

IN THE MATTER OF  
STEPHEN E. SMITH, R. M.P.  
Registration No. R00335

\* BEFORE THE STATE BOARD  
\* OF CHIROPRACTIC AND MASSAGE  
\* THERAPY EXAMINERS  
\* Case Nos. 09-49M, 09-54M & 09-57M

\* \* \* \* \*

**FINAL ORDER OF REVOCATION  
OF THE RESPONDENT'S MASSAGE THERAPY REGISTRATION**

On April 25, 2011, the Board of Chiropractic and Massage Therapy Examiners (the "Board"), notified Stephen E. Smith, RMP, the Respondent, of its Intent to Revoke his massage therapy registration. The Notice also informed the Respondent that, unless he requested a hearing in writing within 30 days of receipt of said Notice, the Board would sign the Final Order herein, which was enclosed. More than 30 days has elapsed and the Respondent failed to timely request a hearing. Therefore, this revocation is final.

The basis for the Board's action was pursuant to the Administrative Procedure Act (the "APA"), Md. State Govt. Code Ann. § 10-226(c)(1) (2009 Repl. Vol.) and the Maryland Chiropractic and Massage Therapy Examiners Act, codified at Md. Health Occ. Code Ann. § 3-101, et seq., ("the Act") (2009 Repl. Vol.).

The pertinent provision of § 10-226( c)(1) of the APA states:

*Revocation of suspension. ( sic) —*(1) Except as provided in paragraph (2) of this subsection, a unit may not revoke or suspend a license unless the unit first gives the licensee:

- (i) written notice of the facts that warrant suspension or revocation; and,
- (ii) an opportunity to be heard.

The pertinent provisions of § 3-5A-11 of the Act:

(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:

- (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 [;].

**FACTS THAT WARRANT THE  
REVOCATION OF THE RESPONDENT'S REGISTRATION**

1. At all times relevant hereto, the Respondent was registered to practice massage therapy in Maryland. The Respondent was first registered on June 21, 2005.

The Respondent's registration expired on October 31, 2010.

2. At all times relevant hereto, the Respondent practiced massage therapy at the Spa at Glenwood and the Hyatt Hotel in Cambridge, Maryland.

3. On or about September 18, 2009, the Board received a complaint from Patient A<sup>1</sup>, who also filed criminal charges against the Respondent for sexual misconduct.

A. Patient A received massages at the Spa on 1/22, 2/5 and 9, 3/ 4, 11, 18 and 25, 4/1, 9 and 15, 5/6, 20, 21 and 29, 6/3, 10, 17, 19 and 25, and 7/1/09;

B. Patient A was partially paralyzed on her left side, including her pelvic area and left breast;

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<sup>1</sup> Patients' and/or Co-workers' or Employer's names are confidential.

C. Patient A indicated that, after pinching her sciatic nerve, her piriformis muscle spasms caused her significant pain and discomfort, causing her pain doctor to administer lidocaine injections through her vagina into her piriformis muscle, which, ultimately, gave her no pain relief. This information was relayed to the Respondent who suggested that he wear a condom and engage in sexual intercourse with the patient. The Respondent also suggested inserting his hand into the patient's vagina and massaging her piriformis muscle. Patient A declined all requests, advising the Respondent that his suggestions were unwelcome and inappropriate;

D. During a massage session in May 2009, the Respondent placed a hydrocollator pack on the patient's left leg, causing second degree burns, which took approximately five months to heal;

E. During a massage session in June 2009, the Respondent massaged Patient A's left hip area and stated that he was going to test the patient's feeling. Shortly afterward, Patient A felt something touching her between her legs, and, after lifting her head, she discovered that the Respondent was touching her clitoris with his tongue. Patient A pushed his head away, telling him to never cross that line again;

F. During a massage session in July 2009, the Respondent entered the room unannounced while Patient A was disrobing and the patient advised the Respondent that his presence made her uncomfortable while she was changing, to which the Respondent replied that he couldn't see her because of his visual impairment. During this session, the Respondent approached Patient A from

behind and said "I got Viagra from the doctor," to which Patient A advised the Respondent that she was not interested;

G. During this session, the Respondent advised Patient A that he was going to work on her shoulder region, after which he climbed onto the table and straddled her lower back. The Respondent proceeded to rub the patient's back with his chest; the patient advised the Respondent that this technique was not acceptable. While still straddling Patient A, the Respondent proceeded to massage her back with his hands, after which he grabbed one of her hands and placed it on his genitals, whereupon Patient A discovered that the Respondent was totally nude;

H. Thereupon, Patient A discontinued the session, got dressed and left the Spa. This was the last "massage" that she received from the Respondent.

4. Patient A informed the Easton Police Department about these events and the Department filed criminal charges in the District Court of Talbot County, as follows:

- A. Count 1: Assault—second degree;
- B. Count 2: Sex offense—second degree;
- C. Count 4: Sex offense—third degree;
- D. Count 5: Perverted practice; and,
- F. Count 6: Assault—second degree.

These charges were later transferred to the Circuit Court of Talbot County.

5. By a form dated 9/8/09, the Board received a second complaint from a co-worker/patient—Patient B—of the Respondent, which stated that she received approximately three massages from the Respondent. The following occurred:

A. During one massage session, the Respondent advised Patient B that the shoulder pain she complained about could be addressed if he massaged the muscle under her breast, and, that in order to get to the muscle, he had to massage her breast. Thereupon he removed her bra and proceeded to massage her left breast for a significant period of time;

B. The Respondent encouraged Patient B to remove all of her clothes during her massage sessions, but she opted not to, because being nude was beyond her level of comfort;

C. While at work, Patient B consistently felt pressured by the Respondent to be the recipient of massages. The Respondent often approached Patient B from behind, grabbing her buttocks or breasts, or kissing her on the neck, or giving her unsolicited hugs at the Spa. On multiple occasions, the Respondent massaged Patient B's neck and shoulders while she sat at the receptionist's desk. During the massage, he would slide his hands under her shirt and touch her breasts. The Respondent frequently asked Patient B about her sex life and volunteered information about his;

D. Patient B advised the Respondent that she was very uncomfortable with his sexual advances and requested that he immediately cease. The information was shared with the Spa owner who gave the Respondent a written reprimand;

E. On one occasion, Patient B tried to avoid the Respondent by sitting in a corner of the pedicure room, but, after locating her there, The Respondent grabbed her foot removed her shoe and placed her toes in his mouth for

approximately one minute. Patient B, who was sexually abused as a child, was in disbelief and felt physically trapped because she was sitting in the corner of the room and the Respondent was blocking her egress. After the Respondent left, she reported this incident to the Spa owner;

F. Criminal charges have also been filed against the Respondent on behalf of Patient B in the District Court for Talbot County, as follows:

- (1) Count 1: Harass, a course of conduct;
- (2) Count 2: Sex Offense, 4<sup>th</sup> degree;
- (3) Count 3: Assault, 2<sup>nd</sup> degree.

6. By a form dated 9/18/08, the owner of the Spa at Greenwood filed a complaint against the Respondent , which indicated that the Respondent was an independent contractor. The complaint alleged that the Respondent engaged in non-bona fide treatment and that he inappropriately touched an employee of the Spa. After admitting to all of the allegations against him by Patient A, the owner terminated the Respondent's employment.

7. Based upon the above, on November 23, 2009, the Board summarily suspended the Respondent's registration. The Respondent failed to request a Show Cause hearing.

8. On May 26, 2010, in the Circuit Court for Talbot County, the Respondent entered an Alford plea to Count 2, sex offense, fourth degree, and was found guilty. He was sentenced to a one year jail term, six months of which were suspended, to be served on home detention, and three years supervised probation. The other charges were nolle prossed.

9. As set forth above, by sexually assaulting clients during the course of providing massage therapy, and other inappropriate behavior, the Respondent violated the Act and his registration should be revoked.

**CONCLUSIONS OF LAW**


Based upon the foregoing Facts, the Board concludes that the Respondent violated its Act and that the revocation is warranted, pursuant to § 3-5A-11 and § 10-226 (c) (1) of the APA.

**NOTICE OF RIGHT OF APPEAL**

In accordance with Md. Health Occ. Code Ann. § 3-316 (2009 Repl. Vol.) and the Administrative Procedure Act, Md. State Govt. Code Ann. § 10-201, *et seq.*, (2009 Repl. Vol.) you have a right to a direct judicial appeal of this decision. A petition for appeal of the Final Board Order shall be filed within thirty days from your receipt of this Final Order and shall be made in accordance with the aforecited authority.

JUN 06 2011

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Date

  
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James Vallone, JD, CFE, Executive Director  
For Kay B. O'Hara, DC, President  
Board of Chiropractic and Massage  
Therapy Examiners