

BEFORE THE IOWA BOARD OF MASSAGE THERAPY

---

|                   |   |                     |
|-------------------|---|---------------------|
| IN THE MATTER OF: | ) | CASE NO. 11-010     |
|                   | ) | DIA NO. 12MTB003    |
| JAMES LUTH II     | ) |                     |
| License No. 00530 | ) | FINDINGS OF FACT,   |
|                   | ) | CONCLUSIONS OF LAW, |
| Respondent        | ) | DECISION AND ORDER  |

---

On March 7, 2012, the Iowa Board of Massage Therapy (Board) issued a Notice of Hearing and Statement of Charges to James Luth II (Respondent), which charged him with practicing massage therapy while his license was inactive or delinquent for any reason [Count I] and with representing himself as a massage therapist when his license was on inactive status [Count II]. The hearing was held on June 5, 2012 at 11:00 a.m. before the following members of the Board: Mary Belieu, Public Member and Chairperson; Jill Ellsworth, LMT; Larry Dallenbach, LMT; Rhonda Reif, LMT; and Coy Clark, public member. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. Assistant Attorney General Meghan Gavin appeared for the state. 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 the testimony of Kimberly Groves, James Luth II, and State Exhibits 1-8 (See Exhibit Index for description).

FINDINGS OF FACT

1. On May 18, 1995, the Board issued Respondent James Luth II license number 00530 to practice massage therapy in the state of Iowa. Massage therapy licenses must be renewed every two years. Respondent's massage therapy license expired on May 15, 2007, and he did not renew it. Respondent's license has been on inactive status since that time. (Testimony of Kimberly Groves; Exhibit 2)

2. On May 19, 2011, the Board received a complaint from another licensed massage therapist. The complainant reported, in part, that Respondent is the owner of the Shiatsu Clinic & School in Iowa City, that his massage therapy license was expired, and that he was practicing without a license and overseeing students during the clinical portion of their education. (Testimony of Kimberly Groves; Exhibit 1)

3. The Board referred the Complaint to the Department of Inspections and Appeals for investigation. On November 15, 2011, DIA Investigator Kimberly Groves obtained information concerning The Shiatsu Clinic & School from several different internet sites. The Shiatsu Clinic & School was described on one site as a state-approved massage therapy training program that has been preparing people for a career in bodywork for 25 years. (Exhibit 3, p. 16). James Luth was listed as a massage therapist offering services that included deep tissue massage, sports massage, Swedish massage, and therapeutic massage. (Exhibit 3, p.17)

On November 16, 2011, DIA Investigators Kimberly Groves and Corey Powell interviewed Respondent at his residence where he operates Shiatsu Clinic & School. Respondent opened the school in 1986 and had five enrolled students at the time of the investigators' visit. Respondent told the investigators that he was the school's only instructor. He also told the investigators that he provides massage therapy services to clients as a sole practitioner.

Investigator Groves asked Respondent why he had not renewed his massage therapy license, and he responded that he had renewed it. When Groves asked Respondent to retrieve his license for her, he saw that it had expired in 2007. Respondent told Groves that the renewal card was probably in a stack of papers in the other room. When Groves told Respondent that the Board did not have any documentation that he had renewed, Respondent apologized and told her that he felt "really stupid." Respondent was unable to find any documentation that he had renewed his license.

Respondent denied the complainant's claim that he had told students that he did not need to renew his massage therapy license. Respondent told Groves that he was current with his continuing education requirements for his massage therapy license and that he only told students that he does not feel the need to renew his NCBTMB<sup>1</sup> certification. Respondent told Groves that he would clear up the

---

<sup>1</sup> National Certification Board for Therapeutic Massage and Bodywork.

licensing matter immediately. (Testimony of Kimberly Groves, James Luth II, Exhibit 3)

4. On March 7, 2012, the Board issued a Notice of Hearing and Statement of Charges to Respondent, which charged him with practicing massage therapy without a current license and with representing himself as a massage therapist when his license was on inactive status. On April 6, 2012, Investigator Groves personally served the Notice of Hearing and Statement of Charges on Respondent. At that time, Respondent admitted to Groves that he had an appointment with a client that day but denied that he was providing massage therapy services. Respondent told Groves that he was still able to perform other therapies, like reflexology<sup>2</sup>, that do not fall within the definition of massage therapy. Groves does not know what therapy or therapies Respondent provided to the client at that appointment. (Testimony of Kimberly Groves; Exhibit 5)

5. As of the date of hearing, Respondent still had not reactivated his license to practice massage therapy. Respondent unsuccessfully attempted to reactivate his license on two occasions. On March 30, 2012, Respondent submitted an incorrect application form (renewal) and an incorrect fee. He later submitted the correct form (reactivation) but submitted an incorrect fee. The fee was returned to Respondent, and he has not reapplied. As of April 9, 2012, Respondent's website continued to describe him as an LMT (licensed massage therapist). (Testimony of Kimberly Groves; Exhibits 2, 6, 7)

6. Respondent reports he was shocked to learn that his massage therapy license was expired, although he admits that he has allowed his driver's license to expire on two occasions. Prior to 2007, Respondent renewed his massage therapy license every two years. Respondent testified that he has taken continuing education all over the world but does not always keep track of the courses that he takes.

Respondent admitted that he continued to practice massage therapy after his license expired, although he claimed that massage therapy is only about 5% of his private practice and that the rest of his practice involves modalities not included in the definition of massage therapy. Respondent further admitted that

---

<sup>2</sup> See Iowa Code section 152C.1(4)(2011) which defines "*reflexology*" to mean manipulation of the soft tissues of the human body **which is restricted to the hands, feet, or ears**, performed by persons **who do not hold themselves out to be massage therapists or to be performing massage therapy**. (emphasis added)

he provided clinical instruction and supervised the clinical practicums for his massage therapy students while his massage therapy license was expired. Respondent denies practicing massage therapy after the November 16, 2011 visit from the DIA investigators. Respondent admitted that he continues to teach 14 modules at The Shiatsu Clinic & School but testified that he has not taught any of the massage therapy modules since the November 16, 2011 visit from the DIA investigators. (Testimony of Respondent)

7. Respondent provided a number of positive reference letters from massage therapy clients and from students of the Shiatsu Clinic and School. (Exhibit 8)

### CONCLUSIONS OF LAW

A person shall not engage in the practice of massage therapy unless the person has obtained a license from the Board.<sup>3</sup> Iowa massage therapy licenses are renewed on a biennial basis.<sup>4</sup> Pursuant to Board rule, the biennial license renewal period for a license to practice massage therapy begins on the sixteenth day of the anniversary month and ends on the fifteenth day of the anniversary month two years later. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the Board does not relieve the licensee of the responsibility for renewing the license.<sup>5</sup>

A licensee seeking renewal shall meet the continuing education requirements in rule 645-133.2 and submit evidence of current certification in CPR.<sup>6</sup> A licensee in this state is required to complete a minimum of 24 hours of board-approved continuing education to renew the license.<sup>7</sup> Upon receiving the information required by 645 IAC 131.8 and the required fee, board staff administratively issues a two-year license and sends a wallet card to the licensee by regular mail.<sup>8</sup> A person licensed to practice as a massage therapist is required to keep the license certificate displayed in a conspicuous public place at the primary site of practice.<sup>9</sup>

---

<sup>3</sup> Iowa Code section 147.2(1)(2011).

<sup>4</sup> 645 IAC 131.8.

<sup>5</sup> 645 IAC 131.8(1).

<sup>6</sup> 645 IAC 131.8(3).

<sup>7</sup> 645 IAC 133.2, 133.3.

<sup>8</sup> 645 IAC 131.8(5).

<sup>9</sup> 645 IAC 131.8(6).

*“Inactive license”* means a license that has expired because it was not renewed at the end of the grace period.<sup>10</sup> *“Grace period”* means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.<sup>11</sup>

The Board may impose any of the disciplinary sanctions provided in rule 645-134.3 when the board determines that the licensee has:

- Represented oneself as a massage therapist when one’s license has been suspended or revoked, or when one’s license is on inactive status;<sup>12</sup> and
- Practiced the profession while the license is under suspension, inactive, or delinquent for any reason.<sup>13</sup>

The preponderance of the evidence established that Respondent represented himself to the public as a massage therapist when his license was on inactive status [Count I] and also practiced massage therapy while his license was inactive. [Count II]. These violations continued for a period of more than four years and cannot be characterized as an “oversight.” As argued by the state, Respondent’s actions demonstrated, at the very least, an unprofessional indifference regarding his licensure and a reckless disregard of the Board’s statute and rules.

#### DECISION AND ORDER

IT IS THEREFORE ORDERED that license number 00530 issued to Respondent James Luth II is hereby SUSPENDED for a period of one (1) year. IT IS FURTHER ORDERED that during the period of suspension, Respondent:

- Shall not hold himself out to the public or to students as a licensed massage therapist;
- Shall not engage in the practice of massage therapy, as defined by Iowa Code section 152C.1(3); and
- Shall not provide hands-on clinical instruction in massage therapy to students, shall not participate in any hands-on clinical demonstration and shall not supervise the massage therapy clinical practicum of any student.

---

<sup>10</sup> 645 IAC 131.1.

<sup>11</sup> 645 IAC 131.1.

<sup>12</sup> 645 IAC 134.2(25)

<sup>13</sup> 645 IAC 134.2(30).

Pursuant to 645 IAC 132.1, "*clinical practicum*" means hands-on massage therapy provided to members of the public by a student who is enrolled at a massage therapy school and is under the supervision of an instructor who is an Iowa-licensed massage therapist, is physically present on the premises, and is available for advice and assistance.

IT IS FURTHER ORDERED that Respondent will not be permitted to reactivate his license until he has served the one year license suspension. Upon completion of the one year suspension, Respondent's massage therapy license will be REINSTATED, pursuant to 645 IAC 131.15, and he will then become eligible to reactivate his license.

IT IS FURTHER ORDERED that in order to reactivate his license, Respondent must comply with 645 IAC 131.14. Since his license has already been inactive for more than five (5) years, Respondent is automatically required to comply with 645 IAC 131.4(3)"b," which requires the reactivation applicant to have passed an examination within two years immediately prior to the submission of the completed reactivation application. In addition, the Board has determined that Respondent will be required to pass the board certification examination offered by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) prior to his reactivation. Respondent shall not take the entry level Massage and Bodywork Licensing Examination (MBLEx) or the NCBTMB National Examination for State Licensure (NESL).

IT IS FURTHER ORDERED that upon reactivation, Respondent's license will be placed on PROBATION for a period of two (2) years. During each year of the two-year probation, Respondent shall file an annual report with the Board documenting his completion of six (6) hours of continuing education in ethics during the preceding year. The annual report shall be filed with the Board within 15 days of the end of each probation year using the issuance date of this Decision and Order to determine the beginning of the probation period. The courses completed in satisfaction of this requirement must comply with the criteria established in 645 IAC 133.3(1) and 133.3(2)"a"(3). The ethics courses may not be taken through Respondent's massage therapy school. No more than two (2) hours of the six (6) hour annual ethics courses may be completed on-line. The two six (6) hour ethics courses are an additional requirement and may not be used by Respondent for his license renewal. Respondent shall submit copies of the certificates of completion to the Board with the annual report.

IT IS FURTHER ORDERED that Respondent shall provide copies of this Findings of Fact, Conclusions of Law, Decision and Order to each student currently enrolled in Respondent's school as well as each student enrolled during the period of one year suspension and two year probation. Current students shall receive the document within five (5) days of the date of this order. Students enrolling during the period of suspension and probation shall be given the documents within five (5) days of enrolling. Respondent shall have each student sign and date a statement that they received a copy of the Findings of Fact, Conclusions of Law, Decision and Order, Respondent shall keep the signed statement in Respondent's files to be submitted to the Board upon request.

IT IS FURTHER ORDERED that Respondent return the license certificate and any licensure wallet cards issued by the Board in his possession within fourteen (14) days of the date of this Findings of Fact, Conclusions of Law, Decision and Order. This includes any of those documents that are out of date or expired.

IT IS FURTHER ORDERED that Respondent shall pay a civil penalty of \$1000.00 within thirty (30) days of the issuance of this Decision and Order.

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 \$68.75 for the court reporter fees. The total fees of \$143.75 shall be paid within thirty (30) days of the issuance of this decision.

IT IS FURTHER ORDERED that if Respondent fails to fully comply with any of the provisions of this Decision and Order, the Board may, upon notice and opportunity for a hearing, impose additional disciplinary sanctions up to and including license revocation.<sup>14</sup>

Dated this 17th day of July, 2012.



---

Mary Belieu, Chairperson  
Iowa Board of Massage Therapy

---

<sup>14</sup> See Iowa Code section 272C.3(2)(a)(2011).

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