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| IN THE MATTER OF | * | BEFORE THE MARYLAND BOARD |
| JEROME D. BIRD, LMT | * | OF CHIROPRACTIC AND |
| Respondent | * | MASSAGE THERAPY EXAMINERS |
| License No. M04230 | * | Case Numbers: 13-04M & 13-42M |

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**FINAL ORDER OF REVOCATION OF MASSAGE THERAPY LICENSE
PROCEDURAL BACKGROUND**

On or about June 13, 2013, the Maryland Board of Chiropractic and Massage Therapy Examiners (“the Board”) notified Jerome D. Bird, L.M.T. (“the Respondent” or “Mr. Bird”), that his license to practice massage therapy in the State of Maryland was being summarily suspended. That same day, the Respondent was notified that he was being charged with violation of certain provisions of the Maryland Chiropractic Act (“the Act”), Md. Code Ann., Health Occ. (“H.O.”), §§ 3-101 *et seq.* and the Code of Maryland Regulations (“COMAR”) tit. 10.43.18 *et seq.*

Specifically, the Board charged the Respondent with violating the following provisions of the Act:

§ 3-5A-11. Denials; suspensions; revocations.

- (a) Denial of license or registration—Subject to the hearing provisions of §3-315 of this title, the Board may deny a license or registration to any applicant, reprimand any 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:

- (2) Fraudulently or deceptively uses a license or registration;

(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 subtitle;

(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.

§3-5A-13. Advertising or soliciting by licensed massage therapists or registered massage practitioners.

(c) Use of trade name. – A licensed massage therapist or a registered massage practitioner may use a trade name in connection with the practice of massage therapy provided that:

(2) The advertisement in which the trade name appears includes the name of the licensed massage therapist or registered massage practitioner or the name of the business entity providing the massage therapy services being advertised, as long as the advertisement includes the name of a licensed massage therapist or registered massage practitioner;

(4) Treatment records are maintained that clearly identify the licensed massage therapist or registered massage practitioner who has performed the massage therapy service for the patient; and

(5) The use of a trade name is preapproved by the Board before use.

In addition, the Board further charged the Respondent with violating the following provisions of the Board's Code of Ethics, Code Md. Regs. ("COMAR"):

10.43.18.03 Standards of Practice.

C. A license holder or registration holder shall:

(2) Engage in professional conduct at all times, with honesty, integrity, self-respect and fairness;

- (3) Remain free from conflict of interest while fulfilling the objectives and maintaining the integrity of the massage therapy profession;

[and]

D. A license holder or registration holder may not:

- (2) Knowingly engage in or condone behavior that:
 - (a) Is fraudulent;
 - (b) Is dishonest;
 - (c) Is deceitful; [and]
 - (d) Involves moral turpitude.
- (6) Aid or abet any individual violating or attempting to violate any provision of law or regulation.

10.43.18.04 Relationship with Client.

A. A license holder or registration holder shall:

- (4) Maintain legible, organized written records of treatment of any client under the care of a license holder or registration holder for at least 5 years after termination of treatment and as provided by applicable provisions of Health-General Article, Title 4, Subtitle 3, Annotated Code of Maryland;

10.43.18.05 Professional Boundaries.

A. A license holder or registration holder shall:

- (1) Maintain professional boundaries, even when the client initiates crossing the professional boundaries of the professional relationship.

B. A license holder or registration holder may not:

- (3) Engage in sexual misconduct that includes, but is not limited to:
 - (a) Therapeutic deception.

10.43.19.03 Advertising.

- C. An advertisement shall state at a minimum the:
 - (1) Authorized trade name;
 - (2) Practitioner's name;
 - (3) Practitioner's status as a licensee or registrant; and
 - (4) Practice address and telephone number.

- D. Trade Name.
 - (1) An advertisement may only use the trade name authorized by the Board.
 - (2) Trade names used in advertising:
 - (c) May not be used in any false or misleading advertisements.

- E. An advertisement may not include statements that:
 - (1) Contain misrepresentation of facts;
 - (8) Make representations or implications that the license holder or registration holder is willing to provide services that are illegal under the laws or regulations of Maryland or the United States.

On September 19, 2013, a hearing on the merits was held. Present were the following Board members, which constituted a quorum: David Cox, LMT, Hearing Chairperson; Michael Fedorczyk, D.C., Board President; Jonathan Nou, D.C., Board Vice-President; Robert Frieman, D.C., Board Secretary; Gwenda Harrison, LMT; Ernestine Jones Jolivet, Consumer Member; Gloria Boddie-Epps, Consumer Member; and Michael Moskowitz, D.C. Also present were the following individuals: Christopher Anderson, Esq., Assistant Attorney General, Administrative Prosecutor; Michael Kao, Esq., Assistant Attorney General; Grant

Gerber, Esq., Assistant Attorney General, Board Counsel; James J. Vallone, Executive Director; James Gamble, Administrative Assistant; and Christopher Bieling, Board Investigator. Neither the Respondent nor counsel appeared for the hearing.

The Board conducted the hearing without Mr. Bird's presence, in accordance with H.O. §3-315(f) of the Act, which states that: "If after due notice the individual against whom the action is contemplated fails or refuses to appear, nevertheless the Board may hear and determine the matter." The Respondent was provided notice of the hearing, but failed to appear.

EXHIBITS

The following exhibits were admitted into evidence during the hearing:

STATE'S EXHIBITS

| No. | |
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| 1 | Report of Board Investigator Chris Bieling |
| 2 | Subpoena Duces Tecum, 4/2/2013, and Respondent's Response thereto |
| 3 | Complaint B, 6/5/2013 |
| 4 | Print outs of Respondent's Websites A&B |
| 5 | Website Registration Record Indicating Respondent's Ownership of Website A |
| 6 | Email Confirming that Respondent's Trade Name was not Board-approved, 5/30/13 |
| 7 | Respondent's Email to Board Declining Offer of Case Resolution Conference, 7/5/2013 |
| 8 | State's Proposed Letter of Surrender, 7/30/2013 |

- 9 Respondent's Unacceptable Letter of Surrender, Submitted without Negotiation of Terms, 8/5/2013
- 10 Board Letter to Respondent's re: Failure to Accept Proposed Letter of Surrender, and Notice of Hearing, 8/6/2013
- 11 Respondent's Letter Acknowledging Notice of Hearing and Declining to Participate, 8/12/2013

SYNOPSIS OF CASE

The State presented the following arguments at the September 19, 2013 hearing. The Board received two complaints regarding the Respondent. The Board received the first complaint ("Complaint A") from an individual ("Complainant A") in December of 2012; the second complaint ("Complaint B") was submitted at the conclusion of the Board's investigation of the Respondent, and echoed the same concerns as Complaint A. Complainant A alleged that the Respondent called her looking to lease space for a "sensual massage practice." During that call, the Respondent used his real name, Jerome D. Bird, and stated that he used the alias "Brad." Complainant A further stated that during that call, the Respondent gave her the URL of his website. After receiving Complaint A, Board Investigator Chris Bieling reviewed the Respondent's website and found that it contained material advertising massage-related services of a sexual nature. The Respondent's website was found to include multiple instances of sexual innuendo and sexually explicit photographs, including a close-up image of a man's genitals in a blue thong bikini garment. Mr. Bieling also found that the website included advertisements for services such as "prostate massage," with

the following description: "If you like, I'll massage your prostate gland. To do this, I use my digits. If you like that, I'll move on to a vibrator. If you like that, I'll use my own 'tool' with a condom, if you ask." The Respondent also advertises for "Tantric massage," described on the website as massage that "focuses on your genital area, which usually leads to release." Thus, the Respondent's website acts as a means to prostitute himself under the guise of providing massage therapy. The Respondent's website uses the trade name "Special Touch Massage," a trade name which was never approved by the Board. The Respondent misrepresents his identity on the website by using a false name and claiming to be forty-eight (48) years old, when in reality the Respondent is over seventy (70) years old. The Respondent also fails to provide an address on his website. A database search indicates that the Respondent is in fact the proprietor of the website at issue.

When Mr. Bieling issued a subpoena for the Respondent's client records, the Respondent failed to comply as he did not keep such substantive records. In fact, the only record the Respondent could produce was his personal calendar, which only showed the first names of men who sought his services. In one instance, only the name "Mystery man" was indicated for a client.

During the investigation, Mr. Bieling called the number provided on the website, and booked an appointment for a massage with "Brad." On March 22nd, 2013, Mr. Bieling drove to the Respondent's residence as directed by the Respondent in the initial telephone conversation. After a brief introduction, the Respondent told Mr. Bieling to "get naked and meet me in the shower." Mr.

Bieling then revealed his affiliation with the Board and his reason for being there. During the interview that followed, the Respondent admitted his true identity as Jerome Bird. The Respondent further admitted that he was the man photographed wearing the blue thong on the website, that he advertised the prostate massage, that he showers with clients, and that he provides "erotic massages." The Respondent also disclosed that he often partners with an unlicensed practitioner to assist him with a service called the "Four Hands Massage."

After the Respondent was notified of the summary suspension of his license and charges against him, the Respondent was provided the opportunity to surrender his license by means of a letter of surrender, which included full admissions of his violations. The Respondent instead drafted and submitted, without permission from the Board, his own letter of surrender that contained no admissions of any kind. Because the letter of surrender contained no admissions, the Board's Executive Director notified the Respondent that it was unacceptable, and that the Respondent's case would have to proceed to a formal hearing due to his noncompliance with the settlement offer. In each correspondence with the Board from the Respondent, the Respondent indicated that he does not wish to challenge the substance of the Board's charges. The Respondent also indicated to the Board that he did not plan on attending the evidentiary hearing.

FINDINGS OF FACT

The Board makes the following Findings of Fact based on the foregoing record:

1. At all times relevant hereto, the Respondent was licensed to practice as a licensed massage therapist (LMT) in the State of Maryland. The Respondent was initially licensed in Maryland on October 15, 2009, under License Number M04230. The Respondent's license is current through October 31, 2014.

2. At all times relevant hereto, the Respondent owned and operated a massage therapy practice out of his home, located at 1323 Riverwood Way, Stoney Beach, Maryland 21226.

3. On or about December 17, 2012, the Board received a telephone call from another licensed massage therapist ("Complainant A") in Maryland who alleged that the Respondent may be engaged in unprofessional conduct. Complainant A stated that the Respondent contacted her by telephone inquiring about leasing space to operate a "sensual massage practice." During the telephone call, the Respondent identified himself using his real name and also stated that he used the alias "Brad." The Respondent also told Complainant A the URL of his website ("Website A") where he promoted his services.

4. Upon speaking with the Respondent, Complainant A found it unusual that the Respondent used an alias and became suspicious of his motives. As a result, Complainant A reported the details of the conversation to the Board. Based on this report ("Complaint A"), the Board initiated an investigation under Case Number 13-04M. The Board's investigator examined Website A, where he discovered material advertising sexualized massage-related services.

5. On or about June 5, 2013, the Board received a second, similar complaint ("Complaint B") from the Program Coordinator for a community college massage therapy program in Maryland ("Complainant B").

6. Complainant B alleged that "Brad Branson," a name Complainant B believed to be "an alias for Jerome Bird," was committing "ethical & other Maryland violations." Complainant B based her allegations on a second website ("Website B") that included "inappropriate photos, description of inappropriate behavior, [and] using a false name."

7. Upon viewing the website, Complainant B believed that "Brad's" personal description seemed similar to the Respondent. Complainant B had recently become familiar with the Respondent when he approached her program seeking to make a presentation. At that time, the Respondent had submitted his resume to Complainant B, which used his real name. When Complainant B compared the Respondent's resume with the biographical details given on Website B, Complainant B concluded that "Brad Branson," the person marketing unprofessional services on Website B, was actually an alias for the Respondent. Based on the allegations included in Complaint B, the Board opened a second case against the Respondent under Case Number 13-42M.

8. On Website A, the Respondent advertised massage-related services by "Brad," who purported to be a "professionally trained" massage therapist, age 48, with a "waterfront studio south of Baltimore off Ft. Smallwood Road (Exit 1 of the Baltimore Beltway) in the shadow of the Key Bridge." Website

A directed potential clients to call a telephone number, which was later confirmed to be the same contact number listed in the Respondent's board file.

9. Website A advertises the Respondent's massage-related services while misrepresenting and concealing his identity. The name "Brad" is an alias, and the Respondent's true age is not 48, but rather 73. While the description of the location of the Respondent's residence is generally accurate, no specific address is given. Additionally, the Respondent's use of the trade name "Special Touch Massage" was never approved or sanctioned by the Board as required.

10. Along with the misleading claims, the Respondent filled Website A with explicit offers to perform sexual massage-related services for a fee, including "Tantric Massage" that is described as a massage that "focuses on your genital area which usually leads to release," as well as advertisement for a "Prostate Massage" with a sexually explicit description.

11. Elsewhere on the site, Website A advertises the Respondent's services by employing a wealth of sexual innuendo, including descriptions of a "very sensual, very erotic" massage, and describing the use of a male and female "partners" to perform the "4-Hands Service." The Respondent also included the following description of himself: "I have great hands, a good body, and a very fertile imagination."

12. A domain registration search revealed that Website A is registered to the Respondent.¹

¹ The search was performed using <http://www.domaintools.com/>, which "offers the most comprehensive searchable database of domain name registration and hosting data."

13. In addition, at the top of Website A, the Respondent encourages visitors to "Visit my New & Improved website," and prominently displays the URL for a second website, Website B, which included a slideshow of sexually provocative images, including:

- (a) A close-up of a man's genitals clothed in a blue thong bikini-style garment;
- (b) A male massage therapist, clad only in sheer translucent underwear, standing above a client lying supine on a table, with the therapist's hand reaching beneath a small towel covering the otherwise nude client's genital area;
- (c) A close-up of what appears to be a woman's buttocks, draped in a semi-transparent miniskirt.

14. The Board's investigator performed further internet research, and was able to find additional internet advertisements for similar services offered by "Brad" associated with the Respondent's telephone number and displaying similar photographs. For example, an advertisement for massage services on backpage.com mentions "Brad's Special Touch massage," along with a location of "Riverwood Way at Cluster Court, 21226" and the Respondent's telephone number. The advertisement also included photographs of a man's body clothed only in bikini-style underwear, a close-up of a man's bikini-clad genital area, and the face of a white male wearing a headband.

15. To date, the Respondent's sexually provocative online advertising remains publicly accessible, its content unaltered.

16. In the course of investigation, the Board's investigator conducted an on-site investigation of the Respondent's practice. On or about March 20, 2013, the investigator, posing as a potential client and concealing his affiliation

with the Board, called the telephone number provided on Website A and booked an appointment for a massage with "Brad."

17. On or about March 22, 2013, the investigator drove to the location listed on Website A and was escorted by the Respondent into his resident at 1323 Riverwood Way. After a brief introduction, the Respondent told the investigator to "get naked and meet me in the shower."

18. At that point, the investigator revealed his affiliation with the Board and his actual reason for being there. Upon being confronted, the Respondent, who had previously referred to himself only as "Brad," admitted his true identity, and the investigator commenced an interview.

19. During the interview, the Respondent admitted that he advertises using the pseudonym "Brad" in order to separate his professional and personal lives. He admitted that he was the white male shown wearing a headband in the backpage.com advertisement, and that a photograph of himself wearing only a blue thong appeared in advertisements for his website and his services. However, he claimed ignorance as to how the photos were posted to the internet.

20. The Respondent also conceded that he advertised a \$25 add-on service, a "prostate massage" performed by two modes of stimulation: his "digits" and a vibrator. However, he denied advertising that he used "my own tool" to accomplish the procedure, despite all three methods are mentioned in the same sentence on Website A.

21. The Respondent acknowledged that he showers with clients and provides "erotic massages."

22. The Respondent further disclosed that he partners with a man ("Individual A") and a woman ("Individual B") to do the "4-Hands Massage" described on Website A. The Respondent stated that he did not believe that either individual was licensed in Maryland.

23. The Board's investigator was able to contact Individual B using a telephone number provided by the Respondent. During the conversation, Individual B admitted that she had been assisting the Respondent with the "4-Hands Massage" for approximately two years. She also divulged her full name, which allowed the investigator to confirm that Individual B is not licensed or registered to practice massage therapy in Maryland.

24. On or about April 2, 2013, the Board's investigator issued the Respondent a subpoena compelling him to produce "all written and computer generated files in reference to massages performed at 1323 Riverwood Way during December 2012 through March 2013," as well as a current client list and S.O.A.P. notes from the previous ten massages performed.

25. However, the only record the Respondent provided in reference to massages performed at the 1323 Riverwood Way was a computer printout of his personal calendar from December 2012 to March 2013. Along with his personal events, the calendar displays appointments with certain names highlighted by hand to indicate they are massage clients. The names indicate first names only, and one client is simply called "Mystery man."

26. Aside from the calendar, the Respondent also submitted S.O.A.P. notes from ten massages he performed at a wellness center where he volunteers, apparently one day per week.

27. No other records—whether billing documentation, progress notes, or other—were forthcoming from the Respondent.

CONCLUSIONS OF LAW

Based on the foregoing evidence, findings of fact and record as a whole, the Board concludes that the Respondent violated his ethical and professional responsibilities as a licensed massage therapist. As a matter of law, the Board finds that the Respondent violated the provisions of the Board's Practice Act and Code of Ethics. See H.O. §3-5A-11(a)(2)(8)(11)(20)and(21); §3-5A-13(c)(2)(4) and (5); COMAR 10.43.18.03C(2) and (3); COMAR 10.43.18.03D(2)and (6); COMAR 10.43.18.04A(4); COMAR 10.43.18.05A(1); COMAR 10.43.18.05B(3); COMAR 10.43.19.03C(1)-(4); COMAR 10.43.19.03D(1)-(2); and COMAR 10.43.19.03E(1) and (8).

First, the Board finds that Mr. Bird committed acts of professional and sexual misconduct under the guise of massage therapy. In Maryland, a licensed massage therapist may be disciplined by the Board if he or she "fraudulently or deceptively uses a license or registration," or "does an act that is inconsistent with generally accepted professional standards in the practice of massage therapy." See H.O. §3-5A-11(2) and (8). The Board finds that Mr. Bird fraudulently and deceptively used his massage therapy license to advertise and perform acts of prostitution at his residence, as evidenced by the Respondent's

sexually explicit websites and his failure to maintain any legitimate client records. The Board further finds that performance of these sexual acts under the guise of massage therapy is inconsistent with generally accepted professional standards for the practice of massage therapy, and is a violation of the Board's Code of Ethics. Accordingly, the Respondent is found to be in violation of H.O. §3-5A-11 (a)(2), (8), (11), (20), and (21); H.O. §3-5A-13(c)(4); COMAR 10.43.18.03C (2) and (3); COMAR 10.43.18.03D (2) and (6); and COMAR 10.43.18.04A(4).

Secondly, the Board finds that Mr. Bird violated professional boundaries by offering and providing sexual services to clients under the guise of massage therapy. Under the Board's Code of Ethics, licensed massage therapists are required to maintain professional boundaries with clients, even when the client initiates crossing that boundary. Further, a license holder or registration holder may not engage in "sexual misconduct" that includes "therapeutic deception." See COMAR 10.43.18.05A (1) and COMAR 10.43.18.05B(3). The Board's investigation showed that the Respondent was overtly advertising massage-related sexual services on his websites; the Respondent further admitted to these allegations upon questioning by the Board's investigator. Accordingly, the Respondent is found to have violated COMAR 10.43.18.05A(1); and COMAR 10.43.18.05B(3)(a).

Finally, the Board finds that Mr. Bird violated the Board's requirements regarding the use of advertisements by massage therapists. Under the Board's statute and regulations, licensed massage therapists are prohibited from using statements in their advertisements that contain misrepresentations of facts or

representations or implications that the massage therapist is willing to provide illegal services. See COMAR 10.43.19.03E(1) and (8). The Board finds that Mr. Bird's websites included deceptive information, including a trade name ("Special Touch Massage") that was never approved by the Board, as well as false information regarding his name and age. The Board also finds that the Respondent explicitly advertised massage-related sexual services on his website as a means of prostitution. Accordingly, the Respondent is found to be in violation of H.O. §3-5A-13(C)(2) and (5), COMAR 10.43.18.04A(4), COMAR 10.43.19.03C(1)-(4), COMAR 10.43.19.03D (1) and (2) and COMAR 10.43.19.03E (1) and (8).

The Board used its sanctioning guidelines to determine the penalty and order in this matter. See COMAR 10.43.16. Due to the multiple serious violations of the practice act, the Board orders Mr. Bird's license to be permanently revoked and that he be fined \$5,000.00. This is a harsh sanction and at the limit of what the Board can order. The sanction was appropriate due to the number of violations.

ORDER

Based on the foregoing Findings of Facts and Conclusions of Law, it is this 26th day of Dec., 2013 by a unanimous vote of the Board, it is hereby:

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

ORDERED that the Respondent shall pay a fine of \$5,000.00; and it is further

ORDERED that the Respondent must immediately return to the Board both the wall and wallet certificate numbered M04230; and it is further

ORDERED that this document is a final order of the Board and therefore a public document pursuant to Md. Code Ann., State Gov't Article, §10-601 *et seq* (2009 Repl. Vol.).

12/26/13

Date



Dr. Michael Fedorczyk, D.C.
President
State Board of Chiropractic &
Massage Therapy Examiners

NOTICE OF THE RIGHT TO APPEAL

Pursuant to Maryland Health Occ. Code Ann. § 3-316, you have a right to take a direct judicial appeal. A petition for appeal shall be filed within thirty (30) days from mailing of this Final Decision and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Maryland State Gov't Code Ann. §§10-201 *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.

