



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

IN THE MATTER OF:

Case No. MT-18-11-COM

David Trujillo,  
License No. MT9078,

Respondent.

**SETTLEMENT AGREEMENT**  
**PROPOSED PRIOR TO REFERRAL FOR ADMINISTRATIVE PROSECUTION**

WHEREAS, David Trujillo (hereafter, "Respondent") is licensed in New Mexico under the Massage Therapy Act NMSA Chapter 61, Article 12C ("the Act"), and is therefore subject to the jurisdiction of the New Mexico Massage Therapy Board ("Board"); and

WHEREAS, the Board has received a formal complaint alleging that Respondent has violated the Act; and

WHEREAS, Respondent wishes to resolve this matter before the complaint is reviewed and possibly referred to the Board's administrative prosecutor at the Office of the Attorney General for the issuance of formal charges through the issuance of a Notice of Contemplated Action ("NCA"); and

WHEREAS, this Settlement Agreement ("Agreement") is entered into voluntarily; and

WHEREAS, Board staff or committee of the Board believe a settlement agreement would be in the best interest of the Board; and

WHEREAS, if the Agreement is rejected by Respondent or not accepted by the Board, the formal complaint in this matter will be forwarded to the Board for further consideration, which may include referral to the Office of the Attorney General for issuance of an NCA, and initiation of a formal disciplinary action, which could result in discipline by the Board up to and including revocation of the license; and

WHEREAS, Respondent is willing to resolve this matter without the need for, and time and expense of, a formal hearing that may occur if the matter is referred for administrative prosecution and an NCA is issued.

THEREFORE, IT IS AGREED AS FOLLOWS:

1. Jurisdiction: Respondent is licensed by the Board or otherwise subject to the Act and jurisdiction of the Board.


2. Voluntary Agreement: Respondent enters into this Agreement knowingly and voluntarily, without duress or coercion, and after a full opportunity to consult an attorney. Respondent understands that the Board has not, at this time, taken any formal disciplinary action against Respondent, and that if Respondent rejects this agreement there is no certainty that the matter will be referred for prosecution or that any disciplinary action will occur.
3. Board Approval: This Agreement requires Board approval. If the Board rejects this Agreement, the matter will be further investigated and may be referred to the Board for additional disciplinary proceedings, including a request for the issuance of a Notice of Contemplated Action by the Board's administrative prosecutor at the Office of the Attorney General and a full evidentiary hearing on the matter. If the Board rejects this Agreement, the terms of this Agreement or statements made by Respondent in support of this Agreement shall not be used against Respondent in a subsequent hearing. The approval shall be effective the date this Agreement is signed by the Board or its designee.
4. Waivers: If this Agreement is accepted by the Board, Respondent agrees to waive any and all rights under the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 through -34 (1957, as amended through 2017), including but not limited to the right to an evidentiary hearing, the right to discovery, the right to present evidence, the right to call and cross examine witnesses, and the right to judicial review.
5. Violations: Respondent admits to the following violation(s) of the Act or Board's rules:
  - a. 16.7.12.16(A) NMAC- 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. 16.7.12.16(B) NMAC- In accordance with the Uniform Licensing Act, Section 61-1-3.2, NMSA 1978 any person, company, firm, or entity who is not licensed or registered by the board is subject to disciplinary actions and proceeding 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. 16.7.12.16(C) NMAC- 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.

6. Sanctions and Conditions: Respondent agrees to the following disciplinary sanctions and conditions:
  - a. Continuing Education: Respondent shall successfully complete the continuing education course(s) listed below. Respondent shall obtain prior written approval (email confirmation of such approval is sufficient) for the course(s) from the Board's administrator or designee before taking any course. The course(s) shall not be credited toward any other continuing education requirements for Respondent's licensure and Respondent is responsible for any associated costs. Respondent shall submit evidence of the successful completion of any course within 90 days from the date this Agreement is accepted by the Board. The required courses are:
    - i. Ethics Course- 4 hour minimum and is required to be taken in person.
  - b. Fine: Respondent shall pay to the Board a fine of One Hundred and Fifty Dollars (\$150.00) within ninety (90) days from the date this Agreement is accepted by the Board.
7. Reportable Discipline: Respondent understands that this Agreement DOES NOT constitute formal disciplinary action by the Board. If this Agreement does constitute formal discipline, the Board will report the action to the applicable professional licensing national database, if any.
8. Non-Compliance: Respondent understands and agrees that failure to comply with the terms of this Agreement will result in further Board action. Any violation of this Agreement will result in the immediate, automatic filing of an administrative Notice of Non-Compliance by Board staff. Upon the filing of a Notice of Non-Compliance, the matter shall be scheduled for the next public meeting of the Board, at which time the Board shall hear from Board staff regarding the alleged non-compliance. Respondent shall have the opportunity to address the allegations or offer any other relevant argument or evidence regarding the reasons for non-compliance. Such argument or evidence may be provided in writing prior to the meeting or in person at the Board meeting. Any presentation regarding the Notice of Non-Compliance shall be limited to evidence surrounding Respondent's alleged failure to comply with the Agreement. Upon finding such violation occurred, the Board may suspend Respondent's license(s), provided that this suspension may only remain in effect until such time as the Respondent has complied with the terms of this agreement, or take other enforcement action as permitted by law. If Respondent's non-compliance constitute acts that are prohibited under the Board's statute or rules, the Board may also initiate a new disciplinary action and refer that matter for administrative prosecution.

9. Contact Information: Respondent shall notify the Board within ten (10) calendar days if there is a change in employment or home address during the term of discipline or prior to completion of any conditions stated herein.
10. Public Record: This Agreement and the original complaint are public records and may be provided for inspection if requested, pursuant to the New Mexico Inspection of Public Records Act ("IPRA"), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2018). The Board may also publish this Agreement or a summary of the Agreement to the public, which may include posting to the Board's website.
11. Full Compliance and Final Disposition: Upon Respondent's satisfactory completion of the terms of this agreement, the case will be deemed closed for administrative purposes without the filing of an order or official vote of the Board. However, this matter may still constitute disciplinary action as provided herein for purposes of Respondent's record with the Board.

I understand and have read this document and hereby agree to the terms of this Agreement freely and voluntarily. I understand that by entering into this Agreement I am giving up my rights under the Uniform Licensing Act, including my right to an evidentiary hearing on the merits of the alleged violations.

I understand that if the Board accepts this Agreement, I am required to comply with the terms stated herein, and that failure to comply with the Agreement may subject me to further discipline, including temporary suspension of my license(s).

  
 \_\_\_\_\_  
 Respondent

n/a  
 \_\_\_\_\_  
 Respondent's Attorney (if any)

2/28/19  
 \_\_\_\_\_  
 Date


\_\_\_\_\_  
 \_\_\_\_\_  
 Date

ORDER

This document is not valid unless it is accepted by vote of the Board. Having come before the Board during a properly scheduled public meeting, with a quorum present and majority voting in the affirmative, this Agreement is:

IT IS SO ORDERED.

  x   ACCEPTED

  
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 SUE ANDREWS, BOARD CHAIR  
 Massage Therapy Board

3/5/2019  
 \_\_\_\_\_  
 Date

David Trujillo  
1068 Maroa St NW  
Albuquerque, NM 87120

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NM 87120  
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New Mexico Massage Therapy Board  
Attention: Kathleen Raybal Compliance  
2550 Cerrillos Road  
Santa Fe, NM 87504

87505-326050

