

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF)
MASSAGE THERAPY,)
)
Petitioner,)
)
vs.) Case No. 00-3404PL
)
ANDREA L. SNYDER,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case at Fort Lauderdale, Florida, on October 11, 2000, before Administrative Law Judge Michael M. Parrish of the Division of Administrative Hearings.

APPEARANCES

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

For Respondent: Timothy Foster, Esquire
2501 Bristol Drive, Suite B-11
West Palm Beach, Florida 33409

STATEMENT OF THE ISSUE

This is a license discipline proceeding in which the Petitioner seeks to take disciplinary action against a licensee on the basis of alleged misconduct set forth in a two-count Administrative Complaint.

PRELIMINARY STATEMENT

At the final hearing on October 11, 2000, the Petitioner presented the testimony of three witnesses and offered four exhibits into evidence. The Petitioner's Exhibits 1 and 2 were received in evidence. The Petitioner's Exhibit 3 was withdrawn by Petitioner. Portions of the Petitioner's Exhibit 4 were received in evidence.¹ The Respondent testified on her own behalf, but did not call any other witnesses. The Respondent did not offer any exhibits.

At the conclusion of the hearing, the parties requested, and were granted, 20 days from the filing of the transcript within which to file their proposed recommended orders. The transcript was filed with the Division of Administrative Hearings on October 30, 2000. Thereafter, both parties filed timely Proposed Recommended Orders containing proposed findings of fact and conclusions of law. The parties' proposals have been carefully considered during the preparation of this Recommended Order.

By way of introduction to the findings of fact which follow, it is noted that the undersigned found the testimony of Detective Steve Drum to be clear, convincing, and persuasive. Accordingly, conflicts in the evidence have been resolved in a manner consistent with the version of events described by Detective Drum.

FINDINGS OF FACT

1. At all times material to this case, the Respondent, Andrea L. Snyder, was a licensed Massage Therapist, having been issued license number MA-0024773 by the Florida Board of Massage Therapy.

2. At all times material to this case, the Respondent was employed part-time at D & D of Broward, Inc., doing business as "Stress Massage Clinic" at an establishment located at 179 State Road 7, Margate, Florida.

3. On February 9, 1998, Broward County Sheriff Detective Steve Drum entered the Stress Massage Clinic, where he encountered the Respondent. Detective Drum arranged for a one-half hour therapy session with the Respondent for a thirty-dollar fee. The Respondent accepted the fee.

4. The Respondent escorted Detective Drum to a private room and advised him to get comfortable. Detective Drum removed his clothing and then laid himself face down on a massage table, naked, and undraped. Shortly thereafter, the Respondent entered the room and began to massage Detective Drum. After a few minutes, the Respondent asked Detective Drum to turn over. Still naked and undraped, Detective Drum turned over onto his back, and the Respondent continued to massage him.

5. The Respondent then asked Detective Drum if he wanted her to put oil on his genital area. He indicated that he did.

The Respondent then indicated that she expected additional compensation for doing so, and Detective Drum agreed to additional compensation. Thereupon, the Respondent removed her shirt, which left her naked from the waist up. She then placed oil on her hands and grabbed Detective Drum's penis and attempted to masturbate him. Detective Drum stopped the attempted masturbation. The Respondent made a second attempt to grab the detective's penis, but he stopped her from doing so, and began to get dressed. Detective Drum then paid the Respondent an additional forty dollars and left the establishment.

6. On March 12, 1998, Detective Drum called the Stress Massage Clinic and made an appointment for a two-girl session. Upon entering the facility on March 12, 1998, Detective Drum was greeted by the Respondent and by another female employee named Kira Talis. Detective Drum paid a fee and was escorted to a massage room.

7. The March 12, 1998, massage session began with Detective Drum lying naked and undraped on a massage table. Both the Respondent and Ms. Talis began performing a massage on Detective Drum. Shortly thereafter, the Respondent and Ms. Talis both removed their shirts and both were naked from the waist up. During the course of the March 12, 1998, massage session, both the Respondent and Ms. Talis attempted to

masturbate Detective Drum by grabbing his penis. Detective Drum promptly stopped these attempts to masturbate him by moving the women's hands away from his penis, and by asking them to massage other parties of his body. At the conclusion of the March 12, 1998, massage session, Detective Drum gave a one hundred dollar bill to one of the women to be divided between the two of them.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this case. Chapter 120, Florida Statutes.

9. In a case of this nature, the Petitioner bears the burden of proving all facts upon which it relies by clear and convincing evidence. The Petitioner has met that burden in this case.

10. At all times material hereto, Section 480.046(1), Florida Statutes, provided in pertinent part:

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:

* * *

(k) violating any provision of this chapter, a rule of the board or department, or a lawful order of the board or department previously entered in a disciplinary hearing, or failing to comply with a lawfully issued subpoena of the department.

11. In the Administrative Complaint, the Respondent is charged with violating Section 480.046(1)(k), Florida Statutes, by violating Section 480.0485, Florida Statutes, by engaging in sexual misconduct in the practice of massage therapy. Section 480.0485, Florida Statutes, provides in pertinent part:

Sexual misconduct in the practice of massage therapy means violation of the massage therapist-patient relationship through which the massage therapist uses that relationship to induce or attempt to induce the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of practice or of the scope of generally accepted examination or treatment of the patient. Sexual misconduct in the practice of massage therapy is prohibited.

12. As to Count I of the Administrative Complaint, the Petitioner has proven by clear and convincing evidence that the Respondent is guilty as charged. By exposing her breasts, touching the Detective's penis and attempting to masturbate the Detective, the Respondent has exceeded the scope of practice for a massage therapist, and has committed acts of sexual misconduct in the practice of massage therapy.

13. In Count II of the Administrative Complaint, Respondent is charged with violating Rule 64B7-30.001(1)(d), Florida Administrative Code, by engaging or attempting or offering to engage a client in sexual activity including genital

contact. The allegations of this count have also been proved by clear and convincing evidence.

14. Rule 64B7-30.002(1)(k)1, Florida Administrative Code (The Massage Therapy Board's disciplinary guidelines), provides for revocation of the license and \$1,000.00 fine for a violation of Section 480.0485, Florida Statutes.²

15. At all times material hereto, Section 455.624(3), Florida Statutes, provided in pertinent part:

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.

RECOMMENDATION

On the basis of all of the foregoing, it is RECOMMENDED that the Board of Massage Therapy issue a final order in this case finding the Respondent guilty of the violations alleged in the Administrative Complaint and imposing a penalty consisting of the following: (a) revocation of the Respondent's license; (b) an administrative fine in the amount of \$1,000.00; and (c) assessments of costs related to the investigation and prosecution of this case.

DONE AND ENTERED this 3rd day of January, 2001, in
Tallahassee, Leon County, Florida.

MICHAEL M. PARRISH
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of January, 2001.

ENDNOTES

1/ The specific portions of the Petitioner's Exhibit 4 that were received in evidence are described at pages 39 and 40 of the transcript of the hearing.

2/ In several similar cases, licenses have been revoked. See Department of Health, Board of Massage Therapy vs. Hae Suk Bornholdt, DOAH Case No. 00-2442 (Recommended Order issued August 16, 2000); Department of Business and Professional Regulation, Board of Massage vs. Alan Sibley, DOAH Case No. 97-0309 (Recommended Order issued May 2, 1997); and Department of Business and Professional Regulation, Board of Massage vs. Elvira Carmen Purmont and Le Clinique, DOAH Case No. 96-2171 (Recommended Order issued May 21, 1997).

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.