STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
Public Hearing Section

Henry Carisio, Jr., Massage Therapist
License No.: 006830

Petition No.: 2012-32
April 3, 2012

MEMORDANDUM OF DECISION

Procedural Background

On February 2, 2012, the Department of Public Health ("the Department") presented a Statement of Charges and a Motion for Summary Suspension to the undersigned, appointed Hearing Officer against Connecticut Massage Therapist license number 006830 held by Henry Carisio ("respondent"). Rec. Exh. 1.

The Charges allege that respondent's license is subject to disciplinary action pursuant to the Connecticut General Statutes ("the Statutes") §§19a-17 and 20-206c.[1] Rec. Exh. 1. The Motion for Summary Suspension was based on the Department's information and belief that respondent's continued practice represented a clear and immediate danger to the public health and safety. Rec. Exh. 1.

On February 6, 2012, pursuant to §§ 4-182(c) and 19a-17(c) of the Statutes, the undersigned granted the Department's Motion and summarily suspended respondent's license pending a final determination on the allegations contained in the Charges.

The Department served the Motion for Summary Suspension, Charges, Summary Suspension Order and Notice of Hearing via certified mail, return receipt requested, first class mail, and State Marshal. Rec. Exh. 1. The Notice of Hearing directed respondent to appear before the undersigned on February 15, 2012, for a formal hearing on the allegations contained in the Charges.

On February 15, 2012, respondent made an oral motion to continue the case to a later date to secure legal counsel, the motion was granted, and the hearing was continued to March 5, 2012. Tr. 2/15/2012, p. 10.

An administrative hearing was held on February 15 and March 5, 2012, in accordance with Connecticut General Statutes Chapter 54 and the Regulations of Connecticut State Agencies

[1] The Department erroneously cited §20-263 of the Statutes instead of §20-206c, the Statute that applies to Licensed Massage Therapist. Therefore, §20-206c of the Statutes is referenced throughout this decision.

("the Regulations") §§19a-9-1 *et seq.* Because respondent was incarcerated at the time of the hearing, he appeared via telephone *pro se*; Attorney Joelle Newton represented the Department. Both parties were given the opportunity to present evidence and argument on all issues and to conduct cross-examination.

On March 5, 2012, the Department made a motion to amend the Statement of Charges ("the Charges"), and without objection, the motion was granted. Tr. 3/5/12, p. 15. Respondent orally answered the Charges at the hearing. Tr. 3/5/2012, pp. 13-14.

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. To the extent the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *SAS Inst., Inc. v. S&H Computer Systems, Inc.*, 605 F. Supp. 816 (M.D. Tenn 1985).

Allegations

1) In paragraph 1 of the Charges, the Department alleges that respondent of East Hartford, Connecticut is, and has been at all times referenced in the Charges, the holder of Connecticut massage therapist license number 006830.

2) In paragraph 2 of the Charges, the Department alleges that in July 2011, the Department ordered a Pre-license Consent Order, Petition 2011-349, that placed respondent's license on probation for two years. The Pre-license Consent Order required respondent to submit to weekly observed random urine screens for drugs and alcohol in accordance with Department requirements for Drug and Alcohol Screens and attend support group meetings.

3) In paragraph 3 of the Charges, the Department alleges that to date, respondent has failed to submit to weekly observed random urine screens for drugs and alcohol in accordance with Department Requirements for Drug and Alcohol Screens and attend support group meetings.

4) In paragraph 4 of the Charges, the Department alleges that respondent's conduct as described above constitutes violations of the terms of probation set forth in the Pre-license Consent Order and subjects respondent's license to revocation or other disciplinary action authorized by §§ 19a-17 and 20-206c.

Findings of Fact

1) Respondent of East Hartford, Connecticut is, and has been at all times referenced in the Charges, the holder of Connecticut massage therapist license number 006830. Tr. 3/5/2012, p. 13.

2) In July 2011, the Department ordered a Pre-license Consent Order, Petition 2011-349, that placed respondent's license on probation for two years. The Pre-license Consent Order required respondent to submit to weekly observed random urine screens for drugs and alcohol in accordance with Department requirements for Drug and Alcohol Screens and to attend support group meetings. Tr. 3/5/2012, pp. 13, 17-18.

3) Respondent has failed to submit to weekly observed random urine screens for drugs and alcohol in accordance with Department Requirements for Drug and Alcohol Screens and has not attended support group meetings. Tr. 3/5/2012, pp. 13, 18, 20.

Discussion and Conclusions of Law

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: . . . emotional disorder or mental illness; . . . abuse or excessive use of drugs, including alcohol, narcotics or chemicals; . . .

The Department bears the burden of proof by a preponderance of the evidence in this matter. *Swiller v. Comm'r of Public Health*, CV-950705601, Superior Court, J.D. Hartford/New Britain at Hartford, October 10, 1995); *Goldstar Medical Services, Inc., et al. v. Department of Social Services,* 288 Conn. 790 (2008); *Steadman v. SEC*, 450 U.S. 91, 101 S. Ct. 999, *reh'g den.*, 451 U.S. 933 (1981). The Department sustained its burden of proof with regard to all allegations set forth in paragraphs 1 through 4 of the Charges.

The preponderance of the evidence establishes that at all times referenced in the Charges, respondent was the holder of Connecticut massage therapist license number 006830. In July 2011, the Department ordered a Pre-license Consent Order, Petition 2011-349, that placed

respondent's license on probation for two years. The Pre-license Consent Order required respondent to submit to weekly observed random urine screens for drugs and alcohol in accordance with Department requirements for Drug and Alcohol Screens, and attend support group meetings. Respondent has failed to submit to weekly observed random urine screens for drugs and alcohol in accordance with Department Requirements for Drug and Alcohol Screens, or to attend support group meetings.

While respondent admits all the Charges, except for the allegation that he failed to attend support group meetings, he contends that the reason that he did not submit to the weekly urine screens was that he could not afford such screens, and because he has been incarcerated since January 2012. Tr. 3/5/2012, p. 15. Respondent's defense is contradicted by the Department's investigator, Olive Tronchin who credibly testified that respondent has not submitted reports that indicate that he has been attending support group meetings. Tr. 3/5/2012, p. 18. Respondent admits that he was aware of such requirement. *Id.* at 15.

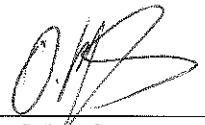
Respondent's claim that he cannot afford the urine screens is not credible in light of respondent's therapist statement to the Department indicating that respondent had urine screens at each therapist session from July to December 2011, but that he has not signed a release so the therapist can forward such results to the Department. Furthermore, the therapist states that the urine screens are not random; and, the Department has not been informed whether the urine screens are directly observed, the type of substances that are being screened, or which laboratory is performing the testing. Dept. Exh. 1, p. 8. Therefore, the Department sustained its burden of proof with regard to all of the allegations contained in the Charges which merits the issuance of this Order.

Although the Department erroneously stated that respondent's conduct subjects respondent to disciplinary pursuant to §20-263, as referenced in the Charges, the applicable statutes and respondent's admission to the factual allegations warrants discipline under §§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 Henry Carisio, LMT, regarding Connecticut massage therapist number 006830:

1. Respondent's license number 006830 to practice as a massage therapist in the State of Connecticut is hereby revoked.
2. This Order shall become effective upon signature.



Olinda Morales, Esq.
Hearing Officer

4/3/2012
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 3rd day of April, 2012 certified mail return receipt requested and first class mail to:

Henry F. Carisio, Jr. Inmate # 387846
Willard - Cybulski Correctional
391 Shaker Avenue
Enfield CT 06082

and by E- Mail to:

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Janice E. Wojick, Hearings Liaison