

IN THE MATTER OF

James Clark, LMT

Respondent.

Case No.: 07-34M

*** BEFORE THE MARYLAND
* STATE BOARD OF CHIROPRACTIC
* AND MASSAGE THERAPY
* EXAMINERS**

* * * * *

ORDER

I. Introduction

On January 25, 2002, the Maryland Board of Chiropractic and Massage Therapy Examiners ("Board") initially issued James Clark a license to practice massage therapy in Maryland. On May 31, 2007, Patient A¹ filed a complaint with the Board about Mr. Clark. The complaint alleged that Mr. Clark had practiced massage therapy without a license and received thousands of dollars of gifts and loans from Patient A. The Board followed up on the complaint with an investigation. At the conclusion of the investigation, the Board issued charges against Mr. Clark on December 22, 2008.

The hearing on this matter was held on July 9, 2009. Mr. Clark attended the hearing, but was not represented by counsel. The state introduced exhibits 1A – 4, without objection. Patient A, Christopher Kelter, Deputy Director of the Maryland Board of Chiropractic and Massage Therapy Examiners, and Teresa Thornton, Investigator for the Maryland Board of Chiropractic and Massage Therapy Examiners all testified on behalf of the state. Mr. Clark testified on his own behalf, but did not introduce any exhibits.

The hearing was conducted in accordance with the APA, the Board's practice act and regulations. A full quorum of the Board was present during the entire hearing and

¹Patient names are confidential.

deliberations. The Board unanimously agreed to the findings of fact and conclusions of law in this order.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Mr. Clark was first licensed to practice massage on January 25, 2002. Mr. Clark's current license expires on October 31, 2010.
2. At all times relevant herein, Mr. Clark either practiced under the name of "A Massage Therapist In Motion, Inc." or "A Massage Therapist in Motion II, LLC" at several different locations in Maryland.
3. Prior to the 2004 renewal period, on July 21, 2004, the Board notified Mr. Clark that his license would not be renewed because he had been identified by the Comptroller's Office of the State of Maryland as having delinquent taxes or unemployment insurance contributions. Mr. Clark was advised that his license could not be renewed until the Comptroller's Office verified that he had resolved the tax issue.
4. Mr. Clark was advised that he could not practice massage therapy after the certificate expired on October 31, 2004. Consequently, on November 1, 2004, Mr. Clark's license was placed on a non-renewed status.
5. On or about September 9, 2005, Mr. Clark provided satisfactory documentation from the Comptroller's Office verifying that the lien had been satisfied. Subsequently, Mr. Clark's fees were paid and his license was reinstated. Despite being warned not to practice while his license was non-renewed, Mr. Clark continued to practice massage therapy without a license for almost one year.
6. By a complaint form dated May 31, 2007, Patient A made the following

grievance:

- A. Patient A was a patient of Mr. Clark from December 3, 2004 to May 29, 2006;
- B. Patient A stated that on July 13, 2005, she loaned Mr. Clark \$5000 and on August 1, 2005, she loaned Mr. Clark \$25,000;
- C. Patient A stated that, at the time, Mr. Clark presented himself as a currently certified massage therapist “with a current license to not only receive business loans, but to operate his office at the time (M Massage therapist in Motion II, 9811 Mallard Drive, Suite 220, Laurel, MD 20708);
- D. Patient A further stated that Mr. Clark renewed his license after informing her in late August 2005 that he received an anonymous fax of letter addressed to the Massage Therapy Board saying he was operating without his license at his former place of business and that he had not renewed his license due to “excessive” income taxes he had to pay first. His license had expired in October 2004;
- E. Patient A further stated that Mr. Clark misrepresented himself to her as a currently licensed massage therapist from 12/3/04 until he renewed in 2005 after he signed for and accepted two business loans from her.

7. The Board’s investigation revealed that Mr. Clark did not properly

document his treatment of Patient A. Instead, Mr. Clark manufactured fake SOAP notes and gave them to the Board's investigator in response to the Board's subpoena requesting his treatment records for Patient A. Mr. Clark told the Board's investigator that the records that he produced were an accurate reflection of his treatment of Patient A. Mr. Clark's records and statements were not accurate.

8. Mr. Clark admitted that the allegations in Patient's A complaint were true. Mr. Clark admitted that he had never repaid Patient A the money she had loaned him. Mr. Clark admitted that he and Patient A had an intimate relationship beyond that of therapist and patient. Mr. Clark exploited his therapeutic relationship with Patient A.

III. CONCLUSIONS OF LAW

The Board charged and found Mr. Clark to be in violation of the following provisions of § 3-5A-09(a):

- (2) Fraudulently or deceptively uses a certificate or registration;
- (8) Does an act that is inconsistent with generally accepted professional standards in the practice of massage therapy;
- (11) Has violated any provision of this subtitle;
- (20) Engages in conduct that violates the professional code of ethics; or
- (21) Knowingly does an act that has been determined by the Board to be a violation of the Board's regulations.

The Board further charged and found Mr. Clark to be in violation of §3-5A-04:

Except as otherwise provided in this subtitle, an individual shall be:

- (1) Licensed by the Board before the individual may practice massage therapy in this State [;].

Finally, the Board charged and found Mr. Clark to be in violation of its Code of Ethics, COMAR 10.43.18.:

.03 Standards of Practice.

A. The certificate holder² or registration holder shall be concerned primarily with the welfare of the client.

C. A certificate 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;

- (3) Remain free from conflict of interest while fulfilling the objectives and maintaining the integrity of the massage therapy profession;

- (4) Provide accurate fee information to the client, the individual responsible for payment for treatment, and the insurer;

D. A certificate holder or registration holder may not:

- (1) Misrepresent professional credentials, qualifications, education, or affiliations;

- (2) Knowingly engage in or condone behavior that:

- (a) Is fraudulent,

- (b) Is dishonest,

- (c) Is deceitful [;].

²Certified Massage Therapists became Licensed Massage Therapists, effective 10/1/08, but the regulations still apply to those who were formerly certified but are now licensed.

.04 Relationship with Client.

A. A certificate holder or registration holder shall:

(3) Terminate a professional relationship with a client in an appropriate manner, such as:

(b) Assisting the client by providing referrals, if appropriate.

(4) Maintain legible, organized written records of treatment of any client under the care of the certificate holder or registration holder for at least 5 years after termination of treatment and as provided by applicable provisions of Health-General Article, Title 4, Subtitle 3, Annotated Code of Maryland;

(5) Make the written records available to the client upon request, in compliance with applicable laws for disclosure of medical records;

B. A certificate holder or registration holder may not:

(4) Exploit the professional relationship by:

(b) Charging for a service:

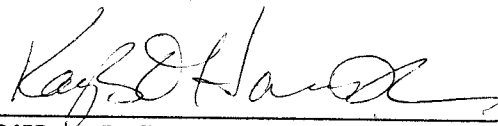
(i) Not provided, or

(ii) Different from those actually provided.

The Board finds that Mr. Clark's actions violated all these provisions of its practice act. Mr. Clark exploited his therapeutic relationship with Patient A for his own benefit. Mr. Clark received over \$30,000.00 from the Patient A. Mr. Clark's relationship with Patient A violated several provisions of the Board's practice act and code of ethics. Mr. Clark did not cooperate with the Board's investigation. Instead, Mr. Clark attempted thwart the Board's investigation by making false statements to its investigator and providing phony medical records. Additionally, Mr. Clark practiced without a license for nearly one year.

IV. ORDER

On this 10th day of September, 2009, the Board orders that Mr. Clark's license to practice massage therapy is revoked. Accordingly, the Board will not allow Mr. Clark to reapply for licensure for a period of five years from the date of this order. Mr. Clark is ordered to pay all costs associated with his hearing, in the amount of: Nine-Hundred Sixty-Six & 00/100 dollars (\$966.00), and may not be considered for licensure unless/until he has paid said costs.



Kay O'Hara, D.C.
President Maryland State Board of Chiropractic and
Massage Therapy Examiners