

**BEFORE THE NEW MEXICO
PHYSICAL THERAPY BOARD**

**IN THE MATTER OF
JAMES RODRIGUEZ,**

CASE NO. 15-03-APP

RESPONDENT.

DEFAULT ORDER

THIS MATTER came before the New Mexico Board of Physical Therapy (“Board”) on December 20, 2016, and the Board finds as follows:

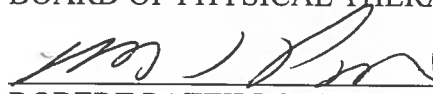
1. A Notice of Contemplated Action was issued on October 11, 2016, pursuant to a physical therapist application by endorsement submitted by James Rodriguez (“Respondent”) and received by the Board on January 13, 2015.
2. The NCA alleges that Respondent holds a physical therapist license from another jurisdiction—California—that is not unrestricted pursuant to NMSA 1978, Section 61-12D-10. Respondent’s California license was restricted since Respondent was placed on probation by the California Physical Therapy Board.
3. The NCA was served on Respondent via certified mail in accordance with the Uniform Licensing Act (“ULA”), NMSA 1978, Section 61-1-5 at Respondent’s last known address.
4. Respondent failed to request a hearing pursuant to the ULA.

IT IS THEREFORE ORDERED that, pursuant to Section 61-1-4(E), the Board is hereby denying the application for a Physical Therapy license by endorsement.

The order is final and not subject to judicial review.

Dated: 12.20.16

FOR THE NEW MEXICO
BOARD OF PHYSICAL THERAPY



ROBERT PATILLO, CHAIR

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing Default Order via Certified Mail, Return Receipt Requested to the Respondent at the following address:

1 Oris Circle
San Francisco, CA 94124

**BEFORE THE NEW MEXICO
PHYSICAL THERAPY BOARD**

IN THE MATTER OF:

Case Number: 15-03-APP

JAMES RODRIGUEZ.

License Applicant/Respondent

NOTICE OF CONTEMPLATED ACTION

YOU ARE HEREBY NOTIFIED that the New Mexico Physical Therapy Board (herein after, "the Board") has sufficient evidence that, if not rebutted or satisfactorily explained at a formal hearing, will justify the Board in denying the license application of JAMES RODRIGUEZ (herein after, "Respondent") pursuant to the Physical Therapy Act and the Uniform Licensing Act.

YOU ARE FURTHER NOTIFIED that if you do not request a hearing within twenty (20) days after service of this notice of contemplated action, the board may take the action contemplated in the notice and such action shall be final and not subject to judicial review. NMSA 1978, §61-1-4 (D) (3) (2003).

APPLICABLE LAW

This action arises under the Physical Therapy Act, NMSA 1978, §§ 61-12D-1 to -19, (1997, as amended through 2015) and the Uniform Licensing Act, NMSA 1978, §§ 61-1-1 to -33, (1957, as amended through 2013). On or about January 13, 2015, Respondent submitted a Physical Therapist Application to the Board. The Board has sufficient evidence which, if not

rebutted or explained, will justify the Board in denying Respondent's license application pursuant to the following statutes and rules, which provide in pertinent part:

§61-12D-2. Legislative purpose

The purpose of the Physical Therapy Act is to protect the public health, safety and welfare and provide for control, supervision, licensure and regulation of the practice of physical therapy. To carry out those purposes, only individuals who meet and maintain minimum standards of competence and conduct may engage in the practice of physical therapy. The practice of physical therapy is declared to affect the public interest and that act shall be liberally construed so as to accomplish the purpose stated in that act.

§61-12D-5. Legislative purpose

The board:

A. shall examine all applicants for licensure to practice physical therapy and issue licenses or permits to those who are duly qualified;

B. shall regulate the practice of physical therapy by interpreting and enforcing the provisions of the Physical Therapy Act, including taking disciplinary action;

§61-12D-10. Licensure qualifications.

H. The board or its designee shall issue a license to a physical therapist or physical therapist assistant who has a valid *unrestricted* license from another United States jurisdiction and who meets all requirements for licensure in New Mexico. (emphasis added)

§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 or rules adopted by the board; ...

* * *

D. engaging in or permitting the performance of negligent care by a physical therapist or by assistive personnel working under the physical therapist's supervision, regardless of whether actual injury to the patient is established;

E. engaging in the performance of negligent care by a physical therapist assistant, regardless of whether actual injury to the patient is established. This includes exceeding the authority to perform tasks pursuant to the plan of care written by the supervising physical therapist;

* * *

H. having had a license revoked or suspended; other disciplinary action taken; or an application for licensure refused, revoked or suspended by the proper authorities of another state, territory or country based upon acts by the licensee similar to acts described in this section. A certified copy of the record of suspension, revocation or other disciplinary action taken by the state taking the disciplinary action is conclusive evidence;

I. failing to adequately supervise assistive personnel;

* * *

L. failing to adhere to the recognized standards of ethics of the physical therapy profession. ...

* * *

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

* * *

P. aiding or abetting an unlicensed person to perform activities requiring a license;

§61-12D-15. Grounds for Disciplinary Action

A. The board, upon satisfactory proof that any ground enumerated in Section 13 [61-12D-13 NMSA 1978] of the Physical

Therapy Act has been violated, may take the following disciplinary action singly or in combination: ...

(5) refuse to issue or renew a license;

SUMMARY OF THE EVIDENCE AGAINST RESPONDENT

On or about January 13, 2015, Respondent JAMES RODRIGUEZ submitted an application for a Physical Therapist license from the New Mexico Physical Therapist Board seeking licensure by endorsement. The information provided to the Board by Respondent indicates that Respondent's California Physical Therapist license has been restricted pursuant to discipline imposed by the Physical Therapy Board of California (CA PT Board). At the time of application, Respondent was on probation by the CA PT Board.

Unless the allegations are explained or rebutted at a formal hearing, such allegations would justify the Board in suspending or revoking Respondents license and qualify certificates and imposing administrative penalties pursuant as allowed by law.

If you would like the opportunity for a formal hearing on this matter, you must respond to this notice with a request for a hearing within twenty (20) days. The response must be sent to the board in writing, by certified return receipt request letter to the address below. Failure to respond will result in the board taking the contemplated action, and this action will be final. Please send your response to:

Elisa Salazar, Compliance Liaison
New Mexico Physical Therapy Board
P.O. Box 25101
Santa Fe, NM 87505

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

§ 61-1-3. Rights of person entitled to 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; ...

§ 61-1-4. Rights of person entitled to hearing. [NOTICE]

- B. When a board contemplates taking any action of a type specified in Subsection A, B or C of Section 61-1-3 NMSA 1978, it shall serve upon the applicant a written notice containing a statement:
 - (1) that the applicant has failed to satisfy the board of his qualifications to be examined or to be issued a license, as the case may be;
 - (2) indicating in what respects the applicant has failed to satisfy the board;
 - (3) that the applicant may secure a hearing before the board by depositing in the mail within twenty days after service of the notice a certified return receipt requested letter addressed to the board and containing a request for a hearing, and calling the applicant's attention to his rights under Section 61-1-8 NMSA 1978. ...
- D. If the licensee or applicant does not mail a request for a hearing within the time and in the manner required by this section, the board may take the action contemplated in the notice and such action shall be final and not subject to further review.

§ 61-1-8. Rights of person entitled to hearing.

- A. A person entitled to be heard under the Uniform Licensing Act [NMSA 1978, §§ 61-1-1 to 61-1-31] 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 the hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the board or 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:
- (2) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and
 - (3) 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.

Dated this 11th day of October, 2016.

**NEW MEXICO
PHYSICAL THERAPY BOARD**

By: _____

Robert Pattillo, Chairperson
Physical Therapy Board

Administrative Prosecutor:


Joshua R. Granata
Assistant Attorney General
408 Galisteo Street
Post Office Drawer 1508
Santa Fe, NM 87504
(505) 827-6000

CERTIFICATE OF SERVICE

A true copy of this *Notice of Contemplated Action* was sent to Respondents by certified mail, return receipt requested, on this 13th day of October 2016.

James Rodriguez
1 Oris Circle
San Francisco, CA 94124

Certified Mail No.: 9171 9690 0935 0079 1801 12
Return Receipt Requested

By: 
Elisa Salazar, Compliance Liaison
New Mexico Physical Therapy Board
P.O. Box 25101
Santa Fe, NM 87505