

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

IN THE MATTER OF

**CONSTANCE M. MOORE, D.C.
LICENSE NO.: 3224**

CASE No. C-COM-11-11-04

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 action against you in the form of censure, reprimand, fine, or by placing you on probation, and will justify the Board in imposing such 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;

* * *

(8) is guilty of advertising by means of knowingly false statements;

* * *

(10) advertises or attempts to attract patronage in any unethical manner prohibited by the rules and regulations of the board;

(11) is guilty of obtaining any fee by fraud or misrepresentation;

(12) is guilty of making false or misleading statements regarding the licensee's or applicant's skill or the efficacy or value of treatment or remedy prescribed or administered by the licensee or applicant or at the licensee's or applicant's direction;

* * *

(15) is guilty of making a false, misleading or fraudulent claim; or

(16) is guilty of unprofessional conduct that includes but is not limited to the following:

* * *

(h) conduct likely to deceive, defraud or harm the public;

* * *

(m) failure to furnish the board, its investigators or representatives with information requested by the board;

* * *

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**

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* * *

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:

(1) performing, or holding oneself out as able to perform, professional services beyond the scope of one's license and field or fields of competence as established by education, experience, training, or any combination [thereof]; this includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the chiropractic profession;

* * *

(6) failure of a chiropractor to comply with and following advertising guidelines as set in 16.4.1.12 [now 16.4.20] NMAC;

* * *

(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);

* * *

(22) failure to furnish the board, its investigators or representatives with information requested by the board[.]. . .

* * *

**TITLE 16 - OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 4 - CHIROPRACTIC PRACTITIONERS
PART 19 - PRACTICE PROCEDURES**

* * *

16.4.18.9 MERIDIAN THERAPY:

* * *

B. Chiropractors who practice meridian therapy may not advertise or promote themselves in the media to be acupuncturists unless licensed pursuant to the Acupuncture Act.

* * *

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

* * *

16.4.20.9 CERTAIN ADVERTISING PROHIBITED:

A. Any chiropractor who disseminates or causes to be disseminated or allows to be disseminated any advertising which is in any way fraudulent, false, deceptive, misleading or confusing, shall be deemed to be in violation of the Chiropractic Physician Practice Act.

B. Fraudulent, false, deceptive, misleading or confusing advertising includes, but is not limited, to:

* * *

(12) advertising which invades the field of practice of other licensed healthcare practitioners when the chiropractor is not allowed by rule or license to practice such profession;

(13) advertising which appears in a classified directory or listing, or otherwise under a heading which, when considered alone or together with the advertisement, does not accurately convey the professional status of the chiropractor or the professional services being advertised[.]. . .

SUMMARY OF EVIDENCE

This Complaint was lodged by a sister professional licensure board on November 21, 2011. The Complaint alleges that Dr. Moore advertises that Milagro Health Center provides acupuncture professional services and that

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Dr. Moore is not a state licensed acupuncturist in New Mexico. The Respondent holds a license from the New Mexico Board of Chiropractic Examiners. However, the Complainant alleges that Dr. Moore is not licensed in the health care practice field of acupuncture.

On November 28, 2011 the Board sent to the Respondent a letter and a copy of the Complaint. The Respondent did not respond to the Board's letter. On or about June 26, 2012, the Board Chair mailed a letter to the Respondent indicating that the Respondent was advertising acupuncture therapy without a proper acupuncturist license. The Respondent did not respond to the Board Chair's letter.

The prohibited advertising conduct and the failure to cooperate with the Board's investigation of the Complaint establish grounds for the Board to exercise licensure discipline against Dr. Moore base on violations of the Act and the rules.

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.

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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 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.

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.

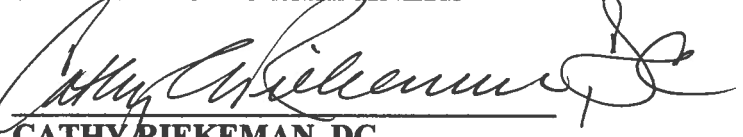
5. Respondent failed to request a hearing within twenty (20) days of receipt of the NCA as required under Section 61-1-4 of the ULA.
6. Pursuant to the provisions of the ULA, specifically Section 61-1-4(E), if Respondent does not request a hearing, the Board may proceed to take the action contemplated in the notice and such action shall not be subject to judicial review.
7. It is therefore ordered and adjudged that Respondent having failed to respond to a properly served NCA in case number C-COM-11-11-04 is therefore found to be in default.
8. Respondent CONNIE MOORE, license number 1573, is hereby **ORDERED** to pay a \$250 (Two Hundred and fifty) fine to the Board of Chiropractic Examiners within 30 days of receiving this Order.
9. This action is final and is not subject to judicial review.

IT IS SO ORDERED.

3-1-16

Date

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



**CATHY RIEKEMAN, DC
BOARD CHAIR**

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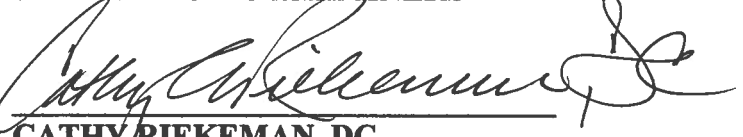
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