

BEFORE THE IOWA BOARD OF MASSAGE THERAPY

IN THE MATTER OF:)	
)	Docket No. 09-007
)	DIA No. 10DPHMT001
STEVEN PAGE)	
License No. 00854,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent.)	DECISION, AND ORDER
)	

STATEMENT OF THE CASE

On September 7, 2010, the Iowa Board of Massage Therapy (Board) filed a Notice of Hearing and Statement of Charges against respondent Steven Page, alleging that Mr. Page violated Iowa Code sections 147.55(3) and 272C.10(3) and 645 Iowa Administrative Code section 134.2(28)(b) by engaging in unethical conduct and/or practice harmful or detrimental to the public.

An in-person hearing was held on December 7, 2010 at 11:00 AM at the Lucas State Office Building, Des Moines, Iowa. Respondent appeared and was represented by attorney Richard Piscopo. Assistant attorney generals Kristin Ensign and Meghan Gavin represented the state of Iowa.

The following members of the Board were present for the hearing: Kathy Spencer-Jensen, LMT, chairperson; Larry Dallenbeck, LMT; Bonni Leiserowitz, public member; Doug Carlson, LMT; Luella Rodenmeyer, LMT; and Bill Cameron, public member. The hearing was closed to the public at Respondent's request pursuant to Iowa Code section 272C.6(1). Administrative Law Judge Laura Lockard assisted the Board in conducting the hearing. The hearing was recorded by a certified court reporter. After hearing all the evidence, the Board convened in closed session, pursuant to Iowa Code section 21.5(1)(f), to deliberate its decision. The administrative law judge was instructed to prepare the Board's written decision in accordance with its deliberations.

THE RECORD

The record includes the Notice of Hearing and Statement of Charges; Answer; Respondent's Motion to Dismiss; Resistance to Motion to Dismiss; State's Request for Ruling on the Admissibility of Rebuttal Evidence; Request for Ruling on Respondent's Motion to Dismiss; Respondent's Resistance to State's Brief in Support of Request for Ruling on Admissibility of Rebuttal Evidence; and Ruling on Respondent's Motion to Dismiss and State's Motion re: Rebuttal.

The record also includes testimony from the following witnesses: A.D.; T.R.; D.M.; Steven Page; Chris Christensen; Lexana Knutson; Vickie Cornick; Nancy Lloyd;

investigator Corey Powell; Teri Reed; Timothy Baxter; Krista Anderson; Lori Cooper; and S.D.

Neither party offered any exhibits into evidence at hearing. Consequently, there are no hearing exhibits in the record.

FINDINGS OF FACT

Respondent Steven Page has been a licensed massage therapist in Mason City, Iowa for approximately 14 years. He completed his massage therapy training at Iowa College of Natural Health. He was an independent practitioner when he first became licensed. At some point thereafter he became a salaried employee of Mercy Hospital and Mercy bought out his practice. Approximately four years later he was laid off when Mercy underwent downsizing. At that point, he began practicing again as an independent practitioner. He was an independent practitioner at the time that the allegations underlying this proceeding arose. (Page testimony).

At the peak of his practice, Mr. Page was doing approximately 45 to 55 massages per week and had approximately 275 clients. Prior to the complaint lodged by A.D.¹ there had been no allegations of any impropriety by Mr. Page in the course of his massage therapy practice. (Page testimony). During this time, Mr. Page also donated his services to a number of youth athletes through school athletic programs in his community and surrounding communities. (Page testimony).

A. A.D.

A.D. is the 16 year-old daughter of S.D., who was an acquaintance and massage therapy client of Mr. Page. In 2008, S.D. had been Mr. Page's client for somewhere between four and seven years. The two had been acquainted for considerably longer. (A.D.; S.D.; Page testimony).

S.D. scheduled a massage for A.D. with Mr. Page in approximately May, 2008. This was the first massage that Mr. Page gave A.D. S.D. remained in the room with A.D. during this massage. After the first massage, S.D. scheduled a second massage for A.D. S.D. recalls that at the second massage appointment Mr. Page told her that he preferred to have a parent in the room when working on underage clients. He indicated, however, that because he knew S.D. and A.D. that he did not care whether S.D. stayed during the massage. S.D. consulted A.D., who indicated she preferred that her mother not be in the room during the massage appointment. S.D. was not aware of any massages beyond the first two that A.D. got from Mr. Page. (S.D. testimony).

During this time period, Mr. Page had engaged A.D. to clean his office occasionally. Mr. Page paid A.D. in cash when she cleaned for him, and Mr. Page's testimony differed dramatically from A.D.'s with respect to the amount she was paid. Mr. Page testified

¹ The patients who made allegations of improper conduct against Respondent are identified in this decision by initials only in order to protect their privacy.

that he typically paid A.D. between \$20 and \$40 for up to three hours of cleaning, while A.D. testified that Mr. Page paid her anywhere between \$40 and \$250 for cleaning the office. A.D. told her mother that she was making between \$20 and \$40 for cleaning each time. (A.D.; S.D.; Page testimony).

Mr. Page offered A.D. massages several times when she was at the office to clean. All told, A.D. got between five and eight massages from Mr. Page during 2008. On one of these occasions, A.D. went into the sauna unit that Mr. Page has at his office prior to her massage. When clients go into the sauna unit, they completely disrobe. Mr. Page has a robe and towels available for clients once they exit the sauna unit. The entrance to the sauna unit is inside the massage room and clients exit directly into the massage room. Mr. Page typically allows a client to dry off and get onto the massage table before entering the room. (A.D.; Page testimony).

On this particular occasion, when Mr. Page began the massage and went to position the sheet and bolster on A.D.'s legs he noticed that A.D.'s underwear was around her knees. He asked A.D. about this and she indicated that she was unable to get the underwear all the way up because her body was still wet from being in the sauna unit. Typically, Mr. Page leaves the decision about how far to disrobe for the massage to the discretion of the individual client. Mr. Page testified at hearing, however, that it was his policy to require minors to wear underwear for massage appointments. In this instance, however, after Mr. Page noted that A.D.'s underwear was not properly positioned, A.D. scooted her underwear down around her ankles and asked Mr. Page to take them off for her and put them on a chair. Mr. Page testified that he asked A.D. to dry off, offered her a towel, and offered to leave the room. According to Mr. Page, A.D. said she was in a hurry and wanted to proceed without her underwear on. Mr. Page took A.D.'s underwear off and continued the massage, violating his own policy regarding minors wearing underwear during a massage. (Page testimony).

During this massage, Mr. Page did what he calls a "swoop move." During this move, Mr. Page stood at the side of the table by A.D.'s leg. He started on the outside of the leg and came around, ending on the upper thigh area on the front of the body where the leg connects to the torso. Mr. Page testified at hearing that his hand is supposed to be in that area at the end of the "swoop move," but that in this instance it slipped more than it was supposed to. He testified that he tries to stay at least one to one and one-half inches away from what he described as a client's "private area." He indicated that he was probably about an inch further up than he should have been on A.D. at the end of the move. Mr. Page denied having touched A.D.'s vagina, but indicated that he felt that he got too close therefore he ended the massage immediately. (Page testimony).

When he was interviewed by investigators about this incident, Mr. Page repeatedly denied that A.D. was nude during this massage. He later told officers that she was nude. (Page testimony).

A.D.'s account of this incident is dramatically different from Mr. Page's account. A.D. testified that during the course of the massage Mr. Page took off her underwear without her asking him to do so. A.D. stated that Mr. Page then massaged her leg close to her

vagina and digitally penetrated her multiple times. A.D. testified that Mr. Page then pulled her down the table and wrapped her legs around him. She could not remember whether she was on her back or stomach when Mr. Page allegedly wrapped her legs around his body. (A.D. testimony).

After this incident occurred, A.D. continued to clean Mr. Page's office and she got at least one subsequent massage from him. Additionally, A.D. accompanied Mr. Page to an out-of-town weekend massage therapy conference. Mr. Page had separate discussions with A.D.'s mother, S.D., and A.D. regarding a massage therapy conference that Mr. Page was planning to attend in Des Moines, Iowa. Mr. Page believed at the time of these discussions that he would get a discount on the conference fee if he brought his own massage therapy client to work on. S.D. mentioned that she thought it would be great to get to go to the conference as a client. S.D., however, worked every weekend and did not believe she would be able to attend. At some point, she suggested that A.D. might like to go with Mr. Page to the conference. S.D. proposed that Mr. Page and A.D. stay in the same hotel room during the conference trip. Mr. Page booked a suite, which had a living room and a bedroom separated by a door that could be locked from the bedroom. (A.D.; S.D.; Page testimony).

Mr. Page learned at least one week prior to the conference that he would not receive a discount for bringing his own massage subject to the conference. Nevertheless, he did not change the arrangements or inform A.D. that she would no longer be needed. In fact, he made arrangements to pay A.D. \$75 per day to attend the conference with him. (Page testimony). The record is not clear regarding whether the payment was agreed upon before or after Mr. Page knew that he would not be receiving a discount for bringing his own massage subject.

Mr. Page drove A.D. to the conference with him. No other adults were present with Mr. Page and A.D. On the first night that Mr. Page and A.D. were in Des Moines for the conference, A.D. drank almost an entire bottle of vodka. A.D. slept in the bedroom that night and Mr. Page slept on a pull-out couch in the suite's living room. When Mr. Page knocked on the bedroom door in the morning to rouse A.D. for the conference, he saw vomit all over the bed and an almost empty vodka bottle on the floor when A.D. opened the door. A.D. acknowledges that she vomited and blacked out that night after drinking. Mr. Page advised A.D. to clean herself up and told her he needed to talk to her at the conference's noon break. Mr. Page then left A.D. alone in the hotel room and went to the conference. When Mr. Page went up to the room at the noon break, A.D. was sleeping. Mr. Page woke her up and asked her, "Why would you set me up like that?" According to Mr. Page, A.D. begged him not to tell her mother that she had been drinking. Mr. Page never informed S.D. about A.D. drinking to intoxication and vomiting on the trip. (A.D.; Page testimony).

A.D. did accompany Mr. Page to the conference on Monday. None of the other conference participants had brought massage subjects and Mr. Page had to get special permission from the conference participants for A.D. to be allowed to stay in the session on Monday. Mr. Page identified A.D. to the conference instructor and participants as his granddaughter. (Page; A.D. testimony).

A.D. had her cell phone with her during the weekend trip to Des Moines. In addition to her cell phone, she had access to a telephone in the hotel room. She sent a large number of texts while in Des Moines and also had at least one telephone conversation with her mother. She never indicated to anyone that weekend that she was nervous about being alone with Mr. Page. (A.D.; S.D.; Page testimony).

During this time period, A.D. was having significant problems at home and in school. She was using marijuana and alcohol. Her mother turned her in to the police after she found A.D. intoxicated at a party on the night of her school's homecoming in September, 2008. A.D. was also caught with marijuana at school. As a result of a plea agreement related to criminal charges, A.D. was placed in 2008 at Forest Ridge, an inpatient facility where she underwent drug and alcohol treatment and treatment for behavioral issues. A.D. was an inpatient at Forest Ridge for a total of 17 months. (S.D.; A.D. testimony).

While she was at Forest Ridge, one of the other residents struggling with drug and alcohol issues disclosed to A.D. that she had been sexually abused. A.D. told this peer that something similar had happened to her and detailed allegations relating to sexual abuse by Mr. Page during at least one massage therapy session. The peer advised A.D. that she would have to tell a staff member because Mr. Page was a massage therapist and such conduct had to be mandatorily reported. A.D. took the peer's advice and reported her allegations to a staff member at Forest Ridge. The report occurred approximately one month after A.D. had been admitted to Forest Ridge. (A.D. testimony). There is no evidence in the record regarding the approximate date A.D. was admitted to Forest Ridge or the approximate date she made the allegation.

Mr. Page testified at hearing that his policy with respect to minor clients was that a minor's parent had to be in the room during the massage unless the parent had given him permission to perform work on a child without the parent present. He testified that S.D. had given him permission to work on A.D. without her present. S.D. testified that she had not given Mr. Page general permission to work on A.D. outside of her presence and that, in fact, she had no knowledge that Mr. Page had given any massages to A.D. apart from the first two massages that S.D. scheduled for A.D.

In addition to A.D., Mr. Page has also performed massage therapy on other minor clients without a parent present; on at least one other occasion, he did so without permission from the parent to conduct the massage without the parent present. (Lloyd, Reed, Cooper testimony).

Prior to entering Forest Ridge, A.D. had asked Mr. Page on numerous occasions to buy alcohol for her. Despite having knowledge of A.D.'s trouble with drugs and alcohol during this time period, Mr. Page never disclosed to A.D.'s mother that A.D. had made these requests of him. (Page testimony).

B. T.R.

T.R. is a friend of A.D.'s mother's boyfriend and a former employee of Curry's Manufacturing, where he works. She estimated that she saw Mr. Page for massage therapy approximately six or seven years ago at his location in Peterson Plaza. She went for a full-body massage with a complaint of back pain. While T.R. was lying on her back, Mr. Page massaged the breast tissue on the top portion of her breasts. T.R. could not remember how long Mr. Page massaged her breasts. (T.R. testimony).

The touching made T.R. uncomfortable, but she did not stop the massage, nor did she report Mr. Page's conduct to anyone. She did not mention to Mr. Page that the touching made her uncomfortable. She did not return to Mr. Page for massage therapy services after receiving that massage. (T.R. testimony).

C. D.M.

D.M. is A.D.'s great aunt. Her niece, A.D.'s mother, and a co-worker recommended Mr. Page to her. She went for a massage with him on December 22, 2007 with a complaint of neck pain. At some point during the massage, D.M. was lying on her stomach and Mr. Page was working on her neck. The sheet that Mr. Page used to drape his clients was down by her underwear. As Mr. Page worked down from her neck along her spine, he pulled the sheet and underwear down together in approximately one inch increments. Mr. Page repeatedly asked D.M. during this process whether she was OK. D.M.'s underwear were below her buttocks when Mr. Page stopped working on this area. (D.M. testimony).

D.M. did not say anything to Mr. Page about her discomfort during the massage. She thought what he was doing was part of the procedure. She felt that perhaps she was making too much of what was occurring or being a "prude." She had only had one massage prior to her session with Mr. Page. (D.M. testimony).

At the conclusion of the massage, D.M. pre-paid for additional massages from Mr. Page, but she did not redeem the credits or book any further appointments with Mr. Page. (D.M. testimony).

CONCLUSIONS OF LAW

A. Unethical Conduct/Practice Harmful or Detrimental to the Public

Iowa law requires the Board to establish rules providing for revocation or suspension of a massage therapy license when the licensee, among other things, engages in unethical conduct or practice harmful or detrimental to the public.² Pursuant to the authority granted by Iowa Code chapter 272C, the Board has promulgated the following rule:

² Iowa Code §§ 147.55(3); 272C.10(3) (2009).

645-134.2 Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—134.3 (147, 272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

...

134.2(28) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e. acts, knowledge, and practices) which constitutes unethical conduct may include, but need not be limited to, the following:

- a. Verbally or physically abusing a client or coworker.
- b. Improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to a client or coworker.
- c. Betrayal of a professional confidence.
- d. Engaging in a professional conflict of interest.
- e. Promotion for personal gain of an unnecessary drug, device, treatment, procedure, or service or directing or requiring an individual to purchase or secure a drug, device, treatment, procedure, or service from a person, place, facility, or business in which the licensee has a financial interest.³

The Statement of Charges charged Respondent with five counts, which boiled down to unethical conduct and/or practice harmful or detrimental to the public based on: 1) engaging in improper sexual contact with and/or making improper advances towards clients while practicing massage therapy; 2) making improper sexual remarks to clients when practicing massage therapy; and 3) improper behavior with a minor client.

1. A.D.

The Board was unable to conclude by a preponderance of the evidence that Respondent either engaged in improper sexual contact with, made improper advances toward, or made improper sexual remarks to A.D. While the Board did not find either A.D. or Respondent's recounting of the massage about which allegations were made completely credible, the Board did not credit A.D.'s statement that Respondent intentionally digitally penetrated her multiple times during the massage. The Board concluded that Respondent's technique and draping during the massage of A.D. left much to be desired, but could not conclude that Respondent's actions constituted improper sexual conduct or improper advances toward A.D.

The Board did conclude that the State established by a preponderance of the evidence that Respondent engaged in improper behavior with a minor client. In making this conclusion, the Board relied upon the following factors: 1) by his own admission, Respondent removed A.D.'s underwear during the course of a massage, violating his

³ 645 Iowa Administrative Code (IAC) 134.2(28).

own stated policy of requiring minors to wear underwear while he was performing massage therapy; 2) Respondent gave massages to A.D. without her mother's knowledge or permission; 3) Respondent took A.D. out of town with him to a massage therapy conference where they stayed in the same hotel room together without any other adult present; 4) upon discovering A.D. intoxicated to the point that she had vomited during the Des Moines trip, Respondent failed to take appropriate steps to ensure A.D.'s safety.

Respondent himself admitted at hearing that he had exercised poor judgment with respect to taking A.D. with him on the trip to Des Moines. The Board was struck overall by Respondent's extremely poor judgment as it related to A.D., even apart from the items identified above. Although it did not find that it rose to the level of unethical conduct, the Board found Respondent's failure to disclose to A.D.'s mother the fact that A.D. had repeatedly solicited him to buy alcohol for her extremely concerning, especially given Respondent's knowledge of A.D.'s situation at the time and her problems with drugs and alcohol. Despite A.D.'s testimony to the contrary, the Board did not conclude that Respondent actually bought alcohol for A.D. during the relevant time period; even without this affirmative step, however, Respondent's behavior reflected a lack of good judgment.

2. T.R. and D.M.

There was insufficient evidence for the Board to conclude that Respondent engaged in improper sexual contact with or made improper advances toward either T.R. or D.M. The Board found the testimony of the two women credible with respect to the details of the massages that the women provided, but could not conclude that such conduct constituted improper sexual contact or advances.

B. Sanction

In considering the sanction to impose, the Board considered the fact that the client at issue was a minor and the relatively egregious lapses in judgment that Respondent, by his own admission, demonstrated in his dealings with her.

ORDER

IT IS THEREFORE ORDERED that Steven Page is hereby prohibited, for a period of no less than three years, from treating any individuals under the age of 18. At the end of the three year period, Respondent may apply to the Board for reinstatement of the ability to treat individuals under 18 years old. At that time, Respondent shall bear the burden of establishing that the basis for the restriction on practice no longer exists and that it is in the public interest for his license to treat individuals under 18 years old to be reinstated.⁴

⁴ 645 IAC 11.31(4).

IT IS FURTHER ORDERED that Respondent must complete a total of six hours of in-person massage therapy ethics courses within one year of the date of this decision. These courses shall not count toward Respondent's regular continuing education requirements. None of the in-person classes that are used to satisfy this requirement can be duplicate classes. Respondent shall provide the Board proof of completion of this requirement within one year of the date of this decision.

IT IS FURTHER ORDERED that Respondent shall pay a \$75 hearing fee and \$578.75 in costs for the court reporter. The \$653.75 in hearing fees and costs shall be paid within 30 days of the date of the decision. The cost of a transcript will be charged to the party requesting it.

This Findings of Fact, Conclusions of Law, Decision and Order is approved by the Board
February 16, 2011.