

**STATE OF NEW MEXICO
REGULATION AND LICENSING DEPARTMENT**

IN THE MATTER OF:

Nicholas Chavez

Case No. RES-19-01-COM

License No. RCP3928

Respondent.

DEFAULT ORDER

THIS MATTER came before the Regulation and Licensing Department (Department), under the directive of the Superintendent of the Department, after evidence presented to the Department raised concerns regarding an incident pertaining to Nicholas Chavez (Respondent); such evidence served as the basis for a Notice of Contemplated Action issued to Respondent by the Department.

FINDINGS OF FACT

1. On December 2, 2019, a complaint was received by the Department.
2. On November 2, 2021, the Department issued a Notice of Contemplated Action (NCA) to Respondent, *attached*, stating that the Department contemplated taking an action against Respondent that would result in the suspension or revocation of the Respondent's license, specifically, contrary to NMSA 1978, Sections 61-12B-12(A)(6),(7),(8), 16.23.17.8(G), and 16.23.17.9 NMAC. 61-27B-16(B)(2) and (4), 16.48.2.23(B) NMAC. The Respondent, while working a shift as a respiratory care practitioner, inflated the cuff of a patient's tracheotomy while the tracheotomy was capped, and knowing that his act would lead to the suffocation of the patient. The patient died soon after. The Respondent deflated the tracheotomy cuff shortly after the death of the patient.
3. The NCA advised that Respondent may request a hearing, and that unless Respondent requested a hearing by certified U. S. mail, return receipt requested, in a letter directed to the Department and

mailed within 20 days after the service of the NCA, the Department "shall take the contemplated action by default" pursuant to Section 61-1-4(D)(3) NMSA 1978, and that disciplinary action will not be subject to judicial review pursuant to Section 61-1-4(E) NMSA 1978.

4. The NCA was served via certified mail, return receipt requested, directed to the Respondent's Attorney at the last known address: 823 Gold Ave SW, Albuquerque, NM 87102 Tracking Number 7005 1820 0003 3155 8093.
5. The date borne by the return receipt reflects the delivery or the last attempted delivery or refusal by the addressee to accept delivery of the NCA on November 10, 2021. This date reflects the date the return receipt was returned to the Department and date stamped as the signature date is not reflected on the green card nor verifiable on the USPS website. (*attached*).
6. Respondent's request for hearing was not received within the timeframe required by law.

CONCLUSIONS OF LAW

1. Pursuant to the Uniform Licensing Act (NMSA 1978, Sections 61-1-1 through 61-1-36) and the Private Investigations Act (Chapter 61, Article 27B NMSA 1978), the Department has jurisdiction over Respondent and Respondent's application.
2. In accordance with Section 5 of the Uniform Licensing Act, Respondent is deemed to have been served with the NCA on the date borne by the return receipt, showing delivery or last attempted delivery or refusal of the addressee to accept delivery of the notice on October 1, 2020.
3. Respondent failed to timely request a hearing in the manner required by the Uniform Licensing Act, therefore, the Department "may take the action contemplated in the notice and such action shall be final and not subject to judicial review." *See* NMSA 1978, Section 61-1-4(E) of the Uniform

Licensing Act.

Based on the above Findings of Fact and Conclusions of Law, the Department takes the following default action:

FINAL ORDER

IT IS THEREFORE ORDERED.

That, by default, Respondents application for registration is hereby revoked.

IT IS SO ORDERED.

Date: 12/28/2021

**NEW MEXICO REGULATION
& LICENSING DEPARTMENT**
By: Linda M Trujillo
LINDA TRUJILLO, SUPERINTENDENT

Digitally signed by Linda M Trujillo
DN: cn=Linda M Trujillo, o=NM Regulation and Licensing
Department, ou=email-linda.trujillo@state.nm.us, c=US
Date: 2021.12.28 10:53:02 -0700

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Default Order was mailed via certified mail, return receipt requested to the Respondent at her last known address (below), on this ___
4th___ day of January, 2022.

Lisa A. Torraco
Counsel for Respondent
823 Gold Ave SW
Albuquerque, NM 87102

Kathleen Roybal

Compliance Liaison
P.O. Box 25101
Santa Fe, NM 87504

Certified Mail Return Receipt Tracking No.
7019 1640 0000 7891 4748

**BEFORE THE NEW MEXICO
REGULATION AND LICENSING DEPARTMENT IN CONSULTATION WITH
THE ADVISORY BOARD OF RESPIRATORY CARE PRACTITIONERS**

IN THE MATTER OF:

Case No. RES-19-01-COM

NICOLAS E. CHAVEZ

License No. RCP3928 (expired)

NOTICE OF CONTEMPLATED ACTION

TAKE NOTICE that the Superintendent of the Regulation and Licensing Department (Superintendent) and the Advisory Board of Respiratory Care Practitioners (“Board”) are contemplating taking disciplinary action against the license held by Nicolas E. Chavez (“Respondent”). The Superintendent and the Board have before them sufficient evidence that, if not rebutted or satisfactorily explained at a formal hearing, will justify revocation, suspension or other disciplinary action against Respondent’s licensure or Respondent himself. If Respondent does not request a hearing within twenty (20) days after service of this Notice of Contemplated Action (“Notice”), the Superintendent in consultation with the Board will proceed to take the action contemplated in this Notice, and such action will be final and not subject to judicial review.

APPLICABLE LAW

1. Respondent was licensed at all times relevant to the allegations in this Notice, pursuant to the Respiratory Care Act (“RCA”), NMSA 1978, §§ 61-12B-1 through 61-12B-16, and as such is subject to the jurisdiction of the Superintendent and the Board. The Superintendent and the Board have jurisdiction over this disciplinary action pursuant to the RCA, NMSA 1978, Section 61-12B-12 and the Uniform Licensing Act (“ULA”), NMSA 1978, Sections 61-1-1 to -36.
2. This Notice is based upon the following alleged statutory or regulatory violation(s):
 - a. Gross negligence, § 61-12B-12(A)(6), NMSA 1978
 - b. Violation of a Respiratory Care Act provision or rule adopted pursuant to that act or aiding and abetting another to do the same, § 61-12B-12(A)(7), NMSA 1978
 - c. Unprofessional Conduct, § 61-12B-12(A)(8), NMSA 1978
 - d. Gross negligence in practice of respiratory care, 16.23.17.8(G) and 16.23.17.9 NMAC

- e. Violation of a Respiratory Care Act provision or New Mexico rules and regulations governing respiratory care or aiding and abetting another to do the same, 16.23.17.8(H) NMAC
- f. Unprofessional Conduct, 16.23.17.8(I) NMAC

§ 61-12(B)-12(A), NMSA 1978. DENIAL, SUSPENSION, REVOCATION AND REINSTATEMENT OF LICENSES.

A. The superintendent in consultation with the board and in accordance with the rules set forth by the department and the procedures set forth in the Uniform Licensing Act may take disciplinary action against a license or temporary permit held or applied for pursuant to the Respiratory Care Act for the following causes, in pertinent part:

- (6) gross negligence as defined by rules of the department in the practice of respiratory care;
- (7) violating a provision of the Respiratory Care Act or a rule duly adopted pursuant to that act or aiding or abetting a person to violate a provision of or a rule adopted pursuant to that act;
- (8) engaging in unprofessional conduct as defined by rules set forth by the department.

16.23.17.8 NMAC. DISCIPLINARY GUIDELINES.

G. Being responsible for gross negligence in the performance and delivery of health care while engaged in the practice of respiratory care.

H. Violating any provision of the Respiratory Care Act or the rules and regulations governing respiratory care adopted by the Department, or aiding or abetting any other person in violating these laws.

I. Engaging in acts of unprofessional conduct such as, but not limited to, the following, in pertinent part:

- (1) Failing to maintain minimum acceptable and prevailing standards of respiratory care practice;
- (2) Performing procedures and functions beyond which the respondent is individually competent to perform or which are outside the scope of accepted and responsible practice of respiratory care;
- (3) Failing to respect and protect the legal and personal rights of the patient, including the right to informed consent and refusal of treatment;

- (4) Intentionally or negligently causing physical or emotional injury to a patient;
- (5) Assaulting or committing battery on a patient;
- (6) Abandoning or neglecting a patient requiring immediate respiratory care without making reasonable arrangements for continuation of such care;
- (7) Failing to maintain for each patient a record which accurately reflects the respiratory care treatment of the patient;
- (8) Failing to take appropriate action to safeguard the patient's welfare or to follow policies and procedures established by the respiratory care practitioner's employer;

16.23.17.9 NMAC. GROSS NEGLIGENCE.

In performing respiratory care functions, a temporary permittee or licensed practitioner is under the legal duty to possess and to apply the knowledge, skill, and care that is ordinarily possessed and exercised by other temporary permittees and licensed practitioners and required by the generally accepted standards of the profession. The failure to possess or to apply to a substantial degree such knowledge, skill, and care constitutes gross negligence.

A. Charges of gross negligence may be based upon a single act of gross negligence or upon a course of conduct or series of acts or omissions which extend over a period of time and which, taken as a whole, demonstrate gross negligence.

B. It shall not be necessary to show that actual harm resulted from the act or omission or series of acts or omissions so long as the conduct is of such a character that harm could have resulted to the patient or to the public from the act or omission or series of acts or omissions.

C. Proof of intent will not be necessary to establish gross negligence.

D. The following shall be deemed prime examples of activities which demonstrate that the temporary permittee or licensed practitioner has engaged in an act or acts of gross negligence. The Department, in consultation with the Board, shall not be limited to this list in determining whether an act or acts constitute gross negligence.

- (1) Acting in a manner inconsistent with the care for the welfare, health, or safety of patients set forth by the facility in which the temporary permittee or licensed practitioner is employed.
- (2) Performance or conduct that substantially departs from, or fails to conform to, the minimal reasonable standards of acceptable and prevailing practice of respiratory care.
- (3) Failure to adhere to the facility's quality assurance standards and risk management recommendations.
- (4) Failure to maintain an appropriate standard of care.
- (5) Failure to follow established policies and procedures.
- (6) Performing procedures beyond the scope of one's training and education.
- (7) Attempting to treat too many patients simultaneously, resulting in harm to one or more patients.

§ 61-12B-6, NMSA 1978. DEPARTMENT; DUTIES AND POWERS.

B. The Superintendent, in consultation with the Board, may:

(2) reprimand, fine, deny, suspend or revoke a license or temporary permit to practice respiratory care as provided in the Respiratory Care Act in accordance with the provisions of the Uniform Licensing Act.

SUMMARY OF THE EVIDENCE AGAINST RESPONDENTS

3. The general nature of the evidence before the Superintendent and the Board is as follows:

On November 22, 2019o, Respondent Nicolas Chavez, while working a shift as a respiratory practitioner, inflated the cuff of Patient X's tracheotomy while the tracheotomy was capped, knowing that his act would lead to suffocation of the patient. The patient died soon after. Respondent deflated the tracheotomy cuff shortly after the death of the patient.

Respondent's license expired on September 30, 2021 and was not renewed.

RIGHTS AND OBLIGATIONS OF RESPONDENTS

4. **Unless Respondent requests a formal hearing, the evidence before the Superintendent and the Board is sufficient to justify the Superintendent in consultation with the Board in taking the contemplated action.**
5. The formal hearing, if requested, will be conducted pursuant to the ULA as provided by Section 61-1-8. Section 61-1-8 provides that:
- A. A person entitled to be heard under the Uniform Licensing 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 (10) days after the mailing or delivery of the request. No request shall be made less than fifteen (15) 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.
6. **If Respondent does not request a hearing in this matter, the Board will take the contemplated action by default. See § 61-1-4(D)(3). If no hearing is requested, this disciplinary action will not be subject to judicial review. See § 61-1-4(E).**
7. In order to request a hearing in this matter Respondent must deposit in the mail a certified return receipt requested letter addressed to the Board containing a request for a hearing within twenty (20) days after services of this notice. See § 61-1-4(D)(3). A written request for a hearing should be sent to the following address:

Kathleen Roybal, Hearing Clerk
Respiratory Care Advisory Board
Regulation and Licensing Department
P.O. Box 25101, Santa Fe, New Mexico 87504

**NEW MEXICO REGULATION & LICENSING
DEPARTMENT ON BEHALF OF THE
ADVISORY BOARD OF RESPIRATORY
CARE PRACTITIONERS**

Linda M Trujillo

Digitally signed by Linda M Trujillo
DN: cn=Linda M Trujillo, o=NM Regulation and
Licensing Department, ou,
email=linda.trujillo3@state.nm.us, c=US
Date: 2021.11.02 11:14:14 -06'00'

Linda Trujillo, Superintendent

Prepared by:

/s/ Victoria Amada

M. Victoria Amada

Assistant Attorney General

New Mexico Attorney General's Office

P.O. Drawer 1508

Santa Fe, NM 87504

(505) 490-4060 – Telephone

Nicolas E. Chavez

Notice of Contemplated Action

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CERTIFICATE OF SERVICE

A true copy of this Notice of Contemplated Action was sent to Respondent's counsel Lisa A. Torraco by United States Postal Service Certified Mail, return receipt requested, on this 2nd day of November, 2021.

Lisa A. Torraco
Attorney at Law
823 Gold Ave. S.W.
Albuquerque, NM 87102-3014
Phone: (505) 244-0430
lisatorrac@gmail.com

Certified Mail Return Receipt
7005 1820 0003 3155 8093

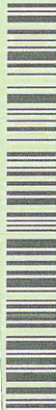
By: *Kathleen Roybal*
Kathleen Roybal, Compliance Liaison
Advisory Board of Respiratory Care Practitioners
Regulation and Licensing Department
P.O. Box 25101, Santa Fe, New Mexico 87505
Santa Fe, New Mexico 87504

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Lisa A. Torraco
 823 Gold Ave SW
 Albuquerque, NM 87102



9590 9402 6243 0265 0880 68

2. Article Number (Transfer from service label)

7005 1820 0003 3155 8093

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? Yes

If YES, enter delivery address below: No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- First-Class Mail®
- First-Class Mail Restricted Delivery
- Registered Mail™
- Registered Mail Restricted Delivery
- Signature Confirmation™
- Signature Confirmation Restricted Delivery
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt

USPS TRACKING#



9590 9402 6243 0265 0880 68

United States
Postal Service

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4® in this box*

New Mexico Regulation and Licensing Department
 Respiratory Care Advisory Board
 Compliance
 P.O. Box 25101
 Santa Fe, NM 87504
 RES-19-01-COM- NCA



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November 4, 2021 at 3:54 pm
ALBUQUERQUE, NM 87102

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November 4, 2021, 3:54 pm
Delivered to Agent for Final Delivery

ALBUQUERQUE, NM 87102

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November 4, 2021, 12:44 am
Departed USPS Facility
ALBUQUERQUE, NM 87101

November 3, 2021, 8:56 pm
Arrived at USPS Facility
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