

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF)
MASSAGE,)
)
Petitioner,)
)
vs.) Case No. 98-0989
)
KEITH RICHARD GOLDSMITH,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Administrative Law Judge, Mary Clark, held a formal hearing in the above-styled case on June 11, 1998. The hearing was conducted by videoconference with the Administrative Law Judge presiding from Tallahassee, Florida. Counsel for the Petitioner participated from Tallahassee; the Respondent, witness for Petitioner, and court reporter participated from Orlando, Florida.

APPEARANCES

For Petitioner: Joseph S. Garwood, Esquire
Agency for Health Care Administration
1580 Waldo Palmer Lane
Post Office Box 14229
Tallahassee, Florida 32317-4229

For Respondent: Keith Richard Goldsmith, pro se
265 Stoner Road

Winter Springs, Florida 32708

STATEMENT OF THE ISSUES

An administrative complaint dated January 5, 1998, charges that Respondent violated rules governing the practice of massage by failing to have a current establishment license and failing to have a fire extinguisher on the premises maintained in good working condition.

The issues for resolution are whether those violations occurred and, if so, what discipline is appropriate.

PRELIMINARY STATEMENT

Respondent disputed the allegations of the administrative complaint and requested a formal evidentiary hearing. After the agency referred the case to the Division of Administrative Hearings, it was assigned and the hearing was set as described above.

At the hearing Petitioner presented the testimony of its investigator, Dawn Witte, and admitted a single exhibit (a composite containing the licensing file) into evidence, without objection.

Respondent testified in his own behalf and also admitted, without objection, a single exhibit comprised of an application and a temporary authorization.

Several days after the hearing the court reporter informed the parties and the administrative law judge that she had lost her tape recording of the proceedings. In a telephone conference convened on June 16, 1998, the parties agreed to allow the matter to proceed without a transcript. The material facts are uncontroverted.

On June 17, 1998, Petitioner filed its Proposed Recommended Order. Although Respondent mentioned that he had faxed some post-hearing written material, including a "poem," those documents were never received by the administrative law judge.

FINDINGS OF FACT

1. Respondent, Keith Richard Goldsmith, is now and has been at all relevant times a massage therapist licensed by the State of Florida with license no. 0011202.

2. In 1996, Respondent's massage establishment, Bio-Spirit Bodywork Therapy, was licensed and located at 1089 Choke Cherry Road in Winter Springs, Seminole County, Florida. The property was sold and Respondent had to relocate in a move which he describes as "chaotic."

3. At some point during or after the move Respondent sent his facility transfer fee to the Board of Massage. He apparently sent a letter, but not the proper application form.

4. On July 31, 1997, after obtaining Respondent's phone number from telephone information and calling to get an appointment, investigators Dawn Witte and J. C. Russell conducted an inspection of Respondent's facility now located at 265 Stoner Road in Winter Springs, Florida. The inspection determined that all requirements were met, except for the following:

- a) No current establishment license;
- b) No establishment license displayed; and
- c) No fire extinguisher maintained on the premises.

5. At the time of the inspection Respondent had not obtained the license for the new facility and did not display the license for the prior facility. His fire extinguisher was still packed away somewhere.

6. In a follow-up visit from the inspectors, Respondent declined the option to accept a disciplinary citation and \$250 fine for the violations.

7. Respondent subsequently formally applied for, and was granted a temporary establishment license for the Stoner Road facility.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction in this proceeding pursuant to Sections 120.57(1), Florida Statutes; and 455.225, Florida Statutes.

9. Section 480.046(1)(k), Florida Statutes, provides that disciplinary action may be taken against a massage therapist or massage establishment for violating a rule of the Board of Massage Therapy or Department of Health.

10. Rule 63B7-26.003, Florida Administrative Code, requires that each massage establishment must maintain a fire extinguisher in good working order. Rule 64B7-28.008, Florida Administrative Code, requires that an establishment owner conspicuously display a current establishment license on the premises.

11. The agency plainly proved that the alleged violations occurred. Moreover, Respondent concedes that he did not have the license displayed for his new facility or the fire extinguisher unpacked and ready.

12. Rule 64B7-30.002, Florida Administrative Code, provides disciplinary guidelines for the Board of Massage Therapy. For violations of Section 480.046(1)(k), Florida Statutes, the rule recommends a penalty of "\$250 fine to probation." Although there are two violations alleged and proven, the mitigating factors described in Rule 64B7-30.002(3), Florida Administrative Code, suggest some lessor penalty than the \$500 fine.

RECOMMENDATION

Based on the foregoing it is hereby recommended that the Board of Massage Therapy enter its final order finding that Respondent committed two violations of Section 480.046(1)(k), Florida Statutes, and assessing a fine of \$350.

DONE AND ENTERED this 20th day of July, 1998, in
Tallahassee. Leon County, Florida.

MARY CLARK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of July, 1998.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.