

**BEFORE THE NEW MEXICO
PHYSICAL THERAPY BOARD**

IN THE MATTER OF:)

DAVID GARCIA)

Respondent.)

LICENSE NO.: #2611)

CASE No. **PT 03, 07-09**

DEFAULT ORDER

THIS MATTER, having come before the State of New Mexico Physical Therapy Board ("Board") in an open public meeting 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 January 21, 2011, again on March 3, 2011 and finally on November 27, 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:

David Garcia
1017 Princeton Drive N.E.
Albuquerque, New Mexico 87106

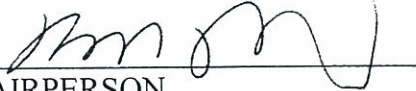
3. Pursuant to the provisions of the *Uniform Licensing Act* at section 61-1-5, a Notice of Contemplated Action shall be deemed to have been "served" on the date of the last "attempted" delivery to the addressee of such an attempt. (On or before November 27, 2010)

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. Central 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. In an open public meeting, board member Mr. Romero made a motion to issue a default order revoking respondent's license and impose a fine of one thousand dollars (\$1000.00) to be paid within sixty (60) days of the date of service of this Order of Default. The motion was thereafter seconded passed by a unanimous vote.
9. The Board has determined that the license # 2611 issued to David Garcia shall be revoked in accord with NMSA 61-12D-15(4). Further and in accord with NMSA 61-

12D-15(6) and NMSA 61-12D-16(A), the Board fines David Garcia one thousand dollars (\$1000).

IT IS THEREFORE ORDERED AND ADJUDGED AS HEREIN ABOVE SET FORTH THAT RESPONDENT DID FAIL TO RESPOND TO A PROPERLY SERVED NOTICE OF CONTEMPLATED ACTION CASE No. PT 03, 07-09 AND IS THEREFORE FOUND TO BE IN DEFAULT IN SAID ACTION. AN ORDER OF DEFAULT IS HEREBY ENTERED ON CASE No. PT 03, 07-09 AND PENALTIES ASSESSED IN ACCORD WITH THE TERMS SET FORTH ABOVE.

10/27/11
DATE



CHAIRPERSON
New Mexico
Physical Therapy Board

CERTIFICATE OF SERVICE OF

I hereby certify that a true copy of the following document

DEFAULT ORDER
CASE No. PT O3, 07-09

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

Mr. David Garcia
1017 Princeton Drive N.E.
Albuquerque, New Mexico 87106

☒ mailed via the United States Postal Service

☐ via fax

☐ via email

By. 

FOR THE BOARD

Robert Hollingsworth, Compliance Litigator.

**BEFORE THE NEW MEXICO
PHYSICAL THERAPY BOARD**

IN THE MATTER OF:

DAVID GARCIA

Respondent.

LICENSE NO.: #2611

CASE No. **PT 03, 07-09**

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 David Garcia (“Respondent”), 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:

- A. practicing physical therapy in violation of the provisions of The Physical Therapy Act [61-12D-1 NMSA 1978] or rules adopted by the board.
- K. directly or indirectly requesting, receiving or participating in the dividing, transferring, assigning, rebating or refunding of an unearned fee; or forfeiting by means of a credit or other valuable consideration such s an unearned commission, discount or gratuity in connection with the furnishing of physical therapy services.
- L. failing to adhere to the recognized standards of ethics of the physical therapy profession.
- M. charging unreasonable or fraudulent fees for services...not performed.
- N. making misleading, deceptive, untrue or fraudulent representations in the practice of physical therapy.

V. abandonment of patients.

SUMMARY OF THE EVIDENCE AGAINST RESPONDENT

1. In at least four instances, Respondent charged for services which he did not provide.
2. On or about June 8, 2009, Respondent failed to provide daily activity reports that validate client visits which are then confirmed by clients as was required by his employer.
3. On or about June 10, 2008, Respondent failed to attend a meeting to discuss his daily activity records as required of him by his employer.
4. On or about June 10, 2008, instead of attending a meeting to discuss what appeared to be a record of charging for services not performed, Respondent dropped off his travel charts and supplies at Home Health Care and departed the building without comment or discussion.
5. On or about June 10, 2008, Respondent abandoned his clients and his employer.
6. The records Respondent maintained make false, untrue and fraudulent representations of client services which were never performed.

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. Pamp. 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