

IN THE MATTER OF
JOHN EDWARD ROSSI
APPLICANT

* BEFORE THE STATE
* BOARD OF CHIROPRACTY
* EXAMINERS
* CASE NUMBER: 05-23-M

* * * * *

FINAL OPINION AND ORDER
I. PROCEDURAL HISTORY

On December 21, 2005, the Board filed a Notice of Intent to Deny John Edward Rossi a license and charged him with violating the Maryland Health Occupations Code and its implementing regulations as follows, by:

§ 3-5A-05. Requirements for certification and registration.

- (b) To qualify for a certificate, an applicant shall be an individual who:
 - (1) Is of good moral character.

§ 3-5A-09. Denials; suspensions; revocations.

(a) Subject to the hearing provisions of § 3-315 of this title, the Board may deny a certificate or registration to any applicant, reprimand any certificate holder or registration holder, place any certificate holder or registration holder on probation, or suspend or revoke the certificate of a certificate holder or the registration of a registration holder if the applicant, certificate holder, or registration holder:

- (11) Has violated any provision of this subtitle;
- (20) Engages in conduct that violates the professional code of ethic; or
- (21) Knowingly does an act that has been determined by the Board to be a violation of the Boards regulations.

§ 3-5A-11. Prohibited action.

(a) Except as otherwise provided in this subtitle, an individual may not practice, attempt to practice, or offer to practice massage therapy, massage,

myotherapy, or any synonym or derivation of these terms in this State unless certified by the Board.

(b) An individual who is not certified as a certified massage therapist or registered as a massage practitioner under this subtitle may not advertise or claim by title, abbreviation, sign, card, or any other representation that the individual practices massage, massage therapy, myotherapy, or any synonym or derivation of these terms.

Code Md. Regs. tit. 10, § 43.18.03

.03 Standards of Practice.

A. The certificate holder or registration holder shall be concerned primarily with the welfare of the client.

B. A certificate holder or registration holder who suffers from a physical, mental, or emotional impairment, including chemical abuse, which impacts the certificate holder's or registration holder's ability to practice massage therapy or non-therapeutic massage, shall proactively seek professional treatment and shall refrain from the practice of massage therapy or non-therapeutic massage until such time as the impairment no longer exists or reasonable accommodations can be made.

C. A certificate 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;
- (3) Remain free from conflict of interest while fulfilling the objectives and maintaining the integrity of the massage therapy profession;
- (4) Provide accurate fee information to the client, the individual responsible for payment for treatment, and the insurer;
- (5) At all times respect the client's dignity, autonomy, and privacy;

D. A certificate holder or registration holder may not:

- (1) Misrepresent professional credentials, qualifications, education, or affiliations;

(2) Knowingly engage in or condone behavior that:

- (a) Is fraudulent,
- (b) Is dishonest,
- (c) Is deceitful, or
- (d) Involves moral turpitude;

.05 Professional Boundaries.

A. A certificate holder or registration holder shall:

- (1) Maintain professional boundaries, even when the client initiates crossing the professional boundaries of the professional relationship; and
- (2) Respect and maintain professional boundaries and respect the client's reasonable expectation of professional conduct.

B. A certificate holder or registration holder may not:

- (1) Exploit a relationship with a client for the certificate 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.

Following the filing of charges, a pre-hearing procedure took place during which the parties exchanged witness lists and documents, and motion and responses were filed with respect to evidentiary matters. A full evidentiary hearing took place before a

quorum of the Board on May 12, 2006. Two witnesses testified for the State, Officer Stocksdale, a Frederick city police officer and Patient C.

Mr. Rossi, an applicant for licensure as a massage therapist, was not represented by counsel. Mr. Rossi testified on his own behalf and in addition presented the following witnesses on his behalf: Patient A and Patient B who testified as a character witnesses.

Two exhibits, labeled A and B, were admitted on behalf of Mr. Rossi. Nine documents, numbered 1, 2, 3, 4, 5A – G, 6, 7, 8, and 9A - F, as listed on the "State's Exhibit List" attached to those documents, were also admitted into evidence as State's exhibits numbers 1 through 9.

II. EVALUATION OF THE EVIDENCE

The majority of the facts of this case were not in controversy. Mr. Rossi has never been licensed to practice massage in the State of Maryland. Currently, Mr. Rossi has the requisite training and education to be licensed as a massage therapist. Mr. Rossi has been practicing massage without a license since 1994. Mr. Rossi could have been granted a license in 1999, when the State Maryland first began regulating the practice of massage. In 1999, Mr. Rossi did not opt to get a license, when he could have been "grandfathered". In 2004 and 2005, Mr. Rossi was arrested and charged with practicing massage without a license.

Mr. Rossi presented two witnesses, Patients A and B, who testified that they both believed that he, was a great massage therapist. Patients A and B testified that Mr. Rossi had good character. However, neither Patient knew any information about Mr.

Rossi's licensure status or arrests. Mr. Rossi submitted his education credentials and letters of recommendation. These documents were admitted as exhibits A and B.

Mr. Rossi testified on his own behalf. He admitted that he had never been licensed to practice massage therapy in Maryland. Mr. Rossi stated that he had not practiced massage since 2004. He admitted that he had been arrested twice for practicing massage without a license in 2004 and 2005. Mr. Rossi denied practicing massage without a license, even though he pled guilty to the 2005 offence. The Board found Mr. Rossi's testimony to be muddled, confused, self-serving and unreliable.

The Board received the underlying anonymous complaint that alleged that Mr. Rossi had been arrested for practicing massage therapy without a license. The state's first witness was Officer Stocksdale, a Frederick City Police Officer. Officer Stocksdale testified regarding the details of Mr. Rossi's arrests. Mr. Rossi was arrested September 17, 2004 for practicing massage without a license. He was arrested again on April 1, 2005 and once again charged with practicing massage without a license. On October 17, 2005, Mr. Rossi pled guilty in the Circuit Court of Maryland for Frederick County to one count of practicing massage therapy without a license. The Board found that this witness's testimony and demeanor to be quite truthful.

The State's second witness was Patient C. She testified that she had received sixty eight massages from Mr. Rossi. Patient C testified that one occasion Mr. Rossi removed her top and touched breasts under guise of giving her a "salt scrub".

Patient C described a second incident of inappropriate touching. She went to get a massage after normal business hours. Patient C stated that she and Mr. Rossi were

all by themselves. During the appointment Mr. Rossi gave Patient wine and marijuana, and then proceeded to touch her breasts and vagina. After he touched her vagina, she stopped the massage and went to the bathroom to regain her composure. She testified that she was scared and felt that she had to go along with the rest of the massage, so that he would not think anything was wrong.

FINDINGS OF FACT

The Board intends to deny Mr. Rossi's application for licensure based on the following facts that the Board believes are true:

1. At all times relevant herein, Mr. Rossi was not certified by the Board to practice massage therapy in the State of the Maryland.
2. At all times relevant herein, Mr. Rossi was not registered by the Board to practice non-therapeutic massage.
3. At all times relevant herein, Mr. Rossi practiced massage therapy at 6 West Third Street in Frederick, Maryland.
4. On or about January 4, 2004, the Board received a complaint that Mr. Rossi had improperly touched and undraped the complainant ("Patient C"), during a massage therapy session.
5. Patient C received massage therapy treatments from Mr. Rossi for approximately three years.
6. During massage therapy sessions with Patient C, Mr. Rossi and Patient C discussed Patient C's marital and dating status. Mr. Rossi attempted to arrange a date for Patient C with another client.

7. On several occasions, Mr. Rossi gave Patient C wine before and during Patient C's massage therapy sessions.

8. Before Mr. Rossi began massage therapy sessions with Patient C, Mr. Rossi had Patient C remove her clothes. After removing her clothes Patient C was draped in a towel and/or sheet.

9. During massage therapy sessions, Mr. Rossi removed the towel covering Patient C's breasts and massaged Patient C's breast.

10. During massage therapy sessions, Mr. Rossi also placed his hands under the sheet covering the remaining portions of Patient C's body and massage Patient C's hips, pelvic area, and stomach.

11. On or about March 18, 2003, Patient C arrived for her massage therapy appointment with Mr. Rossi. Patient C undressed and draped herself with a sheet.

12. Mr. Rossi removed Patient C's sheet leaving only the bottom portion of Patient C's legs covered.

13. Mr. Rossi began massaging Patient C's breast, stomach, and her inner and outer thigh area.

14. Mr. Rossi also touched Patient C's vaginal area.

15. In or around August 2004, the Board received an anonymous complaint that Mr. Rossi was practicing massage therapy without a certificate.

16. On August 3, 2004, the Board investigator went to Mr. Rossi's office pretending to be a new patient. After the investigator informed Mr. Rossi that he worked for the Board, Mr. Rossi admitted that he had been practicing without a certificate or a registration.

17. By letter dated August 5, 2004, the Board requested that Mr. Rossi cease and desist the practice of massage therapy.

18. On or about September 14, 2004, the Frederick City Police Department ("Frederick City Police") conducted an undercover investigation into whether Mr. Rossi was practicing massage therapy without a certificate.

19. Officer Michelle Cassady of the Frederick City Police went to Mr. Rossi's office and made an appointment for a massage therapy session with Mr. Rossi for September 17, 2004.

20. Officer Cassady was given a business card listing Mr. Rossi's name and several types of massage therapy offered by Mr. Rossi.

21. On September 17, 2004, Officer Cassady went to Mr. Rossi's massage therapy office for her massage therapy session. Mr. Rossi introduced himself to Officer Cassady and he explained the type of massage therapy that he would be performing on Officer Cassady.

22. Mr. Rossi told Officer Cassady that he would "rub out the knots."

23. Mr. Rossi asked Officer Cassady if she wanted him to start with the massage at the feet, head, or back. Mr. Rossi told Officer Cassady that he would cover them all.

24. Subsequently, Mr. Rossi was placed under arrest.

25. Following his arrest, Mr. Rossi told the Frederick County Police that he was aware that he needed a license, but did not have one. Mr. Rossi also stated that he had performed thousands of massages in the past year.

26. On September 17, 2004, Mr. Rossi was charged in the District Court of Maryland for Frederick County, with one count of practicing massage therapy without certification by the Board, in violation of § 3-5A-11(a) (a copy of the Charge Summary, the Statement of Charges, and the Statement of Probable Cause, in *State of Maryland v. John E. Rossi*, Case Number 2U00039209, introduced as State's Exhibits 4 and 5).

27. On November 4, 2004, the charges against Mr. Rossi were placed on the Stet docket (a copy of the Trial Docket and Defendant Trial Summary, in *State of Maryland v. John E. Rossi*, Case Number 2U00039209, introduced as State's Exhibit 5).

28. In or around March 2005, the Frederick Police received information that Mr. Rossi continued to practice massage therapy without a certificate.

29. On March 31, 2005, the Frederick Police conducted a second investigation into whether Mr. Rossi was practicing massage therapy without a certificate.

30. Officer Carr of the Frederick Police went to Mr. Rossi's office to make an appointment for a massage. Officer Carr spoke with Mr. Rossi. Mr. Rossi told Officer Carr the price of a massage.

31. Mr. Rossi scheduled Officer Carr's appointment with Mr. Rossi for the following day.

32. On April 1, 2005, Officer Carr arrived at Mr. Rossi's office for her massage therapy session.

33. Mr. Rossi greeted Officer Carr and asked her where she was hurting.

34. Officer Carr told Mr. Rossi that she was having lower back pain.

35. Mr. Rossi told Officer Carr that he would concentrate on her lower back during the massage therapy session.

36. After Officer Carr completed medical forms, Mr. Rossi took her to a massage room.

37. Mr. Rossi was subsequently placed under arrest.

38. On or about April 1, 2005, Mr. Rossi was charged in the District Court of Maryland for Frederick County, with one count of practicing massage therapy without certification by the Board, in violation of § 3-5A-11(a) (a copy of the Charge Summary, Statement of Charges, and the Statement of Probable Cause, in *State of Maryland v. John E. Rossi*, Case Number 000U00041076 introduced as State's Exhibits 6 and 9).

39. On October 17, 2005, Mr. Rossi pled guilty in the Circuit Court of Maryland for Frederick County to one count of practicing massage therapy without certification by the Board, in violation of § 3-5A-11(a)¹.

40. Mr. Rossi was found guilty by Circuit Court Judge Francis M. Arnold. Mr. Rossi received a sentence of probation before judgment. Mr. Rossi was placed on probation for a period of thirty-six (36) months, required to pay court cost, and ordered not to practice without a license (a copy of the Docket Entries and the Probation/Supervision Order are *State of Maryland v. John E. Rossi*, Case Number 10-K-05-03-7545 introduced as State's Exhibit 9).

¹ In June 2005, the Applicant prayed for a jury trial and his District Court case was removed to the Circuit Court.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Opinion, the Board concludes, as a matter of law, indicate that Mr. Rossi lacks good moral character and constitute grounds for denial of Mr. Rossi's application for licensure under H.O. § 3-5A-05. Additionally, the foregoing Findings of Fact and Opinion are grounds for discipline in Maryland and constitute a basis for denial of Mr. Rossi's license under H.O. § 3-5A-09 (a).

ORDER

Based on the foregoing Findings of Fact, Opinion and Conclusions of Law, it is, this 19th day of Sept., 2006, by the Maryland State Board of Chiropractic Examiners hereby

ORDERED that, pursuant to the authority vested in the Board of Chiropractic Examiners by Md. Code Ann., Health Occ. Article, § 3-5A-09, Mr. Rossi's application for massage therapy certification is hereby **DENIED**; and be it further;

ORDERED that the Respondent shall not be permitted to apply for ^{certification or registration} ~~license~~ *MD* for a period of five years from the date of this order;

ORDERED that the Respondent, reimburse the Board its hearing costs; and be it further;

ORDERED that this document is a public record, pursuant to Md. Code Ann., State Gov't Article, § 10-617(h).

SEP 19 2006

Date

Marc Gamerman

Marc Gamerman, D.C.

Board President

NOTICE OF RIGHT OF APPEAL

In accordance with Md. Code Ann., Health Occ. Article, § 3-316, you have a right to take a direct judicial appeal. A petition for appeal shall be filed within thirty

days of your receipt of this Findings of Fact, Conclusion s of Law and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't Article, §§ 10-201 *et seq.*, and Title 7 Chapter 200 of the Maryland Rules.