

IN THE MATTER OF
KINGSTON R. HOLCOMB

Respondent

License Number: M04652

* BEFORE THE MARYLAND STATE
* BOARD OF CHIROPRACTIC AND
* MASSAGE THERAPY EXAMINERS

* Case Number: 13-74M

* * * * *

FINAL ORDER

On or about February 25, 2014, the Maryland State Board of Chiropractic and Massage Therapy Examiners (the "Board") notified Kingston R. Holcomb (the "Respondent"), License Number M04652, that he was being charged with violations of certain provisions of the Maryland Chiropractic Act (the "Act"), Md. Code Ann., Health Occ. ("H.O.") §§3-101 *et seq.* (2009 Repl. Col. & 2013 Supp). 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 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;
...
 - (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 or 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.

The Board also charged the Respondent with violation of the Board's Code of Ethics, found at Md. Code Regs. ("COMAR") 10.43.18.01 *et seq* (2014). Specifically, the Board charged the Respondent with violating the following COMAR provisions:

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 the client'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.

10.43.18.05 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 may not:
 - ...
 - (2) Engage in a sexually intimate act with a client; or
 - (3) Engage in sexual misconduct that includes, but is not limited to:
 - ...
 - (b) Non bona fide treatment[.]

On July 10, 2014, a hearing on the merits was held before the Board in accordance with the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't §10-201 *et seq.* Both parties agreed to hold a combined hearing to address the Summary Suspension and formal charges against the Respondent's license. The following Board members were present, which constituted a quorum: Michael Fedorczyk, D.C., Board President; David Cox, LMT, Board Vice-President, Karen Biagiotti, LMT, Board Secretary/Treasurer; Stephanie Chaney, D.C., Former Board President; Michael Moskowitz, D.C.; Gregory Lewis, D.C.; Ernestine Jones-Jolivet, Consumer Member; Gloria Boddie-Epps, Consumer Member. Also present were the following individuals: Victoria H. Pepper, Esq., Assistant Attorney General, Administrative Prosecutor; Grant D. Gerber, Esq., Assistant Attorney General, Board Counsel; James. J. Vallone, Executive Director; Adrienne Congo, Deputy Director; Michelle Verdis, Compliance Manager. The Respondent, Kingston R. Holcomb, LMT, was present with counsel, Carol Daisey, Esq.

EXHIBITS

The following exhibits were entered into evidence:

State's Exhibits:

EXHIBIT NO.

- | | |
|---|--|
| 1 | Board Licensing System Printout for Kingston R. Holcomb |
| 2 | Criminal Complaint against Respondent, District Court for Baltimore County, dated 7/6/2013 |
| 3 | Statement of Charges and Verdict, District Court for Baltimore County, dated 12/4/2013 |
| 4 | Judiciary Case Search Printout, Case No. 03K14000061 |
| 5 | Order for Summary Suspension, dated 2/6/2014 |
| 6 | Charging document, dated 2/25/14 |

Respondent's Exhibits:

EXHIBIT NO.

- | | |
|---|--|
| 1 | Letter from Current Employer of Respondent, dated 7/8/2014 |
| 2 | Probation Order, Case No. 03K14000061 |
| 3 | Judiciary Case Search Print Out, Case No. 03K14000061, Indicating Appeal |

SUMMARY OF ARGUMENTS AND TESTIMONY

The State, through Administrative Prosecutor Victoria Pepper, AAG, presented the following arguments at the July 10, 2014 evidentiary hearing. The State argued that

the Respondent, a licensed massage therapist, engaged in sexual misconduct contrary to the moral and ethical values of the profession as well as the Board's statute. The Respondent was convicted on two counts of Second Degree Assault and Fourth Degree Sex Offense in the District Court for Baltimore County, and was sentenced to six months incarceration, suspended, and placed on supervised probation for one (1) year. The State argued that under Maryland law, the Respondent cannot collaterally attack his conduct after being convicted by a court. The State further argued that based on this conviction by the court, the Respondent failed to abide by the Board's Code of Ethics for massage therapists by committing a crime of moral turpitude against a client. The State pointed to the judge's ruling in the Respondent's criminal case that states that the Respondent is not to seek employment or be employed in massage therapy or the health care fields. Accordingly, the State argued that permanent revocation of the Respondent's license is warranted due to his convictions. The State did not call any witnesses for testimony.

The Respondent, through counsel Carol Daisey, Esq., presented the following arguments at the July 10, 2014 evidentiary hearing. In response to the criminal convictions, Respondent's counsel informed the Board that after an appeal of the District Court decision, the criminal charge for fourth degree sex offense was not prosecuted by the State, and the Respondent entered an Alford plea for second degree assault, which it not an admission of guilt. Respondent's counsel added that this plea was made in the presence of the victim and with her agreement. Respondent's counsel argued that the Respondent agreed to an Alford plea for the second degree assault charge in an attempt to get the matter behind him. Respondent's counsel further argued

that the deciding judge's ruling that prohibited the Respondent from working as a massage therapist was a specific probationary term, and only applicable during his one year supervised probation. Respondent's counsel informed the Board that the ruling judge instructed the Respondent's counsel to file a motion to modify the decision after ninety (90) days, and that the judge is willing to consider a probation before judgment if the Respondent complies with his probationary terms in the interim. Based on these arguments, Respondent's counsel asked that the Board consider a sanction that is less than permanent revocation.

The Respondent testified on his own behalf. The Respondent testified that he has not practiced massage therapy since his May 20, 2014 Alford plea for second degree assault. The Respondent testified that since that time, he has been working for a catering company. The Respondent read a letter of reference from the owner of the catering company he is currently working for. The Respondent confirmed that he was convicted of the second degree assault charge, and that he has been reporting for probation every two weeks and has been following all conditions. The Respondent testified that the conviction has changed his life and has brought a lot of things into perspective. The Respondent testified that the conviction has also affected him financially, as he paid his own way to obtain his massage license and has not been able to practice due to his criminal charges. The Respondent also testified that he has learned from the experience and hopes to one day return to practicing massage. The Respondent testified that if he were permitted to maintain his massage therapy license, he would only deal with long-term patients under the supervision of a chiropractor or

physician, rather than temporary or one-time clients. The Respondent also testified that based on the result of the criminal court conviction, he is not a registered sex offender.

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 massage therapy in the State of Maryland. The Respondent was originally licensed to practice massage therapy in the State of Maryland on September 8, 2011, under License Number M04652. The Respondent's licensure is current until October 31, 2014.
2. The Respondent was employed by a spa ("Facility A")¹ in Baltimore County on the date of the incident that gave rise to the Board's investigation.
3. The Board initiated an investigation of the Respondent after receiving information that a client (the "Client") at Facility A complained that the Respondent sexually assaulted her during a massage session.
4. Immediately after complaining to Facility A staff, the Client reported the incident to Baltimore County police who presented to Facility A and took the Client's and the Respondent's statements.
5. Based on the Client's allegations, on or about July 10, 2013, the Respondent was charged with Fourth Degree Sex Offense, in violation of Md. Code Ann., Crim. Law §3-308(b)(1), and Second Degree Assault, in violation of Md. Code Ann., Crim. Law §3-203, in the Maryland District Court for Baltimore County.
6. On or about December 4, 2013, a trial was held on the Respondent's criminal case in the District Court for Baltimore County. The Respondent was represented by

¹ To ensure confidentiality, the names of individuals and facilities involved in this case, other than the Respondent's, are not disclosed in this document.

counsel and pleaded not guilty to the charge of Fourth Degree Sex Offense and Second Degree Assault.

7. The district court judge entered a judgment of guilty against the Respondent as to both counts and sentenced him to six months incarceration with all six months suspended and placed him on supervised probation for one year. The judge further ordered criminal fines \$165.00 be imposed upon the Respondent.

8. On or about January 7, 2014, The Respondent appealed the district court ruling to the Circuit Court for Baltimore County. A trial was scheduled for the Respondent's appeal for May 20, 2014.

9. On or about May 20, 2014, the Respondent, who was represented by counsel, entered an Alford plea for the Second Degree Assault charge in lieu of having a full trial. The charge for Fourth Degree Sex Offense was not prosecuted by the State.

10. The circuit court judge sentenced the Respondent to six months incarceration with all six month suspended and placed him on supervised probation, during which the Respondent was to have no contact with the victim and is not to be employed in massage therapy or any health care fields.

11. The Respondent's conviction for Second Degree Assault, a crime involving moral turpitude given the totality of the circumstances, constitutes violations of the following provisions of the Act: being convicted of or pleading guilty or nolo contendere to a felony or a crime involving moral turpitude, in violation of H.O. § 3-5A-11(a)(4);

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes that the Respondent violated H.O. § 3-5A-11(a)(4) when he entered an Alford plea for second

degree assault against a massage therapy client. The Board finds that, as defined, second degree assault in the context of a massage constitutes a crime of moral turpitude as it involves the intentional, nonconsensual touching of an individual. The act of assaulting a patient fits squarely within the bounds of the definition of a crime of moral turpitude. The Board determined that the Respondent should be sanctioned for this conduct. The Board found the decision of the criminal courts involved in the criminal aspects of this case persuasive as to the Respondent's threat to the public; specifically, the fact that he was not convicted of the sex offense nor required to register as a sex offender. Based on this fact and the Respondent's before the Board, the Board rendered its decision and chose not to permanently revoke the license of the Respondent. Therefore, based on the full record, and in accordance with its sanctioning guidelines, Code Md. Regs. 10.43.16.06B (2014), the Board issues the following Order.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 1st day of Dec., 2014, by the majority of the Board, hereby:

ORDERED that the Respondent's registration to practice massage therapy is **SUSPENDED** for a period of **THREE (3) YEARS**;

ORDERED that the Respondent be placed on **PROBATION** for a period of **FIVE (5) YEARS** to run concurrently with the time of suspension;

ORDERED that during the suspension, the Respondent shall be evaluated by a Board approved psychologist and cleared to return to practice prior to petitioning to lift his suspension;

ORDERED that after the conclusion of the suspension period, and upon submittal of proof of successfully completing his criminal probation, the Respondent may petition the Board in writing to lift the suspension of his registration;

ORDERED that during the time of probation, the Respondent shall successfully complete a Board-approved ethics course and jurisprudence examination;

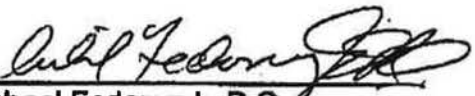
ORDERED that after the conclusion of the probationary period, and upon proof of completion of the Board's probationary terms, the Respondent may submit a written petition to the Board requesting termination of probation;

ORDERED that the Respondent is responsible for all costs associated with this hearing and order, and it is further

ORDERED that this is a Final Order of the Board and as such is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., State Gov't § 10-60110-611 *et seq.* (2009 Repl. Vol. & 2013 Supp.).

DEC 1 2014

Date


Michael Fedorczyk, D.C.
President
MD State Board of Chiropractic
and Massage Therapy Examiners