

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

IN THE MATTER OF:

Desiree Falker-Heinando,
License No. 7343,

Case No. MT 16-21-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, Sections 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 Falker-Heinando 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 March 30, 2018, via United States Postal Service Certified Mail, Return Receipt Requested, Article No. 9171 9690 0935 0155 1576 87. *See* Exhibit 1 (Notice of Contemplated Action, Case No. MT 16-21-COM).
3. Subsequently, the Board's NCA was returned by the United States Postal Service as unclaimed.
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 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. 7343 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 Ms. Desiree Falker-Heinando, at her 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

Susana Martinez
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SUPERINTENDENT

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DEPUTY
SUPERINTENDENT

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DEPUTY GENERAL
COUNSEL

Enrique Knell
DIRECTOR

March 30, 2018

CERTIFIED MAIL #9171 9690 0935 0155 1576 87

Desiree Falker-Heinando
1108 E. Walnut Street
Roswell, NM 88203

Re: New Mexico Board of Massage Therapy
Complaint #MT-16-21-COM
Complainant – Beverly Mardis-Raney

Dear Ms. Falker-Heinando:

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 STATE OF NEW MEXICO
MASSAGE THERAPY BOARD**

IN THE MATTER OF:)	
)	
DESIREE FALKER HEINANDO)	CASE NO. MT 16-21-COM
LICENSE NOS. 4743/7343)	
)	
RESPONDENT.)	

NOTICE OF CONTEMPLATED ACTION

1. DESIREE FALKER-HEINANDO ("Respondent") is licensed 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. 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. 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 and NMSA 1978 Section 61-1-3.

4. This action is based on the following allegations:

It is alleged that Respondent offered three (3) gift certificates of massages for a total of \$99. Respondent was paid but failed to perform the massages she was paid for. Respondent's three (3) gift certificates do not display her license number. Respondent is licensed as a massage therapist in the State of New Mexico.

5. The allegations contained in paragraph number four, above, would constitute a violation of NMAC 16.7.2.8(E):

16.7.2.8 CODE OF PROFESSIONAL CONDUCT:

A. Competence: Each licensee, instructor and applicant shall:

(1) limit practice and instruction to the areas of competence in which proficiency has been gained through education, training, and experience and refer clients to other health professionals when appropriate;

(2) acknowledge the limitations of and contraindications to massage therapy and will not encourage unnecessary or unjustified treatment; and

(3) not delegate professional responsibilities to a person who is not qualified or licensed to perform them;

B. Dual relationship: It is presumed that a power imbalance exists in professional relationships between licensees and clients. Therefore each licensee, in interacting with a client or former client to whom the licensee has at anytime within the previous three (3) months rendered

massage therapy or instruction, shall not engage in romantic or sexual conduct.

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

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

(2) obtain prior informed consent of the client regarding draping and treatment to ensure the safety, comfort and privacy of the client;

(3) provide privacy for the client while the client is dressing or undressing;

(4) modify or terminate treatment at the client's request, regardless of prior consent;

(5) refuse to treat any person or part of the body for just and reasonable cause;

(6) not undertake or continue treatment with a client when the licensee is impaired due to mental, emotional or physiologic conditions including substance or alcohol abuse;

(7) maintain clean equipment, linens, clothing and work areas;

(8) not engage in any verbally or physically abusive behavior; or

(9) take unfair advantage of the client for financial gain.

D. Confidentiality of clients: Each licensee shall safeguard confidential information of the client, unless disclosure is required by law, court order, authorized by the client or absolutely necessary for the protection of the public.

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) 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.

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.

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:

Kathleen Roybal, 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.

7. If Respondent requires the services of an interpreter at the hearing, this request must be made in writing. It is to be submitted to the address in Paragraph 6 at the same time the request for hearing is made.

Dated on this 30th day of March, 2018.

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

By: /s/ Susan Andrews
Massage Therapy Board Chairperson

Prepared By:

/s/ Ismael L. Camacho
Assistant Attorney General
Litigation Division
Office of the Attorney General
201 Third Street NW, Suite 300
Albuquerque, NM 87102
Office: (505) 717-3510
Facsimile: (505) 490-4881

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 30th day of March, 2018.

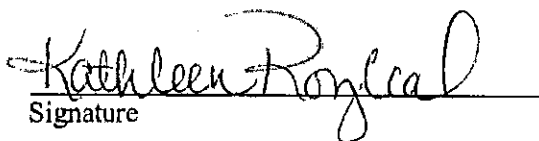
Return Receipt Request No.:9171 9690 0935 0155 1576 87

Kathleen Roybal

Print the Name of Individual Certifying Service

Compliance Liaison / BCD

Title/Organization


Signature