

**STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC HEALTH  
PUBLIC HEALTH HEARING SECTION**

Manuel A. Rivera, MT

Petition No. 2008-0826-029-006

**MEMORANDUM OF DECISION**

***Procedural Background***

On March 15, 2010, the Department of Public Health ("the Department") filed a Statement of Charges against Manuel A. Rivera, massage therapist ("respondent") (Rec. Exh. 1), alleging grounds for disciplinary action pursuant to §20-206c of the Connecticut General Statutes ("the Statutes").

On March 22, 2010, the Department sent a Notice of Hearing ("the Notice") and the Statement of Charges to the respondent via certified mail. Rec. Exh. 1. The Notice scheduled a hearing for May 26, 2010 and appointed this Hearing Officer to rule on all motions, make findings of fact and conclusions of law, and issue an Order. Rec. Exh. 1.

On May 26, 2010, the hearing commenced in accordance with Chapter 54 of the Statutes and §§19a-9-1, *et seq.* of the Regulations of Connecticut State Agencies ("the Regulations"). Respondent was not present, nor was he represented by an attorney; Attorney Leslie Scoville represented the Department. The Department orally moved for a continuance to file a written motion to amend the Statement of Charges. The motion for a continuance was granted. Tr. 5/26/10, pp. 18-24.

On June 2, 2010, the Department filed a Motion to Amend Statement of Charges with an attached Amended Charges ("the Charges"), which the Hearing Officer granted on June 8, 2010. Rec. Exh. 5. On June 10, 2010, the Charges and a Notice of Rescheduled Hearing were sent to the respondent via certified mail and first class mail. Rec. Exh. 5.

Respondent did not file an Answer to the Charges. Rec. Exh. 7.

On July 23, 2010, the Department filed a Motion to Deem Allegations Admitted ("the Motion to Deem"). Rec. Exh. 7.

On July 27, 2010, the hearing was held in accordance with Chapter 54 of the Statutes and §§19a-9-1, *et seq.*, of the Regulations, and the Motion to Deem was granted. Respondent was not present, nor was he represented by an attorney; 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.

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

### *Allegations*

1. In paragraph one of the Charges, the Department alleges that the respondent is, and has been at times referenced in this the Charges, the holder of Connecticut massage therapy license number 004571. Said license lapsed on April 30, 2008.
2. In paragraph two of the Charges, the Department alleges that during July 2008, respondent worked as a massage therapist at Beaux Visages in Rocky Hill, Connecticut. On about July 30, 2008, a female client, S.R. was scheduled to receive a massage from respondent a Beaux Visages. During the appointment with S.R., respondent:
  - a. inappropriately touched S.R.'s breasts;
  - b. inappropriately touched S.R.'s buttocks;
  - c. inserted his finger into S.R.'s vagina;
  - d. exposed his penis; and/or,
  - e. attempted to kiss S.R.
3. In paragraph three of the Charges, the Department alleges that the above-described facts constitute grounds for disciplinary action pursuant to General Statutes of Connecticut, including, but not limited to §20-206c.

### *Findings of Fact*

1. Respondent is, and has been at times referenced in the Charges, the holder of Connecticut massage therapy license number 004571. Said license lapsed on April 30, 2008. Dept. 1.
2. The Department provided respondent adequate, reasonable, and actual notice of the hearing in this matter by sending notice via certified mail and first class mail to respondent's address of record. Tr. 7/27/10, p. 5; Rec. Exh. 7, Attachment D.
3. Respondent did not file an Answer to the allegations contained in the Charges. Tr. 7/27/10, pp. 4-6.
4. All of the factual allegations contained in the Charges are deemed admitted and true. Tr. 7/27/10, pp. 5-6.

### *Conclusions of Law and Discussion*

Section 20-206c of the 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: Conviction of a felony; fraud or deceit in the practice of massage therapy; negligent, incompetent or wrongful conduct in professional activities....

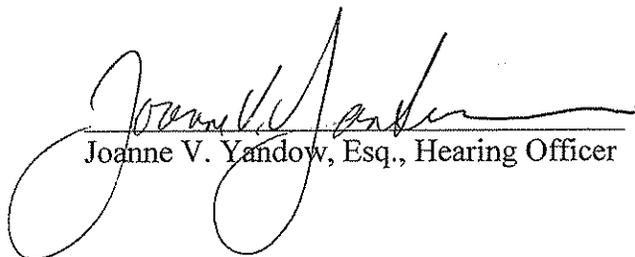
The Department bears the burden of proof by a preponderance of the evidence in this matter. *Goldstar Medical Services, Inc., et al. v. Department of Social Services*, 288 Conn. 790 (2008); *Swiller v. Commissioner of Public Health*, No. CV 95-0705601 (Sup. Court, J.D. Hartford/New Britain at Hartford, October 10, 1995); *Steadman v. SEC*, 450 U.S. 91, 101 S. Ct. 999, *reh'g den.*, 451 U.S. 933 (1981).

In accordance with §19a-9-20 of the Regulations, a hearing shall proceed, "at the time and place specified in the notice of hearing, notwithstanding any failure of the respondent to file an answer within the time provided. If no answer has been timely filed, the allegations shall be deemed admitted." In this particular case, respondent failed to file an Answer to the Charges and failed to appear for the hearing on May 26, 2010, and July 27, 2010, to contest the allegations. As such, the allegations are deemed admitted, thereby establishing that respondent's license is subject to disciplinary action pursuant to §§ 19a-17 and 20-206c of the Statutes.

#### ***Order***

Based on the record in this case, the above findings of fact and conclusions of law, and pursuant to §§19a-17 and 20-206c of the Statutes, the following is ordered in this case against Manuel A. Rivera, MT, regarding Connecticut massage therapist license number 004571:

1. Respondent's license number 004571 to practice as a message therapist in the State of Connecticut is hereby revoked.
2. This Order shall become effective upon signature.

  
Joanne V. Yandow, Esq., Hearing Officer

12/23/10  
Date

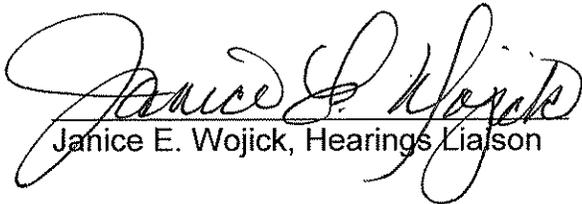
**CERTIFICATION**

I hereby certify that, pursuant to Connecticut General Statutes Section 4-180(c), a copy of the foregoing final Memorandum of Decision was sent this 23<sup>rd</sup> day of December 2010, certified mail return receipt requested and first class mail to:

Manuel A. Rivera, MT  
11 Lincoln Street, Apt. C4  
Hartford CT 06106-3208

*and by E- Mail to:*

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Department of Public Health  
410 Capitol Avenue  
P. O. Box 340308  
Hartford CT 061343-0308

  
Janice E. Wojick, Hearings Liaison