

IN THE MATTER OF

*** BEFORE THE STATE**

MICHAEL STEEVES, LMT

*** BOARD OF CHIROPRACTIC AND**

Respondent

*** MASSAGE THERAPY EXAMINERS**

License Number: M00648

*** Case Nos. 09-48M, 09-52M**

*** * * * ***

FINAL NOTICE OF REVOCATION OF MASSAGE THERAPY LICENSE

PROCEDURAL BACKGROUND

On or about September 24, 2010, the State Board of Chiropractic and Massage Therapy Examiners (“the Board”) notified Michael Steeves, (“Mr. Steeves” or “the Respondent”) that he was being charged with violation of certain provisions of Md.

Health Occ. Code Ann. § 3-101, *et seq.*, (“the Act”). Specifically, the Board charged the

Respondent with violation of the following provisions of § 3-5A-11:

(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:

(20) Engages in conduct that violates the professional code of ethics [; or].

The Board also charged the Respondent with a violation of its Massage Therapy Code of Ethics, Md. Code Regs. tit. 10 § 43.18 (October 16, 2000):

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(2) “Non bona fide treatment” means when a certificate holder or registration holder treats or examines a client in a way that involves sexual contact, but there is no therapeutic reason for the procedure, or the procedure falls outside of reasonable massage therapy or non-therapeutic massage practices.

(4) "Sexually exploitive relationship" means when sexual contact occurs in an existing therapeutic relationship, or within a period of time after formal termination of the therapeutic relationship where the client may still be vulnerable to the power imbalance that exists in the relationship between the certificate holder or the registration holder and the client, even if the relationship may appear to be mutually consensual.

(5) "Therapeutic deception" means when a certificate holder or registration holder misrepresents sexual conduct as a legitimate form of treatment.

The Board further charges the Respondent with a violation of its Standards of Practice, Code Md. Regs. 10 § 10.43.18 (October 16, 2000):

.03 Standards of Practice.

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

C. A certificate 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;

D. A certificate holder or registration holder may not:

(2) Knowingly engage in or condone behavior that:

(c) is deceitful, or

(d) Involves moral turpitude;

.05 Professional Boundaries, thereof:

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 exploitive relationship.

On February 10, 2011, a hearing on the merits was held. Present were the following Board members, which constituted a quorum: Kay O'Hara, D.C, Board President, Stephanie Chaney, D.C., Michael Fedorczyk, D.C., Daniel J. Kraus, D.C., Jonathan Nou, D.C., Duane Sadula, D.C., Karen Biagiotti, LMT, Gwenda Harrison, LMT, Mary Anne Frizzera-Hucek, and Ernestine Jones Jolivet. Also present were James J. Vallone, J.D., Board Executive Director, Britton Gore, Esq., Associate Prosecutor, Gloria Brown, Paralegal, Margaret Anne Mead, Esq., Counsel for the Respondent, John H. Denick, Esq., Counsel for the Respondent, and Michael Steeves, Respondent.

EXHIBITS

The following exhibits were admitted into evidence:

STATE'S EXHIBITS

No. 1

- 2
- 3
- 4
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- 6
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- 8
- 9
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- 11
- 12
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- 14
- 15
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RESPONDENT'S EXHIBITS

- No. 1
- 2
 - 3
 - 4
 - 5

SYNOPSIS OF CASE

Student A¹, the original complainant, testified that she had been a student at the Central Maryland School of Massage from November, 2008 to June, 2009. (T 41 9-17). During her time there, Student A was instructed by the Respondent. (T 41 18-21). Student A testified that her complaint to the Board regarding the Respondent, which was filed August 14, 2009, was based on several interactions with the Respondent that made her feel "unsafe and uncomfortable," as well as being approached by two other students with similar concerns. (T 42 17-21, 43 1-4). The main incident that initially caused concern for Student A involved a situation during lab, in which the Respondent exposed Student A's right breast and massaged

the area around her breast. Initially, Student A was being massaged by her co-student, Student B, at which time the Respondent suggested that Student B try massaging trigger points further down Student A's chest area. The Respondent asked Student A if she would consent to the drape being pulled down and her breast exposed, so that Student B could massage the area around her breast. Student A admitted that at the time she consented to have her breast exposed, she felt she trusted Student B and felt safe (T 51 5-11). However, when the Respondent suggested that Student B massage the other breast, Student A was then uncomfortable and felt relieved when Student B said she was not comfortable with continuing the massage. (T 52 12-18). Student A testified that the Respondent never touched her actual breast tissue, but did give some instruction by massaging the area outside of her breast, on her ribcage (T 56 16-21).

The second incident occurred in the school parking lot, where the Respondent hugged Student A, and while pulling away, his hand "lingered" on the top of her buttocks (T 54 9-14). After this incident, Student A went to the owner of the Central Maryland School of Massage, Laurie Custer ("Ms. Custer") to report the incidents and requested that she not be placed in a clinic where she would be alone with the Respondent, but stated that she wanted to address her discomfort with the Respondent herself. (T 55, 1-21). The final incident that Student A testified to involved the Respondent greeting Student A while she was lying on her massage table by placing his hands on her side and shaking her hips back and forth. (T 56 1-14). Student A said that while the incident by itself would not be "cause for alarm," in the context of the other incidents, the act by the Respondent made her feel "disgusting." (T 56 7-14).

Student A explained that after hearing from fellow students with similar experiences, and being informed from one of them that Ms. Custer (the school's administrator) had

responded to those concerns with disinterest and defensiveness. Afterwards, Student A decided to file the complaint against the Respondent with the Board. (T 57 6-21, 58 1-3).

During questioning by the Board, Student A clarified that the original incident was not a "breast massage," but rather that it entailed a massage of the pectoral muscles that included exposure of her breast. (T 81 18-21, 82 1-10).

Student B, a co-student of Student A, appeared and testified. Student B stated that she attended the Central Maryland School of Massage from August 2008 to March of 2009. (T. 84 15-20). Student B also described the incident in which she was massaging Student A, resulting in Student A's breast being exposed when the Respondent requested that her drape be lowered. Student B testified that after the drape was pulled down, Student A did not seem very uncomfortable. (T 91 6-13). Student B further testified that it was the Respondent, rather than herself, who gave the "breast massage" to Student A, although he did not actually touch breast tissue. (T 99 1-8, 99 13-21). Student B also testified as to her relationship with another witness, Student C, who was involved in an adulterous affair with the Respondent. Student B testified that while Student C informed Student B of her relationship with the Respondent, Student B did not observe any inappropriate behavior between the Respondent and Student C while she was attending the school. (T 93 12-21, 94 1-12).

Student C's husband appeared and testified. He wrote a letter to the Board detailing his wife's affair with Mr. Steeves. His testimony generally matched his wife's regarding her relationship with Mr. Steeves.

Marc Ware ("Mr. Ware"), Board Investigator, testified as to the investigation of the Respondent that commenced after receiving Student A's complaint. Mr. Ware testified that during his investigation he learned through the website for the National Certification Board for

Therapeutic Massage and Bodywork ("NCBTMB") that the Respondent's national licensure had been revoked for breach of ethics. (T 150 20-21, 151 1-4). Mr. Ware subsequently received an e-mail from a representative of NCBTMB, who informed him that the Respondent's license had been revoked for violating several sections of their Code of Ethics. (T 151 8-19). Mr. Ware further testified that after receiving another complaint regarding the Respondent from Student C's husband, the Respondent called the senior Board Investigator, David Ford ("Mr. Ford") and admitted to having an affair with one of his students. (T 153 5-17). Mr. Ware testified that his investigation of Student C's phone records indicated that the Respondent and Student C spoke many times from January 2009 to July 2009. (T 154 11-21, 156 3-18).

Student C appeared and testified. Student C stated that she was a student at the Central Maryland School of Massage from September 2008 to April 2009. (T 179 11-16).

Student C testified that she and the Respondent began to engage in personal conversations, and that he started spending more time massaging her and being affectionate with her. (T 182 1-21). Student C explained that the Respondent then began making eye contact with her frequently and eventually told her that she was "beautiful." (T 185 15-21). Student C also testified that the relationship progressed to where the Respondent gave her massages that involved him touching her breast tissue and slightly rubbing her genitalia. (T 189 1-21, 190 1-21). Student C testified as to two sexual encounters with the Respondent in the school building, and one other when they arranged to go to a hotel room together, and then met several times at each others houses. (T 195 15-21, 196 1-21, 197 1-21, 198 1-7). Student C further testified that she felt that the Respondent used his position and physical contact with her to "get something going." (T 520 9-16).

The Respondent testified on his own behalf. The Respondent testified that he started teaching massage therapy in Maryland in 2005. (T 211 3-8). In regards to the relationship with Student C, the Respondent claimed that while the personal conversations did progress, and the Respondent and Student C met outside of school on several occasions, no sexual contact or sexual encounters occurred at the school itself. (T 315 14-21, 326 12-21). This testimony was contradicted by Student C's version of the events at issue. The Board found Student C's testimony and demeanor to be more credible, than the respondent's.

The Respondent testified that he felt vulnerable in the situation and initially refused her advances by explaining to Student C that he did not want to start an affair. (328 3-11, 329 17-21, 330 1-5). The Respondent testified that he ended contact with Student C after a mutual decision to end the affair, but that she attempted to contact him afterwards. (T 336 1-17). The Respondent stated that while he made a mistake, he has never been told that other students had complained about him, and in fact he has been rated highly by his students. (T 338 1-18).

In regards to the "breast massage" incident, Student A, stated that the Respondent had never actually touched her breast, and was giving appropriate instruction to his students after a discussion of breast cancer in the context of a therapeutic scenario. The Respondent denied any further touching or inappropriate conduct with Student A. (T 34 15-21, 35 1-4).

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 a certified Massage Therapist in Maryland, who was originally issuer his certificate on March 1, 2000. The Respondent's license expires on October 31, 2012.

2. At all times relevant hereto, the Respondent was an instructor at the Central Maryland School of Massage ("Central Maryland") in Frederick, Maryland. The Respondent provided classroom instruction, including ethical training, as well as lab and clinical supervision.
3. That Student A a student at Central Maryland from November 2008-June 2009, filed a complaint with the Board, dated August 26, 2009.
4. Student A alleged that the Respondent violated physical and psychological boundaries while she was a student of Central Maryland, by exposing her breast during lab instruction and performing a breast massage on her right breast, by placing his hand on her buttocks after a hug, and by greeting her while she laid fully-clothed on a massage table by placing his hands on her sides and shaking her hips.
5. During the Respondent's interview under oath by the Board's Investigator, the Respondent admitted that he exposed and massaged Student A's right breast after her consent and after the lab partner did not participate in the massage.
6. By complaint dated August 18, 2009, the Board received a second complaint from another Central Maryland student, Student C. Student C relayed that while she was a student at Central Maryland, the Respondent gave her frequent massages and complimented her by saying that she was "radiant, beautiful, and smart." The complaint alleged that Student C and Mr. Steeves engaged in an affair.

7. That during one of these massages from the Respondent, he massaged Student C's abductors, and repeatedly brushed the back of his fingers against her labia.
8. That the Respondent requested that Student C meet him at Central Maryland, during which he admitted to being attracted to her and discussed beginning an affair with Student C.
9. That during the weeks following their conversation, the Respondent and Student C had sexual relations at Central Maryland and at several other times and locations.
10. That the Respondent had exposed another student's breast (Student A) and performed a spontaneous breast massage, after which the Respondent approached Student C to discuss the matter. The Respondent bragged to Student C that he had one female student touch another female student's breast in order to get her attention.
11. The Respondent, during an interview under oath with the Board's Investigator, admitted that he had sexual relations on multiple occasions with Student C away from Central Maryland while she was a student and after she graduated.
12. As set forth above, by improperly exposing and massaging Student A's breast and instructing a student to massage it for non-bona fide treatment, by engaging in inappropriate comments, non-bona fide, sexually gratifying touching, and by engaging in sexual relations with

Student C, the Respondent violated the Act and regulations thereunder.

CONCLUSIONS OF LAW

Based on the foregoing Evidence and Findings of Fact, the Board concludes that the Respondent violated his fiduciary and professional duties as a Massage Therapist and Massage Therapy instructor. As a matter of law, the Board finds that Mr. Steeves violated the Board's Code of Ethics. See Md. Code Ann. § 3-5A-11(A)(20) and COMAR 10.43.18. The Board holds that it is a violation of its practice act for a licensed massage therapy instructor to have a sexual relationship with a student.

First, the Board finds that Mr. Steeves did not maintain professional boundaries. See COMAR 10.43.18.5(B). Mr. Steeves admits to having a sexual relationship with a massage therapy student. While Mr. Steeves was teaching this student massage therapy and professional ethics, he began a sexual relationship with her. A licensed massage therapist "may not engage in sexual misconduct that includes, but is not limited to: therapeutic deception, non bona fide treatment, or a sexually exploitative relationship." *Id.* The Board finds that Mr. Steeves committed an act of sexual misconduct because he used his position as a massage instructor and licensee to have an improper relationship with one of his massage therapy students. The Board finds that Mr. Steeves committed an act of sexual misconduct when he had an improper, sexually exploitative relationship with a student in his massage therapy class. Mr. Steeves is found to be in violation of Md. Code Ann. § 3-5A-11(A)(20) and COMAR 10.43.18.5(B)(3).

The Board takes broad view of the scope of its own sexual misconduct regulation. The plain language of COMAR 10.43.18.5(B)(3) contains the words "including, but not limited to"

before the specific acts prohibited are outlined. The Board developed these regulations in accordance with the legislature's guidance in Md. Code Ann., Health Occupations § 1-212.

Section 1-212(b)(3) also broadly outlines the type of conduct to be considered sexual misconduct:

For the purposes of the regulations adopted in accordance with subsection (a) of this section, "sexual misconduct" shall be construed to include, *at a minimum*, behavior where a health care provider:

(1) Has engaged in sexual behavior with a client or patient in the context of a professional evaluation, treatment, procedure, or other service to the client or patient, regardless of the setting in which professional service is provided;

(2) Has engaged in sexual behavior with a client or patient under the pretense of diagnostic or therapeutic intent or benefit; or

(3) Has engaged in any sexual behavior that would be considered unethical or unprofessional according to the code of ethics, professional standards of conduct, or regulations of the appropriate health occupation board under this article.

(emphasis added). The Board determined that Mr. Steeves' conduct to be an act of sexual misconduct in accordance with its regulations.

Engaging in inappropriate and/or sexual touching or behavior as a Massage Therapy instructor under the guise of therapeutic instruction is sexual misconduct and a serious violation of the Board's practice act, regardless of whether or not the act was consensual. The power imbalance between an instructor and his or her student creates a fiduciary duty upon the instructor to maintain strict professional boundaries, particularly in the profession of Massage Therapy where those boundaries are more delicate. Even if the student initiates a crossing of these boundaries, it is ultimately the duty of the instructor to maintain them. The Board recognizes that both individuals are adults and should therefore have been aware of the

consequences of their behavior, but it is of the opinion of the Board that Mr. Steeves had the ultimate duty to keep his professional boundaries intact with his students, no matter what the circumstances. The Board finds irrelevant who initiated the relationship or who ended the relationship.

The Board finds that Mr. Steeves' conduct was not professional. Under COMAR 10.43.18.03(C)(2), "a certificate holder or registration holder shall engage in professional conduct at all times, with honesty, integrity, self-respect, and fairness." Mr. Steeves relationship with his massage therapy student was not professional and violates this regulation. Finally, Mr. Steeves' comment about having one female student touch another female student for Student C's amusement was not appropriate or professional.

The Board also finds that Mr. Steeves' conduct involved a conflict of interest. Mr. Steeves used his position as a massage therapist and massage therapy instructor to engage in a relationship with a student. A teacher engaging in a sexual relationship with a student cannot properly instruct or grade that individual student. Under COMAR 10.43.18.03(C)(3), "a certificate holder or registration holder shall remain free from conflict of interest while fulfilling the objectives and maintaining the integrity of the massage therapy profession." By having a sexual relationship with his student, Mr. Steeves failed to maintain free from conflicts of interest and maintain the integrity of the massage therapy profession.

As a matter of law, the Board does not find Mr. Steeves in violation of any of the remaining regulations alleged in the charges. The Board's order rests on its finding that Mr. Steeves violated Md. Code Ann. § 3-5A-11(A)(20) and COMAR 10.43.18.5(B)(3)(c). The Board also finds that Mr. Steeves violated 10.43.18.03(C)(2) and (C)(3). For these reasons, the Board revokes Mr. Steeves' license to practice massage therapy in Maryland. Because

Mr. Steeves' actions squarely violated these provisions of the Board's practice act, it was not necessary to reach the regulations alleged to have been violated by Mr. Steeves.

As an experienced massage therapist and massage therapy instructor, Mr. Steeves was aware that his relationship with a student was improper and illegal. Given that the practice of massage therapy includes a great deal of intimacy and physical contact, the Board takes an extremely dim view of therapists using their training and licensure as a means to sexual intimacy. Because Mr. Steeves is both a massage therapist and a massage therapy instructor, the Board finds this act of sexual misconduct to be particularly objectionable.

The Board finds Mr. Steeves' conduct to be completely unacceptable for a licensee. Mr. Steeves has not been disciplined before. During the hearing, Mr. Steeves apologized for his actions, but admitted that he continues to teach massage therapy. Mr. Steeves proffered that his failings and experience with the Board will make him a better massage therapy instructor. The Board does not agree. The Board orders Mr. Steeves' license revoked.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is on this 21st day of October, 2011 that the majority of the Board hereby:

ORDERED that, pursuant to the authority vested in the Board of Chiropractic Examiners by Md. Code Ann., Health Occ. Article, § 3-5A-11, the Respondent's massage therapy certification is hereby **REVOKED**; and be it further

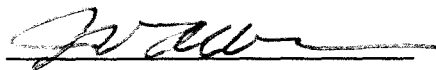
ORDERED that Respondent must immediately return to the Board both the wall and wallet size certificate numbered M00648; and be it further

ORDERED that for the purposes of public disclosure and as permitted by Md. State Govt. Code Ann. §§ 10-601 *et seq.* (2009 Repl. Vol.), this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law, and Order, and is reportable to any entity to whom the Board is obligated to report; and it is further

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

OCT 21 2011

Date



J. J. Vallone, JD, CFE, Exec. Director for
Stephanie J. Chaney, DC, President
State Board of Chiropractic and
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 the 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.

ⁱ Due to privacy concerns, the order does not use many of the witnesses' names. The Board has the names of the witnesses on file.