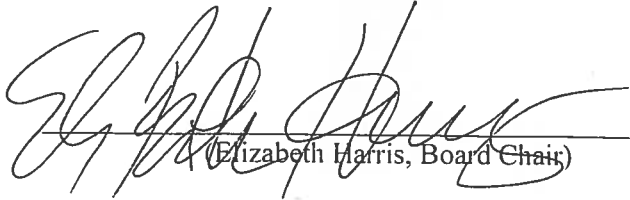
who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written 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 days after the mailing or delivery of the request. No 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.

Dated on this 17 day of April, 2017.

STATE OF NEW MEXICO BOARD OF MASSAGE THERAPY

By



(Elizabeth Harris, Board Chair)

Administrative Prosecutor
Julia White
Assistant Attorney General
Office of the New Mexico Attorney General
P.O. Drawer 1508
Santa Fe, NM 87504-1508
(505) 490-4060
jwhite@nmag.gov

CERTIFICATION OF SERVICE

I, Elisa Salazar, do hereby certify that a true and correct copy of the this Notice of Contemplated Action was mailed to Respondent, Oriental Health Spa, at its last known address as shown by the records of the New Mexico Massage Therapy Board on this 17 day of April, 2017.

Return Receipt Request No.: 9171 9690 0935 0079 1802 04

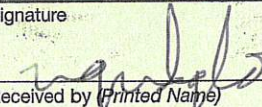
Elisa Salazar
Print the Name of Individual Certifying Service

Compliance Liaison
Title/Organization

Elisa Salazar
Signature

9171 9690 0935 0079 1802 04

Cam Dang Nguyen
Elite Nails & Spa #2
1620 S. Canal
Carlsbad, NM 88220

SENDER:		ON DELIVERY		
<ul style="list-style-type: none">■ Complete items 1, 2, and 3.■ Print your name and address on the reverse so that we can return the card to you.■ Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature X 		<input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
	B. Received by (Printed Name)		C. Date of Delivery 7-19-20	
1. Article Addressed to:	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No			
Cam Dang Nguyen Elite Nails & Spa #2 1620 S. Canal Carlsbad, NM 88220		3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)		<input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery
2. Article Number (Transfer from service label) 9171 9690 0935 0079 1802 04				
PS Form 3811, July 2015 PSN 7530-02-000-9053		Domestic Return Receipt		