

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

IN THE MATTER OF:

Eugenio Gallegos,
License No. 7372,

Case No. MT 16-13-COM

Respondent.

DEFAULT ORDER

This matter came before the New Mexico Massage Therapy Board (the "Board") on May 1, 2018, 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 Eugenio Gallegos 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 February 2, 2018, via United States Postal Service Certified Mail, Return Receipt Requested, Article No. 9171 9690 0935 0155 1578 09. *See* Exhibit 1 (Notice of Contemplated Action, Case No. MT 16-13-COM).
3. Melisa Gallegos signed for delivery of the NCA on the return receipt. *See* Exhibit 1.
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 Board taking disciplinary action. Exhibit 1.
5. The NCA further notified Respondent that failure to respond and request a hearing would "result in the Board taking 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's Massage Therapy License No. 7372 is hereby revoked 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.

5/14/2018
DATE

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

*Signature executed via e-mail
authorization dated 5/14/2018*

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. Eugenio Gallegos, at his last known address of record on May 14, 2018.


Kathleen Roybal, Compliance Liaison



New Mexico Regulation and Licensing Department
BOARDS AND COMMISSIONS DIVISION

P.O. Box 25101 • Santa Fe, New Mexico 87504
(505) 476-4600 • Fax (505) 476-4620 • www.rld.state.nm.us

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SUPERINTENDENT

David Jablonski
DEPUTY
SUPERINTENDENT

Claudia Armijo
DEPUTY GENERAL
COUNSEL

Enrique Knell
DIRECTOR

February 2, 2018

CERTIFIED MAIL #9171 9690 0935 0155 1578 09

Eugenio Gallegos
800 W. Plains Ave.
Clovis, NM 88101

Re: New Mexico Board of Massage Therapy
Complaint #MT-16-13-COM
Complainant – Amanda Lewis

Dear Mr. Gallegos:

Enclosed please find a Notice of Contemplated Action (NCA) for the above referenced complaint, which has been drafted by the Attorney General's Office on behalf of the above referenced Board. The NCA is self-explanatory.

Please pay particular attention to the deadlines outlined in the NCA.

If you are exercising your right to a hearing please mail your request for hearing to the above address, *directing your request to my attention, including the name of the Board as referenced above*, within the timeline outlined in the NCA. Please note that your request must be sent by certified mail.

If you want to discuss the charges enumerated in the NCA please contact the Litigation Assistant Attorney General named in the NCA.

Sincerely,

Kathleen Roybal

Kathleen Roybal
Compliance Liaison
New Mexico Board of Massage Therapy
(505) 476-4622

Enclosure: Notice of Contemplated Action

Alcohol and Gaming Division
(505) 476-4875

Boards and Commissions Division
(505) 476-4600

Construction Industries Division
(505) 476-4700

Financial Institutions Division
(505) 476-4885

Manufactured Housing Division
(505) 476-4770

Securities Division
(505) 476-4580

Administrative Services Division
(505) 476-4800



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

IN THE MATTER OF

Case No. MT 16-13-COM

EUGENIO GALLEGOS (Lic. No. 7372),
RESPONDENT.

NOTICE OF CONTEMPLATED ACTION

1. EUGENIO GALLEGOS (Respondent) possessed a license to perform massage therapy services in the State of New Mexico, 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. Respondent submitted his application for renewal, indicating that he is non-compliant with 16.7.4.10(F) NMAC (General Provisions for Licensure). This provision requires a current CPR, first aid and AED course. The Board met on November 10, 2015, and determined that licensees who were non-compliant with this provision would be permitted 90 days to submit proof that they had completed the required course. Respondent did not submit this proof within that time frame.
3. In addition to the provisions cited in Paragraphs 2 and 4 of this document, it is alleged that Respondent violated the following provision:

16.7.2.8(G) (CODE OF PROFESSIONAL CONDUCT) provides as follows:

G. Resolving professional conduct issues: Each licensee, instructor and applicant shall:

 - (1) have 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) cooperate with investigations, proceedings, and resulting requirements of this part. Failure to cooperate is itself an ethics violation.
4. 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 61-12C-24, NMSA 1978 Section 61-1-3, and NMSA 1978 Section 61-12C-24 (A-E) – (Denial, suspension, revocation and reinstatement of licenses).
5. This action is based on the allegations contained above in Paragraph 2 of this Notice of Contemplated Action.

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 2nd day of February, 2018.

STATE OF NEW MEXICO BOARD OF MASSAGE THERAPY

By: /s/Susan Andrews
Massage Therapy Board Member

/s/Julia White
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, Kathleen Roybal, do hereby certify that a true and correct copy of the this Notice of Contemplated Action was mailed to Respondent, at Respondent's last known address as shown by the records of the New Mexico Massage Therapy Board on this 2nd day of February, 2018.

Return Receipt Request No.: 9171 9690 0935 0155 1578 09

Kathleen Roybal
Print the Name of Individual Certifying Service

Compliance Liaison / RLD
Title/Organization


Signature

9171 9690 0935 0155 1578 09

Eugenio Gallegos
800 W. Plains Ave
Clovis, NM 88101

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- 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.

1. Article Addressed to:

Eugenio Gallegos
800 W. Plains Ave
Clovis, NM 88101

COMPLETE THIS SECTION ON DELIVERY

- A. Signature Agent
x *Eugenio Gallegos* Addressee
- B. Received by (Printed Name) Date of Delivery
Eugenio Gallegos
- D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

Service Type

- Certified Mail® Priority Mail Express™
 Registered Return Receipt for Merchandise
 Insured Mail Collect on Delivery

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number
(Transfer from service label)

9171 9690 0935 0155 1578 09

PS Form 3811, July 2013

Domestic Return Receipt