

**IN THE MATTER OF
PABLO MORENO, RMP
Registration No. R01830**

*** BEFORE THE
* MARYLAND STATE BOARD
* OF MASSAGE THERAPY EXAMINERS
* Case No. 21-19M**

FINAL DECISION AND ORDER OF REVOCATION

Procedural Background

On or about June 28, 2023, the Maryland State Board of Massage Therapy Examiners (the “Board”) issued a “Final Decision and Order of Probation” to Pablo Moreno (the “Respondent”), which placed his registration to practice as a registered massage practitioner (“RMP”) on probation for one year subject to specific terms and conditions. The probationary order was based on findings of fact that the Respondent had failed to protect the dignity, autonomy, and privacy of a female client by “reaching beneath her draping sheet during [the client’s massage]” and misallocated his massage time by massaging areas that the client did not want to be massaged. The Board found that this conduct violated the Maryland Massage Therapy Act, specifically Md. Code Ann., Health Occ. (“HO”) § 6-308(a)(8) (“Does an act inconsistent with generally accepted professional standards in the practice of massage therapy”).

On October 18, 2023, the Board sent the Respondent an “Order Violation Notice” after the Respondent failed to comply with any of the terms of his probationary order. Even after receiving that notice, the Respondent continued to disregard the terms and conditions of his probation. Accordingly, on or about February 28, 2024, the Board issued “Charges Under the Maryland Massage Therapy Act” (the “Charges”), which notified the Respondent that the Board was charging him with several violations of the Maryland Massage Therapy Act. Specifically, the Board alleged that the Respondent violated HO §§ 6-308(a):

- (11) Has violated any provision of this title, specifically HO 6-305(d)

(requiring Board licensees and registrants to notify the Board of a change in address within 60 days after the change occurred);

- (21) Knowingly does an act that has been determined by the Board to be a violation of the Board's regulations, specifically COMAR 10.65.01.08.B (requiring Board licensees and registrants to notify the Board of a change in address within 60 days after the change occurred); and
- (23) Fails to comply with a Board order.

The Notice also notified the Respondent that he faced potential sanctions and that he could request a hearing on the merits of the Board's charges against him. The Respondent subsequently requested a hearing, and the Board scheduled a hearing for July 24, 2024. The Board sent its notice of hearing via regular and certified mail to the Respondent's address of record, which he had previously provided to the Board, as well as his electronic mail address of record. Furthermore, Md. Code Ann., State Gov't § 10-209(c) provides that a person holding a license shall be deemed to have had reasonable opportunity to know of the fact of service if: 1) the person is required by law to notify the agency of a change of address within a specified period of time; 2) the person failed to notify the agency in accordance with the law; 3) the agency mailed the notice to the address of record; and 4) the agency did not have actual notice of the change of address prior to service. While the Respondent alluded to the fact he had not "used" his address of record since approximately 2022, he never provided the Board with an updated address; therefore, the Board finds that service of the notice of hearing was proper.

On July 24, 2024, a quorum of the Board was present, and an evidentiary hearing was held in person at the Board's offices. Joanna Miller, Administrative Prosecutor, presented the State's case against the Respondent. The Respondent failed to appear.

Evidentiary Exhibits and Witnesses

State's Exhibits

1. Maryland State Board of Massage Therapy Examiners – License Verification Information (1 page).
2. Complaint, dated August 27, 2021 (3 pages).
3. Maryland State Board of Massage Therapy Examiners – Charges Under the Maryland Massage Therapy Act, dated October 26, 2022 (8 pages).
4. Transcript, In the Matter of Pablo Moreno, LMT, April 26, 2023 Evidentiary Hearing (30 pages).
5. Maryland State Board of Massage Therapy Examiners – Final Decision and Order of Probation, In the Matter of Pablo Moreno, LMT, dated June 28, 2023 (14 pages).
6. Order Violation Notice, dated October 18, 2023 (2 pages).
7. Respondent's E-Mail Response to Order Violation Notice, dated October 23, 2023 (1 page).
8. Maryland State Board of Massage Therapy Examiners – Charges Under the Maryland Massage Therapy Act, dated February 28, 2024 (8 pages).
9. Maryland State Board of Massage Therapy Examiners – Notice of Hearing, dated April 26, 2024 (2 pages).

State's Witnesses

Sharon J. Oliver, the Board's Executive Director and *de facto* Compliance Officer.

The Respondent's Exhibits

The Respondent did not present any exhibits.

The Respondent's Witnesses

The Respondent did not testify or call any witnesses on his behalf.

FINDINGS OF FACT

Based on the totality of the 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 R01830. (State’s Exhibit 1.)
2. On or about June 28, 2023, the Board issued a “Final Decision and Order of Probation” (“Probationary Order”) that placed the Respondent’s registration to practice as an RMP on probation for a minimum of one (1) year. (State’s Exhibit 5.) The Probationary Order was based on findings of fact that the Respondent had failed to protect the dignity, autonomy, and privacy of a female client by “reaching beneath her draping sheet during [the client’s massage]” and misallocated his massage time by massaging areas that the client did not want to be massaged. (*Id.* at pp. 4-6.) Based on its findings of fact, the Board concluded as a matter of law that the Respondent violated HO § 6-308(a)(8) (“Does an act that is inconsistent with generally accepted professional standards in the practice of massage therapy”). (*Id.* at p. 9.)
3. The Probationary Order placed the Respondent’s registration on probation for a minimum of one (1) year from the effective date of the Order, June 28, 2023. (State’s Exhibit 5, pp. 9, 11.) Among the probationary terms and conditions that the Board ordered, the Respondent was required to take and successfully complete, within 180 days of the effective date of the Order, one (1) Board-approved course in “Client Communication;” one (1) Board-approved course in “Ethics;” one (1) Board-approved course in “Client Draping;” and quarterly self-reports to the Board “describing [his] practice.” (*Id.* at pp. 9-10.) In addition, the Respondent was also ordered to “cooperate with the Board, any of its agents or employees, and with the Board-assigned investigator, in the monitoring, supervision, and investigation of the Respondent’s compliance with the terms and conditions of this Order.” (*Id.* at p. 10.)

4. Pursuant to the Administrative Procedure Act, specifically Md. Code Ann., State Gov't § 10-221(c)(1), the Probationary Order was mailed to the Respondent at his address of record with the Board. (State's Exhibit 5.) The cover letter directed the Respondent to "contact [Ms. Oliver, the Board's Executive Director] no later than **Wednesday, July 19, 2023** ... in order to begin compliance with the terms of ... probation." (*Id.* (emphasis in original))

5. After not hearing from the Respondent regarding beginning compliance with this Probationary Order, on October 18, 2023, Ms. Oliver sent the Respondent a letter, stating that "As of this writing, you have failed to establish contact" as directed by the June 28, 2023 letter that accompanied the Probationary Order. (State's Exhibit 6, p. 1.) The October 18, 2023 letter went on to state:

Furthermore, you are in violation of the terms of the [Probationary] Order. Specifically, you are required to submit written quarterly self-reports describing your practice and provide the Board with the address of the location of your employment. The first report was due on June 28, 2023, and has not been received as of the date of this letter.

Failure to make contact and submit the required written self-report by October 23, 2023 will result in your case being referred to the Board for further review at which time the Board may refer your case to the Office of the Attorney General's Health Occupations Prosecution and Litigation division for the commencement of violation of probation proceedings.

(*Id.*) The letter was sent to the Respondent's address of record with the Board as well as his e-mail address of record. (State's Exhibit 6, p. 2)

6. On October 23, 2023, via e-mail, the Respondent responded to the Board's October 18, 2023 letter. (State's Exhibit 7.) In his response, the Respondent stated:

I had not received nor made an [*sic*] aware of any judgment that had been passed regarding the hearing before this email. I have not used that mailing address in over a year. In regards to a self written report, I am not sure at this moment what all exactly needs to be included but I'll address the two specific terms from your email. I am not practicing, and I have no practiced Massage Therapy in about a year and I am not employed at this time.

(*Id.*)

7. With regard to the courses that the Respondent was to take under the Probationary Order, at the hearing before the Board on this matter, Ms. Oliver testified that the Respondent had not submitted any information related to those courses. (Transcript, p. 16.)

Discussion

The Board may reprimand any licensee, place any licensee on probation, or suspend or revoke the license of a license for any violation of HO § 6-308. HO §6-308(a). This provision provides the underlying authority for, and the necessary legal elements of, the issuance of the Board's "Charges Under the Maryland Massage Therapy Act" on February 28, 2024. Indeed, while the Respondent in this case was charged with separate violations, the Board only needs 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.

As a preliminary matter, the Respondent failed to appear for the evidentiary hearing in this case – an evidentiary hearing that he requested. As mentioned in the introduction to this Order, the Board sent its notice of hearing via regular and certified mail to the Respondent's address of record, which he previously provided to the Board, as well as his electronic mail address of record. The Administrative Procedure Act, specifically Md. Code Ann., State Gov't § 10-209(c), provides that a person holding a license shall be deemed to have had reasonable opportunity to know of the fact of service if: 1) the person is required by law to notify the agency of a change of address within a specified period of time; 2) the person failed to notify the agency in accordance with the law; 3) the agency mailed the notice to the address of record; and 4) the agency did not have actual notice of the change of address prior to service. While the Respondent alluded to the fact he had not "used" his address of record since approximately 2022, he never provided the Board with an

updated address; therefore, the Board finds that service of the notice of hearing was proper. Moreover, the Maryland Massage Therapy Act states, “If, after due notice, the individual against whom the action is contemplated fails or refuses to appear, the Board nevertheless may hear and determine the matter.” HO 6-309(f).

Turning to the substantive issues before the Board, it is clear from the record that the Respondent willfully and without excuse failed to comply with his 2023 Probationary Order. The Respondent failed to take and successfully complete the courses that he was required to take under the Probationary Order. The Respondent further failed to submit any self-reports as required. Even after the deficiency was brought to his attention by Board staff, the Respondent made no attempt or good faith effort to comply with the terms of his Probationary Order despite having ample time and opportunity to come within compliance. As such, the Board finds that the Respondent violated HO § 6-308(a)(23) (“Fails to comply with a Board Order”) by failing to comply with any of the terms of the 2023 Probationary Order.

In a continuing pattern of ambivalence towards the responsibilities entailed in holding a registration to practice a health occupation in the State of Maryland, the Respondent admittedly failed to notify the Board that he was no longer using the address on record with the Board. It is telling that, even after finding out that he had missed critical correspondence from the Board due to his failure to change his address, the Respondent still failed to rectify it by providing the Board with a working address of record, knowingly allowing an unused address to stand. Situations such as this one were certainly on the forefront of the Maryland General Assembly’s mind when it enacted HO § 6-305(d), requiring that “[e]ach licensed massage therapist or registered massage practitioner shall notify the Board in writing of any change in the name or address of the licensed massage therapist or registered massage practitioner within 60 days after the change occurred.”

Accordingly, the Board finds that the Respondent violated HO § 6-308(a)(11) (“Has violated any provision of this title”) by failing to comply with HO § 6-305(d)’s requirement to notify the Board of a change of address.

In its discretion, the Board shall dismiss the charge alleging that the Respondent violated HO § 6-308(a)(21) (“Knowingly does an act that has been determined by the Board to be a violation of the Board’s regulations”). Given that the Board has already found that the Respondent violated HO § 6-308(a)(11) by failing to update his address with the Board, this charge is redundant.

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). Furthermore, the right of a healthcare professional to practice is conditional, subject to the Board’s objective to protect and preserve the public health. *See Board of Physicians v. Felsenberg*, 351 Md. 288, 305-06 (1998). In this case, the Board finds that the Respondent’s misconduct falls within category F.(2) of the Board’s sanctioning guidelines, which is the category for failing to comply with a Board order with additional unprofessional conduct. *See* COMAR 10.65.09.06F.(2). The range of potential sanctions under category F.(2) is a minimum sanction of suspension for three years, without stay for at least 30 days, and probation for three years, and conditions, to a maximum sanction of revocation. *Id.* Here, in consideration of the Respondent’s callous disregard of the 2023 Probationary Order, which was in place to protect the public from the Respondent’s lackadaisical approach to client draping and client dignity, and his disregard for even the most minute of the Board’s requirements, to update his address with the Board, the Board finds that revocation is the only appropriate sanction. It is clear to the Board that the Respondent simply does

not care about his registration, the proper and safe practice of massage therapy, or the authority of the Board over his registration and practice.

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:

- (11) Has violated any provision of this title, specifically HO 6-305(d) (requiring Board licensees and registrants to notify the Board of a change in address within 60 days after the change occurred); and
- (23) Fails to comply with a Board order.

In its discretion, the Board shall dismiss the charge alleging a violation of Md. Code Ann., Health Occ. § 6-308(a)(21) (“Knowingly does an act that has been determined by the Board to be a violation of the Board's regulations,” specifically COMAR 10.65.01.08.B (requiring Board licensees and registrants to notify the Board of a change in address within 60 days after the change occurred) as redundant.

ORDER

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

ORDERED that the charge set forth in the Charges under the Maryland Massage Therapy Practice Act, issued on February 28, 2024, alleging a violation of Md. Code Ann., Health Occ. § 6-308(a)(21) is hereby **DISMISSED**; and it is further

ORDERED that the Respondent’s registration to practice as a Registered Massage Practitioner in the State of Maryland, registration number R01830, is hereby **REVOKED**; and it is further

ORDERED that, pursuant to Md. Code Ann., Health Occ. § 6-308(c)(1), the Respondent shall return his registration within **TEN (10) BUSINESS DAYS** from the effective date of this Order; 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 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.

09/25/2024
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”).