

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH**

James Thomson, Massage Therapist
216 Pine Street
Columbia, Connecticut 06237-1522

Petition No. 971029-029-008

MEMORANDUM OF DECISION

Procedural Background

On July 30, 1998, Cynthia Denne, Director of the Division of Health Systems Regulation of the Department of Public Health ("the Department"), issued a Statement of Charges ("the Charges") against James Thomson, Massage Therapist ("respondent"). H.O. Exh. 1. The Charges alleged grounds for disciplinary action pursuant to §20-206c of the Connecticut General Statutes.

On August 28, 1998, respondent submitted an Answer to the Charges. H.O. Exh. 2.

On December 23, 1998, the Commissioner of the Department appointed this Hearing Officer to rule on all motions, determine findings of fact and conclusions of law, and issue a final order. H.O. Exh. 8. This letter of designation superseded an earlier delegation to Lana M. Glovach contained in the Notice of Hearing. H.O. Exh. 1.

On January 21, 1999, a hearing was held in accordance with Connecticut General Statutes, Chapter 54 and Regulations of Connecticut State Agencies §19a-9-1, *et seq.* Respondent was present and was represented by Benjamin Massa, Esq.; the Department was represented by Diane Wilan, Staff Attorney. Both parties were given the opportunity to present evidence and argument on all issues and to conduct cross-examination.

On January 21, 1999, respondent filed a Motion to Dismiss Charge Two. At the hearing, each party presented oral arguments, and the decision on this motion was reserved.

This Memorandum of Decision is based entirely on the record and sets forth this Hearing Officer's findings of fact, conclusions of law, and order.

Allegations and Answer

The Department alleges that, while licensed as a massage therapist, respondent violated §20-206c of the Connecticut General Statutes in that:

1. he (a) failed to maintain appropriate boundaries with a client, Adele DuBois; (b) made non-therapeutic comments regarding Ms. DuBois' genital area; and, (c) made comments of a sexual nature to Ms. DuBois regarding her clothing on at least one occasion. First Count of the Charges, ¶¶ 3 and 4. Respondent denies these allegations. H.O. Exh. 2.
2. he failed to maintain an appropriate office atmosphere while working at East of the River Center for Therapeutic Massage in Windham, CT ("the Center") in that he revealed confidential information about massage therapy clients and made sexually charged comments about clients and/or staff at the Center. Second Count of the Charges, ¶¶ 6 and 7. Respondent denies these allegations. H.O. Exh. 2.

Findings of Fact

1. Respondent is, and has been at all times referenced in the Charges, the holder of Connecticut massage therapist license number 001134. H.O. Exhs. 1 and 2.
2. At all times referenced in the Charges, respondent owned and operated the Center, an office that provides massage therapy services. H.O. Exhs. 1 and 2.

With Regard to the First Count

3. Between August of 1996 and April of 1997, once or twice a month, Adele DuBois, *a.k.a.* Adele DuBois Curtis ("Ms. DuBois"), received massage therapy from respondent. Tr. p. 13.
4. Respondent was also a member of the gym where Ms. DuBois worked, where she occasionally spoke to him about dating, school, work and other topics. Tr. pp. 60 - 61.
5. During one massage therapy session, Ms. DuBois commented to respondent about the miniature speakers in his office and how women like miniature things. Respondent made a reference to his penis and commented, "that is why women think it is cute." Tr. p. 17.
6. During another massage therapy session, respondent told Ms. DuBois about a woman who had been previously sexually abused, having an orgasm during massage therapy. Tr. p. 17.

7. Prior to April 15, 1997, respondent encountered Ms. DuBois while on the campus of the University of Connecticut at Storrs and engaged her in a conversation. During this conversation, Ms. DuBois mentioned that she had a new earring piercing, and respondent asked Ms. DuBois whether she was going to get her clitoris pierced, and if so, if he could see it after it was pierced. Tr. pp. 20, 22, 23, and 208.
8. On April 15, 1997, Ms. DuBois went to respondent's office, accompanied by her fiancé, Tom Curtis, who was scheduled to receive a massage from another therapist in the office. Tr. p. 18.
9. While Ms. DuBois sat in the waiting area with Tom, respondent commented to her that she was wearing a "cute outfit." Once in his office, with the door closed, respondent asked her, "Are you and Tom trying to live out the schoolgirl fantasy?" Tr. p. 18.
10. Ms. DuBois was late to the appointment with respondent because she was getting her legs waxed in preparation for a Florida vacation. Tr. p. 18.
11. During the massage therapy, respondent touched a spot near Ms. DuBois' hip and asked her what it was. She told him that it was wax. Believing the leg waxing process to be a painful procedure, respondent winced and commented, "Ooh, that must have hurt." Tr. pp. 42 and 203.
12. After Ms. DuBois had dressed, respondent told her that, "All you need now is a backpack to go along with your school outfit, and you can stand on a corner and make top dollar." Tr. p. 23; Dept. Exh. A.
13. Making comments of a sexual nature to a massage therapy client constitutes conduct that falls below the minimum acceptable standards for massage therapists. Tr. pp. 135 - 136, and 172.

With Regard to the Second Count

14. Between September of 1996 and January of 1997, Emily Alger was employed as respondent's office manager at the Center, and was responsible for answering phones and scheduling appointments. Tr. p. 81; Dept. Exh. B.
15. During this time, respondent and Ms. Alger engaged in discussions regarding personal sexual matters.

16. On several occasions, after giving a female client a massage and without any professional reason, respondent commented to Ms. Alger about the client's breasts. He discussed with Ms. Alger whether the client's breasts would fall on her body when they were on the table or would slide down towards her armpits. Tr. p. 90; Dept. Exh. B.
17. On one occasion, Ms. Alger asked respondent whether he ever experienced sexual feelings when he was giving massages. He answered yes, and mentioned that he had once had an erection while giving her a massage. Tr. p. 86.
18. Between November of 1996 and May of 1997, Laurie Noll was employed by respondent as a massage therapist. Tr. p. 63.
19. During this time period, respondent told Ms. Noll about a client having nice breasts and it being too bad that she was married. Tr. p. 64.
20. During this time period, respondent also told Ms. Noll, without a clinical reason for doing so, that he knew one client had breast implants, "because they were perky, and they stood right up." Tr. pp. 64 - 65.
21. By making comments of a sexual nature regarding employees and clients, respondent failed to maintain an appropriate office atmosphere, in violation of the minimum standards for massage therapists. Tr. pp. 65, 92, 136-137, and 172.

Conclusions of Law and Discussion

Section 20-206c of the Connecticut General Statutes provides in pertinent part:

The department may take any action set forth in section 19a-17 if a person issued a license pursuant to section 20-206b fails to conform to the accepted standards of the massage therapy profession, including, but not limited to, the following: . . . negligent, incompetent or wrongful conduct in professional activities

The Department bears the burden of proof by a preponderance of the evidence in this matter. *Swiller v. Commissioner of Public Health*, No. CV 95-0705601 (Sup. Court, J.D. Hartford/New Britain at Hartford, October 10, 1995).

In respondent's Motion to Dismiss Charge Two, he argues that the allegations in the Second Count relate to the operation of a massage therapy business and not the actual conduct of massage therapy, and that such activity is beyond the scope and authority of

the Department. The allegations regarding respondent's office atmosphere fall within the purview of "wrongful conduct of professional activities" (§20-206c), and, therefore, the Department has jurisdiction, and the motion is denied.

The Department sustained its burden with regard to all allegations in the First Count. The evidence establishes that respondent failed to maintain appropriate boundaries with Ms. DuBois by making sexually related comments to her regarding other clients. The Department did not sustain its burden of proof as to the claim that respondent inappropriately touched Ms. DuBois along her bikini line. The evidence also establishes that respondent violated the standards for massage therapists by making non-therapeutic comments to Ms. DuBois regarding her genital area and also making comments of a sexual nature regarding her clothing.

The Department sustained its burden with regard to all allegations in the Second Count. The evidence establishes that by discussing sexual matters with employees, and making comments of a sexual nature, respondent failed to maintain an appropriate office atmosphere, in violation of the minimum standards for massage therapists.

The evidence establishes a history of respondent making comments of a sexual nature to a client and employees. By his testimony at the hearing, respondent does not appear to acknowledge his misconduct or understand the impact it may have on others. This conduct falls below the accepted standards for massage therapists and, accordingly, the facts found in this case establish that respondent violated Connecticut General Statutes §20-206c.

Order

Based on the record in this case, the above findings of fact and conclusions of law, and pursuant to Connecticut General Statutes §§19a-17 and 20-206c, the following is ordered in this case against James Thomson, M.T., regarding Connecticut massage therapist number 001134:

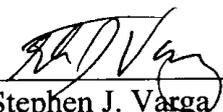
1. Respondent's license shall be suspended for a period of three months with said suspension stayed after a period of two weeks.

2. Concurrently, respondent's license shall be placed on probation for a period of one year under the following conditions:
 - (a) During the period of probation, respondent shall only practice in an office owned and operated by a licensed massage therapist who has been preapproved by the Department.
 - (b) Respondent shall only work as a massage therapist when there is either another massage therapist or a support person present at all times on the premises.
 - (c) Respondent shall submit quarterly reports to the Department concerning his working conditions. Such reports shall include documentation of dates and hours he worked and the name of the massage therapist or support person who was present during those hours.
 - (d) Within three months of the effective date of this Decision, respondent shall successfully complete a course of study, pre-approved by the Department, on gender sensitization. Proof of completion of such course shall be provided to the Department, to its satisfaction, within ninety days of its completion.

3. All correspondence and reports shall be addressed to:

Bonnie Pinkerton, Nurse Consultant
Department of Public Health
Division of Health Systems Regulation
410 Capitol Avenue MS#12HSR
P.O. Box 340308
Hartford, Connecticut 06134-0308

4. This Order shall become effective upon signature.



Stephen J. Varga
Hearing Officer

4/5/99

Date



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

April 6, 2000

James K. Thomson, M.T.
216 Pine Street
Columbia, CT 06237-1522

Re: Memorandum of Decision
Petition No. 971029-029-008
License No. 001134

Completion of Probation

Dear Mr. Thomson:

Please be advised that the probationary terms of the Order of the above-referenced Memorandum of Decision have been satisfied, effective 04/05/2000.

Notice will be sent to the Department's Licensure and Registration section to remove all restrictions from License No. 001134, related to the above-referenced Memorandum of Decision.

Sincerely,

A handwritten signature in cursive script that reads "Richard Goldman".

Richard Goldman
Paralegal Specialist II
Division of Health Systems Regulation

cc: Debra Tomassone, PHSM
Bonnie Pinkerton, RNC



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