

**BEFORE THE NEW MEXICO BOARD OF
CHIROPRACTIC EXAMINERS**

IN THE MATTER OF

DARIN KRUEGER, D.C.;

No. C-COM-12-07-01

Respondent.

NOTICE OF CONTEMPLATED ACTION

YOU ARE HEREBY notified that the New Mexico Board of Chiropractic Examiners (the "Board") has before it sufficient evidence that, if not rebutted or explained at a formal hearing, will justify the Board in suspending or revoking your license, or will justify the Board in taking other action against you in the form of other penalties as permitted by law.

The Board has jurisdiction to hear this matter and to take disciplinary action against you pursuant to the Chiropractic Physician Practice Act, NMSA 1978, §§ 61-4-1 through -17 (the "Act") and pursuant to the rules of the New Mexico Board of Chiropractic Examiners, 16.4.1 through 16.4.22 NMAC (the "rules").

The relevant portion of the Act, § 61-4-10, provides:

§ 61-4-10. Refusal, suspension or revocation of license.

A. The board may refuse to issue or may suspend or revoke any license or may censure, reprimand, fine or place on probation and stipulation any licensee in accordance with the procedures as contained in the Uniform Licensing Act [61-1-1 NMSA 1978] upon the grounds that the licensee or applicant:

* * *

(6) is guilty of failing to comply with any of the provisions of the Chiropractic Physician Practice Act or rules and regulations promulgated by the board and filed in accordance with the State Rules Act;

* * *

D. Licensees shall bear all costs of disciplinary proceedings unless exonerated.

The relevant rules of the Board provide:

**TITLE 16 - OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 4 - CHIROPRACTIC PRACTITIONERS
PART 8 - DISCIPLINARY PROCEEDINGS**

* * *

16.4.8.9 ACTIONS:

A. The board may penalize, deny, revoke, suspend, stipulate, or otherwise limit a license if the board determines the licensee is guilty of violating any of the provisions of the Chiropractic Physician Practice Act, the Uniform Licensing Act, the Impaired Healthcare Care Providers Act, these Rules, or discipline imposed by other governing bodies.

B. The board may reprimand, censure, or require licensees to fulfill additional continuing education hours within limited time constraints for violations of the act or rules.

* * *

D. Licensees shall bear all costs of disciplinary proceedings unless exonerated.

* * *

16.4.8.10 GUIDELINES: The board shall use the following as guidelines for disciplinary action.

* * *

B. "Unprofessional conduct" means, but is not limited to because of enumeration:

* * *

(15) failure to adequately supervise, as provided by board regulation, a chiropractic assistant or technician who renders care as a chiropractic assistant under 16.4.19 NMAC of these rules;

* * *

(18) is guilty of failing to comply with any of the provisions of the Chiropractic Physician Practice Act (Chapter 61, Article 4 NMSA 1978) or rules and regulations promulgated by the board and filed in accordance with the State Rules Act (Chapter 14, Article 4 NMSA 1978)[.]. . .

* * *

**TITLE 16 - OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 4 - CHIROPRACTIC PRACTITIONERS
PART 20 - ADVERTISING**

* * *

16.4.20.9 CERTAIN ADVERTISING PROHIBITED:

* * *

F. No chiropractor engaging in, or authorizing another to engage in, telemarketing of prospective patients shall misrepresent to the person called any association with an insurance company, other licensed health care provider or another chiropractor or group of chiropractors, nor shall such solicitor promise successful chiropractic treatment of injuries, or make any other misrepresentation of whatever kind for the purpose of selling chiropractic services.

G. No chiropractor engaging in, or authorizing another to engage in, telemarketing of prospective patients shall engage in such practices during hours prohibited by applicable municipal ordinance or state law, or in the absence of either, then other than between the hours 9 a.m. and 8 p.m. local time.

H. No chiropractor engaging in, or authorizing another to engage in, telemarketing of prospective patients shall make more than one telephone call to any telephone number unless requested by the recipient to call again[.]. . .

SUMMARY OF EVIDENCE

On July 2, 2012, a Request for Investigation (the "Complaint" filed by the "Complainant") was received by the Board. The Complaint alleges that the Respondent has engaged in impermissible telemarketing for chiropractic services

and that the Respondent used public records to identify the Respondent in violation of the rule.. A copy of the Complaint and a request for a written response was mailed via certified mail to the Respondent by the Board with a cover letter dated July 5, 2012.

In a timely fashion, the Respondent sent a written response dated July 10, 2012 to the Board. The written response admits that the Respondent used a marketer to contact the Complainant, but denies that the Respondent's marketer misrepresented that it was a representative of an insurance company, and also admits that the marketer telephoned the Complainant on two occasions. It is alleged that the Respondent engaged in prohibited advertising conduct by making more than one (1) telephone call to the Complainant which constitutes grounds for the Board to exercise licensure discipline against the Respondent based on violations of the Act and Board rule 16.4.20.9. The Complaint alleges that the phone call was received by the Complainant at 7:30 a.m. or earlier. The written response does not deny this allegation and also provides documentation showing that one phone call was made prior to 9:00 a.m. The Complaint alleges that the telemarketer stated that she was calling from an insurance company. The written response denies this claim. Finally, the Complaint alleges that the telemarketer admitted that the Respondent was identified through the use of public records.

In a letter sent certified mail on October 17, 2012, the Board requested marketing information from the Respondent. In a letter dated January 10, 2013, and received by the Board on January 17, 2013, the Respondent provided the requested information to the Board.

RESPONDENT'S RIGHT TO A HEARING

The hearing, if requested, will be conducted in accordance with the Uniform Licensing Act, NMSA 1978, §§ 61-1-1 to -33 (the "ULA"). Because the Board administers the profession of licensed chiropractors, the ULA procedures apply to the Board's administrative hearings:

61-1-2. Definitions.

As used in the Uniform Licensing Act:

A. "board" means:

* * *

(3) a board, commission or agency that administers a profession or occupation licensed pursuant to Chapter 61 NMSA 1978[.] . . .

The ULA provides as follows regarding a licensee's opportunity for a hearing:

61-1-3. Opportunity for licensee or applicant to have hearing.

Every licensee or applicant shall be afforded notice and an opportunity to be heard, before the board has authority to take any action which would result in:

A. denial of permission to take an examination for licensing for which application has been properly made as required by board rule;

B. denial of a license after examination for any cause other than failure to pass an examination;

C. denial of a license for which application has been properly made as required by board rule on the basis of reciprocity or endorsement or acceptance of a national certificate of qualification;

D. withholding the renewal of a license for any cause other than:

- (1) failure to pay the required renewal fee;
- (2) failure to meet continuing education requirements; or
- (3) issuance of a temporary license extension if authorized by

statute;

E. suspension of a license;

F. revocation of a license;

G. restrictions or limitations on the scope of a practice;

H. the requirement that the applicant complete a program of remedial education or treatment;

I. monitoring of the practice by a supervisor approved by the board;

J. the censure or reprimand of the licensee or applicant;

K. compliance with conditions of probation or suspension for a specific period of time;

L. payment of a fine for a violation not to exceed one thousand dollars (\$1,000) for each violation, unless a greater amount is provided by law;

M. corrective action, as specified by the board; or

N. a refund to the consumer of fees that were billed to and collected from the consumer by the licensee.

The ULA at NMSA 1978, § 61-1-8 further provides as follows regarding the rights of persons entitled to a hearing:

A. A person entitled to be heard under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] 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

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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.

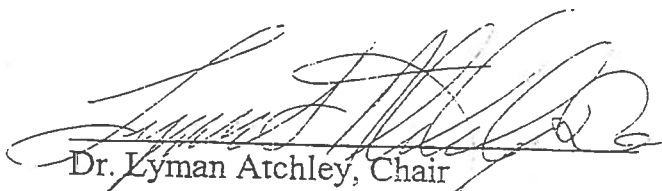
CONCLUSION

The evidence before the Board, summarized above, if not rebutted or explained at a formal hearing, is sufficient to justify the Board in imposing such penalties as may be permitted by law.

The Board will take the contemplated actions unless, within twenty days after service of this Notice, Respondent requests a formal hearing by certified mail/ return receipt requested. Such a request for a formal hearing should be mailed to:

**Elisa Salazar
Compliance Liaison
Board of Chiropractic Examiners
2550 Cerrillos Road
Santa Fe, NM 87505.**

6/27/2014
Date



Dr. Lyman Archley, Chair
 NM Board of Chiropractic Examiners
 Regulation and Licensing Department
 2250 Cerrillos Road Second Floor
 Santa Fe, New Mexico 87505

Administrative Prosecutor:
 David Dayog Black
 Assistant Attorney General
 New Mexico Attorney General's Office
 408 Galisteo Street
 Santa Fe, New Mexico 87101
 (505) 827-6624
 dblack@nmag.gov

CERTIFICATE OF SERVICE

A true copy of this Notice of Contemplated Action was sent to Respondent by certified mail, return receipt requested, on this 30 day of June 2014.

DARIN KRUEGER, D.C.
 3530 Foothills Rd. Ste. G
 Las Cruces, NM 88011

Certified Mail No.: 7011 2970 0003 9314 1389
 Return Receipt Requested

By: Elisa Salazar
 Elisa Salazar
 Compliance Liaison
 NM Board of Chiropractic Examiners
 2550 Cerillos Road
 Santa Fe, NM 87505

**BEFORE THE NEW MEXICO BOARD OF
CHIROPRACTIC EXAMINERS**

IN THE MATTER OF:

**DARIN KRUEGER, D.C.,
License Expired 6/30/14**

Case No. C-COM-12-07-01

Respondent.

DEFAULT ORDER

THIS MATTER came before a quorum of the New Mexico Board of Chiropractic Examiners (hereafter "the Board") on November 6, 2014, 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 July 10, 2014 and July 18, 2014 in accordance with the Uniform Licensing Act, NMSA 1978, §§ 61-1-1 to -34 (1957, as amended through 2013).
2. The Board first mailed Respondent the NCA via certified mail, return receipt requested, to Respondent's business address located at 151 S. Walnut, Ste C, Las Cruces, NM 88001. The U.S. Postal Service, Certified Mail Receipt No. 7011 2970 0003 9314 1389, returned the envelope on July 10, 2014 marked "Return to Sender /Unable to Forward."
3. The Board mailed Respondent the NCA a second time via certified mail, return receipt requested, to Respondent's address located at 3321 Squaw Mountain Drive, Las Cruces, NM 88001. The U.S. Postal Service Certified Mail Receipt No. 7011 2970 0003 9314 1464, was returned on July 26, 2014 marked "Return to Sender/ Attempted – Not known /Unable to Forward."
4. The NCA stated that the Board has sufficient evidence to take disciplinary action against Respondent, including a fine or action against Respondent's license, for

engaging in Unprofessional Conduct as set out in 16.4.8.10.B(15) and (18) NMAC and Certain Prohibited Advertising as set out in 16.4.20.9F, G and H NMAC.

5. 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.
6. 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.
7. 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.
8. It is therefore ordered and adjudged that Respondent did fail to respond to a properly served NCA in case number C-COM-12-07-01 and is therefore found to be in default.
9. Respondent DARIN KRUEGER, license Expired, is hereby **ORDERED** to pay a \$1,000 (One Thousand Dollar) fine to the Board of Chiropractic Examiners within 30 days of receiving this Order.
10. This action is final and is not subject to judicial review.

IT IS SO ORDERED.

**FOR THE NEW MEXICO BOARD OF
CHIROPRACTIC EXAMINERS**


**CATHY RIEKEMAN, DC
BOARD CHAIR**

2/23/16
Date