

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH,)
BOARD OF MASSAGE THERAPY,)
)
Petitioner,)
)
vs.) Case No. 99-3719
)
STANLEY MICHAEL CARROLL, M.A.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

A formal hearing was held in this case on August 18, 2000, by video teleconference between Tallahassee, Florida, and Jacksonville, Florida, before the Division of Administrative Hearings, by its designated Administrative Law Judge, Suzanne F. Hood.

APPEARANCES

For Petitioner: Gary L. Asbell, Esquire
Agency for Health Care Administration
2727 Mahan Drive
Building 3, Mail Stop 39
Tallahassee, Florida 32308

For Respondent: Stanley Michael Carroll, pro se
1535 San Juan Avenue
Jacksonville, Florida 32210

STATEMENT OF THE ISSUES

The issues are whether Respondent violated Section 480.046(1)(c), Florida Statutes, and if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On May 24, 1999, Petitioner Department of Health (Petitioner) issued an Amended Administrative Complaint against Respondent Stanley Michael Carroll, M.A. (Respondent). Said complaint alleged that Respondent had violated Section 480.046(1)(c), Florida Statutes. Respondent requested a formal hearing to contest the allegations contained in the complaint on July 1, 1999. Petitioner referred this case to the Division of Administrative Hearings on September 1, 1999.

The Division of Administrative Hearings issued an Initial Order on September 8, 1999. The parties filed a Joint Response to Initial Order on September 20, 1999.

The undersigned issued a Notice of Hearing dated September 22, 1999, scheduling the case for hearing on November 15, 1999.

On November 3, 1999, counsel for Respondent filed a Notice of Appearance of Counsel.

On November 9, 1999, Petitioner filed a Motion for Order Compelling an Amended Answer to Petitioner's Request for Admissions or Alternatively for an Order Deeming the Matter

Admitted. The next day, Petitioner's counsel filed a Motion to Place in Abeyance and Temporarily Relinquish Jurisdiction, stating that the parties had reached a proposed settlement agreement of this matter and requesting abeyance until Petitioner could meet to consider the proposed settlement stipulation. The undersigned issued an Order Granting Continuance and Placing Case in Abeyance on November 12, 1999.

On January 31, 2000, Petitioner filed a request to continue the case until March 1, 2000, to provide the parties an opportunity to consider a second proposed settlement agreement. The undersigned granted this request by order dated February 1, 2000.

On March 1, 2000, Petitioner's counsel filed a Status Report, requesting further continuance until Petitioner could meet to consider the second proposed settlement. The undersigned granted this request by order dated March 2, 2000.

On May 5, 2000, Petitioner filed a Status Report, stating that the parties had been unable to reach a settlement agreement and requesting that the case be rescheduled for formal hearing. On May 22, 2000, the undersigned issued a Notice of Hearing by Video Teleconference, scheduling the case for hearing on August 18, 2000.

On July 7, 2000, Respondent's counsel filed a Motion to Withdraw. The undersigned granted this motion by order dated July 10, 2000.

At the hearing, Petitioner presented no witnesses but offered four exhibits, which were accepted into evidence. Respondent testified on his own behalf and offered three exhibits, two of which were accepted into evidence. Respondent's Exhibit 2, containing the results of Respondent's lie detector test on May 5, 1999, was not admitted into evidence.

The court reporter filed a Transcript of the proceeding on September 5, 2000. Petitioner filed a Proposed Recommended Order on September 8, 2000. Respondent did not file a post-hearing proposed recommended order.

FINDINGS OF FACT

1. Petitioner is the agency charged with the duty to regulate the practice of massage therapy in Florida.
2. At all time relevant to this proceeding, Respondent was licensed to practice massage therapy, holding license No. MA0020209.
3. In September 1997, Respondent provided massage therapy treatment on three occasions to a client, M.J. The treatment was intended to be therapeutic for injuries suffered by M.J. in an automobile accident.

4. The last of the massage therapy sessions occurred on September 19, 1997, at the home of M.J.'s mother.

5. M.J. subsequently filed a formal complaint with the Duval County Sheriff's Office. The complaint alleged that Respondent touched M.J.'s breast and nipple inappropriately during the September 19, 1997, massage therapy session. On November 24, 1997, the State Attorney, in and for Duval County, Florida, filed an Information, charging Respondent with misdemeanor battery in violation of Section 784.03(1)(a), Florida Statutes.

6. In a jury trial on April 15, 1998, Duval County Court Case No. 97-66371 MM, Respondent was convicted of simple battery, a criminal violation of Section 784.03(1)(a), Florida Statutes.

7. The above-referenced criminal conviction arose directly out of Respondent's massage therapy session with M.J. on September 19, 1997. Respondent would not have been charged with and convicted of simple battery but for Respondent's massage therapy practice on M.J.

8. Respondent had to pay a \$200 fine and \$115 in court costs as a result of his criminal conviction.

CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. Sections 120.569 and 120.57(1), Florida Statutes.

10. Petitioner has the burden of proving by clear and convincing evidence that Respondent violated Section 480.046(1)(c), Florida Statutes. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

11. Section 455.624(3), Florida Statutes, provides as follows in pertinent part:

(3) In addition to any other discipline imposed pursuant to this section or discipline imposed for a violation of any practice act, the board, or the department when there is no board, may assess costs related to the investigation and prosecution of the case excluding costs associated with an attorney's time. . . .

12. Section 480.033(3), Florida Statutes, defines "massage" as follows:

(3) "Massage" means the manipulation of the superficial tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.

13. Section 480.046(1), Florida Statutes, provides in pertinent part:

(1) The following acts shall constitute grounds for which disciplinary actions specified in subsection (2) may be taken against a massage therapist or massage establishment licensed under this act.

* * *

(c) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of massage or to the ability to practice massage. Any plea of nolo contendere shall be considered a conviction for purposes of this chapter.

14. Section 784.03(1), Florida Statutes, states as follows:

(1)(a) The offense of battery occurs when a person:

1. Actually and intentionally touches or strikes another person against the will of the other; or
2. Intentionally causes bodily harm to another person.

(b) Except as provided in subsection (2), a person who commits battery commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or 775.083.

15. In this case, Respondent was convicted of misdemeanor battery for intentionally touching M.J. against her will. His conviction would not have occurred but for the massage therapy session. Petitioner has provided clear and convincing evidence that Respondent has violated Section 480.046(1)(c), Florida Statutes.

16. Section 480.046(2), Florida Statutes, authorizes Petitioner to impose penalties on persons who violate Section

480.046(1), Florida Statutes. Section 480.046(2)(d), Florida Statutes, specifically authorizes the "[i]mposition of an administrative fine not to exceed \$1,000 for each count or separate offense."

17. Rule 64B7-30.002(1)(c), Florida Administrative Code, provides that Petitioner may penalize a person who violates Section 480.046(1)(c), Florida Statutes, for crimes related to battery by imposing an administrative fine up to \$1,000 and/or revoking licensure.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED:

That Petitioner enter a final order fining Respondent \$500 and assessing costs of investigation and prosecution.

DONE AND ENTERED this 10th day of October, 2000, in
Tallahassee, Leon County, Florida.

SUZANNE F. HOOD
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of October, 2000.

COPIES FURNISHED:

Gary L. Asbell, Esquire
Agency for Health Care Administration
2727 Mahan Drive
Building 3, Mail Stop 39
Tallahassee, Florida 32308

Stanley Michael Carroll
1535 San Juan Avenue
Jacksonville, Florida 32210

William H. Buckhalt, Executive Director
Board of Massage Therapy
Department of Health
4052 Bald Cypress Way
Tallahassee, Florida 32399-1701

Theodore M. Henderson, Agency Clerk
Department of Health
4052 Bald Cypress Way, Bin A00
Tallahassee, Florida 32399-1701

William W. Large, General Counsel
Department of Health
4052 Bald Cypress Way, Bin A02
Tallahassee, Florida 32399-1701

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.