

IN THE MATTER OF * BEFORE THE STATE
TER-SHON HAYWARD, RMP * BOARD OF
Respondent * MASSAGE THERAPY EXAMINERS
Registration Number: R02060 * Case Number: 17-33M

FINAL ORDER OF REVOCATION OF MASSAGE THERAPY REGISTRATION

On October 30, 2017, the Maryland State Board of Massage Therapy Examiners (the "Board") summarily suspended the registration to practice massage therapy issued to Ter-Shon Hayward, RMP (the "Respondent"), Registration Number R02060, under the Maryland Massage Therapy Act (the "Act"), Md. Health Occ., Code Ann. § 6-101 *et seq.* (2016 Supp.), based on the Board's investigative findings that he engaged in inappropriate touching of a sexual nature (non bona fide treatment) to a female client ("Client A") during a massage.

On November 9, 2017, the Board notified the Respondent of its Intent to Revoke his registration to practice massage therapy. The Notice specified that unless the Respondent requested a hearing in writing within 30 days of receipt of the Notice, the Board intended to sign the Final Order herein, which was enclosed. On December 7, 2017, made a timely request to the Board for an evidentiary hearing.

On March 28, 2018, the Board held an evidentiary hearing in the matter in accordance with the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't § 10-201 *et seq.*, and the Board's regulations, COMAR 10.65.02. The Respondent was served and notified about the matter. The Respondent did not appear and was not represented by counsel. The Board conducted the hearing in the Respondent's absence as provided for in the Act, Md. Code Ann., Health Occ., § 6-

309(f). The State presented witnesses, evidence, and argument. Following the hearing, the Board convened to deliberate and voted to revoke the Respondent's registration to practice massage therapy for the reasons set forth in this Final Decision and Order.

The basis for the Board's action was pursuant to the Maryland Administrative Procedure Act (the "APA"), Md. Code Ann., State Gov't ("State Gov't") § 10-226(c)(1) (2014 Repl. Vol. & 2016 Supp.) and the Act.

The pertinent provision of State Gov't § 10-226(c)(1) states:

Except as provided in paragraph (2) of this subsection, a unit may not revoke or suspend a license unless the unit first gives the licensee:

- (i) written notice of the facts that warrant suspension or revocation;
and,
- (ii) an opportunity to be heard.

The pertinent provisions of Health Occ. § 6-308 provide:

(a) In general; grounds. -- Subject to the hearing provisions of § 6-309 of this subtitle, the Board may deny a license or registration to an applicant, reprimand a licensee or registration holder, place any licensee or registration holder on probation, or suspend or revoke the license of a licensee or the registration of a registration holder if the applicant, licensee or registration holder:

...

(8) Does an act that is inconsistent with generally accepted standards in the practice of massage therapy;

(9) Is negligent in the practice of massage therapy;

...

(20) Engages in conduct that violates the professional code of ethics;

(21) Knowingly does an act that has been determined by the Board to be a violation of the Board's regulations[.]

The pertinent regulations provide:

Md. Code Regs. 10.65.03.02:

...

B. Terms defined.

...

(2) "Non bona fide treatment" means when a license holder or registration holder treats or examines a client in a way that involves sexual contact, but there is no therapeutic reason for the procedure, or the procedure falls outside of reasonable massage therapy.

...

(4) "Sexually exploitative relationship" means when sexual contact occurs in an existing therapeutic relationship between the massage therapist and the client ...[.]

Md. Code Regs. 10.65.03.03:

...

C. A license holder or registration holder shall:

...

(5) At all times respect the client's dignity, autonomy, and privacy[.]

Md. Code Regs. 10.65.03.05:

A. A license holder or registration holder shall:

(1) Maintain professional boundaries, even when the client, staff member, or student initiates crossing the professional boundaries of the professional relationship;

...

B. A license holder or registration holder may not:

(1) Exploit a relationship with a client...for the license holder's personal advantage, including, but not limited to, a personal, sexual, romantic, or financial relationship;

(2) Engage in a sexually intimate act with a client;

(3) Engage in sexual misconduct that includes, but is not limited to:

...

(b) Non bona fide treatment; or

(c) A sexually exploitative relationship.

EXHIBITS

The following exhibits were admitted into evidence during the hearing:

STATE'S EXHIBITS

No.	Exhibit Description
1	Application for Massage Therapy license or registration in Massage Therapy, 6/1/2014
2	License verification information, undated
3	Complaint, 7/31/2017
4	Order for Summary Suspension of Registration to practice massage therapy, 10/20/2017
5	Request for show cause hearing, 10/26/2017
6	Notice of Intent to Revoke Massage Therapy registration, 11/9/2017
7	Transcript of post-deprivation hearing, 11/29/2017
8	Letter affirming Order for Summary Suspension, 11/30/2017
9	Request for Hearing, 12/7/2017
10	Emails from complainant to Chris Beiling and responses, 8/15/2017 and 9/25/2017
11	Email from Chris Beiling to Respondent re: contact with Board, 8/30/2017

- 12 Subpoena duces tecum issued to Respondent for documents for July 2017, 9/11/2017
- 13 Transcript of interview of Respondent by Chris Beiling, 9/11/2017
- 14 Handwritten notes by Chris Beiling, 9/11/2017
- 15 Email from Chris Beiling to Respondent and response, 9/27/2017
- 16 July 2017 scheduling calendar, undated
- 17 Emails and Google scheduling between complainant and Respondent re: scheduling appointments (Bates-stamped pages 1-11)
- 18 Investigative Report, undated
- 19 Anne Arundel County Police investigative report with attachments, 12/7/2017

FINDINGS OF FACT

The Board finds:

1. At all times relevant, the Respondent was registered to practice massage therapy in the State of Maryland. The Respondent was initially registered in Maryland on August 6, 2014.
2. The Board summarily suspended the Respondent's license to practice massage therapy on October 30, 2017 based on investigative findings as set forth in pertinent part below.
3. At all times relevant, the Respondent worked as a massage therapy practitioner without employees at his solo practice located in Crofton, Maryland ("Practice A").

4. On or about August 7, 2017, the Board received a complaint from a former client of the Respondent ("Client A") who alleged that on July 29, 2017, the Respondent had inappropriately touched her in a sexual manner during a scheduled massage.

5. After receiving the complaint, the Board initiated an investigation that included conducting an in-person interview of the Respondent, conducting a telephone interview with Client A, and subpoenaing Client A's file from Practice A. The Board's investigative findings are set forth in pertinent part below.

Client A

6. Client A's written statement dated July 31, 2017 stated that she had seen the Respondent for "multiple" massages over the course of the past year,¹ but had never previously experienced a massage as set forth below, that took place on July 29, 2017.

7. Client A's appointment with the Respondent had been scheduled for 5:00 p.m. on July 29, 2017, however, the Respondent re-scheduled Client A's appointment without her knowledge, for 5:45 p.m.²

8. Client A stated in her complaint that on July 29, 2017, when she arrived for her appointment, the Respondent "smelled of booze." According to Client A, the Respondent did not appear intoxicated, but acknowledged he had been drinking gin the night before the appointment.

¹ Client A produced computer printouts of her appointments with the Respondent on the following dates: October 6, 2016, November 12, 2016, November 19, 2016, July 18, 2017 and July 29, 2017.

² Client A did not receive notification of the modified appointment time until 5:39 p.m.

9. Client A stated that she told the Respondent she had a migraine headache and requested that he provide a relaxing massage for her, instead of the deep tissue massage she usually received from the Respondent.

10. The Respondent told Client A, "if you feel uncomfortable at any point, let me know." According to Client A, the Respondent had never made that statement during any of her prior massages with him.

11. Client A was lying on her back and was covered by a sheet on the massage table. When the Respondent adjusted the sheet to expose her right leg, she felt the Respondent grab the right side of her labia.

12. After massaging her right leg, Client A stated that the Respondent adjusted the sheet to expose her left leg, and while doing that she stated that the Respondent grabbed the left side of her labia.

13. Client A claimed that when the Respondent was massaging her right foot, he inserted her big toe into his mouth.

14. Client A stated that the Respondent began massaging her left foot, and subsequently felt the Respondent's "beard brushing against my foot" while his hands were on her calf and then inserted her toes into his mouth again.

15. Client A stated that she did not consent to the Respondent's conduct described in ¶¶ 11 -- 14.

16. Client A stated that after she left the Respondent's practice, she texted a male friend to alert him about what had occurred, and on Monday, July 31, 2017, she filed a complaint with the Board.

17. On or about September 22, 2017, Client A saw the Respondent at a neighborhood gas station in Glen Burnie. Client A documented her encounter with the Respondent in an email sent to Board staff. Client A stated that the Respondent recognized her as one of his clients and said, "You caught me on a bad day" and "now I have to talk to a detective." Client A said that the Respondent apologized to her, saying, "sorry about that."

Respondent's interview

18. On September 11, 2017, Board staff conducted an interview under oath of the Respondent regarding Client A's allegations.

19. The Respondent stated that he had performed less than five massages on Client A.

20. The Respondent stated that he usually performed deep tissue massages for Client A.

21. In response to Board staff's question as to whether the Respondent recalled that on July 29, 2017, while adjusting Client A's sheet, he exposed her leg and might have grabbed her vagina, the Respondent stated:

That might be a situation, but it was 100 percent unintentional because the way that I drape and the sheet kind of like fumbled. So, it wasn't like a grab, but it was more like a -- trying to grab my sheet to drape the leg, and I did apologize and asked her, if you feel uncomfortable let me know, because I did go to the drape because she did say she was having -- she was doing more workouts as far as like leg workouts. So, I did want to stretch her legs.

22. The Respondent answered "yes" to the question by Board staff as to whether his (the Respondent's) hand had come into contact with Client A's vagina. As a consequence to his action, the Respondent stated that he apologized to Client A.

23. The Respondent stated that he had gone out with friends the night before Client A's July 29, 2017 appointment, and had been drinking alcohol.

24. The Respondent acknowledged that he "might've still had a substantial amount of alcohol in my system" during Client A's appointment on July 29, 2017.

25. The Respondent acknowledged that he had massaged Client A's feet on July 29, 2017, but denied placing Client A's toes into his mouth or kissing her toes.

26. The Respondent stated that it was possible that he had fallen asleep while massaging Client A's toes which according to the Respondent, would have explained why Client A had felt his facial hair on her foot during the course of her massage.

CONCLUSIONS OF LAW

Based on the Findings of Fact, the Board concludes that the Respondent violated Md. Code Ann., Health Occ. § 6-308 (8), (9); and (20) and (21), pursuant in whole or in part to Md. Code Regs. 10.65.03.03C, 10.65.03.05A(1) and B(1), (2) and (3).

ORDER

It is hereby:

ORDERED that the registration of Ter-Shon Hayward, RMP, is **REVOKED**; and it is further

ORDERED that this is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen.

Prov. §§ 4-101 et seq.

9/12/2018
Date

 for/ by direction
Laurie Sheffield-James Executive Director
Maryland State Board of Massage Therapy Examiners

NOTICE OF RIGHT OF APPEAL

In accordance with Md. Code Ann., Health Occ. § 6-310 (2017) and the Administrative Procedure Act, Md. Code Ann., State Gov't II § 10-201 *et seq.* (2014 Repl. Vol. & 2016 Supp.) you have a right to a direct judicial appeal of this decision. A petition for appeal of the Final Board Order shall be filed within thirty days from your receipt of this Final Order and shall be made in accordance with the aforementioned authority.