

IN THE MATTER OF	*	BEFORE THE MARYLAND STATE
ROBERT W. PUMPHREY, L.M.T.	*	BOARD OF CHIROPRACTIC AND
Respondent	*	MASSAGE THERAPY EXAMINERS
License Number: M01817	*	Case Number: 14-28C
* * * * *	*	* * * * *

FINAL ORDER OF REVOCATION OF LICENSE TO PRACTICE MASSAGE THERAPY

PROCEDURAL BACKGROUND

On or about August 26, 2014, the Maryland State Board of Chiropractic and Massage Therapy Examiners (the "Board") notified Robert W. Pumphrey (the "Respondent"), License Number M01817, that he was being charged with violations of certain provisions of the Maryland Chiropractic Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") §§ 3-101 *et seq.* (2009 Repl. Vol.). Specifically, the Board charged the Respondent with violating the following provisions of the Act under Health Occ. § 3-5A-11:

§3-5A-11. Denials; suspensions; revocations.

- (a) Denial of license or registration.—Subject to the hearing provisions of §3-315 of this title, the Board may deny a license or registration to any applicant, reprimand any licensee or registration holder, place any licensee or registration holder on probation, or suspend or revoke the license of a licensee or the registration of a registration holder if the applicant, licensee, or registration holder:
 - (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.

The Board also charged the Respondent with violation of the Board's Code of Ethics, found at Md. Code Regs. ("COMAR") 10.43.18.01 *et seq.* Specifically, the Board charged the Respondent with violating the following COMAR provisions:

10.43.18.03 Standards of Practice.

- 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; [and]
 - (6) Practice massage therapy or non-therapeutic massage only as defined in the scope of practice set out in *Health Occupations Article, § 3-5A-01*, Annotated Code of Maryland.

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

10.43.18.04 Relationship with Client.

- A. A license holder or registration holder shall:
 - (4) Maintain legible, organized written records of treatment of any client under the care of the license 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.

10.43.18.05 Professional Boundaries.

- A. A license holder or registration holder shall:
 - (2) Respect and maintain professional boundaries and respect the client's reasonable expectation of professional conduct.

- B. A license holder or registration holder may not:
 - (2) Engage in a sexually intimate act with a client; [and]
 - (3) Engage in sexual misconduct that includes, but is not limited to:
 - (b) Non bona fide treatment; [and]
 - (c) A sexually exploitative relationship.

On January 8, 2015, a hearing on the merits was held before the Board in accordance with the Administrative Procedure Act, Md. Code Ann., State Gov't §10-201 *et seq.* The

following Board members were present, which constituted a quorum: Michael Fedorczyk, D.C., Board President; David Cox, L.M.T., Board Vice-President; Karen Biagiotti, L.M.T., Board Secretary/Treasurer; Stephanie Chaney, D.C., Former Board President, Michael Moskowitz, D.C.; Robert Frieman, D.C.; Gregory Lewis, D.C.; Gwenda Harrison, L.M.T.; Ernestine Jones Jolivet, Consumer Member; Gloria Boddie-Epps, Consumer Member. Also present were the following individuals: Christopher B. Anderson, Esq., Administrative Prosecutor; K. F. Michael Kao, Assistant Attorney General, Administrative Prosecutor; Grant D. Gerber, Assistant Attorney General, Board Counsel; and Michelle Verdis, J.D., Compliance Manager. The Respondent, Robert W. Pumphrey, L.M.T., was present without counsel and represented himself throughout all portions of the hearing.

SUMMARY OF THE EVIDENCE

The following exhibits were entered into evidence upon stipulation from both parties:

State's Exhibits:

EXHIBIT NO.

1	Report of Investigation
2	Respondent's Reinstatement Application
3	Md. Judiciary Case Search Records
4	Application for Criminal Charges
5	Massage Records for Client A
6	Interview with Client A
7	Text Messages
8	First and Second Interview with Respondent
9	Written Complaints of Client A and B to Fitness Club
10	Massage Records for Client B
11	Interview with Client B

12	Police Records
13	Respondent's Board Information Page
14	Typed Statement of Client A
15	Respondent's Professional Webpage

Respondent's Exhibits:

EXHIBIT NO.

1	Email messages w/ Fitness Club Personnel, August 2011
2	Email to Fitness Club Personnel, April 2011
3	Email to Fitness Club Personnel, June 2012
4	Text messages from Groupon client, November 2014
5	Groupon reviews for Respondent
7	LivingSocial reviews for Respondent
8	Google reviews for Respondent
9	Yelp reviews for Respondent
10	Baltimore School of Massage Course Syllabus, Intermediate Massage Course

SUMMARY OF TESTIMONY AND ARGUMENTS

Client A¹ was called to testify on behalf of the State. Client A testified to the following under oath. Client A testified that she had approximately forty (40) professional massages prior to receiving a massage from the Respondent, with several of those massages being performed by men. Client A testified that she has not filed a complaint regarding any other massage therapist. Client A arranged her first massage with the Respondent in August of 2011. She

¹ To ensure confidentiality, the names of individuals, patients, clients and facilities involved in this case, other than the Respondent's, are not disclosed in this document.

made this appointment after purchasing a Groupon deal from his massage studio, Haptic Bodywork. Haptic Bodywork is physically located inside of a fitness club in Essex, Maryland.

Client A described the first massage she received from the Respondent. She identified State's Exhibit 5 as the form that she completed and signed before her first massage with the Respondent. Client A testified as to the location and physical description of the Respondent's massage studio. Client A testified that her first massage performed by the Respondent was a normal massage. After the massage, Client A received a card from the Respondent thanking her for her business and offering a special for her next massage.

Client A testified that she texted the Respondent to accept the special offer and scheduled a massage for August 16, 2011 at approximately 7:30pm. Client A testified that the massage performed by the Respondent on August 16, 2011 began normally, with her face-down on the massage table. At one point during the massage, the Respondent was working on her inner thighs and Client A felt the Respondent briefly touch her underwear. This contact made Client A uncomfortable. Client A testified that further into the massage, she felt the Respondent "cupping" her vagina with his hand, which also made her very uncomfortable. At this point, Client A did not say anything to the Respondent because of the brevity of the contact and because the Respondent would quickly return to what felt like a normal massage. Client A testified that as the massage continued, she felt the Respondent touch the sides of her breasts as he smoothed the sides of her body, again making her uncomfortable. Client A testified that she then felt like the Respondent was taking two fingers and pressing on top of her underwear on her vagina. Again, this made Client A uncomfortable but the contact was so brief that she was not able to respond. Client A testified that at one point, she felt the Respondent place his finger in her vagina, after which the Respondent immediately asked what he was doing. Client A testified that the Respondent acted surprised and said "Oh, you didn't want me to do that?" Client A testified that she responded "No." Afterward this interaction, the Respondent started to massage Client A's chest area, at which time he altered the draping to expose Client A's

breasts and began pressing the area around her nipples. Client A testified that this made her very uncomfortable because she was alone with the Respondent with a locked door. Client A then asked the Respondent to work on her neck instead. Respondent complied and began massaging Client A's neck.

Client A testified that when the massage ended, the Respondent left the room and Client A dressed herself quickly. Client A paid in cash, including a tip. When handed the money, the Respondent indicated to Client A that there was no charge. Client A testified that she insisted on paying him, due to the fact that she wanted to pretend that everything was normal. According to Client A, the Respondent replied "I've never done that before," to which Client A responded that it was "extremely inappropriate." As Client A was leaving, the Respondent asked her if she had a "hot date." Client A responded, "No," and walked out of the massage area to her car. Once Client A reached her car, she texted the Respondent and warned him not to do that to anyone else. The Respondent texted back asking if he could call Client A. Client A responded that he should only text her. Client A later testified during cross examination by the Respondent that she told the Respondent not to call her and only to text because she wanted a written record of the conversation. After the text conversation with the Respondent and telling a friend what had happened during the massage, Client A reported the incident later that night to the Baltimore County Police Department in Essex, Maryland. Client A testified that when the criminal case against the Respondent was prosecuted, she agreed to have the case placed on the stet docket. Client A testified that she agreed to this because while she did not want to testify or have the Respondent incarcerated, she did want to prevent him from repeating the same conduct.

Client B testified on behalf of the State. Client B testified to the following under oath. Client B testified that she is familiar with massage therapy, and has received massage therapy every two weeks for the last few years. Client B received a massage from the Respondent on June 27, 2013 at his massage studio, Haptic Bodywork. Client B testified that when she arrived

at the Respondent's studio, she met the Respondent, who then handed her a clipboard and told her to fill it out. Client B identified State's Exhibit 10 as the form that she completed and signed when she arrived at Haptic Bodywork. Afterwards, Client B went into the massage room and was instructed by the Respondent to remove her clothing. The Respondent then left the room, and Client B undressed, keeping her underwear on. The Respondent then returned to the room and began the massage.

Client B testified that while lying face-down on the massage table, the Respondent began to massage her left leg. Client B stated that during that portion of the massage, the Respondent's hands went up her leg, about two inches from her genital area. At that point, the Respondent began massaging back and forth, which caused her labia to move in the same motion. Client B testified that she was immediately startled when the Respondent made contact with the area so close to her genitals, which caused her to tense up. At that point, the Respondent asked Client B "Are you always this tense?" Client B replied "Yes," in anger. Client B testified that the Respondent did not provide her with any instructions or options regarding massaging the area close to her genitals. Client B later testified that the Respondent massaged the area close to her genitals for approximately 30 seconds, but that she did not say anything to the Respondent at the time because she was scared. Client B testified that the rest of the massage was performed normally.

Client B further testified that after the massage was over, the Respondent left the room and Client B got dressed. Client B testified that she gave the Respondent a tip because she wanted to get out of the area without indicating that anything was wrong. After leaving, Client B then sat in her car for a period of time to calm down and then drove home. Client B testified that afterwards she told her husband and a few other individuals about what happened. Client B eventually called the manager of the fitness club where the Respondent's massage studio was located and explained what had happened. The manager instructed her to submit a written statement regarding the incident, which her husband delivered to the manager on July 3, 2013.

Client B identified State's Exhibit 9 as the signed complaint that her husband submitted to the fitness club manager. Client B testified that the Respondent telephoned her after the complaint was submitted. During that conversation, the Respondent told Client B how many rewards he had received and that the massage he performed on her was appropriate and within his usual protocol. Client B testified that she told the Respondent that he should learn from what happened and eventually hung up the phone when the Respondent began arguing with her.

During cross examination by the Respondent, Client B testified that the Respondent did not make direct contact with her vagina, but rather that he was massaging close enough to her vagina to cause her labia to move. Client B also testified during cross examination that she submitted an additional complaint against the Respondent through LivingSocial and Groupon. Client B further testified during cross examination that she has submitted a complaint against one previous massage therapy student in Boulder, Colorado in the 1980s when she felt that the student began massaging too close to her genital area. Client B further testified that the incident in Colorado did not affect her experience with the Respondent because she has had many massages since then with male massage therapists without any problems or complaints. Client B testified further on redirect examination that she has not submitted any other complaints against massage therapists in the last 30 years.

The Respondent was offered the opportunity to testify on his own behalf, which he declined.

In closing arguments, Mr. Anderson made the following arguments on behalf of the State. Mr. Anderson stated that the weight of the evidence presented at the hearing indicates that the allegations are true in this case. Mr. Anderson pointed to the similarity of the testimony of Client A and Client B, despite not having met each other, as further indication of the truthfulness of their allegations against the Respondent. Mr. Anderson stated that although both witnesses were not able to immediately verbalize their objections during the massages at issue, the Board should consider that this is a typical feature of such events, and not an indication that

these events never occurred. Mr. Anderson argued that the Respondent has demonstrated a lack of sensitivity that calls for permanent revocation of his massage therapy license.

The Respondent presented the following arguments in his closing statement. The Respondent stated that he has completed 1,294 Groupon massages since using their services, and that the resulting anonymous reviews were overwhelmingly positive. In reference to Client B's complaint, the Respondent stated that the incident Client B described that took place in Boulder, Colorado has affected her experience with massage. The Respondent further stated that he performed a perfectly legitimate massage using the techniques he was taught in massage school. The Respondent referenced the techniques involved in massaging the ham string, which includes contact with the ischial tuberosity that is close to the genitals. The Respondent pointed to his favorable reviews on Google, Living Social, and Yelp as inconsistent with the allegations made by Clients A and B. The Respondent also pointed to Client A's behavior during the massage at issue, specifically her failing to verbally expressing her discomfort, and instead asking for a neck massage, as inconsistent with the allegations made. The Respondent also questioned Client A's testimony that no examination was offered when she reported the sexual assault to the police. The Respondent argued that because the Board's decision would impact his life, future, and livelihood, the Board should hold themselves to the higher standard of guilty beyond a reasonable doubt.

FINDINGS OF FACT

The Board makes the following Findings of Fact based on the foregoing record:

BACKGROUND

1. At all times relevant, the Respondent was licensed to practice massage therapy in the State of Maryland. The Respondent was originally licensed to practice massage therapy in Maryland on January 30, 2002, under License Number M01817. The Respondent's license is current until October 31, 2014.

2. At all times relevant, the Respondent was the owner of an the sole massage therapist at a massage therapy facility called Haptic Bodywork ("Haptic Bodywork") located in Baltimore, Maryland.

3. On or about March 14, 2014, the Respondent filed an application to reinstate his Chiropractic Assistant's License, License Number RC0607, which had expired since March 31, 2007. As part of the application approval process, the Board conducted a criminal history check of the Respondent and discovered that the Respondent was charged with Fourth Degree Sex Offense and Second Degree Assault in the District Court for Baltimore County, Maryland on or about August 22, 2011. Both charges were placed on the Stet Docket on or about March 8, 2012.

4. As a result of the criminal history check, the Board initiated an investigation of the Respondent, including the circumstances surrounding the criminal charges that were filed against him, and a complaint by a former client.

BOARD INVESTIGATION

5. Board investigation determined that on or about August 16, 2011, the Respondent inappropriately touched a client's ("Client A") private areas while performing massage on her. Board investigation further determined that the Respondent performed an inappropriate massage on Client B on or about June 27, 2013.

Client A

6. Client A initially saw the Respondent at Haptic Bodywork for a freestyle massage on or about August 3, 2011, through a Groupon advertisement. Subsequent to the massage therapy session, Client A scheduled another session with the Respondent for August 16, 2011.

7. On or about August 16, 2011, Client A saw the Respondent for another freestyle massage at Haptic Bodywork. Prior to the massage, Client A undressed herself leaving only her underwear on and draped herself with a blanket, lying face down on a massage table.

8. The Respondent entered the massage room and began performing massage therapy on Client A. Client A stated for the first hour or so, the Respondent's massage was "normal and professional."

9. During the second hour, when the Respondent began massaging Client A's thighs, he began moving his hands closer to A's vaginal area. Client A stated that initially the Respondent's fingers would on occasion touch the outer portion of her underwear. Eventually, the Respondent used his hand to cup Client A's vaginal area and started rubbing it back and forth.

10. Client A stated that before she could object, the Respondent would move to another area and began performing a normal, appropriate massage. Client A stated that further into the massage, the Respondent's hands again moved towards Client A's vaginal area. Client A stated that at one point in time, the Respondent slipped his fingers into her vagina, at which time she immediately objected and asked, "What are you doing?" Client A stated the Respondent's reaction was "Oh, you want me to stop?" to which the Respondent replied "Yes."

11. The Respondent proceeded to massage other areas of Client A's body. A little later the Respondent lowered Client A's drape, exposing her breasts, and began to massage her breasts, including her nipples. Client A stated that this made her uncomfortable, and told the Respondent to focus on her neck instead, which the Respondent complied. The massage therapy ended shortly thereafter.

12. According to Client A, as she was paying for the massage therapy session, the Respondent stated, "No, it's no charge." When Client A insisted that he take the money, the Respondent stated, "I've never done that before. I don't know what came over me." Client A then told the Respondent that what he did was very unprofessional to which he replied, "I guess I thought there was something there that wasn't."

13. Not long after Client A left Haptic Bodywork, the following text message exchange took place between Client A and the Respondent:

[CLIENT A]: I really don't know why I just paid you. Don't try that on someone else. You could end up in jail.

RESPONDENT: Would you please call me?

[CLIENT A]: Just text me.

RESPONDENT: If you would like I can return your payment by mail.

14. The following day on or about August 17, 2011, Client A reported the incident to the Baltimore County Police Department.

15. The Respondent failed to maintain any record of his massage therapy session with Client A on or about August 16, 2011.

Client B

16. Client B saw the Respondent for massage therapy at Haptic Bodywork on or about June 27, 2013. At the start, Client B undressed herself leaving her underwear on and lay on the massage table waiting for the Respondent.

17. The Respondent entered the massage room and began massaging Client B. She stated that when he was massaging one of her legs, he moved his hands up to the inside part of her leg and began moving around her genitals. Client B stated that she was frightened, so she froze.

18. Client B stated that the Respondent must have sensed something was wrong, because when he massaged her other leg, his hands did not move as close to her genitals.

19. Less than a week later, on or about July 3, 2013, Client B filed a written complaint with the owner of the fitness center that leased the space to the Respondent.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes that the Respondent's behavior with Client A and Client B constitutes violations of the Act and the Board's regulations. The Board considered all evidence presented by the parties, as well as the demeanor of the

testifying witnesses and the Respondent to support this conclusion. The Board found both Client A and Client B to be forthright and credible witnesses, particularly in regards to their consistency during cross examination by the Respondent.

The Board concludes that the Respondent's touching of Client A's private areas in the guise of performing therapeutic massage constitutes violation of the following provisions of the Act: Health Occ. § 3-5A-11(a)(8), doing an act that is inconsistent with general accepted professional standards in the practice of massage therapy; Health Occ. §3-5A-11(a)(20), engaging in conduct that violates the professional code of ethics; Health Occ. § 3-5A-11(a)(21), knowingly doing an act that has been determined by the Board to be a violation of the Board's regulations. The Board also finds that the Respondent's conduct involving Client A violates the following sections of the Massage Therapy Code of Ethics: COMAR 10.43.18.03C(2), (5) and (6); COMAR 10.43.18.03D(2)(d); COMAR 10.43.18.04A(4); COMAR 10.43.18.05A(2); and COMAR 10.43.18.05B(2), (3)(b) and (c).

The Board also concludes that the Respondent's performing inappropriate massage on Client B constitutes violations of the following provisions of the Act: Health Occ. § 3-5A-11(a)(8), doing an act that is inconsistent with general accepted professional standards in the practice of massage therapy; Health Occ. §3-5A-11(a)(20), engaging in conduct that violates the professional code of ethics; and Health Occ. § 3-5A-11(a)(21), knowingly doing an act that has been determined by the Board to be a violation of the Board's regulations. The Board also finds that the Respondent's conduct involving Client B violates the following sections of the Massage Therapy Code of Ethics: COMAR 10.43.18.03C(2), (5) and (6); COMAR 10.43.18.05A(2); and COMAR 10.43.18.05B(2), (3)(b) and (c).

The Board issues this Order in accordance with its rulings during the hearing and based upon its consideration of the entire record, including all exhibits, witness testimony and oral arguments. Therefore, in accordance with its sanctioning guidelines, COMAR 10.43.16.06B, the Board issues the following Order.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 8 day of October, 2015, by a unanimous vote of the Board, hereby:

ORDERED that the Respondent's license to practice massage therapy, under License Number M01817, is hereby **REVOKED**; and it is further

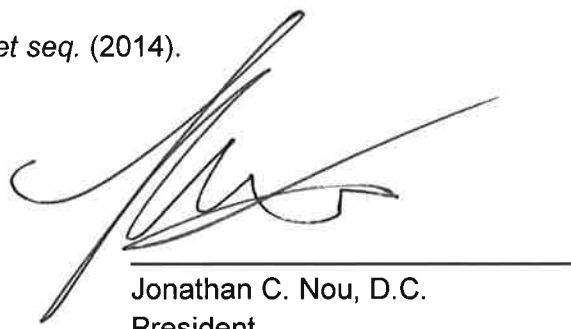
ORDERED that the Board will not consider an application for licensure or registration from the Respondent for **FIVE (5) YEARS**; and it is further

ORDERED that after the revocation period, the Board will consider an application for licensure or registration from the Respondent upon receipt of (1) a written evaluation of the Respondent by a Board-approved psychologist regarding his mental fitness to practice massage therapy; and (2) proof of successful completion of a Board-approved ethics and boundaries course; and it is further

ORDERED that the Respondent is responsible for all cost associated with this hearing and order; and it is further

ORDERED that this is a Final Order of the Board and as such is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Prov. §§4-101 *et seq.* (2014).

10/8/15
Date



Jonathan C. Nou, D.C.
President
MD State Board of Chiropractic and
Massage Therapy Examiners

NOTICE OF THE RIGHT TO APPEAL

Pursuant to Md. Code Ann., Health Occ. § 3-316, you have a right to take a direct judicial appeal. A petition for appeal shall be filed within thirty (30) days from mailing of this Final Decision and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Md. Code Ann., Gov't Proc. §§10-201 *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.