

IN THE MATTER OF * BEFORE THE
ANTON ZAITSEV, * MARYLAND STATE BOARD
RMP * OF MASSAGE THERAPY EXAMINERS
Registration No. R01417 * Case No. 18-01M

FINAL DECISION AND ORDER OF REVOCATION

Procedural Background

On or about January 2, 2018, the Maryland State Board of Massage Therapy Examiners (the “Board”) received notification that Anton Zaitsev, Registration Number R01417, (the “Respondent”) had been arrested and charged criminally after an adult female had reported that the Respondent had allegedly sexually assaulted her during a massage. As a result of this notification, the Board initiated an investigation.

Based on that investigation, on or about March 16, 2018, the Board issued to the Respondent an “Order for Summary Suspension of Registration to Practice Massage Therapy”, which notified the Respondent that the Board was summarily suspending his registration to practice massage therapy pursuant to Md. Code Ann., State Gov’t § 10-226(c)(2). The Order for Summary Suspension provided the Respondent with the opportunity to request a hearing before the Board to show cause as to why his registration should not remain suspended, but the Respondent did not request a hearing.

On or about January 27, 2022, the Board issued a “Notice of Intent to Revoke” to the Respondent, providing the Respondent with notice that the Board intended to revoke his registration based on allegations that the Respondent violated the Maryland Massage Therapy Act. Specifically, the Board alleged that the Respondent violated Md. Code Ann, Health Occ. (“HO”) § 6-308(a):

- (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.

Specific to the statutory violations of HO § 6-308(a)(20) and § 6-308(a)(21), the Board alleged that the Respondent violated the following provisions of the Code of Maryland Regulations (“COMAR”):

.03 Standards of Practice.

- A. The license holder or registration holder shall be concerned primarily with the welfare of the client.
...
- C. A license 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;
...
 - (5) At all times respect the client's dignity, autonomy, and privacy[.]

.05 Professional Boundaries.

- A. A license holder or registration holder shall:
 - (1) Maintain professional boundaries, even when the client, staff member, or student initiates crossing the professional boundaries of the professional relationship; and
 - (2) Respect and maintain professional boundaries and respect the client's, staff member's, or student's reasonable expectation of professional conduct.

B. A license holder or registration holder may not:

- (1) Exploit a relationship with a client, staff member, or student for the license 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.

The Notice also notified the Respondent that he faced potential licensure sanctions and that he could request a hearing on the merits of the Board's allegations against him. On or about February 22, 2022, the Respondent submitted a timely request for a hearing, and the Board scheduled a hearing for May 25, 2022. Subsequently, the Respondent requested a postponement, which was granted, and the hearing was rescheduled for July 27, 2022.

On July 27, 2022, a quorum of the Board was present, and an evidentiary hearing was held virtually via Google Meets. Karen Malinowski, Administrative Prosecutor, was present and presented the State's case against the Respondent. The Respondent appeared and represented himself at the hearing.

Evidentiary Exhibits and Witnesses

State's Exhibits

1. Maryland State Board of Massage Therapy Examiners – License Verification Information (1 page).
2. WJLA News Release, printed January 9, 2018 (3 pages).

3. District Court of Maryland for Montgomery County, Case No. 4D00373937, Application for Statement of Charges, dated October 9, 2017 (3 pages).
4.
 - a. Circuit Court for Montgomery County, Excerpt of Trial Transcript, State v. Zaitsev, Case No. 132801C, dated April 24, 2018 (15 pages).
 - b. Circuit Court for Montgomery County, Excerpt of Trial Transcript, State v. Zaitsev, Case No. 132801C, dated April 25, 2018 (31 pages).
5. Personnel Records from Facility A (33 pages).
6. Maryland State Board of Massage Therapy Examiners – Order for Summary Suspension, issued March 16, 2018 (7 pages).
7. Maryland State Board of Massage Therapy Examiners – Report of Investigation, dated July 30, 2021 (4 pages).
8. Maryland State Board of Massage Therapy Examiners – Notice of Intent to Revoke, dated January 24, 2022 (19 pages).
9. Respondent’s Request for a Hearing, dated February 22, 2022 (1 page).
10.
 - a. Maryland State Board of Massage Therapy Examiners – Notice of Hearing, dated April 19, 2022 (1 page).
 - b. Maryland State Board of Massage Therapy Examiners – Notice of Hearing, dated May 23, 2022 (1 page).

State’s Witnesses

1. Marc Ware, Board Investigator

The Respondent’s Exhibits

The Respondent submitted no exhibits.

The Respondent’s Witnesses

The Respondent, Anton Zaitsev, testified on his own behalf.

FINDINGS OF FACT

Based on the totality of record before it, the Board finds that:

1. At all times relevant to this Order, the Respondent was licensed to practice as a registered massage practitioner (“RMP”), registration number R01417. (State’s Exhibit 1.)

2. On or about January 2, 2018, the Board became aware through media reports that the Respondent had been arrested and charged criminally after an adult female (the “Client”) reported to police that, on or about August 28, 2017, the Respondent had sexually assaulted her during a massage he provided to her at the facility where he was then employed (“Facility A”). (State’s Exhibit 2.) The Board initiated an investigation.

3. As part of that investigation, the Board obtained the “Application for Statement of Charges” filed in the District Court of Maryland for Montgomery County, Case No. 4D00373937, by the Montgomery County Police Department. (State’s Exhibit 3.) The affidavit included with the Application set forth the following narrative:

On August 28, 2017, [the Montgomery County Police Detective] interviewed [the Client], who disclosed the following. She had a massage appointment at [Facility A] located [in Olney, Maryland]. [The Client] has frequented [Facility A] on numerous occasions. The day of the incident, [the Client’s] massage was scheduled with the [Respondent]. It was not the first-time [the Client] had received a massage from [the Respondent].

[The Client] stated she was naked except for her underwear. She was lying on her stomach and the massage was normal until [the Respondent] reached her right upper thigh. [The Respondent] began to massage high on her thigh. He pushed her underwear out of the way and rubbed her buttocks. He then rubbed his hand in between [the Client’s] legs and touched her vagina with his fingers through her underwear. [The Respondent] then moved [the Client’s] arms from her sides to up by her head. [The Client] looked up as [the Respondent] grabbed her right hand and put it on his exposed, erect penis. He then moved forward and pushed his erect penis into her mouth and face. [The Client] stated [the Respondent’s] penis was wet with what she thought was ejaculate.

[The Respondent] then walked around to [the Client's] side and pulled down her underwear, exposing her buttocks. He asked her 'Is this what you want?' [The Client] was extremely upset and said no. In the hopes of discouraging any further sexual actions on [the Respondent's] part, [the Client] also told him that she was on her period. [The Respondent] told her the massage was over and left the room. [The Client] immediately told the receptionist what had occurred. She then left [Facility A] and drove directly to a police station to report the incident...

(*Id.* at p. 006.)

4. The matter was transferred to the Circuit Court for Montgomery County (the "Court"), Case No. 132801C. (State's Exhibit 4, p. 010.) On April 24, 2018, in a jury trial before the Court, the Client testified under oath that, on August 28, 2017, she was scheduled to receive a massage from the Respondent at the Facility. (*Id.* at p. 013.) The Client testified that the massage had been proceeding normally, (*Id.* at pp. 015-016), until the Respondent started to touch the Client's vagina through her underwear. (*Id.* at p. 016.) The Client further testified that, at one point, the Respondent "reached under my underwear on the right side and massaged the whole buttock" and "that [the Respondent's] breathing was – seemed heavier and more obvious." (*Id.* at p. 017.) At that point, according to the Client in her testimony, she lifted her head up to see what the Respondent was doing. (*Id.* at p. 018.) The Client testified that the Respondent put her right hand on "something that felt like flesh" and on lifting her head up she was able to see that it was the Respondent's "exposed penis." (*Id.*) The Client further testified that the Respondent put his penis on her mouth and face and that she believed he ejaculated. (*Id.*) According to the Client, the Respondent "walked around the left side of the bed and he grabbed my underwear and pulled them down and said is this what you want." (*Id.* at p. 019.) The Client told the Respondent, "[D]on't do that," and the Respondent stopped and left the room. (*Id.*) The Client reported the matter to the Facility desk clerk through a note. (*Id.* at p. 021.) Thereafter, the Client left the Facility to report the matter to the police. (*Id.* at p. 022.)

5. The Respondent testified in his own defense at his criminal trial. (State's Exhibit 4, pp. 024-053.) According to the Respondent, during the massage, it was the Client who initiated the sexual contact: "I got pretty much halfway up [the Client's body], right beneath her glute when [the Client] moved her right hand and started to pallate [*sic*] and massage my penis. She started to rub my penis in a circular motion." (*Id.* at p. 027.) According to the Respondent, he "decided to continue to work while she was rubbing [his] genitals" through his pants (*Id.* at pp. 027-028.) The Respondent testified that the Client continued to massage his penis while he continued his massage of her; testified that, after approximately five minutes, he had begun to get "pretty, pretty aroused" and that he "unzipped and opened his pants" allowing the Client to move her hands into his pants to "retrieve" his penis. (*Id.* at p. 028.) The Respondent continued his testimony: "After, after a brief period of time I decided to reciprocate, I moved my left hand and started to massage her vagina, to which she actually spread her legs and lifted off the table allowing me access to her clitoris, which I started to rub." (*Id.*) Indeed, the Respondent testified that he had massaged the Client's vagina for "three to five minutes." (*Id.*) According to the Respondent, the Client pulled him to the front of the massage table, took his now-exposed penis into her mouth, and performed fellatio on him. (*Id.* at p. 029.) After the Respondent ejaculated, he testified that he "moved to the back of the table to reciprocate orally" and began to pull her pants down, to which, the Client objected. (*Id.* at p. 030.) According to the Respondent, he then asked her, "[T]his isn't what you want?" (*Id.*) The Client demurred, stating that she was on her period. (*Id.*) On cross-examination from the State's Attorney, the Respondent admitted that, from a licensure perspective, contact with a client outside of professional contact would be inappropriate and may jeopardize his license. (*Id.* at p. 037.)

6. The Board has taken official notice that the Respondent was found not guilty, in the Circuit Court for Montgomery County, of violating Md. Code Ann., Criminal Law §§ 3-306 and 3-308(b)(1).

7. As part of its investigation, the Board subpoenaed information from Facility A. (State's Exhibit 5.) Specifically, Facility A's documents corroborate the Client's trial testimony, specifically a memorandum to the Respondent's Facility personnel file written contemporaneously to the August 28, 2017 incident. (*Id.* at pp. 075-076; pp. 077-081.) As a result of the incident, the Facility terminated the Respondent's employment. (*Id.* at p. 078.)

8. The Respondent testified at his hearing before the Board. (Transcript ("Tr."), pp. 50-76.) In his testimony, the Respondent admitted to the conduct for which he was charged by the Board. Specifically, he testified, "I've already admitted that a sex act had occurred between me and [the Client]. I take full responsibility for the act." (Tr., p. 54.) When asked by a Board member whether the Respondent believed his conduct to be wrong, the Respondent testified:

Absolutely...The only – it's just awkward and strange, but it's cheating me out of being a massage therapist and preventing the client to get reasonable work. It's irrelevant whether she started this. I went along with it. It doesn't happen under my watch. I literally made the largest mistake of my life. No, I would never do anything like that again. And it's just wrong that that happened, it truly did.

(Tr., p. 68.) The Respondent further testified, "I failed to act appropriate [*sic*] and went along with what was going on. It happened but it happened in the opposite direction. In this case, I should have acted and been more responsible, more professional, just in general more active against the situation..." (Tr., p. 69.)

Discussion

The Board may reprimand any licensee, place any licensee on probation, or suspend or revoke the license of a licensee for any violation of HO § 6-308. *See* HO § 6-308(a). This provision provided the underlying authority for, and the necessary legal elements of, the issuance of the Board's "Notice of Intent to Revoke" the Respondent's registration to practice massage therapy on January 27, 2022. Indeed, while the Respondent in this case was charged with three separate and distinct violations of the Maryland Massage Therapy Act, the Board only need to find that the Respondent violated one of those provisions in order to sanction his registration. HO § 6-308 provides the authority for this Order.

The central question before the Board is whether the Respondent inappropriately touched the Client on August 28, 2017 during the massage he provided to her. While there appears to be a factual dispute as to who initiated the sexual contact, that dispute is irrelevant to the Board's inquiry. Indeed, the Board's code of ethics, specifically those dealing with maintaining professional boundaries, are not premised or otherwise contingent on which party initiated a boundary violation. A boundary violation is a boundary violation regardless of who initiated it, and these violations are akin to strict liability offenses where intent or mental state are not relevant. Applying those principles to the present case, there is no dispute that there was a boundary violation that occurred on August 28, 2017. The Respondent has admitted in his testimony before the Circuit Court for Montgomery County and in his testimony before the Board – both under oath – that he participated in sexual contact with a client under his care. Moreover, he testified that he was fully aware that his conduct might cause the Board to take an adverse action against his registration. (*See* State's Exhibit 4, p. 037.)

Based on the foregoing and after careful and deliberate consideration of the totality of the record, the Board finds that the Respondent acted in a manner inconsistent with generally accepted professional standards in the practice of massage therapy in violation of HO § 6-308(a)(8) by inappropriately touching and engaging in sexual acts with the Client on August 28, 2017. Further, the Board finds that the Respondent violated HO 6-308(a)(20) by engaging in conduct that violates the Board's Code of Ethics. Specifically, the Board finds that the Respondent violated COMAR 10.65.03.05.B.(2) by engaging in a sexually intimate act with the Client on August 28, 2017. In addition, the Respondent violated COMAR 10.65.03.05.B.(3) by engaging sexual misconduct that includes "non bona fide treatment." COMAR 10.65.03.02.(B)(2) defines "non bona fide treatment" as "when a license 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." Here, based on the record before it and utilizing the Board's expertise in the profession of massage therapy, the Board finds that there was no therapeutic reason for touching the Client's genitals or buttocks. In its discretion, the Board shall dismiss the balance of the charges.

Turning to the appropriate sanction, it is well-established that the health occupation boards, including the State Board of Massage Therapy Examiners, exist in order to protect the public. See *Unnamed Physician v. Commission on Medical Discipline*, 285 Md. 1, 8-9 (1979). The disciplinary actions of this Board and all health occupations boards are supposed to be "a catharsis for the profession and a prophylactic for the public," not a punishment. *Maryland State Bd. of Social Work Examiners v. Chertkov*, 121 Md. App. 574, 585, (1998), quoting *McDonnell v. Comm'n on Medical Discipline*, 301 Md. 426, 436 (1984). Furthermore, the right of a

healthcare professional to practice is conditional, subject to the Board's objective to protect and preserve the public health. *Board of Physicians v. Felsenberg*, 351 Md. 288, 305-06 (1998).

The Board finds that the Respondent's misconduct falls within category H.(3) of the Board's sanctioning guidelines. *See* COMAR 10.65.09.06.H.(3). The range of potential sanctions under category H.(3) is suspension for 2 years, without stay for at least 90 days, and probation for 2 years, and conditions to revocation. *Id.* The Respondent's conduct was particularly egregious. Whether or not he initiated the acts, he was still a licensed professional with a duty to act appropriately and clinically with his clients. As a licensed professional, he was also duty-bound to abide by the Board's Code of Ethics, which presumably he fully understood given his testimonial statements to the Court, the Board, and his passage of the Board's required jurisprudence examination. By all accounts, including the Respondent's, he did not abide by those ethics provisions. These were not minor lapses in judgment by the Respondent. To be sure, the Board considers the lurid nature of the August 28, 2017 incident to be a significant deviation from professional judgment. As one example among many, the Board points to the fact that, by his own testimony before the Circuit Court, the Respondent unzipped his pants allowing the Client to have unfettered access to his penis. (State's Exhibit 4, p. 028.) Moreover, the Respondent's actions bring the entire profession into disrepute. Massage therapy is intended to be therapeutic, as is patently obvious by the name of our profession; massage therapy is not and should not be a vehicle or a premise for lurid sexual acts. By not exercising proper judgment and care, the Respondent has lost this Board's confidence to be able to practice safely. Finally, the Board considered that, despite acknowledging that he "would have to" report the incident to the Board, (Tr., p. 76), the Respondent never did, and the Board was notified about the incident

through news reports several months after. Thus, consistent with the Board's mandate to protect the public and its sanction guidelines, it finds that revocation is appropriate.

CONCLUSIONS OF LAW

In this case, based on the foregoing Findings of Fact, the Board concludes that the Respondent violated Md. Code Ann., Health Occ. § 6-308(a) as follows:

- (8) Does an act that is inconsistent with generally accepted professional standards in the practice of massage therapy; and
- (20) Engages in conduct that violates the professional code of ethics, specifically COMAR 10.65.03.05.B.(2) ("A license holder or registration holder may not ... [e]ngage in a sexually intimate act with a client") and COMAR 10.65.03.05.B.(3)(b) ("A license holder or registration holder may not . . . [e]ngage in sexual misconduct that includes . . . [n]on bona fide treatment[.]")

In its discretion, the Board shall dismiss the charges alleging a violation of Md. Code Ann., Health Occ. § 6-308(a)(21).

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby:

ORDERED that the charge set forth in the "Notice of Intent to Revoke," issued on January 17, 2022 alleging a violation of Md. Code Ann., Health Occ. § 6-308(a) (21) is hereby **DISMISSED**; and it is further

ORDERED that the registration of the Respondent to practice massage therapy in the State of Maryland, is hereby **REVOKED**; and it is further

ORDERED that for purposes of public disclosure and as permitted by Md. Code Ann., Gen. Prov. § 4-333(b)(6), this document consists 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 Order is a Final Order and as such is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Prov. § 4-333(b)(6) and Md. Code Ann., Health Occ. § 1-607.

9/28/2022
Date

Sharon Oliver
Sharon J. Oliver, MBA
Executive Director
Maryland State Board of Massage Therapy Examiners

NOTICE OF APPEAL RIGHTS

Any person aggrieved by a final decision of the Board under Md. Code Ann., Health Occ. § 6-308(a) may take a direct judicial appeal within thirty (30) days as provided by Md. Code Ann., Health Occ. § 6-310; Maryland Code Ann., State Gov't § 10-222; and Title 7, Chapter 200 of the Maryland Rules, including Md. Rule 7-203 ("Time for Filing Action").