

IN THE MATTER OF

* BEFORE THE

CHAUN ROGERS,
RMP

* MARYLAND STATE BOARD

Registration No. R02880

* OF MASSAGE THERAPY EXAMINERS

* Case No. 20-16M

FINAL DECISION AND ORDER OF SUSPENSION

Procedural Background

On or about October 27, 2020, the Maryland State Board of Massage Therapy Examiners (the “Board”) received an “Application for Renewal of Registered Massage Practitioner” submitted by Chaun Rogers (the “Respondent”). On that application, the Respondent answered “Yes” to a question regarding his criminal history. As a result of this disclosure, the Board initiated an investigation.

Based on that investigation, on or about September 28, 2021, the Board issued to the Respondent a “Notice of Intent to Revoke Massage Therapy Registration” (the “Notice”), which notified the Respondent that the Board was charging him with several violations of the Maryland Massage Therapy Act, specifically 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;
- (9) Is negligent in the practice of massage therapy;
- (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 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;
 - (6) Practice massage therapy only as defined in the scope of practice set out in Health Occupations Article, §6–101, Annotated Code of Maryland;
 - ...

.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:

...

(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 charges against him. The Respondent subsequently requested a hearing, and the Board promptly scheduled a hearing for January 26, 2022.

On January 26, 2022, a quorum of the Board was present and an evidentiary hearing was held virtually via Google Meets. Nicholas Johansson, 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 – Report of Investigation (4 pages).
2. Maryland State Board of Massage Therapy Examiners – License Verification Information (1 page).
3. Maryland State Board of Massage Therapy Examiners – Online License Renewal form for the Respondent, submitted on October 27, 2020 and accessed October 29, 2020 (4 pages).
4. Subpoena Duces Tecum to Facility A, dated April 29, 2021 (1 page).
5. Facility A Documents
 - a. Client Intake Information for Client SS (1 page).

- b. General Liability Notice of Occurrence/Claim, dated June 17, 2019 (1 page).
 - c. Facility A Incident Report (1 page).
 - d. Client Intake Form, dated June 3, 2019 (2 pages).
 - e. Respondent's Certificate of Insurance (1 page).
 - f. Respondent's Paper License to Practice as a Registered Massage Practitioner (1 page).
 - g. Facility A Code of Ethics Declaration Form, dated May 29, 2018 (1 page).
 - h. Customer Service Surveys (15 pages).
6. Maryland State Board of Massage Therapy Examiners – Investigative Interview Transcript for Client SS, dated May 25, 2021 (11 pages).
 7. Email Correspondence between the Board's Investigator and the Respondent (2 pages).
 8. Maryland State Board of Massage Therapy Examiners – Notice of Intent to Revoke Massage Therapy Registration, dated September 28, 2021 (8 pages).

State's Witnesses

1. Marc Ware, Board Investigator
2. Employee NA, Facility A Employee
3. Client SS

The Respondent's Exhibits¹

1. Facebook Post from Born United, LLC, dated January 1, 2021 (1 page).
2. Cortiva Institute, Baltimore, MD, Certificate of Participation, dated March 3, 2018 (1 page).
3. Letter from the Links, Inc., dated May 11, 2018 (1 page).
4. Baltimore School of Massage, Certificate of Appreciation, dated June 21, 2017 (1 page).
5. Susan G. Komen Maryland, Certificate of Appreciation, dated June 24, 2017 (1 page).
6. Inn at Perry Cabin, Employment Offer, dated June 24, 2019 (1 page).
7. Photograph of an "Order Reversing Judgment," issued by the Circuit Court for Carroll County, Maryland, Case No. C-06-CV-21-000144, dated July 27, 2021 (2 pages).
8. AT&T Back on My Feet, Certificate of Participation, dated August 4, 2017 (1 page).

¹ The Respondent attempted to introduce the State's Case Resolution Conference Memorandum as evidence. The State objected to that document's admission because it was a document prepared in advancement of settlement. (Tr., p. 15.) The Board sustained the State's objection and ruled the Memorandum inadmissible. (Tr., p. 16.)

9. Letter from Back on My Feet Baltimore, dated August 6, 2017 (1 page).
10. Photograph of an "Order for Expungement of Records," issued by the Circuit Court for Carroll County, Case No. C-06-CV-21-000114, dated August 10, 2021 (1 page).
11. United States Department of Justice Manual, Chapter 9-63.000 – Protection of Public Order, Table of Contents (1 page).
12. Photograph of Form 4-508.2 – Expungement Certificate of Compliance, filed in the Circuit Court of Carroll County, Case No. C-06-CV-21-000114, dated October 7, 2021 (1 page).
13. Photograph of Form 4-508.2 – Expungement Certificate of Compliance, filed in the Circuit Court of Carroll County, Case No. C-06-CV-21-000114, dated October 20, 2021 (1 page).
14. Health Care for the Homeless, Certificate of Participation, dated November 4, 2017 (1 page).
15. Letter of Reference from Health Care for the Homeless, dated November 10, 2017 (1 page).
16. Facebook Post from Born United, LLC, dated December 6, 2020 (1 page).
17. Marian House, Inc., Certification of Appreciation, dated September 23, 2017 (1 page).
18. Graduate Spotlight, undated (1 page).
19. Screenshot, "A Bit About Chaun Rogers" (1 page).
20. American Massage Therapy Association, Certificate of Insurance (2 pages).
21. Photograph of Form 4-508.1 – Order for Expungement of Records, filed by the Circuit Court of Anne Arundel County, Case No. C-02-CV-21-000850, date illegible (1 page).
22. Photograph of Cortiva Baltimore Spotlight Bulletin Board (1 page).
23. Evaluation of Student Practitioner by Person PJ, date illegible (1 page).
24. Evaluation of Student Practitioner by Person SD, date illegible (1 page).
25. Evaluation of Student Practitioner by Person SP, date illegible (1 page).
26. Evaluation of Student Practitioner by Person JM, dated February 3, 2018 (2 pages).

27. Portion of a Letter from the Four Seasons Hotel Baltimore, dated June 6, 2018 (1 page).
28. Photograph of a Graduate Spotlight (1 page).
29. Maryland State Board of Massage Therapy Examiners, In the Matter of Timothy J. Snyder, Final Order of Revocation of Massage Therapy Registration, dated February 27, 2019 (6 pages).
30. Maryland Code Annotated, Health Occupations Article, § 6-302 (2 pages).
31. Portion of a Letter from Robert Andrew Salon and Spa, undated (1 page).
32. Code of Maryland Regulations, 10.65.09.05 (2 pages).
33. Letter from the Susan G. Komen Foundation – Maryland Affiliate, undated (1 page).
34. Screenshots from Thumbtack.com (2 pages).

The Respondent's Witnesses

The Respondent, Chaun Rogers, 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 R02880. (State’s Exhibit 2.)
2. On or about October 27, 2020, the Respondent submitted an application to renew his RMP registration. (State’s Exhibit 3.) On that application, the Respondent was asked, “Have you been arrested or pled guilty, nolo contendere, no contest, or been convicted or Received Probation [*sic*] before judgment of any criminal act, including DWI or DUI of alcohol or controlled substances?” (*Id.* at p. 8.) To that question, the Respondent answered “Yes” and provided a narrative:

On 06/09/2019, while working as a massage therapist at [Facility A] in Annapolis, I was charged with second degree assault and fourth degree sexual assault by a client

who felt uncomfortable with the service that I provide. Upon taking the matter to court on 12/03/2019, the prosecuting attorney along with the judge agreed to dismiss the charge of fourth degree sexual assault based on the information and claims provided by the plaintiff. I was, however, given probation before judgment on the charge of second degree assault due to the nature of the claims made by the plaintiff. The probation before judgment was enacted on 12/04/2019 for a period of twelve months to end on 12/04/2020. There have been no other incidents prior to or after this isolated incident. I have met all court-ordered terms and conditions of my probation without any violations whatsoever. The case number in this matter is D07CR19004334.

(*Id.*) Based the Respondent's "Yes" response and the accompanying narrative response, the Board initiated an investigation.

3. As part of that investigation, the Board subpoenaed information from Facility A. (State's Exhibit 4.) Specifically, the documents indicated that on June 3, 2019 Client SS went to Facility A to receive massage therapy. On the Client Intake Form, Client SS indicated that she wanted the therapy to focus on her "upper back & neck, behind ears, shoulders, hands." (*Id.* at pp. 0014-0015.) Client SS testified before the Board that she "was having some back and neck pain and just thought that [massage therapy] would be a good way to kind of resolve it and relieve some of the issues." (Transcript ("Tr."), p. 66.)

4. Client SS testified that, after completing the Client Intake Form, she was led to the massage room, and the Respondent was her assigned massage therapist. (Tr., p. 67.) According to Client SS, she reiterated to the Respondent that she wanted him to focus on her neck and back. (Tr., p. 68.) Client SS testified that the massage began "totally normal, par for the course," but "about halfway through" the massage, the Respondent asked Client SS to turn over onto her back. (Tr., p. 69.) Although Client SS testified that she was completely draped (Tr., p. 69), Client SS explained:

[The Respondent] was massaging my thigh and then he proceeded to go under the draping -- under the blanket -- and moved his hands closer to my vagina – closer to the crotch area.

He then moved his hands back out and massaging my thigh, and then after – you know, a few seconds or a few moments he went back under the draping, moved his hands under the blanket and proceeded to touch me again, and this happened several times.

You know, each time the interaction with my crotch and my private area became more intense, more aggressive sort of, like, rubbing me a little bit, and then the last time that he touched me I felt, like, pressure as if, like, he might penetrate with his fingers, but he was, like, rubbing and I guess trying to, like, stimulate me in some way.

(Tr., p. 70.) Client SS affirmatively stated in her testimony that the Respondent touched her vulva and that she could “feel him touching [her] labia and rubbing around that area very explicitly on [her] outer vagina.” (Tr., pp 70-71.) After repeated touching in this area, Client SS testified that she asked the Respondent to move to a different part of her body. (Tr., p. 71.) The Respondent acknowledged this request and began massaging her shoulders. (Tr., pp. 71-72.) Client SS testified that, after a period of several minutes once she had an opportunity to collect her thoughts, she told the Respondent, “You just sexually assaulted me.” (Tr., p. 72.) Client SS further told the Respondent to leave the room. (Tr., p. 73.)

5. Client SS reported the incident to Facility A staff. (Tr., p. 73.) Indeed, included among the documents received from Facility A was an “Incident Report” that indicated that on June 3, 2019 at 4:00pm, “Guest [Client SS] said that [the Respondent] massaged her inner thigh and proceeded to touch and fondle her vagina for a few seconds.” (*Id.* at p. 0013.) The Incident Report also stated that “[Client SS] was upset [and] left the spa with no charge to her. [The Respondent] was terminated immediately. [Client SS] called 911 to file [an] incident report.” (*Id.*)

6. In her testimony, Client SS affirmed under oath before the Board that during her interview with the Board investigator she stated that the Respondent touched her vagina “multiple, multiple, multiple times.” (Tr., p. 101; State’s Exhibit 6, p. 3.) She further affirmed under oath before Board that she told the Board investigator that the Respondent’s “fingers were on my labia, as if he was trying to rub, I guess to, you know, insight [*sic*] like some sexual energy on my end.” (*Id.*) Moreover, the Administrative Prosecutor asked Client SS if she believed that Respondent’s actions during her massage were an accident. (Tr., p. 101.) Client SS responded, “I think for a massage therapist to go under the blanket, under the drapery, speaks to itself. I don’t think that’s appropriate in any instance, least of all in this instance where he was touching my vagina.” (Tr., p. 102.)

7. Employee NA, who at the time of the incident was Facility A’s regional operations manager (Tr., p. 34), stated that she was present at Facility A on June 3, 2019. (Tr., p. 38.) She testified that:

So [the Respondent] about halfway through [Client SS’s] service or a little more than half way had come out of the room, and he came to the front and poked his head out of the door and asked to speak to me.

So I went into the back into a free room -- that was not occupied -- with him. He informed me that [Client SS] was visibly upset and that **she elected to end the service because he had accidentally massaged too close when he was massaging her upper thigh and brush her vaginal area.**

(Tr., p. 39. (Emphasis added.)) In her testimony, Employee NA characterized Client SS as “visibly upset” and as “crying and sobbing.” (Tr., pp. 39, 41).

8. Facility A conducted its own internal investigation. Employee NA testified, “We went through and reviewed any past reviews that [the Respondent] had ... as well as sent out a randomized survey to clients that had seen [the Respondent] recently.” (Tr., p. 43.) Specifically,

Employee NA stated that the survey was to discern “if there had ever been anything that made them feel uncomfortable during a service, etcetera.” (*Id.*) The surveys did not ask about the Respondent specifically, however one survey specifically named the Respondent and indicated:

I didn't get what I wanted from the time [the Respondent] introduced himself to me. [The Respondent] wasn't ready for me in the room, the bed wasn't warmed up, the music wasn't on, etc. This was my second time at [Facility A], so I was comparing it to my first time there with Ed (extremely professional), and every other massage I've ever had. Unlike Ed, [the Respondent] never asked me if touching me certain places was okay. Within minutes [the Respondent] was on my glutes². [The Respondent] tucked the blanket into my underwear and that made me want to run the second it happened. I thought [the Respondent] raised the blankets too high every time he adjusted and I felt exposed. I couldn't relax for a minute and I wish I would have gotten up. I wouldn't have been able to relax anyways, because it was like getting a backrub, not a massage. It just felt like he was rubbing my body. He also rubbed my ears and face, which was extremely off putting.

(State Exhibit 5, p. 0027.) The author of the survey also indicated that she would not refer the Respondent to a friend, stating: “I felt exposed, touched inappropriately, and anxious the entire time.” (*Id.* at p. 0028.)

9. The Respondent testified on his own behalf. (Tr., pp. 104-166.) The Respondent acknowledged that Client SS instructed him to focus on her neck and her back, (Tr., p. 124), and that Client SS's massage began with her face down and that at some point the Respondent asked her to turn over on to her back. (Tr., p. 126.) According to the Respondent's testimony after Client SS turned onto her back, the Respondent massaged her arms and her legs. (Tr., p. 126.)

The Respondent further stated:

Everything was fine -- you know. So again -- you know, everything was going fine. She's kind of, like, relaxed now and everything like that, and then again when I get to her calf muscle, massaging her calf, moving up -- you know, again she's properly draped. I made sure she's comfortable. I get to -- you know, working on her thigh -- you know, the outer part of her thigh, the core muscle, and then I get to the middle

²“Glutes” is a shortened and informal expression for the gluteal muscles located in and around the hips and buttocks.

part because -- you know, core has different sections so again properly draped -- you know.

When I get to, like -- you know, the inner portion of the thigh along the border where she's bordered at -- you know, she does, like, a knee jerk reaction, like, kicking her leg up, and so I asked [Client SS] is this an area that you'd like me to focus on, and she said yes, please.

So literally as I begin to massage the inner portion of her leg, less than ten seconds, she's asking me can you please stop. Again at this point I'm very confused because I'm, like -- again I'm confused. I literally just asked this woman would you like me to massage this area, and -- you know, she says no, I'd like you to just -- you know, to move on to my neck and shoulders, right, and so -- okay, so would you like me to just -- you know, to reiterate -- would you like me to just -- you know, focus on your neck and shoulders, and she said yeah, so I just redraped -- again I'm confused because, like, I just asked this woman -- you know, would you like me to focus on this area, and she was, like, yeah.

(Tr., pp. 127-128.) The Respondent stated that he asked Client SS if she would rather him focus on her neck and shoulders to which Client SS said yes. (Tr., pp. 128-129.) The Respondent testified that he complied with Client SS's directive, but that shortly thereafter she stated to him: "I think I just want to end the service because you touched me inappropriately." The Respondent testified that, at that point, he did not want to make Client SS "feel uncomfortable," so he exited the massage room to get a manager. (Tr., p. 130.)

10. Under cross-examination, the Respondent denied that he told Employee NA that he accidentally touched Client SS's vagina. (Tr., p. 151.) According to the Respondent, rather than saying "vagina," he told Employee NA that "I don't know if this woman [Client SS] think that I accidentally might have got too close to her crotch." (Tr., p. 152.)

11. Under Board examination, the Respondent denied the possibility, even if unintentional, that Client SS's groin was touched, stating:

No because -- the reason I say that because again even she stated that she was properly draped, so if you're properly draped that means that in order for you to feel this type of sensation the drape has to be at some point not properly draped. She

stated that again I allegedly went under the blankets or whatever. That means that she was not properly draped at some point in time which contradicts her statement of being properly draped. The point of being draped is to be properly bordered so that these incidents won't happen -- to let you know where to stop.

(Tr., pp. 166-167.) Similarly, another board member and the Respondent had the following exchange:

[Board Member]: ... [M]y question was did you inappropriately touch [Client SS], and my followup is that she's testified more than once that you touched her on the labia and vulva. If your testimony is that that did not happen is there anything that happened during the massage that you feel like would elicit that response from her?

[The Respondent]: Again the key factor that everybody is leaving out or missing is again this woman herself voluntarily -- nobody asked her to make this revelation, right. She self-testified after the service that she was a victim of sexual assault. Did she say that prior to me asking her prior to today? No. Why is that key vital information left out, and the reason I bring it up is because again PTSD triggers and trauma all plays into incidents exactly like this. That's why I said no, absolutely nothing happened. What I believe happened is that this woman was triggered by my touch. That's my personal belief and that's what I will argue to the end.

(Tr., p. 167.)

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 provided the underlying authority for, and the necessary legal elements of, the issuance of the Board's "Notice of Intent to Revoke Massage Therapy Registration" on September 28, 2021. Indeed, while the Respondent in this case was charged with five separate violations, 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.

As a threshold matter, this case came before the Board through the Respondent's self-disclosure of his criminal history on his renewal application. As a routine part of its mandate to

protect the public, the Board investigates all applicant and licensee disclosures of criminal history. During the Board investigation in this case, the Board did seek and did receive court documents related to the June 3, 2019 incident described in this Order. Those court documents have subsequently been expunged. In light of those records being expunged, the Board did not consider any of those documents in its deliberations. Instead, the Board relied solely on its independent investigation of the June 3, 2019 incident and the testimony given before the Board during its hearing.

The question before the Board is whether the Respondent inappropriately touched Client SS on June 3, 2019 during the massage he provided to her. The Board is permitted to use its clinical expertise in the evaluation of the 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 SS specifically requested that attention and care be given to her upper body, specifically her upper back, neck, ears, shoulders, and hands. In this scenario, it would have been prudent for the Respondent to have asked at the onset of the massage for clarification as to whether it would be appropriate to massage her lower body as well. At a minimum, given her specific directions both orally to the Respondent and in her Client Intake Form, the Respondent in this particular case should have asked Client SS whether it would be appropriate to massage her lower body before he started massaging those areas. Based on the Respondent's own testimony, he did not ask Client SS until after he began touching her lower body. To be sure, the Respondent proceeded to massage her calves and, when she did not object, he proceeded to massage her outer and inner thighs – only stopping momentarily when Client SS jerked her leg in response. It is axiomatic to say that silence is not assent, but any assumption on the Respondent's part that Client SS's initial silence as he massaged her lower

body, particularly her inner thighs, is fundamentally flawed and grossly inappropriate. There is a power 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 only with a towel; and, depending on their position at the time, has their vision obscured. The Respondent abused this power differential by proceeding to Client SS's lower body without her assent. This alone 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 that day. According to the State's evidence, specifically Client SS's testimony, the Respondent touched Client SS's vulva and labia. (Tr., pp 70-71.) Client SS stated that with the pressure he applied in his touch it felt as if the Respondent was attempting to "stimulate" her "in some way." (Tr., p. 70.) For his part, the Respondent completely denied that anything untoward occurred, expressly testifying that even an accidental touching of Client SS's groin area did not occur. (Tr., pp. 165-166.) The Respondent's lack of self-reflection regarding the events in question undercut the Board's ability to find him credible. Particularly, when offered the opportunity to concede, in light of Client SS's testimony, that perhaps he inadvertently touched Client SS's groin area as he was conducting an otherwise routine massage, he refused. In refusing to concede to even an inadvertent touching of Client SS's groin area, however, the Respondent contradicted his own testimony and that of Employee NA. Specifically, Employee NA testified before the Board that the Respondent told her that he had "accidentally massaged too close when he was massaging her upper thigh and brush[ed] her vaginal area." (Tr., p. 39.) The Respondent, in his testimony, disputed Employee NA's account, stating that he used the word

“crotch” instead of “vagina.” (Tr., p. 152.) This manner of parsing and semantics only served to undermine the Respondent’s credibility with the Board.

On cross-examination, the Respondent’s demeanor was combative and, at times, evasive to the Administrative Prosecutor’s reasonable line of questioning. In addition, the Respondent’s credibility was damaged by evidence in the record indicating that the incident with Client SS may not have been isolated. As noted above, shortly after the incident with Client SS, Facility A sent out random surveys to clients that had seen the Respondent in recent months. One of those surveys returned comments that closely mirrored Client SS’s experience. Specifically, that client indicated that she felt uncomfortable with the Respondent’s massage of her due to inappropriate touching, which that particular client characterized as “extremely off-putting.” (State Exhibit 5, p. 0027.)

Another aspect of the Respondent’s testimony that diminished his credibility before the Board were his repeated suggestions that a main reason for Client SS to have felt uncomfortable during his massage of her was due to her suffering post-traumatic stress syndrome (“PTSD”) from previous sexual assault. (Tr., pp. 119-120; 137; 158; 167.) First, there is nothing in the record to suggest that Client SS suffers or suffered from PTSD or that she had been sexually assaulted prior to June 3, 2019.³ Second, Client SS testified that she has received massages “many times” and that “every single time it’s been a completely professional and a great experience and very relaxing, nothing other than a positive experience.” (Tr., pp. 65-66.) Thus,

³ There is an exchange between Client SS and the Respondent while Client SS was under cross-examination where the Respondent asks, “Do you recall making any statements that you had been previously sexually assaulted on prior --” (Tr., p. 92.) Client SS interrupted his question to respond in the affirmative, however the Board believes, in the context of the questioning, Client SS more likely than not meant that she did report the Respondent’s sexual assault of her to Facility A staff.

Client SS was not unaccustomed to receiving massage therapy, saw its benefits when properly done, and apparently did not find massages to be a “triggering” event. Even if Client SS did suffer from PTSD, to the Board’s knowledge, the Respondent is not a licensed mental health professional qualified to discern how a person’s PTSD might manifest itself at any given time. Again, these statements damaged the Respondent’s credibility before the Board.

Based on the evidence before it and based on its expertise, the Board found Client SS’s account of the June 3, 2019 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 she was subject to cross-examination by the Respondent himself. Her testimony at the hearing was consistent with the testimony she gave to the Board’s investigator during the investigative interview approximately eight months before. In short, Client SS 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 inappropriately touching Client SS’s upper inner thigh area on June 3, 2019. 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.(3)(b), by engaging in a non bona fide treatment of Client SS on June 3, 2019 when he began to touch Client SS’s upper inner thigh area. 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 the Respondent to have massaged Client SS’s upper inner thigh area. Further, it was unreasonable for the Respondent to have even focused on that area given that Client SS specifically indicated that she wanted the massage to focus on her upper body. 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 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.* Here, in consideration that the Respondent self-disclosed the conduct in question and cooperated with the Board’s investigation, the Board finds it appropriate to impose the minimum 2-year suspension on the Respondent’s registration to practice massage therapy in the State of Maryland. After the expiration of the 2-year suspension, the Respondent’s registration to practice as a massage therapist shall be placed on probation for a minimum of 2 years.

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.(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 violations of Md. Code Ann., Health Occ. § 6-308(a)(9), (11), 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 “Notice of Intent to Revoke,” issued on September 28, 2021 alleging violations of Md. Code Ann., Health Occ. § 6-308(a)(9), (11), and (21) are hereby **DISMISSED**; and it is further

ORDERED that the registration of the Respondent to practice massage therapy in the State of Maryland, is hereby **SUSPENDED FOR TWO (2) YEARS** from the effective date of this Final Decision and Order of Suspension; and it is further

ORDERED that, after 2 years from the effective date of this Final Decision and Order, the Respondent’s suspension shall be **TERMINATED** by operation of this Order and the Respondent’s registration shall be placed on **PROBATION** for a minimum of **TWO (2) YEARS**, subject to the following terms and conditions:

1. Within **180 DAYS** of the termination of the Respondent’s suspension, the Respondent is required to take and successfully complete two (2) Board-

approved courses in **Client Communications**, and two (2) Board-approved courses in **Ethics and Preventing Sexual Misconduct**. 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 all 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 – 6-602, and all laws and regulations governing the practice of massage therapy in Maryland; and it is further

ORDERED that after the conclusion of the **TWO (2) 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, the Respondent shall be given notice and an 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 an 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 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.

3/24/2022
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").