

BEFORE THE IOWA BOARD OF MASSAGE THERAPY

IN THE MATTER OF:

CASE NO. 11-030

DIA NO. 12MTB008

REBECCA ECHTER

License No. 03774

Respondent

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

On September 25, 2012, the Iowa Board of Massage Therapy (Board) issued a Notice of Hearing and Statement of Charges to Rebecca Echter (Respondent), which charged her with engaging in unethical conduct by having improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to a client, in violation of Iowa Code section 147.5(9)¹. The hearing was held on December 5, 2012 before the following members of the Board: Mary Belieu, Public Member and Chairperson; Jill Ellsworth, LMT; Larry Dallenbach, LMT; Rhonda Reif, LMT; and Adam Schweers and Coy Clark,² public members. 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 represented by attorney David Reinschmidt. The hearing was closed to the public and was recorded by a certified court reporter. The Board convened in closed session following the hearing 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 testimony from DIA Investigator Corey Powell, the Complainant, and Respondent. The record also includes State Exhibits 1-7, and Respondent Exhibits A-D.

FINDINGS OF FACT

1. On November 23, 2004, the Board issued license number 03774 to Respondent Rebecca Echter. Respondent currently owns and operates Becky's Massage and Body Therapy in Sioux City, Iowa. Respondent has had no prior disciplinary actions taken

¹ This was an obvious typographical error. The citation should have been 147.55(9), which authorizes discipline for "other acts or offenses as specified by board rule."

² Board Member Coy Clark was unable to stay for the entire hearing and did not participate in making this decision.

against her license. Several of Respondent's long-term massage therapy clients have submitted letters to the Board. These letters describe Respondent as consistently professional and respectful during their massage therapy appointments. (State Exhibit 2; Respondent Exhibit B; Respondent testimony)

2. On December 21, 2011, the Board received a complaint from one of Respondent's massage therapy clients (hereinafter, the "Complainant"). Respondent provided weekly massage therapy to the Complainant from mid-March 2010 until early December 2011. Respondent also provided occasional massage therapy to the Complainant's wife over this same time period. (State Exhibit 1; Respondent, Complainant testimony)

The Complainant alleged that he and Respondent had sexual contact during some of his massage therapy appointments. Specifically, the Complainant alleged that Respondent accepted money and gifts from him in exchange for sexual favors. The Complainant further alleged that Respondent knew that he has a sexual addiction and took advantage of him. (State Exhibit 1; Complainant testimony)

3. The Board referred the complaint to the Department of Inspections and Appeals for investigation. DIA Investigator Corey Powell initially interviewed the Complainant. In this interview, the Complainant told Powell, in part, that:

- he has struggled with sexual addiction for most of his adult life;
- he and his wife began receiving massages from Respondent in the summer or fall of 2010 and became friends with her over time;
- he received approximately 100 massages from Respondent and his wife received approximately 40 massages from Respondent;
- he was physically attracted to Respondent from the first appointment. In the winter of 2010 or spring of 2011 (around the time of his 25th massage), he asked Respondent if he could see and feel her breasts after they had a discussion about breast implants. Respondent initially refused but then consented to his request;
- during massage therapy sessions, Respondent complained to him about her marriage and told him about her personal and family financial issues;
- he asked Respondent if he could help her out with her financial problems. Respondent initially refused his offer but eventually accepted a \$500 cash gift and agreed with his request for sexual favors in appreciation;
- he gave Respondent additional cash as their sexual relationship continued;

- he paid Respondent approximately \$80-\$100 for each massage therapy session and also gave Respondent cash gifts to pay for various items for herself and her family;
- he and his wife loaned Respondent \$3800 to satisfy an outstanding credit card debt. Respondent agreed not to charge either of them for future massage therapy sessions in exchange for this loan;
- he gave Respondent a silver/diamond bracelet that cost \$179 and also gave her a \$60 nail salon gift certificates, flowers, and a sheet metal sign;
- he helped Respondent tile a shower in her home; and
- he claimed knowledge of some of Respondent's personal physical characteristics as a result of their intimate contact.

The Complainant also told Powell that he confessed his sexual indiscretions with Respondent to his wife while they were having a domestic dispute. The Complainant's wife then told Respondent's husband, who is a police officer. When Respondent's husband confronted her, Respondent denied having any sexual contact with the Complainant. Respondent told her husband that the Complainant made up the accusations when she refused his advances. Two law enforcement officers later visited the Complainant at his home and told him to stay away from Respondent. The Complainant described this visit as an informal/unofficial "no contact order" notification. The Complainant told Powell that he filed his complaint with the Board because he was angry with Respondent for denying any wrongdoing and for trying to make it appear as though he was crazy. (Powell, Complainant testimony; State Exhibit 2)

4. The Complainant reported that he and Respondent exchanged frequent text messages and that some were sexual in nature. The Complainant deleted the messages. The Board's investigator attempted to obtain text messages from the cell phone service providers but was unable to retrieve any because the text messages are only retained for a short period of time. (Powell testimony; State Exhibit 2)

5. Investigator Powell also interviewed Respondent during an unannounced visit to her business. Respondent adamantly denied having any sexual contact with the Complainant. During this interview, Respondent told Powell, in part, that:

- Complainant and his wife had been her massage therapy clients;
- she became friends with both of them and had exchanged text messages with both of them;

- she accepted approximately \$3600 from Complainant and his wife to help her pay off some credit card debt as part of a “bartering agreement.” She stated that she agreed not to charge Complainant and his wife for massage therapy services equal to his amount;
- the Complainant (and other clients) had given her gifts, as well as cash tips for her services;
- she believed that the Complainant was obsessed and/or infatuated with her and had become vindictive once he realized that she would not engage in a romantic or sexual relationship with him;
- she terminated the Complainant as a client because he acted very inappropriately toward her and tried to engage in a physical relationship with her;
- she had to get a restraining order against the Complainant because he stalked her and threatened to file a false complaint against her;
- she believed that the Complainant is delusional and believes that she will eventually leave her husband and marry him.

(Powell testimony; State Exhibit 2)

6. Investigator Powell did not find any record of a restraining order being filed against the Complainant by Respondent. (Powell testimony; Exhibit 2, p. 14) At hearing, however, Respondent submitted an email from a Sioux City Police Sergeant. In this email, the sergeant explained that after interviewing Respondent (as the Complainant) and the Complainant (as the suspect), police officers gave both of them a verbal warning to cease all contact. According to the sergeant, a documented warning is a required first step before a restraining order can be sought in court. (Respondent Exhibit C; Respondent testimony)

7. *Complainant's Testimony.* In his testimony at hearing, the Complainant made allegations against Respondent that were generally consistent with his written complaint and with the information he provided to Investigator Powell. The Complainant testified that he and Respondent discussed their marriages and sexual matters during his massage therapy appointments. The Complainant believes that his wife told Respondent about his sex addiction. The Complainant testified that he brought beer to many of his appointments and that Respondent sometimes drank beer with him. He estimated that he had sexual contact with Respondent at about 10 appointments.

The Complainant further testified that he and his wife loaned Respondent \$3800 to help her with a credit card bill and that the money was to be considered an advance payment

for massages. The Complainant believed they gave Respondent this money in March or April 2011, and he believed that he received about 10-15 free massages after the loan was made. The Complainant asserts that he had sexual contact with Respondent both before and after he and his wife gave her the loan. The Complainant also described a number of gifts that he gave to Respondent, including but not limited to a bracelet, flowers, and a \$60 nail salon gift certificate.

The Complainant testified that his sexual relationship with Respondent ended after his wife confronted him about the number of text messages that he and Respondent were exchanging, and he told his wife everything, including how much money he had spent on Respondent. The Complainant's wife then emailed Respondent's husband and told him what her husband reported to her. (Complainant testimony)

8. *Respondent's Testimony.* Respondent testified at hearing and submitted a detailed affidavit. Respondent's testimony and affidavit was generally consistent with the statements she made to Investigator Powell. In part, Respondent testified to the following:

- Respondent provided massage therapy services to the Complainant on a regular weekly basis from March 17, 2010 until his last appointment, which was on December 2, 2011;
- Respondent also provided massage therapy services to Complainant's wife;
- Respondent became friends with the Complainant and his wife;
- During one appointment in April or May 2010, Respondent told the Complainant about a delinquent credit card bill that she was unable to pay. Following this appointment, the Complainant told Respondent that he was going to ask his wife about loaning her the money to pay off the debt. Respondent was later contacted by the Complainant's wife, who wrote a check to Respondent to pay the credit card bill. Respondent believes the check was for \$3600 and that it was given to her in April or May of 2010, after the Complainant and his wife had been her clients for two or three months;
- Respondent did not want her husband to know about the loan. The Complainant and his wife agreed to accept free massages as their payment. Respondent charged \$60 for a one hour massage. She believes that it took her until mid-October 2011 to pay back Complainant and his wife with free massages;
- The Complainant also gave Respondent tips and a number of gifts, including a bracelet (which she subsequently returned for \$170 in cash), flowers, a \$60 gift certificate to a nail salon, and a sheet metal sign;

- Over time, Respondent became increasingly uncomfortable with the Complainant's inappropriate behavior and comments during his massage therapy appointments. According to Respondent, this included unwanted gifts, being jealous of her other male customers, and derogatory comments about her husband. Respondent continued to provide services to Complainant, however, because she still owed him and his wife free massages;
- In February 2011, the Complainant started bringing beer to his appointments. Respondent reports that she told him it was illegal to have beer in the office but he would open a beer for her and insist she drink it. Respondent denies ever actually drinking the beer but claims that she pretended to drink it so he would leave her alone;
- Respondent became increasingly afraid of the Complainant after he went to jail following a domestic dispute with his wife early in 2011. Respondent testified that the Complainant made disturbing and threatening comments to her about his wife. She further testified that the Complainant sat in his vehicle outside her business, attempted to lock the door when he came in for appointments, pressured her for two hour appointments, and took a photograph of her without her permission;
- Respondent eventually told Complainant's wife that he made her uncomfortable and she did not want to provide any further massages for him. The Complainant's last appointment with Respondent was December 2, 2011;
- Respondent continues to adamantly deny that she ever provided sexual favors to the Complainant. Respondent believes that the Complainant made his allegations because he hoped they could be together if her husband divorced her.

(Respondent testimony; Respondent Exhibits A, D)

9. Neither Respondent nor the state provided any records or documentation of the dates or number of the Complainant's massage therapy appointments. The record also does not include any documentation of the exact amount or the date of the substantial monetary loan made by Complainant and his wife to Respondent.

CONCLUSIONS OF LAW

Respondent is currently charged with the single count of engaging in unethical conduct by having improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to a client, in violation of Iowa Code section 147.55(9) and 645 IAC 134.2(28)(b). The state has the burden of proving this charge by a

preponderance of the evidence. *Eaves v. Board of Medical Examiners*, 647 N.W.2d 234, 237 (Iowa 1991). A preponderance of the evidence is the evidence “that is more convincing than opposing evidence” or “more likely true than not true.” *Martinek v. Belmont-Klemme Community School Dist.*, 772 N.W.2d 758, 761 (Iowa 2009), citing *Holliday v. Rain & Hail L.L.C.*, 690 N.W.2d 59, 63-64 (Iowa 2004), and *Walthart v. Bd. of Directors of Edgewood-Colesburg Comm. School Dist.*, 694 N.W.2d 740, 744 (Iowa 2005). “It is evidence superior in weight, influence, or force.” *Id.*

This disciplinary proceeding depends entirely on witness credibility. In order to find a violation, the Board must conclude that the Complainant’s allegation of sexual contact with Respondent during their massage therapy sessions is more convincing or superior in weight, influence, or force than Respondent’s denial that any sexual contact occurred. There are many factors that can be considered when assessing the credibility of a witness. Some of the most common are: whether a person’s statements are reasonable; whether the person provides consistent statements over time; whether the person appears credible to the listener; whether the person is competent – in terms of age, memory, and knowledge; and what is the person’s interest in the proceeding – is there a motive or bias. See *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996) (citing Uniform Jury Instructions).

Upon a review of the entire record, the Board was unable to conclude, by a preponderance of the evidence, that the Complainant’s allegations of sexual contact with Respondent were more credible or more convincing than Respondent’s denial of any sexual contact between them. The Complainant and Respondent have both been generally consistent in their various statements and testimony. Nevertheless, both of them appear to have motives or self-interest that detracts from their overall credibility. The record provides an insufficient basis for the Board to reach the conclusion that the Complainant’s allegations are “more likely true than not true” or more convincing than the defense offered by Respondent.

It must be emphasized that the only legal issue before the Board in this proceeding was whether Respondent engaged in “improper sexual contact” with a client or “made suggestive, lewd, lascivious, or improper remarks or advances” to a client. See 645 IAC 134.2(28)(b). The record included evidence relating to other serious ethical and/or legal violations, including but not limited to Respondent’s admissions that she accepted a substantial monetary loan and other gifts from the Complainant. However, these other ethical/legal issues may not be addressed by the Board as part of this proceeding because they were not charged.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the Notice of Hearing and Statement of Charges filed against Respondent Rebecca Echter on September 25, 2012 is hereby DISMISSED.

Dated this 8th day of January, 2013.

A handwritten signature in cursive script that reads "Mary Belieu".

Mary Belieu, Chairperson
Iowa Board of Massage Therapy

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.

cc: Assistant Attorney General Meghan Gavin