

**IN THE MATTER OF
KENNETH ANDERSON, RMP
Registration No. R02118**

*** BEFORE THE
* MARYLAND STATE BOARD
* OF MASSAGE THERAPY EXAMINERS
* Case No. 22-20M**

FINAL DECISION AND ORDER OF REVOCATION

Procedural Background

On or about September 13, 2022, the Maryland State Board of Massage Therapy Examiners (the “Board”) received a complaint from a massage facility (“Facility A”) in Olney, Maryland regarding Kenneth Anderson (the “Respondent”), a registered massage practitioner in the State of Maryland, registration number R02118. The Board initiated an investigation. As the Board was investigating that complaint, on or about February 15, 2023, the Board received another complaint from an employee of Facility A regarding the Respondent that alleged similar facts. The Board initiated another investigation.

Based on those investigations, on or about June 28, 2023, the Board issued to the Respondent a “Charges Under the Maryland Massage Therapy Act” (“Charges”), which notified the Respondent that the Board was charging him with several violations of the Maryland Massage Therapy Act. Specifically, the Board alleged that the Respondent violated Md. Code Ann, Health Occ. (“HO”) § 6-308(a):

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

...

(11) Has violated any provision of this title;

...

- (20) Engages in conduct that violates the professional code of ethics; and
- (21) Knowingly does an act that has been determined by the Board to be a violation of the Board's regulations.

Specific to the statutory violations of HO § 6-308(a)(20) and § 6-308(a)(21), the Board alleged that the Respondent violated the following provisions of the Code of Maryland Regulations (“COMAR”):

.03 Standards of Practice.

- A. The license holder or registration holder shall be concerned primarily with the welfare of the client.
...
- C. A license holder or registration holder shall:
 - (1) Use professional discretion and integrity in relationships with members of the public and health care community;
 - (2) Engage in professional conduct at all times, with honesty, integrity, self-respect, and fairness;
...
 - (5) At all times respect the client's dignity, autonomy, and privacy[.]
- D. A license holder or registration holder may not:
 - (2) Knowingly engage in or condone behavior that:
...
(d) Involves moral turpitude.

.05 Professional Boundaries.

- 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; and
 - (2) Respect and maintain professional boundaries and respect the client's, staff member's, or student's reasonable expectation of professional conduct.

- B. A license holder or registration holder may not:
 - (1) Exploit a relationship with a client, staff member, or student for the license holder's or registration 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; or
 - (3) Engage in sexual misconduct that includes, but is not limited to:
 - (a) Therapeutic deception;
 - (b) Non bona fide treatment; or
 - (c) A sexually exploitative relationship.

The Charges also notified the Respondent that he faced potential licensure sanctions and that he could request a hearing on the merits of the Board's allegations against him. On or about July 11, 2023, the Respondent submitted a timely request for a hearing, and the Board scheduled a hearing for January 24, 2024. Subsequently, the State requested a postponement, and the hearing was rescheduled. Then, the Respondent requested a postponement, which was granted, and the hearing was rescheduled for July 19, 2024 at 10:00 a.m.

On July 19, 2024, a quorum of the Board was present, and an evidentiary hearing was held at the Board offices. Karen Malinowski, the Administrative Prosecutor, presented the State's case

against the Respondent. The Respondent appeared and represented himself at the hearing.

Evidentiary Exhibits and Witnesses

State's Exhibits

1. Maryland State Board of Massage Therapy Examiners – License Verification Information (2 pages).
2. Board Complaint No. 1 from Facility A, dated September 13, 2022 (2 pages).
3. Facility A Incident Report (4 pages).
4. Personnel Records and Client Records from Facility A (22 pages).
5. Maryland State Board of Massage Therapy Examiners – Investigatory Interview Transcripts
 - a. Facility A Manager, dated December 6, 2022 (9 pages).
 - b. Client DG, dated December 22, 2022 (5 pages).
 - c. Respondent, dated January 24, 2023 (6 pages).
6.
 - a. Board Investigator Memo to File, dated January 17, 2023 (1 page).
 - b. Board Complaint No. 2 from Employee KP, dated February 11, 2023 (6 pages).
7. Maryland State Board of Massage Therapy Examiners – Investigatory Interview Transcripts
 - a. Facility A Employee KP, dated April 27, 2023 (9 pages).
 - b. Respondent, dated June 23, 2023 (7 pages).
8. Maryland State Board of Massage Therapy Examiners – Reports of Investigation
 - a. Report of Investigation (Complaint No. 1), dated March 13, 2023 (4 pages).
 - b. Report of Investigation (Complaint No. 2), dated August 8, 2023 (5 pages).
9. Maryland State Board of Massage Therapy Examiners – Notice of Charges, dated June 28, 2023 (12 pages).
10. Respondent's Request for a Hearing, dated July 11, 2023 (1 page).
11.
 - a. Maryland State Board of Massage Therapy Examiners – Notice of Hearing, dated October 26, 2023 (11 pages).
 - b. Maryland State Board of Massage Therapy Examiners – Rescheduled Hearing, dated March 7, 2024 (1 page).

- c. Maryland State Board of Massage Therapy Examiners – 2nd Rescheduled Hearing, dated March 7, 2024 (1 page).

State’s Witnesses

1. Nicole Cullings, Board Investigator
2. Client DG
3. Facility A Employee KP

The Respondent’s Exhibits

The Respondent submitted no exhibits.

The Respondent’s Witnesses

The Respondent, Kenneth Anderson, testified on his own behalf.

FINDINGS OF FACT

Based on the totality of the record before it, the Board finds that:

1. At all times relevant to this Order, the Respondent was licensed to practice as a registered massage practitioner (“RMP”), registration number R02118. (State’s Exhibit 1.)

2. On October 12, 2022, the Board received a complaint, dated September 13, 2022, from a massage facility in Olney, Maryland (“Facility A”) against the Respondent. (State’s Exhibit

2.) The complaint alleged:

On 9/11/2022 a client called spa and spoke with Manager of location [...] in regards to massage received on August 9, 2022 with massage therapist [the Respondent] license number R02118. Client stated inappropriate touching. Client stated [the Respondent] touched her nipples and breast on both sides. She said he also had her private area exposed not wrapped in the sheet and [the Respondent] grazed it multiple times. Client has seen [the Respondent] 7 times before and this appointment was her 8th[.] This was the first time the touching on private areas occurred. After [Facility A’s manager] spoke with the client she requested no longer to be contacted [*sic*] and company is taking employment action going forward.

(*Id.* at p.004). Based on this complaint, the Board initiated an investigation.

3. As part of its investigation, the Board subpoenaed and obtained documents relevant to the September 13, 2022 complaint from Facility A. (State's Exhibit 4, pp. 009-010.) According to those documents, on September 11, 2022, Facility A provided the Respondent with an "Employee Suspension Notice." (State's Exhibit 4, p. 014.) According to the Employee Suspension Notice, the Respondent was suspended for a "Violation of Safety Rules" and a "Violation of Company Policies." (*Id.*) According to the "Description of Infraction," Facility A noted to the Respondent:

Kenny, we have had a client come forward with an accusation about being touched by you inappropriately. We cannot discuss who the client was, but our code of ethics was breached, and misconduct was in play. We must abide by company policies and do an investigation due to the information received.

(*Id.*) Accordingly, the notice advised the Respondent that it was suspending him from performing massage services. (*Id.*) The Respondent signed and acknowledged the Employee Suspension Notice on September 11, 2022. (*Id.* at p. 015.)

4. On December 6, 2022, the Board's investigator interviewed, under oath, Manager RF, Facility A's Manager, regarding Facility A's September 13, 2022 complaint. (*See* State's Exhibit 5, pp. 031-039.) According to Manager RF, she was made aware of Client DG's complaint through an "incident report." (*Id.* at p. 034.) Manager RF contacted Client DG in response to the incident report and stated that Client DG "went into detail of the allegations and the incident that occurred." (*Id.*) Manager RF notified her regional manager of the complaint and commenced her own investigation. (*Id.*) According to Manager RF, the Facility A investigation found Client DG's allegations credible: "I don't know why someone would make that up or lie about it. It is a pretty, you know, intense statement to let us know that occurred." (*Id.* at p. 036.) Ultimately, based on its internal investigation, Facility A terminated the Respondent. (*Id.* at p. 037.)

5. Pursuant to the Board's investigation, on December 22, 2022, the Board's investigator interviewed, under oath, Client DG, the client referenced in Facility A's September 13, 2022 complaint. (*See* State's Exhibit 5, pp. 040-044.) According to Client DG, she first went to Facility A due to shoulder problems. (*Id.* at p. 014.) She stated that she saw the Respondent "five or six times" and that he was a "wonderful massage therapist" because "I was feeling relief in my shoulder." (*Id.*) After that initial success, Client DG bought a monthly membership at Facility A. (*Id.*) Relevant to Facility A's complaint, Client DG stated that "[i]t was a Friday, in maybe early September, at 5:00" and that, while she would get a full-body massage, she requested that the Respondent focus on her right shoulder. (*Id.*) She further described:

I was on my stomach. That's how you start, you know, initially. And what [the Respondent] had always done in the past is when you're on your stomach, he would lift, like, a leg. And you're completely naked under the [draping] sheet. [The Respondent] would lift one leg and then tuck the sheet underneath the leg, so just the leg is showing and he would massage, you know, my foot and leg. This particular day, he lifted my leg pretty high, and so my genitals, my vagina was completely exposed, which I was embarrassed about. And I thought maybe it's, you know, just a weird thing. I didn't say anything. And he started massaging my leg. And I noticed that he was moving a lot farther up my leg toward my vagina and actually touched it with his hands, like with his – he grazed it with his hand and his thumb as he was massaging like my – the back part of my leg. And also, he was kind of spreading my butt apart. So – I mean, this is embarrassing, but like – so my butt hole was showing, you know, my anus was showing. And I didn't say anything, because I thought maybe it's just, you know, an accident by mistake. And I was saying to myself, 'Please just let that just have been an accident.' So I didn't say anything.

(*Id.* at p. 042.) According to Client DG, she believed it was a mistake because the Respondent was "completely professional" in her prior sessions. (*Id.*) Client DG stated that the Respondent then moved to her other leg "and [the Respondent] does the same thing." (*Id.*) According to Client DG, the Respondent then had her turn over to her back: "And then he does your arms and your hands and your shoulders. And he proceeded – he had never done this before – to move down the front,

pass my throat, down my chest, and was massaging my breasts and nipples.” (*Id.*) It was at this point that Client DG realized that “this is wrong” and “completely unprofessional,” however the massage was over shortly after. (*Id.*) Client DG left without reporting the incident, however after researching “what is appropriate, what is inappropriate with massaging,” the next day, she canceled her monthly membership to Facility A. (*Id.*) Facility A did not ask Client DG why she was canceling her membership. (*Id.*) According to Client DG, several weeks later, she received an email survey from Facility A asking her about her last visit. Client DG responded that she wasn’t returning to Facility A for reasons that she did not feel comfortable stating through an email. (*Id.*) Client DG indicated that someone from Facility A contacted her shortly after she submitted her survey response, after which Client DG explained her experience with the Respondent. (*Id.*) According to Client DG, the manager from Facility A contacted her several weeks later to notify her that Facility A had “let [the Respondent] go.” (*Id.* at p. 043.) During her interview, Client DG reiterated that the Respondent did not apologize or otherwise acknowledge touching her vagina. (*Id.*)

6. On January 24, 2023, the Board’s investigator also interviewed the Respondent under oath in response to the September 13, 2022 complaint from Facility A. (*See* State’s Exhibit 5, pp. 045-050.) The Respondent stated that he recalled providing Client DG with a deep tissue massage on August 12, 2022. (*Id.* at p. 047.) In response to a question from the Board’s investigator asking him to describe Client DG’s massage session on August 12, 2022:

Well, she came and she was my last client of the day. So I believe that was a Friday. So that was my last client. I believe I had her around 4:00. She came in per usual. She’d usually get the 90-minute [massage session]. This time was just a 60-minute [session] – I believe she still wanted deep tissue. I really can’t remember, but I did everything according to [Facility A] protocol. As I said, I’m a lead – I’m a trainer [at Facility A], so everything is always up to protocol. So I made sure that she was

draped properly, everything was tucked in as it's supposed to be. I gave her the massage she asked for, no complaints. No – never reported that I made her uncomfortable at all. It was just nothing but relaxation from her. I told her – I had made her aware of the panic button. You know, like I said, she was my client for a month, so I've been told her where the panic button was if she had any complaints. So I completed the massage. Like I said, it was no complaints at all. I asked her did I address all the issues. She said, yes, with a smile. I exited I saw her up front. She told the ladies up front – you know, the massage was well. She left me a 50 dollar cash tip, told me she would see me next time, and I never heard anything else until this accusation. So I am completely thrown off-guard and clueless as to what could have happened. She had several resources, if this was the case. She could have told me that I'm making her uncomfortable. She could have asked me to stop. She could have hit the panic button. She could have went up front to complain. She could ask to see a manager. She could have called when she got home, but I have no idea why she made accusations over a month – well, a month after this happened.

(*Id.* at pp. 047-048.) The Respondent acknowledged that there would be no reason to touch a client's breast or massage close to the vaginal area and again reiterated his belief that nothing out of the ordinary occurred during the August 12, 2022 massage session with Client DG: "She didn't twitch. She didn't say I was making her uncomfortable. She smiled the whole time." (*Id.* at pp. 048-049.)

7. While investigating the September 13, 2022 complaint from Facility, on January 17, 2023, the Board's investigator was contacted by Manager RF, Manager of Facility A. (State's Exhibit 6, p. 051.) According to a memorandum to file made contemporaneously on January 17, 2023, Manager RF told the Board's investigator that "three (3) staff members had come forward [with] allegations against [the Respondent]. It is alleged that [the Respondent] provided massage service to the staff members and inappropriately touched them." (*Id.*) According to the same memorandum, Manager RF advised her employees to file a formal complaint with the Board. (*Id.*)

8. On February 15, 2023, the Board received a complaint dated February 11, 2023 from Employee KP, an employee at Facility A, with an attached written report. (State's Exhibit 6,

pp. 052-057). According to the complaint and its attachment, the Respondent was terminated from Facility A on September 13, 2022. (*Id.* at p. 054.) Employee KP's submission to the Board went on to state that on an unspecified date before the Respondent's termination, the Respondent provided Employee KP with a massage. (*Id.* at p. 055.) In her narrative, Employee KP described the massage:

I told [the Respondent] about the pain I was experiencing in my neck, right shoulder, and arm. We agreed, given the time allotted, he would concentrate on my upper back and neck to help ease my discomfort. [The Respondent] left the room so I could undress. I removed my shirt and bra. I was under the sheets face down when he knocked and asked if I was ready. I said I was ready. [The Respondent] began working under the sheets on my back and neck. He proceeded to massage my shoulder and neck. Next, he told me to lie face up on the table. While I assume he had me turn over onto my back using the appropriate draping process, I cannot say for certain. While I was lying face-up he began lifting my shoulders upwards so that I was eventually in a sitting position. Right away the sheets fell off my chest exposing both of my breasts. He began to massage harder on my back pushing me more and more forward. I do not remember if he verbally asked me to sit up or not. I can say for certain that at no point did [the Respondent]:

- A. Ask for permission to perform these actions;
- B. Preemptively explain the full nature of these actions so I would not be caught off guard (i.e. how these actions would work and what it would mean in terms of private area exposure);
- C. Apologize for what happened, and
- D. Correct the resulting exposure by helping me to adjust the vulnerable position I found myself in.

(*Id.*) In her narrative, Employee KP went on to describe her mindset at the time:

I wondered if I should make a second attempt at pulling the sheets up but then I began to think that sure since he was my colleague and that he worked together he wouldn't try some inappropriate move unless he had a good reason to. Afterall [*sic*] he was the Lead Massage Therapist. Why would I not put my trust in his authoritative position with [Facility A] and the skill set that comes with this position...

(*Id.*) Based on Employee KP's complaint, the Board initiated another investigation into the Respondent's conduct.

9. On April 27, 2023, the Board's investigator interviewed Employee KP under oath. (*See* State's Exhibit 7, p. 058-066.) During that interview, Employee KP reaffirmed her complaint that, during her massage, the Respondent allowed her draping sheet to fall off and expose her breasts, stating that the Respondent "made no effort whatsoever to move the [draping] sheets, move the bed or move me to ensure that I could cover myself up again to be in a better position." (*Id.* at p. 060.) Further, Employee KP stated that the Respondent did not communicate with her during the massage: "It was a definitive silence." (*Id.*) Employee KP reiterated that the Respondent's technique caused the mid-massage exposure of her breasts. (*Id.* at p. 062.) Employee KP described her state of mind at that time:

I was looking down just by the way of how I was being seated and pushed up [by the Respondent], and I could see that I was completely nude from my belly button up. So I - he was behind me, and I'm like, well, I guess he can't see anything, but what's he doing? And then that's where, you know, I just began to question myself, like, well, he wouldn't be doing this if he - you know, he knows that we're colleagues. He knows I have to see him every day. He's the team lead. He must - he must - you know, maybe he's doing some technique that's not necessarily what they usually do, but maybe he felt in my neck that I really - anyway, I made all these assumptions for him.

(*Id.* at p. 063.) Employee KF stated, "I wasn't paying attention to how good the massage was anymore. I just felt so uncomfortable." (*Id.*)

10. As a result of the second complaint, on June 23, 2023, the Board's investigator again interviewed the Respondent under oath. (*See* State's Exhibit 7, pp. 067-073.) During his interview, the Respondent acknowledged that if a client's breast were exposed or if the draping fell off, he would "pull [the draping cloth] up if it happened." (*Id.* at p. 069.) The Respondent

further stated that he would apologize, communicate to the individual that he did not intend to have the draping sheet fall, and stop the massage. (*Id.*) In his recollection of Employee KP's massage, the Respondent acknowledged that Employee KP's draping sheet fell, leaving her exposed:

Okay, so as I elevated her neck, I told her to relax. The way she's supposed to do it, she's supposed to relax and just let me elevate it. It's going to take you up. I think she kind of squirmed or jerked or something, something where as though a part – you know, a part of the sheet came down. And I hurried up and I grabbed it, and I apologized immediately. Immediately, I said 'I'm so sorry. I didn't mean.' And her reaction was, 'It's no problem...mistakes happen. No, I'm not worked about it. I know you're doing it professional.'

(*Id.* at p. 070.)

11. Based on the information elicited during the Board's investigation, on June 28, 2023, the Board charged the Respondent with several violations, enumerated at the beginning of this Order, of the Maryland Massage Maryland Massage Therapy Act. (*See* State's Exhibit 9.) The Respondent subsequently requested a hearing. (*See* State's Exhibit 10.) After several postponements, a hearing was ultimately scheduled for July 19, 2024. (*See* State's Exhibit 11.)

12. On July 19, 2024, an evidentiary hearing was convened, and a quorum of the Board was present. (*See* Transcript ("Tr."), p. 6.) An Administrative Prosecutor represented the State, and the Respondent was present and represented himself. (*Id.*)

13. During the hearing, the State called Client DG to testify. (*See* Tr., pp. 36-44.) Client DG testified that she sought out massage therapy from Facility A due to issues with her shoulder. (*Id.* at pp. 36-37.) She testified that initially, she was "really happy" with the massage therapy provided to her by the Respondent, stating, "I wanted to see him every week because I was getting so much relief." (*Id.* at pp. 38-39.) Client DG testified that satisfaction changed after August 22, 2022. (*Id.* at p. 39.) Client DG testified regarding the events of August 22, 2022:

I remember it was a Friday evening, 5:00 or 6:00. I can walk to [Facility A] from my home, and I went there. And this particular evening, you know, we started off where I'm on my stomach and, you know, I'm fully naked, and I have this sheet that covers. And I had seen [the Respondent], you know, five or six, times before. Always professional.

This particular evening I noticed [the Respondent] was – like he would move the sheet from one leg to the other and completely expose me. And then I was thinking that was just like a mistake. And then he did it on the other side. And then I was like, okay, maybe this is a technique, because I wasn't really familiar with massages before that. I didn't know. But then – I don't know how descriptive you want me to get here.

[The Administrative Prosecutor states, “As much as you're comfortable with.”]

So then, because you sign a consent form, can they massage your buttocks, and I said, yeah, that's fine. But this time, he took my butt and he opened it and looked at my anus. I mean, I felt – I don't know what he's looking [at] behind me but it's open.

And then I start to panic because I'm thinking this is not right, this is not right, this is not right. I was just like, how much longer is this massage going to go on? I knew it was getting closer to the end. And then I flipped over and I'm still like knowing what happened, but not knowing what to do. And then he started doing my shoulders.

I'm thinking, just don't let him do anything else. And then he literally massaged all the way down like this. And fully naked. I just didn't know what to do. So I just wanted to get out of there. The massage ended maybe five or ten minutes later.

(*Id.* at pp. 39-40.) Client DG testified that, on exiting her massage room, she did not see any managers and that she “just wanted to get out of there” and she left. (*Id.* at p. 40.) According to Client DG's testimony, the next day, August 12, 2022, she canceled her Facility A membership. However, she did not provide Facility A a reason for the cancelation: “I was still like shocked. I just couldn't wrap my head around what happened.” (*Id.* at p. 41.) Only after Facility A sent Client DG a “follow-up email survey” did Client DG notify Facility A that a manager could call her to speak about her experience. (*Id.*) According to Client DG's testimony, someone from Facility A contacted her a “few days later, and Client DG recounted her experience. (*Id.* at p. 42.) Client DG

testified that a few weeks later, she was contacted by Facility A, and Facility A informed her that it had terminated the employment of the Respondent. (*Id.*)

14. On cross-examination, the Respondent asked Client DG whether he ever explained “where the panic button was in the [massage] room in case [she] ever needed to use it,” and Client DG stated that she didn’t recall him explaining that to her. (Tr., p. 44.) Further, on questioning as to why Client DG did not “say anything” about exposing her and grazing her genitals during the massage, Client DG testified that the massage was done “strategically” and “at the time I was not a person that was familiar with massages and I thought it might just been a mistake on your part.” (*Id.* at p. 45.) The Respondent asked her to expand on her characterization that the massage was done “strategically,” and Client DG responded:

Well, in the past, when you removed or moved the [draping] sheet over to like massage my legs and my butt area, you would kind of tuck the sheet into the other side so I wasn’t exposed, so my vagina is not hanging out there, so my butt is not hanging out there.

But on this particular night, you went above the place that you normally would until you’re up on my butt, spreading it open. And the sheet was – like you would lift my leg up. Like you would lift my leg up and when you lift the leg up, the sheet is here. So when you lift the leg up, all this is open [*gesturing to her lower body*]. And when you don’t tuck it into the other side, you’re completely exposed.

(*Id.* at p. 46.) The Respondent asked Client DG why she did not alert a manager about her experience at the conclusion of the massage, to which Client DG testified, “I didn’t speak to a manager because I wanted to get out of there. I had just been assaulted. I wanted to get out of there as quickly as I could and collect my thoughts. I was thinking about pressing charges. I was thinking about going to the police.” (*Id.* at pp. 49-50.)

15. Employee KP also testified in the hearing before the Board. (*See* Tr., pp. 56-67.) Employee KP testified that “[o]ne of the reasons [she] started working at [Facility A] was I planned

to take advantage of monthly massages.” (*Id.* at p. 59.) Employee KP testified that at the time she received a massage from the Respondent she was under “a lot of stress” due to her father’s health situation. (*Id.* at p. 58.) In her testimony, Employee KP described the massage that she received from the Respondent:

So for the first part, he did a back massage. He concentrated on the areas that I needed and my arms and everything. It was absolutely fine, nothing out of the ordinary. And then he had me turn over. And as far as I can tell, he did the draping tent correctly. I rolled over. I was absolutely fine.

And then at a certain point, when he was behind me at I guess the back of the table, he massaged me and might have used his – whatever he needed to do, it was working. It felt good. But as he started, he began sort of pushing me up so that my back left the table, which was odd. And granted, I hadn’t had a massage there before, at [Facility A] before, so I was like, okay, well, if this works. But then he began to push me all the way forward until the sheet came off[...].

[...] And I sort of – and I could tell he was kneading, and I just sort of, I didn’t say anything because I was like, okay, he’s the lead therapist and the assistant manager recommended him, knows him since he’s been there.

So I was like, okay, maybe this is a technique that I don’t know of, that I only have a short amount of time. Maybe he’s just doing this because in a short amount of time this would have the most effect. So, you know I just – but at the same time, I couldn’t really enjoy the massager [*sic*] or feel its effects because my breasts were exposed, and then he kept pushing me, so I was all the way down to here. I don’t know if you can see me, but my breasts were touching my thighs, and even my belly button was exposed, and I was really shocked at that point. And then it was like a rocking motion because he was doing whatever he needed to do. I was just stunned. And then I was like, well, maybe I should pull the sheet up, even though I knew it would be fruitless, but I just had to.

So I went to go pull it up and went back up a little bit, but of course they [Employee KP’s breasts] fell down again. And then I was like well – I don’t know. I just kept rationalizing in my head that we have to see each other every day. This can’t be what he really needs to do.

But I felt – I was completely exposed and I don’t know exactly what he saw, but I was very uncomfortable. The rocking motion made it more uncomfortable, and I couldn’t speak up, which I regret.

(*Id.* at pp. 60-62.) Employee KP also testified that the Respondent did not make “any attempt” to assist Employee KP in re-draping and that it was “complete silence, which made it so much worse.”

(*Id.* at p. 62; *see also id.* at p. 63.) Employee KP further stated that the Respondent did not provide any explanation for the techniques he was using during her massage. (*Id.* at p. 63.)

16. On cross-examination, Employee KP stated that she did not remember the Respondent explaining and demonstrating the stretching process he would utilize during his massage. (Tr., p. 68.) During cross-examination, Employee KP acknowledged that she did not alert anyone to her experience. (*Id.*) When asked why she did not “say something about the sheet falling off,” Employee KP testified:

I was really shocked, and I honestly didn't know what to do. I was sort of frozen. In fact, I couldn't tell you how long [the Respondent was] doing that, if you call it a stretch, because I'm just not – I was just shocked.

I felt like, well, maybe this is okay. Maybe this is what you do with this particular problem with only a half an hour, 45 minutes, not a full appointment. You know, maybe this is some stretch that, yeah, is out of the ordinary but might work better. I took it for granted that [the Respondent] is the lead and [he] know what [he's] doing. And I was very uncomfortable with what [the Respondent was] doing, but I didn't know what to do. I didn't have the strength, I guess to say hey, stop, let's do another. Let's stop.

(*Id.* at pp. 69-70.)

17. At the hearing before the Board, the Respondent testified on his own behalf. (*See* Tr., pp. 76-89.) During his testimony, the Respondent reiterated that the allegations against him were false: “Well, I did nothing wrong, and I hold tight by the claim that I did nothing wrong.” (*Id.* at p. 76.) The Respondent stated, “[n]othing was ever said, you know, that I was doing anything wrong so I didn't know.” (*Id.*) The Respondent further stated in “both cases” (presumably, Client DG and Employee KP) that he was “never” disciplined. (*Id.*) The Respondent conceded that,

during Employee KP's massage, "the sheet did fall, but I pulled it up right away. I apologized vehemently." With specific regard to Client DG's massage, the Respondent testified:

[Client DG] came in. [I start] all my clients supine. So just the fact that she said I started her prone was a lie. Start all of them supine. Went through the process. I never heard any complaints. [She never] said 'stop.' Never said, 'oh, what are you doing? I feel like the draping is off.'

...
Like I said, I never massaged her inappropriately, never did any inappropriate draping. Nothing ever was said to me.

(Tr., p. 78.) With specific regard to Employee KP's massage, the Respondent stated:

The sheet did fall. I pulled it up. Apologized vehemently. Nothing was ever said after that. Never held [her] down for a long time. The stretch was maybe five seconds at best. Nothing was ever said to me. Nothing was ever said to management about that incident. We had a good working relationship from then on.

(Tr., p. 79.)

Discussion

The Board may reprimand any licensee, place any licensee on probation, or suspend or revoke the license of a licensee for any violation of HO § 6-308. *See* HO § 6-308(a). This provision provided the underlying authority for, and the necessary legal elements of, the issuance of the Board's "Charges under the Maryland Massage Therapy Act" on June 28, 2023. Indeed, while the Respondent in this case was charged with four separate and distinct violations of the Maryland Massage Therapy Act, the Board only needs to find that the Respondent violated one of those provisions in order to sanction his registration. HO § 6-308 and Md. Code Ann., State Gov't § 10-221 provides the authority for this Order.

The question before the Board is whether the Respondent's care for Client DG or Employee KP conflicts with the laws and regulations governing massage therapy. In this case, there is conflicting evidence in the record, with Client DG asserting in both her investigative interview and in her testimony before the Board that the Respondent allowed her draping to fall, exposing her vagina. (*See* State's Exhibit 5, p. 042; Tr., p. 46.) Client DG further asserted in both the interview and in her Board testimony that the Respondent "took [her] butt and he opened it and looked at my anus." (Tr., p. 40.) For his part, the Respondent did not specifically address those claims and only testified that he "never massaged [Client DG] inappropriately." (Tr., p. 78.) Similarly, Employee KP asserted during her investigative interview and her hearing testimony that her draping fell off during her massage, leaving her breasts exposed. (*See* State's Exhibit 7, pp. 062-063; Tr., pp. 61-62.) While the Respondent acknowledged that Employee KP's draping did fall off during the massage, the Respondent stated that he immediately acknowledged the draping situation, fixed it, and apologized for it, (*See* Tr., p. 78-79). In contrast, Employee KP specifically stated that the Respondent did or said nothing regarding her fallen draping. (*See* Tr., p. 62.)

As a threshold matter, the Board found the State's witnesses, Client DG and Employee KP, highly credible. Their demeanor during their respective testimony under oath was thoughtful, direct, and calm, even while they were asked to recount a traumatic incident in their life and even while subject to cross-examination by the Respondent himself. Their detailed and, often, graphic testimonies before the Board were consistent with the statements that they provided to Facility A and the Board throughout the investigative process, both before the Board and internally at Facility A. In short, Client DG and Employee KP gave the Board no reason to doubt the veracity of their respective testimonies. The Respondent has consistently denied the allegations that he did anything

wrong or untoward, but that consistency is clearly out of the Respondent's professional and personal self-interest. Based on the evidence before it, Client DG and Employee KP have no similar self-interest in testifying falsely about the Respondent. In fact, to the contrary, their testimony was against their self-interest as it must have been incredibly difficult for them to revisit their negative experiences in front of the Board and its auxiliary staff. While the Respondent has stated that the allegations are part of a "witch hunt" (*see* State's Exhibit 7, p. 072; Tr., pp. 101, 102, 103), the Respondent never offered any evidence as to why two women who apparently did not have any connection to one another would have any motivation to make false statements about him. To be sure, the Respondent called no witnesses or offered any evidence. The Respondent himself initially provided perfunctory testimony before eventually providing more detail. (*See* Tr., p. 77.)

The witnesses' credibility is further buttressed by the similarity of their experiences. Specifically, during each massage, according to Client DG and Employee KP, the Respondent, in utilizing stretching techniques, caused their draping sheets to fall, exposing, in the case of Client DG, her vagina or, in the case of Employee KP, her breasts. Finally, the Respondent did himself a disservice with his combative, aggressive, and, at times, disrespectful cross-examinations – particularly of Client DG. He had to be warned several times by the presiding officer to allow the witness to finish her answers to his questions. (*See, for example,* Tr., pp. 46, 47, 51.) Further, while not reflected in the transcript, the Respondent's close physical stance and encroachment on the personal space of the witnesses and the administrative prosecutor during his questioning of the witnesses appeared to the Board to be an attempt at intimidation. While these encroachments are not dispositive of any fact before the Board, they certainly did not aid the Respondent in the

Board's assessment of his demeanor. In sum, based on the totality of the evidence, the Board finds Client DG's and Employee KP's testimony more credible than the Respondent's.

The Board is permitted to use its clinical expertise in the evaluation of evidence and to make reasonable inferences based on conflicting evidence in the record. *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 68 (1999). Utilizing that expertise, the Board makes several preliminary findings. First, proper draping is an essential part of the massage process. While the Board does not mandate specific draping methods, the Board's code of ethics clearly states that a "licensee or registrant shall...[a]t all times respect the client's dignity, autonomy, and privacy." COMAR 10.65.18.03.C(5). Proper draping and maintenance of the draping during a massage are essential to respecting that dignity and privacy. Faulty draping that exposes a client's private areas, even for a moment, is an inexcusable affront to any client's dignity and privacy. The Respondent should have prepared the draping so that it was always secure. If he wanted to engage in a stretching exercise that may have compromised the draping, he should have communicated to Client DG and Employee KP that he was about to perform a stretching exercise that might disturb the draping so that they could prepare or even assist in securing the draping throughout the exercise. The fact that both Client DG and Employee KP testified that the Respondent failed to communicate anything indicates either, at a minimum, that the Respondent does not know how to properly drape or communicate with his clients in a clinically meaningful way or, at worst, he intended for the draping to fall to expose his clients. While the Board cannot speculate on the Respondent's state of mind, it is enough to say that either scenario violates the Board's regulation to respect the dignity, privacy, and autonomy. The matter was exacerbated by the Respondent's apparent failure to immediately correct the situation with each client. As mentioned above, the

Board simply does not find the Respondent's testimony that he immediately corrected and apologized to Employee KP after her draping fell and exposed her breasts to be credible. (*See Tr.*, pp. 78-79.) It is self-serving, and Employee KP flatly testified that this did not occur. (*See Tr.*, p. 62.) This is consistent with her complaint (*see State Exhibit 6*, p. 55) and her investigative interview (*see State's Exhibit 7*, p. 062). Given the detail and consistency of her recollection during her testimony, the Board finds that testimony to be credible.

Second, the Board notes that there is a powerful differential between a massage practitioner and the client. One is fully clothed, the holder of a state-issued registration, and presumed by the public to be knowledgeable regarding the practice of massage. The other individual is lying on a table; draped with a towel or a sheet; and, depending on their position at the time, has their vision obscured. Just as a patient assumes that the procedures a physician or a dentist uses during treatment are bona fide, a client on a massage table makes those same assumptions. Thus, it is also reasonable that a person would trust that professional and not question their every move. As such, the Board puts very little weight on the Respondent's near-constant refrain that neither Client DG nor Employee KP said anything to him during the massage regarding any discomfort they may have felt. To the contrary and as alluded to in the preceding paragraph of this Order, because of the power and knowledge differential between the client and the practitioner, the Board believes that it is incumbent on the massage practitioner to communicate to the client what they are doing in terms of the massage and how they are doing it.

Based on the preceding and after careful and deliberate consideration of the totality of the record, the Board finds that the Respondent violated the Board's code of ethics set forth within the Board's regulations at COMAR 10.65.03.03.C(5) by failing to "[a]t all times respect the dignity,

autonomy, and privacy” by failing to drape Client DG and Employee KP properly and by failing to secure the drape throughout the massage leaving Client DG’s vagina and anus exposed and Employee KP’s breasts exposed. Both clients were exposed long enough to testify that they were uncomfortable and that the Respondent’s failure to maintain proper draping was traumatic for them. As stated above, the Board cannot speculate on the Respondent’s motivations. Still, in this case, the Respondent’s mere failure to properly drape led to the impermissible exposure of the private areas of two women, which, by operation of the Board’s regulations, the Board considers to be unethical conduct. Accordingly, the Board finds that the Respondent violated Md. Code Ann., Health Occ. § 6-308(a)(20) (“Engages in conduct that violates the professional code of ethics”).

In its discretion the Board shall dismiss the balance of the charges.

Turning to the appropriate sanction, it is well-established that the health occupation boards, including the State Board of Massage Therapy Examiners, exist to protect the public. *See Unnamed Physician v. Commission on Medical Discipline*, 285 Md. 1, 8-9 (1979). Furthermore, the right of a healthcare professional to practice is conditional, subject to the Board’s objective to protect and preserve the public health. *Board of Physicians v. Felsenberg*, 351 Md. 288, 305-06 (1998). The Board finds that the Respondent’s misconduct falls within category K.(7) of the Board’s sanctioning guidelines. *See* COMAR 10.65.09.06K.(7). The range of potential sanctions under category K.(7) is reprimand as a minimum sanction to revocation as a maximum. *Id.* Here, in consideration that two separate and unrelated individuals were directly affected by the Respondent’s failure to properly drape, the Board is not confident that these episodes were the only instances. Indeed, there was some suggestion in the evidence and in the testimony that there is at least one other individual who did not come forward who experienced the same thing. Thus,

the Respondent has lost the Board's confidence to practice in a safe, prudent, and respectful manner. In order to maintain its legislative charge to protect the public, the Board believes that revocation is the most appropriate sanction.

CONCLUSIONS OF LAW

In this case, based on the foregoing Findings of Fact, the Board concludes that the Respondent violated MD Code Ann., Health Occ. § 6-308(a) as follows:

- (20) Engages in conduct that violates the professional code of ethics, specifically COMAR 10.65.03.03.C(5) ("A licensee or registrant shall ... at all times respect the client's dignity, autonomy, and privacy[.]").

In its discretion, the Board shall dismiss the charges alleging violations of Md. Code Ann., Health Occ. § 6-308(a)(8), (11), and (21).

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby:

ORDERED that the charges set forth in the "Charges Under the Maryland Massage Therapy Act," issued on June 28, 2023, alleging violations of Md. Code Ann., Health Occ. § 6-308(a)(8), (11), and (21) are hereby **DISMISSED**; and it is further

ORDERED that the registration of the Respondent to practice massage therapy in the State of Maryland is hereby **REVOKED**; and it is further


ORDERED that, pursuant to Md. Code Ann., Health Occ. § 6-308(c)(1), the Respondent shall return his registration within **TEN (10) BUSINESS DAYS** from the effective date of this Order; and it is further

ORDERED that for purposes of public disclosure and as permitted by Md. Code Ann., Gen. Prov. § 4-333(b)(6), this document consists of the foregoing Findings of Fact, Conclusions

of Law, and Order, and is reportable to any entity to whom the Board is obligated to report; and it is further

ORDERED that this Order is a Final Order and, as such, is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Prov. § 4-333(b)(6) and Md. Code Ann., Health Occ. § 1-607.

09/25/2024
Date



Sharon J. Oliver, MBA
Executive Director
Maryland State Board of Massage Therapy Examiners

NOTICE OF APPEAL RIGHTS

Any person aggrieved by a final decision of the Board under Md. Code Ann., Health Occ. § 6-308(a) may take a direct judicial appeal within thirty (30) days as provided by Md. Code Ann., Health Occ. § 6-310; Maryland Code Ann., State Gov't § 10-222; and Title 7, Chapter 200 of the Maryland Rules, including Md. Rule 7-203 ("Time for Filing Action").