

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

IN THE MATTER OF:

Jianbo Zhang,
Unlicensed,

Case No. MT 16-23-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 Jianbo Zhang 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 13, 2018, via United States Postal Service Certified Mail, Return Receipt Requested, Article No. 9171 9690 0935 0155 1577 48. *See Exhibit 1 (Notice of Contemplated Action, Case No. MT 16-13-COM).*
3. Respondent 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 pay a civil penalty to the Board in the amount of \$1,000.00 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.

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. Jianbo Zhang, 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

Susana Martinez
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SUPERINTENDENT

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DEPUTY GENERAL
COUNSEL

Enrique Knell
DIRECTOR

February 13, 2018

CERTIFIED MAIL #9171 9690 0935 0155 1577 48

Jianbo Zhang
9901 Lomas NE
Albuquerque, NM 87108

Re: New Mexico Board of Massage Therapy
Complaint #MT-16-23-COM
Complainant – Amanda Lewis

Dear Jianbo Zhang:

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

EXHIBIT



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

IN THE MATTER OF

Case No. MT 16-23-COM

JIANBO ZHANG (Unlicensed),
RESPONDENT.

NOTICE OF CONTEMPLATED ACTION

1. JIANBO ZHANG (Respondent) performed 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 engaged in sexual misconduct and unlicensed activity while working as a massage therapist in New Mexico. After rendering massage therapy services to an undercover officer with the VICE Unit, it is alleged that Respondent offered to perform sexual acts on the officer/client. The VICE agent positively identified the Respondent as the massage therapist who made the illicit offer. Additionally, Respondent was not licensed to perform massage therapy services.

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

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) 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.

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.

Additionally, it is alleged that Respondent violated the following regulations:

NMSA 1978 Section 61-12C-5. License or registration required.

A. A person shall not provide or offer to provide massage therapy for compensation unless that person is a massage therapist.

B. A person shall not use the title of or represent himself to be a massage therapist or use any other title, abbreviations, letters, figures, signs or devices that indicate the person is a massage therapist unless he is a massage therapist.

C. A person shall not provide or offer to provide massage therapy training as a massage therapy instructor unless he is registered as a massage therapy instructor pursuant to Section 61-12C-9 NMSA 1978.

D. A person shall not maintain, manage or operate a massage therapy school offering education, instruction or training in massage therapy unless the school is a registered massage therapy school.

NMAC 16.7.12.16 UNLICENSED PRACTICE PROHIBITED:

A. Massage therapists, massage therapy instructors, and massage therapy schools may not render or attempt to render massage therapy services, instruction as a massage therapy instructor, or training and instruction as a massage therapy school without the required current and valid license or registration issued by the board as provided in Section 61-12C-27 NMSA 1978 of the Massage Therapy Practice Act.

B. In accordance with the Uniform Licensing Act, Section 61-1-3.2, NMSA 1978 (2003 Repl. Pam), any person, company, firm, or entity who is not licensed or registered by the board is subject to disciplinary actions and proceedings by the board if it is determined that they, have been offering or providing massage therapy, offering or providing massage therapy instruction; or offering or providing educational training in massage therapy in New Mexico without a valid New Mexico license or registration.

C. The board may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against any person, company, firm, or entity that violates the Massage Therapy Practice Act by practicing without a valid New Mexico license.

D. In addition, the board may assess the person, company, firm, or entity engaging in the unlicensed practice of massage therapy, massages therapy instruction, or massage therapy education, the administrative costs, including investigative costs and the costs of conducting a hearing.

E. Reports of unlicensed practice may be reported to the board for investigation by phone, fax, mail, or e-mail. An approved complaint form is available from the board office or downloadable from the board's website at www.rld.state.nm.us.

6.

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 13th day of February, 2018.

STATE OF NEW MEXICO BOARD OF MASSAGE THERAPY

By: /s/ Susan Andrews
Message Therapy Board Chairperson

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, Kathleen Roybal, do hereby certify that a true and correct copy of this Notice of Contemplated Action was mailed to Respondent, at Respondent's last known address on this 13th day of February, 2018.

Return Receipt Request No.: 9171 9690 0935 0155 1577 48

Kathleen Roybal
Print the Name of Individual Certifying Service

Compliance Liaison / BCD
Title/Organization

Kathleen Roybal
Signature

9171 9690 0935 0155 1577 62

Lin Guangzhou
2400 Eubank NE
Albuquerque, NM 87111

Mailed 2/13/18

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none">■ 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.	A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee	
1. Article Addressed to:	B. Received by (Printed Name)	C. Date of Delivery
Jianbo Zhang 9901 Lomas NE Albuquerque, NM 87108	D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
	3. Service Type <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™ <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery	
2. Article Number (Transfer from service label)	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
9171 9690 0935 0155 1577 48		
PS Form 3811, July 2013 Domestic Return Receipt		