

BEFORE THE BOARD OF CHIROPRACTORS
OF THE STATE OF NEW MEXICO

IN THE MATTER OF:

Jerry Salazar (applicant),
Respondent.

Case No. C-17-01-APP

DECISION AND ORDER OF THE BOARD

THIS MATTER came before the New Mexico Board of Chiropractors (“Board”) at a regular meeting held on October 18, 2019, for its decision on the Notice of Contemplated Action (“NCA”) issued by the Board alleging violations of the Chiropractic Physician Practice Act, NMSA 1978, Sections 61-4-1 to -17, and the Board’s rules and regulations by Jerry Salazar (“Respondent”). A formal evidentiary hearing was held in this matter on September 27, 2019, by designated Hearing Officer Dr. Michael Pendleton, pursuant to the Uniform Licensing Act (“ULA”), NMSA 1978, Sections 61-1-1 through -34 (1957, as amended through 2017), the Chiropractic Practices Act, and the Board’s rules. Upon review of the matter, the Board voted to adopt the Hearing Officer’s Recommended Findings of Fact. Pursuant to the Act and, the Board issues the following:

FINDINGS OF FACT

The Board adopts the proposed Findings of Fact from the Hearing Officer’s Report, and such findings are hereby attached and incorporated into this order. *See* Exhibit 1 (Hearing Officer’s Report, C-17-01-APP) (October 16, 2019).

CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the Board.

2. Pursuant to § 61-1-3 of the ULA, the Board held a proper hearing on the matter after previously providing Respondent with proper notice of the general nature of the allegations and evidence against him. *See* Exhibit 2 (Notice of Contemplated Action, C-17-01-APP) (June 24, 2019).
3. Respondent was provided timely notice of the hearing and advised of his rights.
4. Pursuant to NMSA 1978, § 61-1-4(C) of the ULA, the applicant has the burden of proving that the applicant meets all Board requirements for licensure.
5. Pursuant to NMSA 1978, § 61-4-10(A)(1) of the Act, the Board may refuse to issue a license to an applicant on the grounds that the applicant is convicted of a felony.
6. Pursuant to § 61-4-10(A)(2) of the Act, the Board may refuse to issue a license to an applicant on the grounds that the applicant is guilty of fraud or deceit in procuring or attempting to procure a license in the chiropractic profession or in connection with applying for or procuring license renewal.
7. Pursuant to the New Mexico Criminal Offenders Employment Act, NMSA 1978, Section 28-2-4(A)(2), the Board may refuse to grant a license “where the applicant has been convicted of a felony or misdemeanor involving moral turpitude...if the board determines after investigation that the person so convicted has not been sufficiently rehabilitated to warrant public trust...”
8. Based on testimony and the exhibits admitted at the formal evidentiary hearing in this matter, including the statements of the Respondent, a preponderance of the evidence supports the finding that the Respondent was convicted of a felony for tampering with evidence in 2007.

9. Based on Respondent's testimony regarding his rehabilitation, the Board also finds that the Respondent has been sufficiently rehabilitated to warrant public trust.
10. Upon finding that a licensee has been convicted of a felony, the Board is authorized to place the Respondent on probation and place any other stipulations on Respondent's licenses as the Board deems appropriate. *See* § 61-4-10(A)(1).

ORDER

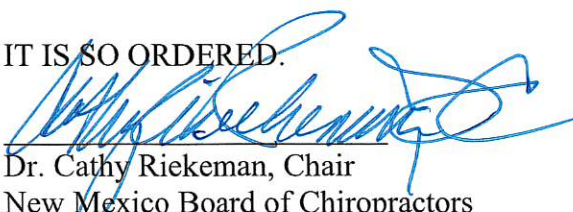
Based on these Findings of Fact and Conclusions of Law, a quorum of the Board voted to allow Respondent to obtain a license to practice chiropractic subject to the following conditions:

- A. Respondent to do a SPEC test within six (6) months from the date of this order;
- B. Board is authorizing Respondent SPEC test.
- C. Respondent must work with at least one (1) licensed, practicing doctor of chiropractic for three (3) months who will provide monthly status updates regarding Respondent's competency to practice chiropractic;
- D. Respondent must provide these status updates to the Board in a timely manner;
- E. Respondent must take the jurisprudence exam within thirty (30) days from date of the order;
- F. Additionally, this Order 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, NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2018). The Board may also publish this Order or a summary of this Order to the public, which may include posting to the Board's website.

IT IS FURTHER ORDERED that failure to comply with the terms of this Order will result in further Board action. Any violation of this Order 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 Order. 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.

IT IS SO ORDERED.


Dr. Cathy Riekeman, Chair
New Mexico Board of Chiropractors

11/19/2019
Date

JUDICIAL REVIEW

This Order constitutes a final decision for purposes of initiating any contemplated judicial review pursuant to the provisions of the Uniform Licensing Act, NMSA 1978, Section 61-1-17, and NMSA 1978, Section 39-3-1.1. An aggrieved party has the right to judicial review of this Order by filing a notice of appeal under Rule 1-074 NMRA within thirty (30) days of the date of filing of the final decision. Any pleadings filed with the district court must be served on the Board's counsel, Assistant Attorney General Delilah Tenorio.


CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent on this 25th day of November, 2019 via certified mail, return receipt requested and via electronic mail to:

Jerry Salazar
2367 Mares Road SW
Albuquerque, NM 87105

Certified Mail No 7018 1130 0001 5734 4991

Erin Lecocq, Administrative Prosecutor and Assistant Attorney General
elecocq@nmag.gov


Kathleen Roybal, Hearing Clerk

**BEFORE THE CHIROPRACTIC BOARD
FOR THE STATE OF NEW MEXICO**

IN THE MATTER OF:

Case No. C-17-01-APP

**Jerry Salazar,
License No. N/A,**

Respondent.

NOTICE OF CONTEMPLATED ACTION

TAKE NOTICE that the Chiropractic of Board Examiners has before it sufficient evidence that, if not rebutted or satisfactorily explained at a formal hearing, will justify the Board taking action to deny licensure or taking other disciplinary action against Jerry Salazar ("Respondent") as permitted by law. If Respondent does not request a hearing within twenty (20) days after service of this Notice of Contemplated Action ("Notice"), the Board will take this contemplated action by default and such action will be final and not subject to judicial review.

APPLICABLE LAW

1. Respondent has applied to be licensed pursuant to the Chiropractic Physician Practice Act, NMSA 1978, Sections 61-4-1 *et seq.*, and as such is subject to the jurisdiction of the Board of Chiropractic Examiners ("the Board"). The Board has jurisdiction over this disciplinary action pursuant to the Chiropractic Physician Practice Act and the Uniform Licensing Act ("ULA"), NMSA 1978, Sections 61-1-1 to -34 (1957, as amended through 2017).
2. Respondent has the burden of satisfying the Board of the applicant's qualifications pursuant to Section 61-1-4(C).
3. This Notice is based upon the following alleged statutory or regulatory violation(s):
 - a. The Board may refuse to issue a license to Respondent because he is a convicted felon pursuant to NMSA 1978, § 61-4-10(A)(1).
 - b. Respondent is guilty of fraud or deceit in procuring or attempting to procure a license in the chiropractic profession or in connection with applying for or procuring license renewal pursuant to NMSA 1978, § 61-4-10(A)(2).

SUMMARY OF THE EVIDENCE AGAINST RESPONDENTS

4. The general nature of the evidence before the Board is as follows:
 - a. Respondent admits in his May 24, 2016, Application for Chiropractic Licensure that he is a felon. *See* D-1329-CR-2006-00514.
 - b. Respondent averred under the penalty of perjury in his May 24, 2016, application that his answers to questions within his application and all statements made were true and correct. Respondent failed to disclose that he committed the following crimes: Interference with Communications and Criminal Damage to Property. *See* Case No. D-202-CR-2004-04124.
 - c. Respondent has other convictions he failed to disclose, e.g., *see* Case No. D-202-CR-2005-03190 plead to Assault on Peace Officer and Tampering with evidence.

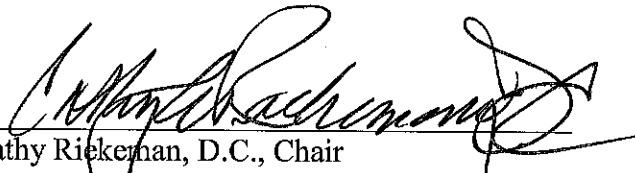
RIGHTS AND OBLIGATIONS OF RESPONDENT

5. **Unless Respondent requests a formal hearing, the evidence before the Board is sufficient to justify the Board in taking the contemplated action.**
6. The formal hearing, if requested, will be conducted pursuant to the ULA as provided by Section 61-1-8. Section 61-1-8 provides that:
 - 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 does not request a hearing in this matter, the Board will take the contemplated action by default. See § 61-1-4(D)(3). If no hearing is requested, this disciplinary action will not be subject to judicial review. See § 61-1-4(E).**
8. In order to request a hearing in this matter Respondent must deposit in the mail a certified return receipt requested letter addressed to the Board containing a request for a hearing within twenty (20) days after services of this notice. See § 61-1-4(D)(3). A written request for a hearing should be sent to the following address:

Kathleen Roybal, Compliance Liaison
Board of Chiropractic Examiners
New Mexico Regulation and Licensing Department
P.O. Box 25101
Santa Fe, NM 87504


Cathy Riekeman, D.C., Chair
New Mexico Board of Chiropractic Examiners

Prepared by:

/Ismael L. Camacho/
Ismael Camacho López
Assistant Attorney General
New Mexico Attorney General's Office
201 Third Street NW, Suite 300
Albuquerque, NM 87102
(505) 717-3510– Telephone
(505) 490-4881 – Facsimile

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed by United States Postal Service Certified Mail, return receipt requested, on June 24, 2019, to:

Jerry Salazar
2367 Mares Road SW
Albuquerque, NM 87105

Certified Mail No. 7011 3500 0002 1599 8889



Kathleen Roybal, Compliance Liaison