

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

IN THE MATTER OF

Case No. 2014-02

SARA MARQUEZ,
Respondent.

NOTICE OF CONTEMPLATED ACTION

1. Sara Marquez (Respondent) is unlicensed and unregistered to practice massage therapy in the State of New Mexico as required under the Massage Therapy Practice Act, NMSA 1978, Sections 61-12C-1 through -28, and Uniform Licensing Act, NMSA (ULA), Sections 61-1-1 through -31. Even so, Respondent is subject to the jurisdiction of the New Mexico Board of Massage Therapy Practice (“Board”) under NMSA 1978, Section 61-1-3.2(A), which provides that “[a] person who is not licensed to engage in a profession or occupation regulated by a [B]oard is subject to disciplinary proceedings by the [B]oard” when that person engages in activities of that profession or occupation.
2. 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.”
3. This action is based on the following allegations:
 - a. Laurie Ann Trujillo purchased a \$40.00 gift certificate for an hour and one half massage for her mother, Yolanda Trujillo, from Respondent after contacting Respondent via a telephone number provided on a business card advertising “Massage by Sara Marquez.”
 - b. Ms. Trujillo knew Respondent through the Scherer Institute of Natural Healing where Respondent had been a student. When Ms. Trujillo contacted the Scherer Institute of Natural Healing, the school the staff there informed her that Respondent was not licensed and should not be performing massage therapy.
4. The allegations contained in paragraph number three would constitute a violation of NMSA 1978, Section 61-12C-5(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.”) and NMSA 1978, Section 61-12C-27(C) (providing that unlicensed practice includes “advertis[ing]...implying that [she] is a massage therapist...unless [she] holds a current valid license or registration issued by the board.”).

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:

Vanessa Montoya, Compliance Liaison
New Mexico Massage Therapy Board
Toney Anaya Building
2550 Cerrillos Road
Santa Fe, NM 87505
(505) 476-4643

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 19 day of June, 20 15.

STATE OF NEW MEXICO BOARD OF MASSAGE THERAPY

By: Elizabeth A Harris
Massage Therapy Board Member

Administrative Prosecutor
Brian Parrish,
Assistant Attorney General
Office of the New Mexico Attorney General
P.O. Drawer 1508
Santa Fe, NM 87504-1508
(505) 827-6624
bparrish@nmag.gov

CERTIFICATION OF SERVICE

I, Vanessa Montoya, do hereby certify that a true and correct copy of the this Notice of Contemplated Action was mailed to Respondent, Sara Marquez, at her last known address as shown by the records of the New Mexico Massage Therapy Board on this 22 day of June, 2015.

Return Receipt Request No.: 701421200003162255598

Vanessa Montoya
Print the Name of Individual Certifying Service

Compliance Liaison
Title/Organization

Vanessa Montoya
Signature

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

IN THE MATTER OF:

**SARA MARQUEZ,
Respondent.**

Case No. 2014-02

DEFAULT ORDER

THIS MATTER came before a quorum of the New Mexico Board of Massage Therapy Practice (hereafter “the Board”), and with a quorum present and a majority voting in the affirmative, the Board finds as follows:

1. A Notice of Contemplated Action (“NCA”) was served upon Respondent on June 19, 2015 in accordance with the Uniform Licensing Act, NMSA 1978, §§ 61-1-1 to -34 (1957, as amended through 2016).
2. The Board mailed Respondent the NCA in case number 2014-02 via certified mail, return receipt requested, to Respondent’s address located at HCR 73 Box 527, San Jose, NM 87565.
3. The NCA stated that the Board has sufficient evidence that Respondent was engaging in unlicensed practice, in violation of NMSA 1978 § 61-12C-1. The Board is therefore entitled to take disciplinary action against Respondent, including a fine or taking action against Respondent’s license.
4. Section 61-1-5 of the ULA provides that, where notice is served via certified mail, “it shall be deemed to have been served on the date borne by the return receipt showing delivery or the last attempted delivery of the notice or decision to the addressee or refusal of the addressee to accept delivery of the notice or decision.” § 61-1-5.

5. Respondent failed to request a hearing within twenty (20) days of receipt of the NCA as required under Section 61-1-4 of the ULA.
6. Pursuant to the provisions of the ULA, specifically Section 61-1-4(E), if Respondent does not request a hearing, the Board may proceed to take the action contemplated in the notice and such action shall not be subject to judicial review.
7. It is therefore ordered and adjudged that Respondent did fail to respond to a properly served NCA in case number 2014-02 and is therefore found to be in default.
8. It is hereby **ORDERED** that the license of Respondent **SARA MARQUEZ**, is hereby **REVOKED**, and Respondent is ordered to pay a fine of \$500. This action is final and is not subject to judicial review.

IT IS SO ORDERED.

Sept 6 2016
Date

**FOR THE NEW MEXICO BOARD OF
MESSAGE THERAPY PRACTICE**



ELIZABETH HARRIS, Board Chair

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Default Order was mailed by certified mail to:

**SARA MARQUEZ
HCR 73 Box 528
San Jose, NM 87565**

Certified Mail #: 9171 9690 0935 0079 1800 44

By: 
FOR THE BOARD