

IN THE MATTER OF * **BEFORE THE**
PABLO MORENO, RMP * **MARYLAND STATE BOARD**
Registration No. R01830 * **OF MASSAGE THERAPY EXAMINERS**
* **Case No. 21-19M**

FINAL DECISION AND ORDER OF PROBATION

Procedural Background

On or about August 27, 2021, the Maryland State Board of Massage Therapy Examiners (the “Board”) received a complaint from a massage facility located in Columbia, Maryland against Pablo Moreno (the “Respondent”), Registered Massage Practitioner, Registration No. R01830. As a result of that submission, the Board initiated an investigation.

Based on that investigation, on or about October 26, 2022, the Board issued a “Notice of Charges” (the “Notice”), 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 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;
- (10) Is professionally incompetent;
- (11) Has violated any provision of this title;
- (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 shall be concerned primarily with the welfare of the client.

- C. A license holder or registration holder shall:
 - ...
 - (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;

- D. A license holder or registration holder may not:
 - (2) Knowingly engage in or condone behavior that:
 - (d) Involves moral turpitude[.]

.04 Relationship with Client.

- A. A license holder or registration holder shall:
 - (1) Use professional judgment in the use of evaluation and treatment procedure[.]

.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 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:
 - (3) Engage in sexual misconduct that includes, but is not limited to:
 - (a) Therapeutic deception;
 - (b) Non bona fide treatment[.]

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 promptly scheduled a hearing for April 26, 2023.

On April 26, 2023, a quorum of the Board was present and an evidentiary hearing was held virtually via Google Meets. Joanna Miller, 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. Complaint form, dated August 27, 2021 (3 pages).
- 3A. Subpoena Duces Tecum to Facility A, for records of Respondent dated August 31, 2021 (1 page).
- 3B. Subpoena Duces Tecum to Facility A, for Respondent's personnel records, dated August 31, 2021(1 page).
- 3C. Response from Facility A (28 pages).
4. Facility A Rapid Response Report, Dated September 7, 2021 (7 pages).
- 5A. Maryland State Board of Massage Examiners-Investigative Interview Transcript for Client DK, dated September 23, 2021 (20 pages).
- 5B. Maryland State Board of Massage Examiners-Investigative Interview Transcript for the Respondent, dated November 9, 2021 (10 pages).
6. Email from Client DK to the manager of Facility A, dated July 30, 2021 (2 pages).
7. Email correspondence between the Board's Investigator and Facility A dated November 29, 2021 (3 pages).
8. Subpoena duces tecum to Facility A for the Respondent's records for Client MK (1 page).
9. Maryland State Board of Massage Therapists Investigative Report, dated February 4, 2022 (4 pages).

10. Maryland State Board of Massage Therapy Examiners- Notice of Charges, dated October 26, 2022 (8 pages).
11. Signed United States Postal Service Green Card (1 page).

State's Witnesses

1. Marc Ware, Board Investigator
2. Client DK

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 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.) The Respondent was employed to provide massage therapy at a facility ("Facility A") in Columbia, Maryland.

2. On or about August 27, 2021, the Board received a complaint from Facility A management. The Complaint contained the following allegations:

[Client DK] contacted [Facility A] on July 30, 2021, and she reported that "Inappropriate touching" occurred during her service on July 25, 2021. [Facility A's] manager, contacted [Client DK] the same day and spoke with her via telephone to get a better understanding of what occurred. [Client DK] recounted that she was made to feel uncomfortable by the [Respondent] and that he had massaged several no touch areas including her abdomen and inner thigh. [Client DK] stated that [Respondent] massaged underneath the draping sheet and had gotten very close to her private areas without touching them. [Client DK] stated that [Respondent] asked several times if where his hands were was okay while she was lying face down, but did not ask while she was lying face up.

(State's Exhibit 2, pg. 4.)

3. The Board initiated an investigation based on the complaint it received regarding the Respondent. As part of that investigation, the Board subpoenaed information from Facility A (State's Exhibits 3A and 3B). Specifically, the documents indicated that on July 25, 2021, Client DK went to Facility A to receive massage therapy. Client DK testified before the Board that she was suffering with sciatica pain. (Transcript ("Tr."), pgs. 43-44.) Client DK further testified that she verbally told Respondent the areas that she wanted him to focus on during the session while she was at the front desk before going into the massage room. (Tr., pg. 11.)

4. Client DK sent an email to Facility A dated August 1, 2021, which stated:

He removed my left leg from under the sheet keeping it tucked underneath my buttocks he's massaging my leg and giving me a foot massage. He then puts my left leg into a teacup position. He then puts his side hand and arm in between the upper part of my left thigh close to my groin area and massage up and around. He then puts both hands underneath the sheet from the left side massaging and caressing my torso area slowly pulling his hands back across the top part of my vagina.

(State's Ex. 6, pg. 74.)

5. As part of its investigation, the Board obtained an incident report prepared by Redirect on behalf of Facility A. (State's Exhibit 4.) In relevant part, the report recounted an interview with Client DK, who stated that:

After [Respondent] massaged her left leg, there were "only a few minutes" remaining in the session when he proceeded to stand near her waist and place one of his hands underneath the drape. She described that [Respondent] then "caressed" her stomach from the "left side to the right side" with the "back of his hand," during which he "grazed" her vagina directly on her skin as he moved his hand back over her "midsection."

(*Id.* at 35).

6. Pursuant to its investigation, on or about September 23, 2021, the Board, through its investigator, interviewed Client DK. (State's Exhibit 5A.) Client DK stated that she was

draped, but that Respondent, during the massage, went under the sheet up the crease of her left thigh and that his hand slightly touched her vagina. (*Id.* at 17.)

7. Client DK's statement to the Board investigator was consistent with the statement that she provided to Redirect as part of Facility A's internal investigation. (State's Exhibit 4 at 35.)

8. During his interview with the Board's investigator, the Respondent denied that Client DK's stomach, inner left thigh or vagina were touched. (State's Ex. 5B, pgs. 10-11.)

9. During the hearing, Client DK testified that, "[the Respondent's] hands came in from the left bottom of my hip. Right where my torso starts [the Respondent] went with two hands. [The Respondent] went in the sheet, over my torso, back, back over again, and back out." (Tr., pg. 60.)

10. The Board finds that Facility A's documents corroborate the Client DK's hearing testimony, specifically an incident report to the Respondent's Facility personnel file written contemporaneously to the incident on July 25, 2021. (State's Exhibit 3C, p. 18.) As a result of the incident, the Facility indefinitely suspended the Respondent's employment. (*Id.* at p. 18.)

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. 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 October 26, 2022. 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.

The question before the Board is whether any of the Respondent's care for Client DK conflicts with the laws and regulations governing massage therapy. The Board is permitted to use its clinical expertise in the evaluation of evidence and to make reasonable inferences based on conflicting evidence in the record. *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 68 (1999). There is no dispute that Client DK specifically requested that attention and care be given to her sciatica. There is a powerful differential between a massage therapist and the client. One is fully clothed, the holder of a state-issued registration, and presumed to be knowledgeable regarding the practice of massage. The other individual is lying on a table; draped with a towel; and, depending on their position at the time, has their vision obscured. The Respondent abused this power differential by touching the anterior upper half of her left medial thigh, nearly touching her vagina and her stomach, under the sheet without her assent. Placing his hand under the draping, which serves to protect the client's privacy, constitutes conduct that falls outside of generally accepted principles in the practice of massage therapy.

There is conflicting evidence in the record, however, as to the extent of the events of the day. For his part, Respondent completely denied that anything untoward occurred in his interview with the Board's investigator. While questioning Client DK on direct examination, Respondent's demeanor was combative.

Based on the evidence before it and based on its expertise, the Board found DK's account of the July 25, 2021 massage to be credible. Her demeanor during her testimony under oath was thoughtful, direct, and calm, even while she was asked to recount a traumatic incident in her life and even while subject to cross-examination by the Respondent himself. Her testimony at the hearing was consistent with the written account of what happened to her that she provided on July 30, 2021. In short, Client DK gave the Board no reason to doubt the veracity of her testimony.

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 not respecting Client DK's dignity, autonomy, and privacy by reaching beneath her draping sheet during the massage. Further, the Respondent's care fell short by not properly allocating his time to respond to the Client DK's specified needs. To be sure, because he misallocated his time massaging other, unwanted and unnecessary areas, the Respondent did not massage Client DK's right leg at all despite her statement that she wanted him to focus on her sciatica. (Tr., pgs. 46 and 44.) A massage therapist must be concerned primarily with the welfare of the client, and it is apparent that the Respondent disregarded Client DK's specific needs and requests.

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). 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 g.(1) of the Board's sanctioning guidelines. *See* COMAR 10.65.09.06G.(1). The range of potential sanctions under category G.(1) is reprimand and conditions to suspension for 1 year, and probation for 1 year, and conditions. *Id.* Here, in consideration that the Respondent cooperated with the Board's investigation and that it is the Respondent's first offense, the Board finds it appropriate to impose a one-year probation on the Respondent's registration to practice massage therapy in the State of Maryland, subject to terms and conditions.

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[.]

In its discretion, the Board shall dismiss the charges alleging violations of Md. Code Ann., Health Occ. § 6-308(a)(9), (10), (11), (20), and (21).

ORDER

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

ORDERED that the charges set forth in the Charges under the Maryland Massage Therapy Practice Act, issued on October 26, 2022, alleging violations of Md. Code Ann., Health Occ. § 6-308(a)(9), (10), (11), (20), and (21) are hereby **DISMISSED**; and it is further

ORDERED that the Respondent's registration to practice as a Registered Massage Practitioner in the State of Maryland shall be placed on **PROBATION** for a minimum of **ONE (1) YEAR**, subject to the following terms and conditions:

1. Within **180 DAYS** of the termination of the effective date of this Order, the Respondent is required to take and successfully complete one (1) Board-approved course in **CLIENT COMMUNICATION**; one (1) Board-approved course in **ETHICS**; and One (1) Board-approved course in **CLIENT DRAPING**. The following terms apply:

- a. It is the Respondent's responsibility to locate, enroll in, and obtain the Board's approval of the courses before the courses begin;
- b. The Board may accept courses taken in person or online;
- c. The Respondent must provide documentation to the Board that the Respondent has successfully completed the courses;
- d. The courses may not be used to fulfill the continuing education credits required for license renewal; and

e. The Respondent is responsible for the costs of the courses.

2. The Respondent shall submit to the Board written quarterly self-reports describing the Respondent's practice, including the Respondent's place of employment with its address.

3. The Respondent shall at times 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.

4. The Respondent shall comply with the Maryland Massage Therapy Act, Md. Code Ann., Health Occ. §§ 6-101 and 6-602, and all laws and regulations governing the practice of massage therapy in Maryland; and it is further

ORDERED that after conclusion of the **ONE YEAR** probationary period imposed by this Order, the Respondent may submit a written petition to the Board requesting termination of probation. After consideration of the petition, the probation may be terminated through an order of the Board. The Board at its discretion may grant termination if the Respondent has fully and satisfactorily complied with all the terms and conditions of the Order, and there are no pending investigations or complaints against the Respondent, and the Board deems termination of probation appropriate. If the Respondent fails to make any such petition, then the probationary period status may continue indefinitely, subject to the conditions set forth in this Order; and it is further

ORDERED that if the Respondent allegedly fails to comply with any of the terms and conditions of this Order, Respondent shall be given notice and opportunity for a hearing. If, in its sole discretion, the Board determines that there is a genuine dispute as to a material fact, the hearing shall be evidentiary hearing before the Board. If there is no genuine dispute as to a material fact, the Respondent shall be given a show cause hearing before the Board; and it is further

ORDERED that, after the appropriate hearing, if the Board determines that the Respondent has failed to comply with any term or condition of probation or this Order, the Board may reprimand the Respondent, place the Respondent on probation with appropriate terms and conditions, or suspend or revoke the Respondent's registration to practice massage therapy in Maryland. The Board may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine upon the Respondent; and it is further


ORDERED that the Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this Order, and it is further

ORDERED that, unless stated otherwise in the order, any time prescribed in this order begins when the Order goes into effect. The Order goes into effect upon the signature of the Board's Executive Director, who signs on behalf of the Board; 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.

06/28/2023
Date



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; Title 7, Chapter 200 of the Maryland Rules, including Md. Rule 7-203 (“Time for Filing Action”).