

BEFORE THE IOWA BOARD OF MASSAGE THERAPY

IN THE MATTER OF:)	CASE NO. 10-013
)	DIA NO. 11MTB002
MISAEEL COOPER)	
License No. 005763)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent)	DECISION AND ORDER

On September 6, 2011, the Iowa Board of Massage Therapy (Board) filed a Notice of Hearing and Statement of Charges against Misael Cooper (Respondent). Respondent was charged with violating a regulation or law of this state, which relates to the practice of the profession, in violation of Iowa Code section 147.55(5) and 645 IAC 134.2(19). The citation to Board rule 645 IAC 134.2(19) was a typographical error. At hearing, the Board granted the state's motion to correct the citation to 645 IAC 134.2(11).

The hearing was held on December 13, 2011 before the following members of the Board: Mary Belieu, Public Member and Chair; Jill Ellsworth, LMT; Larry Dallenbach, LMT; and Adam Schweers, public member. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. Assistant Attorney General Meghan Gavin appeared for the state. Respondent appeared and was self-represented. The hearing was closed to the public at Respondent's request, pursuant to Iowa Code section 272C.6(1). The hearing was recorded by a certified court reporter. Following the hearing, the Board convened 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 Respondent's testimony and State Exhibits 1-7 (See Exhibit Index for description).

FINDINGS OF FACT

1. On May 10, 2010, Respondent Misael Cooper was issued license number 005763 to practice massage therapy in the state of Iowa. Respondent's license is current and will expire on March 15, 2012. (Exhibit 6)

2. On October 25, 2010, Respondent was charged with the aggravated misdemeanor of assault with intent to commit sexual abuse, in violation of Iowa Code section 709.11. The police department's incident report and the trial information both indicated that the alleged assault occurred at Respondent's place of employment during a scheduled appointment with a client. (Exhibits 1, 2).
3. On May 23, 2011, Respondent withdrew his not guilty plea and entered an "Alford" plea to the charge of assault with intent to commit sexual abuse. (Exhibit 3)
4. On June 28, 2011, Respondent was sentenced to a suspended two-year term of imprisonment and a two-year term of probation. Respondent was required to pay for and cooperate with the Sex Offender Treatment Program (SOTP). He was also required to register as a sex offender. Respondent was ordered not to engage in the practice of massage therapy as one of his conditions of probation. (Exhibit 4)
5. Respondent states he does not plan to return to the practice of massage therapy in the future. (Respondent testimony)

CONCLUSIONS OF LAW

The Board is authorized to revoke, suspend, or otherwise discipline a licensee for conviction of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.¹

The preponderance of the evidence established that Respondent violated Iowa Code section 147.55(5) and 645 IAC 134.2(11) when he was convicted of assault with intent to commit sexual abuse. The conviction is directly related to Respondent's ability to safely practice massage therapy. The nature of the violation requires Respondent's license to be revoked for a minimum period of ten years.

¹ Iowa Code section 147.55(5)(2011); 645 IAC 134.2(11).

DECISION AND ORDER

IT IS THEREFORE ORDERED that license number 005763, issued to Respondent Misael Cooper, is hereby REVOKED effectively immediately upon service of this Decision and Order. IT IS FURTHER ORDERED that Respondent shall pay a civil penalty of \$1000.00. The \$1000 civil penalty must be paid by Respondent prior to filing any application for reinstatement.

IT IS FURTHER ORDERED that Respondent shall immediately return his license renewal card to the Board office.

IT IS FURTHER ORDERED that Respondent may not file an application to reinstate his license for a minimum period of ten (10) years. Prior to filing an application for reinstatement, Respondent must obtain a comprehensive evaluation from a Board approved licensed mental health professional. Respondent must comply with any treatment recommendations made as a result of the evaluation. Respondent must provide a written report from the approved mental health professional indicating that Respondent is safe to return to the practice of massage therapy. Moreover, in any application for reinstatement, the burden will be placed on Respondent to establish that the reason for the revocation no longer exists and that it is in the public interest for his license to be reinstated. 645 IAC 11.31(4). The Board retains the discretion to deny the reinstatement application even if Respondent obtains a favorable evaluation and complies with the other conditions outlined in this Decision and Order.

If Respondent's license is reinstated by the Board, he will then be required to satisfy the Board's reactivation requirements. See Board rules 645 IAC 131.14 and 131.15. At the current time, a person whose license has been revoked for more than five years is required to complete 24 hours of continuing education and is required to pass one of the specified licensing examinations offered by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) or the Federation of State Massage Therapy Boards (FSMTB) within the two years immediately prior to submission of the reactivation application. 645 IAC 131.14(3)"b." The continuing education hours submitted by Respondent for license reactivation must include a three hour ethics course on professional boundaries in massage therapy practice.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that Respondent shall pay \$75.00 for fees associated with the disciplinary hearing and

\$55.00 for the court reporter fees. The total fees of \$130.00 shall be paid within thirty (30) days of receipt of this decision.

Dated this 9th day of February, 2012.

Pursuant to Iowa Code section 17A.19(2011) and 645 IAC 11.29, any appeal to the district court from a decision in a contested case shall be taken within 30 days from the issuance of the decision by the board. The appealing party shall pay the full costs for the transcript of the hearing. 645 IAC 11.23.