



LOUISIANA BOARD OF MASSAGE THERAPY

BOBBY JINDAL

GOVERNOR

IN RE:

Docket No: 8-15-01

88 Reflexology

Louisiana Board of Massage Therapy

OPINION AND ORDER

This matter involving 88 Reflexology massage establishment ("Respondent Establishment") came before the Louisiana Board of Massage Therapy ("Board") for hearing on August 14, 2015, pursuant to written notice, at which time a quorum of the Board was present. Appearances at hearing:

John "Jack" Miller, complaint counsel for the Board.

Jeffrey Wale, general counsel for Board.

A. JURISDICTION

Jurisdiction for the hearing is vested pursuant to La. R.S. 37:3563.

B. BACKGROUND AND MATTERS AT ISSUE

Proceedings to adjudicate an administrative enforcement action were initiated by the filing of a Notice of Initial Violation completed by the Board on February 27, 2015. The Notice was created after an inspection report dated February 10, 2015 was turned into the Board. The inspection report was signed by Terry Lacombe. Terry Lacombe is an investigator employed by the Board to inspect massage establishments. The inspection report prepared by Terry Lacombe concluded that Respondent Establishment failed to comply with adequate health data recordkeeping as required under Board rules. The inspection also found that current client records were not maintained at the location in a confidential manner and that client records were not maintained for a minimum of 5 calendar years after the last service performed for that client. The Notice of Initial Violation was sent to Respondent Establishment on February 27, 2015 via certified mail, and an individual signed the receipt of this certified mail on March 3, 2015. This Notice of Initial Violation included a fine of \$150.00. A subsequent letter informing Respondent Establishment of its violations was sent to Respondent Establishment, and a representative of Respondent Establishment signed a letter of receipt for it on April 28, 2015. A subsequent investigation of the building took place on April 28, 2015, which revealed more violations of Board rules. Respondent Establishment was mailed a notice of an administrative hearing to address these issues, scheduled for August 14, 2015, on June 2, 2015. A representative of Respondent Establishment signed a receipt of the letter on June 4, 2015. On July 14, 2015,

Respondent Establishment was mailed a second notice alerting it to the August 14, 2015 hearing date. The receipt of this second notice was signed by a representative of Respondent Establishment on July 17, 2015. At no time did Respondent Establishment contact the Board for further information or make a payment of the fines sent to it.

The issues for the Board to determine in this matter were whether the Respondent Establishment's actions constituted cause for which the Board may order suspension or revocation of the Respondent Establishment's license or a lesser sanction as deemed appropriate and whether the Respondent Establishment's actions were in violation of the following provisions:

- (a) LAC 46:XLIV §4101: Collection of data concerning an individual's health status.

C. APPLICABLE STATUTES AND RULES AND REGULATIONS

The laws governing massage therapists in Louisiana can be found at La. R.S. 37:3551 through La. R.S. 37:3567, and LAC 46:XLV§101 through LAC 46:XLV§6101. Specific consideration was given by the Board to the following statutes, rules and regulations:

La. R.S. 37:3555: Powers and Duties of the Board

A. The board shall:

- (1) Regulate the practice of massage and bodywork in Louisiana by licensing massage therapists who meet the state's minimum standards of education. Among its functions, the board promulgates rules and regulations, issues and renews professional and establishment licenses, collects and assesses fees pursuant to R.S. 37:3562, inspects, investigates, and disciplines licensees, including both individuals and establishments, who violate the law, and imposes fines and penalties.
- (2) Perform inspections and investigate persons who may be engaging in practices which violate provisions of this Chapter and impose fines and penalties.
- (3) Maintain a complete record going back for a period of at least five years of all licensed massage therapists and annually prepare a roster of the names and addresses of all such licensees. A copy of this roster shall be made available to any person requesting it, upon payment of a fee set by the board in an amount sufficient to cover the costs of its publication and distribution.
- (4) Adopt and revise rules and regulations pursuant to the Administrative Procedure Act for the purpose of administering the provisions of this Chapter.
- (5) Issue declaratory rulings interpreting the scope of practice of massage therapy, as that term is further defined in R.S. 37:3552(10).

B. The board may:

- (1) Accept or deny entrance of any applicant applying for licensure.
- (2) Establish continuing education requirements for license renewal.

La. R.S. 37:3558: Massage establishments

A. Massage establishments shall be required to be licensed as follows:

(1) Each person engaging in the practice of massage therapy at a massage establishment shall be the holder of a Licensed Massage Therapist Identification Card (LMT-ID Card), which shall identify the therapist as being properly licensed and shall authorize the therapist to provide off-site massage services.

(2) All locations where one or more persons are regularly engaged in the practice of massage therapy shall register with the board as a massage establishment. Additionally, all locations where more than one person is regularly engaged in the practice of massage therapy shall pay the establishment license fee.

(3) Obtaining a massage establishment license shall be the responsibility of the entity which controls the physical location where the services are provided, which entity may be a sole proprietor, lessee, owner, partnership, corporation, cooperative, association, or other legal entity.

B. A massage establishment shall employ or contract only licensed massage therapists to perform massage therapy.

C. For purposes of this Chapter, "sexually oriented business" means a sex parlor, massage parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult motel, or other commercial enterprise which has as its primary business the offering of a service or the sale, rent, or exhibit of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.

D. A sexually oriented business shall be ineligible for registration as a massage establishment and shall not operate as a massage establishment.

La. R.S. 37:3563: Grounds for discipline

A. The board may suspend, revoke, or refuse to issue or renew a license after notice and opportunity for hearing pursuant to the Administrative Procedure Act, upon proof of any of the following:

(1) Obtaining a license by means of fraud, misrepresentation, or concealment of material facts, including making false statements on an application or other document required by the board.

(2) Selling, bartering, or offering to sell or barter a license.

(3) Engaging in unprofessional conduct that has endangered or that is likely to endanger the health, welfare, or safety of the public, as further defined by rules of the board.

(4) Conviction of a felony, unless such conviction was reversed on appeal.

(5) Conviction of any crime arising out of or connected with the practice of massage therapy, unless such conviction was reversed on appeal.

(6) Violating or aiding and abetting in the violation of any provisions of this Chapter or the rules and regulations promulgated hereunder.

(7) Failing to comply with license or renewal requirements.

B. Any person who has been convicted of, entered a plea of nolo contendere to, or received deferred adjudication in connection with any criminal offense involving sexual misconduct shall be ineligible for licensure as a massage therapist.

C. The board shall revoke the license of any person who is convicted of, enters a plea of nolo contendere to, or receives deferred adjudication in connection with any criminal offense involving sexual misconduct or prostitution.

D. Any person who has been convicted of, entered a plea of nolo contendere to, or received deferred adjudication in connection with any criminal offense involving sexual misconduct or prostitution shall be ineligible for licensure as an owner or operator of a massage establishment. The board shall revoke the license of any person if the board determines that the establishment is a sexually oriented business, as defined in R.S. 37:3558(C), or that a crime or offense involving prostitution or other sexual offenses and resulting in a conviction, to which a plea of nolo contendere was entered or deferred adjudication was received, has occurred on the premises of the establishment since the date of the most recent license renewal.

LAC 46:XLIV §4101: Health Data

A. Data concerning an individual's health status must be systematically and continuously collected, recorded, and communicated in order to determine therapeutic needs, according to the following criteria.

1. The format for the collection and recordation of data must provide for systematic collection, frequent updating, accessibility, and appropriate confidentiality.

2. Data may be collected from the individual, family members, pertinent others and other health care personnel.

3. Client records are to be obtained and reviewed by the licensed therapist to determine if therapeutic massage intervention is needed.

4. Current client records are to be maintained at the licensed establishment location in a confidential manner.

5. All client records must be maintained for a minimum of five calendar years after the last service is performed for that client. After five years from the last date of service, client records may be disposed of in an appropriate and confidential manner.

LAC 46:XLIV §5501: Guidelines for Disciplinary Actions

A. When the board finds that an applicant or licensee whom it regulates has committed any of the prohibited acts set forth in the statutes or rules, the board may impose appropriate penalties within the ranges recommended in the following disciplinary guidelines.

B. Penalties imposed by the board pursuant to this Section may be imposed in combination or individually, and are as follows:

1. refusal to license an applicant; revocation or suspension of license;

2. issuance of a reprimand or censure;
3. imposition of an administrative fine not to exceed \$1,000 for each count or separate offense.

C. The provisions of this Section are not intended and shall not be construed to limit the ability of the board to informally dispose of disciplinary actions by agreement.

D. The provisions of this Section are not intended and shall not be construed to limit the ability of the board to pursue collateral, civil or criminal actions when appropriate.

E. In determining whether an applicant who has a criminal history should be permitted to apply to be licensed or renew a license, the complaint investigation officer (CIO), designated under §5901 of this Part, shall be authorized to make an initial decision as to whether a conviction of a non-violent crime by an applicant, which conviction is less than five years old, is sufficiently related to the practice of massage therapy so as to require the application or renewal to be presented to the board for approval. If the CIO makes a determination that the criminal activity involved is clearly not related to the ability to engage in the practice of massage therapy, the CIO may approve the applicant to continue with the application or renewal process. The CIO shall submit a report to the board as to those applicants who have been approved under this procedure.

LAC 46:XLIV §6101. Formal Disciplinary Hearings

A. Formal Disciplinary Hearings

1. The board shall also be authorized to conduct formal disciplinary hearings.
2. The hearing shall be held before the board only after the involved licensee and/or applicant is given at least 30 days notice by registered or certified mail. The content of the notice, as well as the conduct of the hearings, shall be governed by R.S. 49:955, being further provided that the licensee be advised of the right to be represented by legal counsel. The board shall arrange for a court reporter to make an accurate recording of all testimony presented at the hearing. Any person bringing a complaint waives the privilege of confidentiality for purposes of the hearing.

D. FINDINGS OF FACT

On February 10, 2015, a Board inspector inspected Respondent Establishment. The inspection found that data concerning individuals' health status was not systematically and continuously collected, recorded, and communicated in order to determine therapeutic needs. The inspection also found that current client records were not maintained at the location in a confidential manner. The inspection further found that client records were not maintained for a minimum of 5 calendar years after the last service performed for that client.

On February 27, 2015, the Board sent Respondent Establishment a notice of initial violation that Respondent Establishment had violated Board rules, namely §4101, Health Data Recordkeeping.

Respondent Establishment was fined \$150.00. The notice also informed Respondent Establishment that this decision could be appealed.

On March 3, 2015, a certified mail receipt was signed by an individual at Respondent Establishment's address, signifying receipt of the notice sent by the Board.

On April 25, 2015, the Board sent a letter to Respondent Establishment, advising it that the notice of initial violation had been sent to it. The letter from the Board noted that the Board had not received a notice of intent to contest the violation and that the fine had not been paid. Receipt of the letter was signed at Respondent Establishment's address on April 28, 2015.

On April 28, 2015, a Board inspector conducted another inspection of Respondent Establishment. The inspection once again found that Respondent Establishment had failed to maintain adequate health data recordkeeping and additionally found that Respondent Establishment failed to put the correct name on Respondent Establishment's promotional signs, brochures, displays, or business cards.

On June 2, 2015, the Board sent Respondent Establishment a notice of hearing. The notice of hearing stated that the hearing was to be held on August 14, 2015, 10:00 a.m., at 3851 Essen Lane, Baton Rouge, LA 70809. The issue scheduled for hearing was listed as a violation of Rule §4101, Health Data Recordkeeping. The hearing included a notice to Respondent Establishment that they had the right to be represented by an attorney at this hearing, and that Respondent Establishment had the right to respond and present evidence on all issues of fact involved.

On June 4, 2015, a certified mail receipt was signed by an individual at Respondent Establishment's address, signifying receipt of the notice sent by the Board.

On July 14, 2015, the Board sent a second notice of hearing for the August 14, 2015 date. The information in the second notice contained the same information found in the first notice.

On July 17, 2015, a certified mail receipt was signed by an individual at Respondent Establishment's address, signifying receipt of the second notice sent by the Board.

On August 14, 2015, the Board conducted an administrative hearing to review the facts listed above. A Board staff member testified that the Board staff had not received any payment or communication from Respondent Establishment. At the beginning of the hearing, the hearing officer twice asked the public if any representative of Respondent Establishment would like to speak. No representative of Respondent Establishment came forward. No communication had been received by the Board from Respondent Establishment.

E. CONCLUSIONS OF LAW

Failure to keep adequate health records of individuals is a violation of LAC 46:XLIV §4101: Health Data. Establishments are required to keep certain health data records in a confidential manner for a minimum of five years.

The Board may conduct an administrative hearing as long as the licensee has been given 30 days notice by registered or certified mail. LAC 46:XLIV §6101.

The Board has the authority to revoke or suspend a license and impose administrative fines of not more than \$1,000. LAC 46:XLIV §5501.

F. DECISION

The purpose of the Louisiana Board of Massage Therapy is to regulate massage therapy in the State of Louisiana. The Board is charged with licensing therapists, issuing and renewing establishment licenses, inspecting, investigating, and disciplining licensees and establishments, and imposing fines and penalties under La. R.S. 37:3555.

This matter came before the Board on August 14, 2015. After hearing all evidence presented, the Board found that Respondent Establishment had failed to comply with Board Rule §4101: Health Data. Additionally, the Board found that Respondent Establishment had failed to pay the first administrative fine assessed to it for violations of the Board rule. The Board weighed all evidence presented by complaint counsel, as Respondent Establishment failed to appear despite adequate notice.

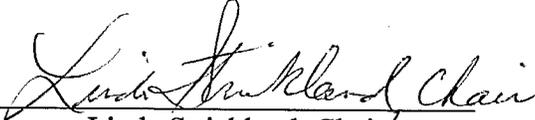
Considering the law, pleadings, evidence, and arguments of counsel, and for the reasons set forth above:

IT IS ORDERED, ADJUDGED, AND DECREED that 88 Reflexology pay \$650.00 in administrative fines and all costs necessary for 88 Reflexology to obtain the costs of the court reporter's documents from the August 14, 2015 hearing, not to exceed \$1,000.00. This fine includes the initial \$150.00 fine sent by the Board. Furthermore, 88 Reflexology's establishment license is suspended until all above fines have been paid.

G. APPEAL RIGHTS

Appeals of this decision may be made pursuant to La. R.S. 49:964-965, in accordance with LAC 46:XLIV §6101.

Signed this 8th day of September, 2015, Mandeville, Louisiana.


Linda Strickland, Chair
Louisiana Board of Massage Therapy