

**STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC HEALTH  
Public Health Hearing Office**

**Joseph Burden, LMT  
3260 Cruger Avenue, Apt. 8G  
Bronx, NY 10467**

**Petition No.: 2001-0302-029-001**

**MEMORANDUM OF DECISION**

*Procedural Background*

On June 24, 2002, the Department of Public Health ("the Department") issued a Notice of Hearing ("the Notice") and a Statement of Charges ("the Charges") against Joseph Burden, licensed massage therapist ("respondent"). Rec. Exh. 2. The Charges alleged grounds for disciplinary action pursuant to *Conn. Gen. Stat.* §20-206c. The Notice scheduled hearings for July 23, 30 and 31, 2002 and appointed this Hearing Officer to rule on all motions, make findings of fact and conclusions of law, and issue an Order. Rec. Exh. 2.

Prior to the July 23, 2002 hearing, respondent's attorney, Attorney Andrew Bowman, requested a continuance of the July 30 and 31, 2002 scheduled hearing dates, which was granted during the July 23, 2002 hearing. The hearings were continued until August 12 and 27, 2002.

During the July 23, 2002 hearing, the Department filed a Motion to Deem Allegations Admitted. The Motion was denied and, as the record reflects, respondent provided an Answer to the Charges on July 18, 2002, denying the allegations. Rec. Exh. 4. The hearing was held in accordance with Connecticut General Statutes, Chapter 54 and Regulation of Connecticut State Agencies §19a-9-1, *et seq.* Respondent was present and was represented by Attorney Andrew Bowman; Attorney Leslie Scoville represented the Department. Both parties were given the opportunity to present evidence and argument on all issues and to conduct cross-examination.

On August 23, 2002, respondent filed a Motion for Stay of Administrative Proceedings. After review of the written Motion and application of relevant law, the Motion was denied.

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*

1. In paragraphs 1 and 5 of the Charges, the Department alleges that respondent is, and has been at all times referenced in the Charges, the holder of Connecticut massage therapy license number 001854.
2. In paragraph 2 of the Charges, the Department alleges that on or about September 13, 2001 respondent provided massage therapy to female patient, L.D.
3. In paragraph 3 of the Charges, the Department alleges that while providing massage therapy to L.D. on or about September 13, 2000, respondent: rubbed L.D.'s vagina with his fingers; placed his fingers into L.D.'s vagina; and/or touched L.D.'s foot with his clothed penis.
4. In paragraph 6 of the Charges, the Department alleges that on or about February 20, 2001 respondent provided massage therapy to female patient, P.P.
5. In paragraph 7 of the Charges, the Department alleges that while providing massage therapy to P.P. on or about February 20, 2001 respondent touched P.P.'s vaginal area and/or placed P.P.'s hand on respondent's front crotch area.
6. In paragraphs 4 and 8 of the Charges, the Department alleges allegations 1-3 and 5-7 constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, §20-206c.

### *Findings of Fact*

1. Respondent is, and has been at all times referenced in the Charges, the holder of Connecticut massage therapist license number 001854. Rec. Exh. 2, 4.
2. At all times referenced in the Charges, respondent provided massage therapy under the employ of Derma Clinic in Westport, Connecticut.
3. On September 13, 2000, respondent provided massage therapy to L.D. Dept Exh. 1, Tr. 7/23/02 pp. 20-106.

4. During the September 13, 2000 treatment, L.D. was to receive the Lustone massage, which is a massage typically done with heated stones and oils rubbed on the body. Tr. 7/23/02 p. 20, 50.
5. During the September 13, 2000 massage therapy session, L.D. was instructed by respondent to disrobe, leaving nothing on, but her underwear, and lie underneath a towel while her massage was being rendered. Tr. 7/23/02 p. 22, Dept. Exh. 1.
6. While laying face down on the massage table, on September 13, 2000, respondent massaged L.D.'s back and legs. Tr. 7/23/02 pp. 22-23, Dept. Exh. 1.
7. During the September 13, 2000 treatment, respondent continued to move his hands underneath L.D.'s underwear and massaged her crotch area. Tr. 7/23/02 p. 23, Dept. Exh. 1.
8. During the September 13, 2000 treatment, respondent inserted his finger into L.D.'s vagina and rubbed his fingers up and down on her clitoris. Tr. 7/23/02 p. 23, Dept. Exh. 1.
9. During the September 13, 2000 treatment, respondent moved around the massage table and rubbed his erect penis on L.D.'s left foot. Tr. 7.23.02 p. 24, Dept. Exh. 1.
10. Upon completion of her massage therapy on September 13, 2000, respondent offered L.D. a glass of water, which she refused. Tr. 7/23/02 p. 25, Dept. Exh. 1.
11. On February 20, 2001, respondent provided massage therapy to female patient, P.P. Tr. 7/23/02 pp. 112-157.
12. Respondent started P.P.'s treatment session on February 20, 2001 by massaging P.P.'s back while she laid on her stomach. He then required her to turn over onto her back and he massaged her legs. Tr. 7/23/02 p.113.
13. On February 20, 2001, respondent rubbed his hand repeatedly over P.P.'s vagina. Tr. 7/23/02 pp. 113-116, Dept. Exh. 2.
14. On February 20, 2001, respondent groped and pressed P.P.'s breasts, touching close to her nipples. Tr. 7/23/02 p. 114, Dept. Exh. 2.
15. On February 20, 2001, respondent pulled P.P.'s hand and placed it on his erect penis. Tr. 7/23/02 p. 115, Dept. Exh. 2.
16. On February 20, 2001, respondent pushed his hands through P.P.'s hair and leaned over her mouth breathing heavily. Tr. 7/23/02 p. 115, Dept. Exh. 2.

17. At the conclusion of P.P.'s February 20, 2001 session with respondent, respondent asked P.P. if she wanted water and left the room. Tr. 7/23/02 p. 115.

### ***Conclusions of Law and Discussion***

Section 20-206 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).

The Department sustained its burden with regard to all allegations in both Counts. The evidence establishes that respondent failed to engage the minimum standards of the massage therapy profession by engaging in sexual misconduct involving his clients. L.D.'s testimony at the hearing was detailed and consistent with the sworn statement she provided to the police just one day after the incident. Dept. Exh. 1. L.D. is deemed a credible witness.<sup>1</sup> L.D. acknowledged receiving massage therapy from respondent on three other occasions, during which she was not subjected to sexually inappropriate actions. Tr. 7/23/02 pp. 48-56, 74-89. Clearly L.D. had developed a trust in respondent and the services of Derma Clinic that prompted her to return on September 13, 2000 for another massage therapy session. Tr. 7/23/02 p. 21. Further, L.D. testified that she has received about 20 massages in her life. Her experiences in past massage therapy sessions provided her with a sufficient background of knowledge to discern what is customary and what is inappropriate. While describing what took place on September 13, 2000, L.D. was visibly upset, necessitating a break to regain her composure to discuss the violative

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<sup>1</sup> Respondent's attorney, Andrew Bowman, requested the hearing officer order the production of L.D.'s psychiatric records for the purpose of determining credibility. The request was denied based on Attorney Bowman's failure to make an adequate offer of proof to order the production of confidential records. Tr. 7/23/02 pp. 56-69.

nature of respondent's actions. Though given the opportunity to support his denial of the actions claimed by L.D., respondent failed to testify or present witnesses on his behalf.<sup>2</sup>

The Department also sustained its burden with regard to all allegations in the Second Count. The evidence establishes that respondent failed to engage the minimum standards of the massage therapy profession by engaging in sexual conduct involving his client, P.P. FF 12-15. P.P.'s testimony at the hearing was detailed and consistent with the statement she provided in an affidavit for Superior Court in March 2001. Dept. Exh. 2. P.P.'s testimony is deemed credible. As testified, she brought the incident to the attention of the owner of Derma Clinic right after her massage therapy session with respondent on February 20, 2001 and filed a sworn statement with the police on the same day. P.P. reported the incident without having any knowledge of past accusations against respondent for sexually inappropriate conduct or having ever spoken to L.D. P.P.'s first contact with L.D. was by referral of the sexual assault clinic sometime in March 2001. Tr. 7/23/02 pp. 91-93. Eerily, P.P. and L.D.'s accounts of the incidents of September 13, 2000 and February 20, 2001 demonstrate a similar approach by respondent in his actions. FF 4-8, 11-16. Though given the opportunity to support his denial of the actions claimed by P.P., respondent failed to testify or present witnesses on his behalf.<sup>3</sup>

Respondent failed to conform to accepted standards of the massage therapy profession by engaging in wrongful and reprehensible sexual misconduct, subject to disciplinary action in accordance with Connecticut General Statute Section 20-206c in conjunction with Section 19a-17.

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<sup>2</sup> By facsimile and overnight mail, Attorney Bowman filed a Motion for Stay of Administrative Proceedings invoking respondent's Fourteenth Amendment due process right and Fifth Amendment right against self-incrimination under the United States Constitution. In noting the hearing officer's discretion, Attorney Bowman argued several factors to consider whether a stay should be granted:

- 1) the extent of issues overlapping in both the criminal case and administrative proceeding;
- 2) the status of the criminal case
- 3) private interests of the plaintiffs weighed against prejudice by delay;
- 4) private interests of the defendant;
- 5) interests of the court; and
- 6) the public interest.

In consideration of each of these factors, the hearing officer exercised her discretion and found the interest of ensuring the health and safety of the public required that the hearing proceed as scheduled, and denied the Motion. Respondent and his attorney did not appear for the last scheduled day of hearing, August 23, 2002, to provide testimony, evidence or witnesses.

<sup>3</sup> See FN 2

**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 Joseph Burden, LMT, regarding Connecticut massage therapist number 001854:

1. Respondent's license number 001854 to practice as a massage therapist in the State of Connecticut is hereby revoked.
2. This Order shall become effective upon signature.

  
Stacy M. Owens, Hearing Officer

1/22/03  
Date