

**BEFORE THE STATE OF NEW MEXICO
COUNSELING AND THERAPY PRACTICE BOARD**

IN THE MATTER OF:

Case Number: CT-17-28-COM

**KEVIN MAINS,
License No.: CCMH0069,**

Respondent.

DECISION AND ORDER

THIS MATTER came before the New Mexico Counseling and Therapy Practice Board (hereafter, “Board”) during its regularly scheduled meeting on October 4, 2019, for a decision in the above-referenced case. With a quorum present and a vote in the affirmative, the Board voted to render this Decision and Order.

FINDINGS OF FACT

1. On or about July 24, 2019, the Board, issued a Notice of Contemplated Action (“NCA”) to KEVIN MAINS. The NCA stated that the Board had sufficient evidence to justify suspending or revoking Respondent’s license. Respondent was also informed that the Board could impose administrative penalties against a licensee pursuant to the Counseling and Therapy Practice Act, NMSA 1978, Section 61-9A-26(A)(4) and (6) and the Uniform Licensing Act (“ULA”), NMSA 1978, Section 61-1-1 to 61-1-34.

2. The NCA stated that Respondent’s alleged conduct, unless explained or rebutted at a formal hearing, justified the Board in suspending or revoking Respondent’s license and take any other action provided for in the Uniform Licensing Act.

3. The NCA further informed Respondent that, if he would like the opportunity for a formal hearing in this matter he must “request a hearing in this matter . . . within twenty

(20) days after service of this Notice . . . A written request for a hearing should be sent to the following address:"

Sheila Harris
Compliance Liaison
New Mexico Counseling and Therapy Practice Board
New Mexico Regulation and Licensing Department
P O Box 25101
Santa Fe, NM 87504

4. On or about July 25, 2019, the U. S. Postal Service ("USPS") received an envelope containing the NCA that was sent to Respondent's last known addresses, as shown in the Board's records, via certified mail, return receipt requested (No. 9171-9690-0935-0079-1172-17). On or about August 21, 2019, the certified return receipt envelope was returned unopen to the Board marked by the USPS tracking system as "return to sender, unclaimed, unable to forward".

5. Respondent did not request a hearing within twenty (20) days of service of, the last attempted delivery of, or Respondent's refusal to accept delivery of, the NCA as contemplated by Sections 61-1-4(D)(3) (2003) and 61-1-5 (1957) of the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 to -34 (1957, as amended through 2013).

6. Respondent failed to otherwise respond to the NCA.

CONCLUSIONS OF LAW

Based on the Findings of Fact, the Board reaches the following Conclusions of Law:

1. The Board has jurisdiction over Respondent and the subject matter of this proceeding pursuant to the Counseling and Therapy Practice Act, NMSA 1978, §§ 61-9A-4 and 61-9A-9 and ULA, NMSA 1978, §§ 61-1-1 and 61-1-31.

2. When served by certified mail, the NCA is deemed to have been served on the date borne by the return receipt showing delivery or the last attempted delivery of the NCA

to the addressee or refusal of the addressee to accept delivery of the NCA. NMSA 1978, § 61-1-5.

3. Service of the NCA upon Respondent via certified mail was accomplished in accordance with Sections 61-1-4 and 61-1-5 of the ULA.

4. The Board may take the action contemplated in the NCA if the Respondent does not 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 service of the NCA. NMSA 1978, §§ 61-1-4(D)(3) and (E).

5. More than twenty (20) days have passed since Respondent was served, or deemed to have been served, with the NCA and Respondent has failed to request a hearing. Thus, the Board is authorized to take the action contemplated in the NCA pursuant to Section 61-1-4(E) of the ULA.

6. The Board has complied with all notice and other procedural requirements of the Counseling and Therapy Practice Act and the ULA.

7. The Board may suspend or revoke a license pursuant to Section 61-9A-26(A)(4) and (6) of the Counseling and Therapy Practice Act.

8. The Board's Decision and Order in this matter is final and is not subject to judicial review. NMSA 1978, § 61-1-4(E).

ORDER

Based on the above Findings of Fact and Conclusions of Law, the Board renders this Order.

IT IS THEREFORE ORDERED that Respondent's license is hereby **REVOKED**;
IT IS FURTHER ORDERED Respondent KEVIN MAINS may not apply for

or receive a New Mexico counseling or therapy license until the NCA has been answered and resolved.

IT IS SO ORDERED.

Chairwoman Bentley Oliver is designated by the Board to sign this Order on behalf of the Counseling and Therapy Practice Board.

**NEW MEXICO COUNSELING AND
THERAPY PRACTICE BOARD**

Approved via email on 10/31/2019
DATE

/s/ Bentley Oliver
Bentley Oliver, Chair

**BEFORE THE NEW MEXICO COUNSELING & THERAPY BOARD
FOR THE STATE OF NEW MEXICO**

IN THE MATTER OF:

Case No. CT-17-28-COM

**KEVIN MAINS,
License No. CCMH0069**

Respondent.

NOTICE OF CONTEMPLATED ACTION

TAKE NOTICE that the New Mexico Counseling & Therapy Board (“Board”) is contemplating taking disciplinary action against the license held by Kevin Mains (“Respondent”). The Board has before it sufficient evidence that, if not rebutted or satisfactorily explained at a formal hearing, will justify the Board revoking, suspending or taking other disciplinary action against Respondent’s license. If Respondent does not request a hearing within twenty (20) days after service of this Notice of Contemplated Action (“Notice”), the Board will proceed to take the action contemplated in this Notice, and such action will be final and not subject to judicial review.

APPLICABLE LAW

1. Respondent is licensed pursuant to the New Mexico Counseling and Therapy Practice Act, NMSA 1978, Sections 61-9A-1 to -10 (“Act”), and as such is subject to the jurisdiction of the Board. In addition, the Board has jurisdiction over this disciplinary action pursuant to the Uniform Licensing Act (“ULA”), NMSA 1978, Sections 61-1-1 to -34 (1957, as amended through 2017).
2. This Notice is based upon the following alleged statutory or regulatory violation(s):
 - a. **§ 61-9A-26(A)(4)(6). License and registration; denial, suspension and revocation.**

A. In accordance with the procedures established by the Uniform Licensing Act (61-1-1 to 61-1-31 NMSA 1978), the Board may deny, suspend or revoke any license or registration held or applied for under the Counseling and Therapy Practice Act (61-9A-1 to 61-9A-30 NMSA 1978), or take any other action provided for in the Uniform Licensing Act, upon grounds that the licensee, registrant or applicant:

(6) Has violated any provision of the Counseling and Therapy Practice Act or regulations adopted by the board;
 - b. **16.27.18.16 PROFESSIONAL COMPETENCE, CONDUCT & INTEGRITY:**

B. A licensed or registered individual, when interacting with a client or former client to whom the counselor or therapist has at anytime within the previous 60 months rendered counseling or therapy, shall not:

- (1) engage in sexual intercourse, contact or other physical intimacies with the client; or
- (2) enter into a financial or other potentially exploitive relationship with the client.

C. The prohibitions set out in 16.27.18.16 above shall not be limited to the 60-month period but shall extend indefinitely if the client is proven to be clearly vulnerable, by reason of emotional or cognitive disorder, to exploitive influence by the counselor or therapist. The counselor or therapist who engages in such activity after the 60-month period following cessation or termination of treatment bears the burden of providing proof that there has been no exploitation, in light of all relevant factors, including

- (1) the amount of time that has passed since therapy terminated;
- (2) the nature and duration of the therapy;
- (3) the circumstances of termination;
- (4) the patient's or client's personal history;
- (5) the patient's or client's mental status;
- (6) the likelihood of adverse impact on the patient or client and others;
and
- (7) any statements or actions made by the counselor or therapist during the course of therapy suggesting or inviting the possibility of a post termination relationship with the patient or client.

c. 16.27.18.19 RESPONSIBILITY TO THE PROFESSION:

G. Licensed or registered individuals shall cooperate in ethics investigations, proceedings, and resulting requirements of this code. Release of confidential information in an investigation by the board does not constitute a violation of confidentiality. Failure to cooperate in an investigation is itself an ethics violation.

[16.27.18.19 NMAC- Rp 16 NMAC 27.14.19, 6-15-01]

SUMMARY OF THE EVIDENCE AGAINST RESPONDENT

3. The general nature of the evidence before the Board is as follows:
 - a. On or about July 25, 2017, the Board received a complaint, which provided information regarding Respondent's professional and personal relationship with his client Sarah Blumenschein. The complaint outlines a relationship that involved Respondent telling the client he loved her, inappropriate hugging, emailing and communications not related to client's treatment, accepting gifts from client.
 - b. On or about July 27, 2017 through August 10, 2017, the Board attempted to provide notification of the received complaint and requested a response to the allegations, which Respondent did not provide.

RIGHTS AND OBLIGATIONS OF RESPONDENT

4. **Unless Respondent requests a formal hearing, the evidence before the Board is sufficient to justify the Board in taking the contemplated action.**
5. 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 (10) days after the mailing or delivery of the request. No request shall be made less than fifteen (15) 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.
- d. **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).**
- e. 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:

Sheila Harris
Compliance Liaison
New Mexico Counseling and Therapy Practice Board
New Mexico Regulation and Licensing Department
P.O. Box 25101
Santa Fe, NM 87504

DATED: 24th day of July, 2019



Chair, New Mexico Counseling and Therapy
Practice Board

Prepared by:

/s/Mark F. Swanson


Mark F. Swanson
Assistant Attorney General
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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 July 25, 2019, to:

Kevin Mains
1943 S 33rd Drive
Yuma, AZ 85364

Certified Mail No. 9171 969 0935 0079 1172 17



Sheila Harris, Compliance Liaison
New Mexico Counseling and Therapy Practice Board