

**BEFORE THE NEW MEXICO
PHYSICAL THERAPY BOARD**

IN THE MATTER OF:)

SHAWN S. ETKIN)

Aka: Scott Hill)

Respondent.)

CASE No. **PT 02, 04-09**

PT 05, 09-08

LICENSE NO.: # 1662 & 1638)

DEFAULT ORDER

THESE MATTERS, having come before the State of New Mexico Physical Therapy Board ("Board") and with a quorum present and a majority voting in the affirmative the Board finds as follows:

1. A Notice of Contemplated Action was served upon Respondent in accordance with the Uniform Licensing Act, NMSA 1978, §61-1-1 *et seq.* on November 10, 2010.
2. Said attempt to deliver a copy of the Notice of Contemplated Action to the Respondent was made by United States mail, return receipt requested, at the following address which Respondent had previously provided to the Board for the purpose of his application for licensure which is at issue in this action:

Shawn S. Etkin
a.k.a. Scott Hill
42121 U.S. Highway 70
Portales, New Mexico 88130

3. Pursuant to the provisions of the *Uniform Licensing Act* at section 61-1-5, a Notice of Contemplated Action shall be deemed to have been "served" on the date of the last

“attempted” delivery to the addressee of such an attempt. (On or before November 10, 2010)

4. In accord with the *Rules of Civil Procedure of the District Courts* in Article 2 regarding the commencement of actions and the service of process at rule 1-004, process in this matter was attempted, under all the circumstances, in the manner most reasonably likely to apprise the Respondent of the existence and pendency of the actions of the Board. Such an attempt conforms to the due process considerations of the New Mexico and United States Constitutions and constitutes “service” for the purposes of the ULA and the CCP.
5. In accord with *Mullane v. Cental Hanover Bank and Trust*, 339 U.S. 306, 314 (1950) Respondent’s due process rights have been met by providing him notice reasonable calculated, under all circumstances, to appraise him of the pendency of Board action and to afford him an opportunity to present his response. The address to which the Notice of Contemplated Action in this administrative matter was sent was the address Respondent provided to the Board at which to receive communications from the Board appertaining to his application for licensure.
6. Respondent did not request a hearing within twenty days of receipt of service of the Notice of Contemplated Action as set forth in the *Uniform Licensing Act*.
7. Pursuant to the provisions of the *Uniform Licensing Act*, if Respondent does not request a hearing, the Board may proceed to take action by default.
8. The New Mexico Physical Therapy Board on motion of Mr. Romero made the decision to issue a default order to Mr. Shawn Etkin and that he be fined five thousand dollars (\$5,000.00) to be paid within sixty (60) days from the date of service of the Order of Default.

9. The motion was seconded and it passed with unanimous approval.

IT IS THEREFORE ORDERED AND ADJUDGED THAT RESPONDENT DID FAIL TO RESPOND TO A PROPERLY SERVED NOTICE OF CONTEMPLATED ACTION CASES PT O2, 04-09 and PT O5, 09-08 AND IS THEREFORE FOUND TO BE IN DEFAULT IN SAID ACTIONS. AN ORDER OF DEFAULT IS HEREBY ENTERED ON CASES PT O2, 04-09 and PT O5, 09-08 AS HEREIN SET FORTH ABOVE.

It is so ordered:

10/27/11
DATE



CHAIRPERSON
COUNSELING AND THERAPY
PRACTICE BOARD

CERTIFICATE OF SERVICE OF

I hereby certify that a true copy of the following document

DEFAULT ORDER

In re: cases PT O2, 04-09 and PT O5, 09-08

was sent on this 28th day of October, 2011 as follows to:

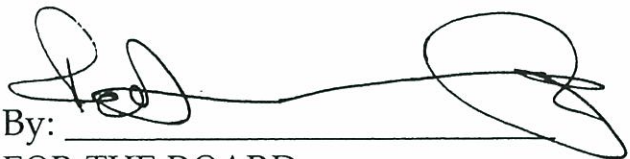
Shawn S. Etkin or
Scott Hill
42121 U.S. Highway 70
Portales, New Mexico 88130



mailed via the United States Postal Service

_____ via fax

_____ via email

By: 

FOR THE BOARD

D. Hollingsworth Compliance Liaison.

**BEFORE THE NEW MEXICO
PHYSICAL THERAPY BOARD**

IN THE MATTER OF:

SHAWN S. ETKIN

Aka: Scott Hill

Respondent.

LICENSE NO.: # 1662 & 1638

CASE No. **PT 02, 04-09**
PT 05, 09-08

NOTICE OF CONTEMPLATED ACTION

YOU ARE HEREBY NOTIFIED that the New Mexico Physical Therapy Board (“the Board”) has sufficient evidence which, if not rebutted or satisfactorily explained at a formal hearing, will justify the Board suspending or revoking the New Mexico Physical Therapy license of Shawn S. Etkin (“Respondent”), License # 1662, (also known as Scott Hill, License #1638), or assessing fines and/or penalties against Respondent pursuant to the *Physical Therapy Act* and the *Uniform Licensing Act*. If the Respondent is not currently licensed in New Mexico, sufficient evidence exists which, if not rebutted or satisfactorily explained at a formal hearing, will justify the Board denying Respondent a license to practice. NMSA (2010) § 61-12D-15

APPLICABLE LAW

The Board has sufficient evidence to take disciplinary action against Respondent pursuant to the *New Mexico Physical Therapy Act*, NMSA 1978 §61-12D-13 and the American Physical Therapy Association *Code of Ethics*. (see NMSA (1978) § 61-12D-13L)

For the purposes of this contemplated action, the *New Mexico Physical Therapy Act* in pertinent part states:

§ 61-12D-13: Grounds for Disciplinary Action

The following conduct, acts or conditions constitute grounds for disciplinary action:

C. obtaining or attempting to obtain a license by fraud or misrepresentation.

N. making misleading, deceptive, untrue or fraudulent representations in the practice of physical therapy.

T. impersonating another person licensed to practice physical therapy, permitting or allowing any person to use the physical therapist's or physical therapist's assistant's license or practicing physical therapy under a false or assumed name.

V. abandonment of patients.

§ 61-12D-8. Practice of physical therapy; license required.

A. No person shall practice or hold himself out to be engaging in the practice of physical therapy or designate himself as a physical therapist unless he is licensed as a physical therapist or is exempt from licensure as provided in the Physical Therapy Act .

§ 61-12D-16. Unlawful practice; criminal and civil penalties; injunctive relief.

A. A person who engages in an activity requiring a license pursuant to the provisions of the Physical Therapy Act [61-12D-1 NMSA 1978] and who fails to obtain the required license; who violates any provision of the Physical Therapy Act; or who uses any word, title or representation to induce the false belief that the person is licensed to engage in the practice of physical therapy is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$ 1,000) or by imprisonment of not more than one year, or both.

B. The board may apply for injunctive relief in any court of competent jurisdiction to enjoin a person from committing an act in violation of the Physical Therapy Act [61-12D-1 NMSA 1978]. Such injunction proceedings shall be in addition to and not in lieu of penalties and other remedies in the Physical Therapy Act.

C. The board may assess a civil penalty of up to one thousand dollars (\$ 1,000) for a first offense and up to five thousand dollars (\$ 5,000) for a second or subsequent offense against a licensee who aids or abets an unlicensed person to directly or indirectly evade the Physical Therapy Act [61-12D-1 NMSA 1978] or the applicable licensing laws; or permits his license to be used by an unlicensed person with the intent to evade the Physical Therapy Act or the applicable licensing laws, pursuant to the notice of hearing and appeal procedures pursuant to the Uniform Licensing Act [61-1-1 NMSA 1978]. The civil penalties provided in this subsection are in addition to other disciplinary measures provided in the Physical Therapy Act. Civil penalties shall be deposited with the state treasurer to the credit of the current school fund.

Other Relevant Law:

NMSA (1978) § 66-5-38 Making false affidavit perjury.

Any person who makes any false affidavit, or knowingly swears or affirms falsely to any matter or thing required by the terms of the Motor Vehicle Code [66-1-1 NMSA 1978] to be sworn to or affirmed, is guilty of perjury and upon conviction shall be punishable

by fine or imprisonment as other persons committing perjury are punishable.

NMSA (1978) § 66-5-18(A) Altered forged or fictitious license

A. A person who uses or possesses an altered, forged or fictitious driver's license, permit or identification card is guilty of a misdemeanor.

B. A person who alters or forges a driver's license, permit or identification card or who makes a fictitious driver's license, permit or identification card is guilty of a fourth degree felony.

C. A person who possesses or uses a fraudulent, counterfeit or forged document to apply for or renew a driver's license, permit or identification card is guilty of a fourth degree felony.

NMSA (1978) § 30-16-6 Fraud

A. Fraud consists of the intentional misappropriation or taking of anything of value that belongs to another by means of fraudulent conduct, practices or representations.

B. Whoever commits fraud when the value of the property misappropriated or taken is two hundred fifty dollars (\$ 250) or less is guilty of a petty misdemeanor.

C. Whoever commits fraud when the value of the property misappropriated or taken is over two hundred fifty dollars (\$ 250) but not more than five hundred dollars (\$ 500) is guilty of a misdemeanor.

D. Whoever commits fraud when the value of the property misappropriated or taken is over five hundred dollars (\$ 500) but not more than two thousand five hundred dollars (\$ 2,500) is guilty of a fourth degree felony.

E. Whoever commits fraud when the value of the property misappropriated or taken is over two thousand five hundred dollars (\$ 2,500) but not more than twenty thousand dollars (\$ 20,000) is guilty

of a third degree felony.

F. Whoever commits fraud when the value of the property misappropriated or taken exceeds twenty thousand dollars (\$ 20,000) is guilty of a second degree felony.

G. Whoever commits fraud when the property misappropriated or taken is a firearm that is valued at less than two thousand five hundred dollars (\$ 2,500) is guilty of a fourth degree felony.

SUMMARY OF THE EVIDENCE AGAINST RESPONDENT

1. Respondent obtained licensure and employment as a physical therapist by using falsified diploma ostensibly awarded by the University of Washington.
2. Respondent obtained licensure and employment as a physical therapist by using and a falsified New Mexico drivers license. Any person who possesses an altered, forged or fictitious driver's license is guilty of a misdemeanor. Possession of a false driver's license is forbidden because it is illegal or illicit and comes within the definition of "contraband."
3. Respondent obtained employment and delivered physical therapy services to clients by the use of fraudulent credentials and fraudulent

misrepresentations proffered to Amedisys Home Health of Albuquerque under the false name of Scott Hill.

4. Respondent falsely identified himself to employers in order to obtain money.
5. Respondent intentionally refused to respond to inquiries of state agencies regarding his licensure and the client care he was allegedly providing.
6. Respondent refused to employer requests for client information thereby abandoning his clients.
7. Respondent has obtained licensure and practiced physical therapy through fraud and deceit as part of a common plan, scheme or design to misrepresent himself to his employers and his clients for economic gain.

The formal hearing, if requested, will be conducted pursuant to the *New Mexico Uniform Licensing Act*, NMSA 1978, § 61-1-1 through 61-1-31 (Repl. Pamph. 1999). Pursuant to NMSA 1978, § 61-1-8 the licensee is specifically advised as follows:

61-1-8. Rights of person entitled to 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 therefore 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 NMSA 1978, § 61-1-4 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 such 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:

Unless the allegations are explained or rebutted at a formal hearing, such allegations are justification for the Board to suspend, revoke or deny Respondent's license to practice as a physical therapist in the State of New Mexico and to impose such other penalties as may be permitted by law.

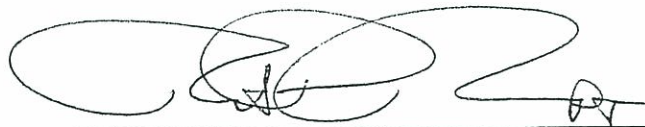
If you would like the opportunity for a formal hearing on this matter, you must respond to this notice with a written request for a hearing within twenty (20) days.

Your response must be sent to the Board by certified mail, return receipt requested, to Ms. Velma Rodriguez, Board Administrator for the New Mexico Physical Therapy Board located at 2550 Cerrillos Road Santa Fe, New Mexico 87505. The telephone number at the Board is (505) 476-4827.

Failure to respond will result in the Board taking the contemplated action and this action will be final.

10/29/10

Date



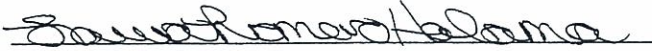
Robert Romero, Chairperson
New Mexico Physical Therapy Board
2550 Cerrillos Road
Santa Fe, New Mexico 87505

Administrative Prosecutor:
William J. Moon,

Assistant Attorney General
408 Galisteo Street
Santa Fe, New Mexico 87501
(505) 827-6079

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing Notice of Contemplated Action to the Respondent on November 10, 2010, via certified mail, return receipt requested.


For the New Mexico Physical Therapy Board

Administrative Prosecutor:

William J. Moon
Assistant Attorney General
New Mexico Attorney General's Office
408 Galisteo Street
Santa Fe, New Mexico 87102
(505) 827-6079