

IN THE MATTER OF	*	BEFORE THE MARYLAND STATE
DHANUSHKA R. GAMAGE, R.M.P.	*	BOARD OF CHIROPRACTIC AND
Respondent	*	MASSAGE THERAPY EXAMINERS
Registration Number: R01648	*	Case Number: 13-38M

* * * * *

FINAL ORDER OF REVOCATION OF MASSAGE THERAPY REGISTRATION

PROCEDURAL BACKGROUND

On or about September 11, 2013, the Maryland State Board of Chiropractic and Massage Therapy Examiners (the "Board") notified Dhanushka R. Gamage ("Mr. Gamage" or the "Respondent") that his registration to practice massage therapy in Maryland was summarily suspended. On or about October 8, 2013, the Board notified Mr. Gamage 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 under Health Occ. §3-5A-11:

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

- (a) Denial of license and 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 license 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;

- (4) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction of plea set aside;
- (8) Does an act that is inconsistent with generally accepted professional standards in the practice of massage therapy;
- (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.

Under §3-5A-11(a)(20) & (21), the Board further charged the Respondent with violating the following regulations and 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;
- (5) At all times respect 's dignity, autonomy, and privacy; [and]
- (6) Practice massage therapy or non-therapeutic massage only as defined in the scope of practice set out in *Health Occupations Article, §3-5A-01, Annotated Code of Maryland.*

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.

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 the 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:**
 - (2) Respect and maintain professional boundaries and respect the client's reasonable expectation of professional conduct.**
- B. A license holder or registration holder may not:**
 - (2) Engage in a sexually intimate act with a client; [and]**
 - (3) Engage in sexual misconduct that includes, but is not limited to:**
 - (a) Non bona fide treatment; [and]**
 - (b) A sexually exploitative relationship.**

On November 15, 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; Stephanie Chaney, D.C., Former Board President; Ernestine Jones Jolivet, Consumer Member; Gloria Boddie-Epps, Consumer Member; and Michael Moskowitz, D.C. Also present were the following individuals: Dhanushka Gamage, RMP, Respondent; Michael Kao, Esq., Assistant Attorney General, Administrative Prosecutor; Ali Elbaum, Esq., Assistant Attorney General, Substitute Board Counsel; James J. Vallone, Executive Director; James

Gamble, Administrative Assistant; Michelle Czarnecki, Disciplinary Compliance Manager; and Christopher Bieling, Board Investigator.

EXHIBITS

The Respondent stipulated to the admission of the State's exhibits. The following exhibits were admitted into evidence during the hearing:

STATE'S EXHIBITS

No.

- 1 Respondent's Board licensing file
- 2 Court record from Maryland District Court for Howard County
- 3 Respondent's interview transcript, dated July 2, 2013
- 4 Report of Investigation
- 5 Order for Summary Suspension of Registration to Practice Non-Therapeutic Massage, issued on September 9, 2013
- 6 Charges under the Maryland Chiropractic Act, issued on October 8, 2013
- 7 Audio recording (compact disc) of the plea hearing in *State of Maryland v. Dhanushka R. Gamage*, Case Number: 5T00082850, in the Maryland District Court for Howard County, on September 19, 2013

SYNOPSIS OF CASE

The Respondent did not testify or introduce any exhibits. He represented himself during throughout the hearing and gave only a brief statement and apology. The State's documentary and recorded evidence were not opposed or contradicted by the Respondent.

The State presented the following arguments at the November 14, 2013 evidentiary hearing. The Board's investigation of the Respondent began upon the Board receiving information that a patient (the "Patient A")¹ of the Respondent alleged that on or about May 12, 2013, the Respondent sexually assaulted her during a massage session at the Respondent's facility, Holistic Therapeutic Massage, LLC. Patient A alleged that the Respondent inappropriately touched her private areas while performing a massage on her. Specifically, Patient A alleged that the Respondent massaged her breasts, thigh area, vaginal area, and at one point inserted his finger or fingers into her vagina. Patient A alleged that after the Respondent touched Patient A's vaginal area, the Respondent asked Patient A if she was "OK" with the act, to which she replied that she was not. According to Patient A, the Respondent replied that "fifty percent" of his clients received this act. At that point Patient A ended the massage, got dressed and left the facility.

After the incident, Patient A then met with a Howard County police officer at a nearby mall to report the incident. Based on Patient A's allegations, the Respondent was charged with a Fourth Degree Sex Offense under Maryland's Criminal Law Article, §3-308(b)(1) in the Maryland District Court for Howard County. A Fourth Degree Sex Offense is defined in the statute as engaging in "sexual contact with another without the consent of the other." Md. Code Ann., Crim. Law, §3-308(b)(1). The prosecutor presented that under the Maryland Criminal Law Article, "sexual contact" is defined as "an intentional touching of the victim's or actor's genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of either party." Md. Code Ann., Crim. Law, §3-301(f)(1).

¹ The patient's name is omitted for privacy reasons. The Board maintains the name in its file.

On or about September 19, 2013, the Respondent appeared before a district court judge and pleaded guilty to the charge of Fourth Degree Sex Offense. Excerpts of the hearing were played for the Board. The district court judge entered a judgment against the Respondent, and sentenced him to six months incarceration with all six months suspended, along with supervised probation until August 19, 2014. During the plea hearing, the district court judge explicitly stated that she believed that the Respondent should never be permitted to practice massage therapy again. This statement was given a lot of weight by the Board.

The Board's investigation included an interview with the Respondent on July 2, 2013 by the Board's Investigator, Chris Bieling. During that interview, the Respondent admitted to likely making contact with Patient A's breasts and vaginal area during the massage he performed on May 12, 2013. The Board's investigation determined that on or about May 12, 2013, the Respondent inappropriately touched Patient A's private areas while performing a massage on her. Accordingly, on or about September 9, 2013, the Board summarily suspended the Respondent's registration to practice massage in Maryland, finding that the public health, safety and welfare imperatively required that the Respondent's registration be summarily suspended.

The Respondent's inappropriate touching of Patient A's private areas in the guise of performing non-therapeutic massage, as well as his subsequent plea of guilty and conviction for a Fourth Degree Sex Offense, a crime of moral turpitude, constitutes violation of the Board's statute and regulations for the practice of massage therapy in Maryland.

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 registered to practice non-therapeutic massage in the State of Maryland. The Respondent was originally registered to practice non-therapeutic massage in Maryland on September 10, 2012, under Registration Number R01648. The Respondent's registration is current until October 31, 2014.
2. At all times relevant hereto, the Respondent was the owner of a sole practitioner at a non-health-care facility called Holistic Therapeutic Massage, LLC ("Holistic Massage") located in Columbia, Maryland.
3. On or about May 12, 2013, Patient A arrived at Holistic Massage for a full body massage scheduled for 12:15pm. Prior to the massage, Patient A was ushered into a room where she undressed and was provided a bed sheet to cover herself.
4. The Respondent was the massage practitioner. Patient A lay on her stomach and the Respondent began performing massage, at one point using both of his hands to massage her buttocks.
5. During the massage, the Respondent instructed Patient A to lie on her back. Patient A complied, using the bed sheet to cover herself. The Respondent then removed the bed sheet and began massaging her breasts and inner thigh area, followed by her vaginal area, during which time he inserted his finger or fingers into Patient A's vagina. At this point the Respondent asked Patient A "if the act was okay with her," at which time Patient A responded that it was not okay. The Respondent then advised that fifty percent of his clients received such act.

6. Patient A ended the massage, got dressed and left Holistic Massage. She contacted the Howard County Police Department and met with a police officer at a nearby mall at which time she reported the incident.
7. The Board initiated an investigation of the Respondent after receiving information that a client (the "Client") at Holistic Massage alleged that on or about May 12, 2013, the Respondent sexually assaulted her during a massage session. Patient A subsequently met with a Howard County police officer at a nearby mall and reported the incident.
8. On or about July 2, 2013, during a Board interview, the Respondent stated that he may have touched the outer portion of Patient A's breasts and brushed vagina with his hands during the massage. He further stated that he did not maintain written records of the massage.
9. Board investigation determined that on or about May 12, 2013, the Respondent inappropriately touched Patient A's private areas while performing massage on her.
10. Based on its investigation, the Board on or about September 9, 2013, summarily suspended the Respondent's registration to practice non-therapeutic massage in Maryland, finding that the public health, safety, or welfare imperatively required that the Respondent's registration to practice non-therapeutic massage therapy be summarily suspended.
11. Based on Patient A's allegations, the Respondent was charged with Fourth Degree Sex Offense, in violation of Md. Code Ann., Criminal §3-308(b)(1), in the Maryland District Court for Howard County on or about May 23, 2013. On or about September 19, 2013, the Respondent appeared before a district court judge and pled guilty to the charge of Fourth Degree Sex Offense. The district court judge entered a

judgment against the Respondent and sentenced him to six months incarceration with all six month suspended and placed him on supervised probation until August 19, 2014.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes that the Respondent violated his professional and ethical responsibilities as a registered massage practitioner. As a matter of law, the Board finds that the Respondent violated the Board's Practice Act and Code of Ethics. See Md. Code Ann., Health Occ. ("H.O."), §3-5A-11(a)(2), (4), (8), (20) and (21); Code Md. Regs ("COMAR"), §§ 10.43.18.03C(2), (3), (5) and (6); 10.43.18.03D(2)(a), (b), (c) and (d); 10.43.18.04A(4); 10.43.18.05A(2); and 10.43.18.05B(2), (3)(a) and (b).

First, the Board finds that the Respondent violated his professional and ethical responsibilities as a registered massage practitioner when he deceptively used his massage registration to engage in sexual misconduct during the massage of Patient A. The Respondent's touching of Patient A's breast and genital area is inconsistent with generally accepted professional standards in the practice of massage therapy. In doing so, the Respondent violated the trust of his client, and placed her in a vulnerable and fearful position. His failure to record any documentation of the massage provided to Patient A further shows the deceptive use of his massage therapy registration to engage in sexual misconduct. Accordingly, the Board finds the Respondent in violation of H.O. §3-5A-11 (a)(2), (8), (20), (21); COMAR 10.43.18.03C(2),(3),(5),(6), 10.43.18.03 D (2)(a)-(d), 10.48.18.04A(4), 10.43.18.05A(2) and 10.43.18.05B (2), (3) (a)-(b).

Secondly, the Respondent's plea of guilty and subsequent conviction for a fourth degree sexual offense, a crime of moral turpitude, is in direct violation of the Practice Act and the ethical standards that the Respondent is bound to uphold as a Registered Massage Practitioner in the State of Maryland. Accordingly, the Board finds the Respondent in violation of Md. Code Ann., Health Occ., §3-5A-11(a) (4).

ORDER

Based on the foregoing Findings of Facts and Conclusions of Law, it is this 12th day of December, 2013 by a unanimous vote of the Board, it is hereby:

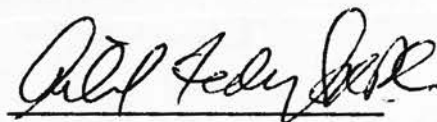
ORDERED that the Respondent's license to practice massage therapy in the State of Maryland is hereby permanently **REVOKED**; and it is further

ORDERED that the Board will not accept any future application from the Respondent for licensure or registration to practice massage therapy in the State of Maryland; 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.).

DEC 12 2013

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.