

**BEFORE THE MASSAGE THERAPY PRACTICE BOARD  
OF THE STATE OF NEW MEXICO**

**IN THE MATTER OF:**

**KENNETH D. TISDALE, LMT  
LICENSE NO. 5488**

**CASE NO. 12-04-03**

**Respondent.**

**FINAL DECISION AND ORDER**

**THIS MATTER** comes before a quorum of the New Mexico Massage Therapy Practice Board (the “Board”), at a regular meeting held on October 22, 2014, for a decision in the above-referenced case. An evidentiary hearing on the merits of the allegations contained in the Notice of Contemplated Action (hereinafter “NCA”) was heard on the merits by the designated hearing officer, Elizabeth Harris, on August 20, 2014. The evidentiary hearing was held at the Regulation and Licensing Department, located at 5200 Oakland Ave. NE, Albuquerque, New Mexico, 87113. The Administrative Prosecutor, Assistant Attorney General David Dayog-Black, appeared on behalf of the Board. Respondent, Kenneth D. Tisdale, appeared in person and proceeded *pro se*. Assistant Attorney General, Jennifer Salazar, was present to assist the hearing officer. The Hearing Officer’s Report, which contained proposed findings of fact, was timely submitted to the Board on September 19, 2014.

The Board, having familiarized themselves with the record of the proceedings, including the Hearing Officer’s Report, and by a unanimous vote of 3-0 in the affirmative, with Dawn Saunders recused, hereby issues its Final Decision and Order:

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## **FINDINGS OF FACT**

The Hearing Officer's Proposed Findings of Fact numbered one (1) through thirty-three (33), are hereby adopted in their entirety by a unanimous vote of 3-0. A copy of the Hearing Officer's Report is attached hereto.

## **CONCLUSIONS OF LAW**

1. Respondent is licensed to practice massage therapy under the New Mexico Massage Therapy Practice Act (hereinafter "Act"), NMSA 1978, Sections 61-12C-1 to -28 (1991, as amended through 1999), under license number 5488. As such, Respondent is subject to the jurisdiction and licensure authority of the Board.

2. All parties to these proceedings were properly and timely noticed and all interested parties were present at the hearing. [Administrative Record].

3. A formal hearing was held on August 20, 2014, in conformance with the Uniform Licensing Act ("ULA"), NMSA 1978, Sections 61-1-1 through 61-1-31 (1957, as amended through 2013).

4. The usual standard of proof in an administrative proceeding for disciplinary action against a professional license is a preponderance of the evidence. See Foster v. Board of Dentistry, 1986-NMSC-009, ¶ 10, 103 N.M. 776; see also Matter of D'Angelo, 1986-NMSC-052, ¶ 10, 105 N.M. 391, cert. denied, 479 U.S. 1065, 107 S. Ct. 952 (1987).

5. Section 61-1-3 of the ULA requires that a licensee be afforded notice and an opportunity to be heard before the Board has authority to take any action that could, among

other discipline, result in a license suspension, revocation, or the imposition of a fine of one-thousand dollars (\$1,000) per violation.

6. Under Section 61-12C-24(B) of the Act, the Board may deny, revoke, suspend, stipulate or otherwise limit a message therapy license, in accordance with the ULA's requirements, if the Board finds that a licensee:

...

(6) is guilty of unprofessional or unethical conduct or a violation of the code of ethics;

...

(10) is grossly negligent or incompetent in the practice of massage therapy;

...

(12) is guilty of failing to comply with a provision of the Massage Therapy Practice Act or rules of the board adopted pursuant to that act and filed in accordance with the State Rules Act.

7. Rule 16.7.2.8(B)(2) NMAC prohibits a licensee from engaging in sexual conduct with a client at anytime within three months of providing massage therapy services or instruction.

8. Rule 16.7.2.8(C)(1) NMAC requires that licensees "conduct their business and professional activities with honesty and integrity."

9. Rule 16.7.2.8(G) NMAC requires the following:

(1) Each licensee has an obligation to be familiar with this part. Lack of knowledge of professional conduct standard is not itself a defense to a charge of unethical conduct.

(2) Each licensee will cooperate with investigations, proceedings, and resulting requirements of this part. Failure to cooperate is itself an ethics violation.

10. There is a preponderance of evidence to show that Respondent violated Section 61-12C-24(B)(6), and engaged in unprofessional and unethical conduct by: failing to keep proper client records and SOAP notes; by failing to obtain informed consent prior to working near the complainant's private areas; and by making the complainant feel uncomfortable during her treatments.

11. There is a preponderance of evidence to show that Respondent acted with incompetence, in violation of Section 61-12C-24(B)(10), by failing to obtain informed consent prior to massaging near the complainant's private areas.

12. There is a preponderance of evidence to show that Respondent violated Section 61-12C-24(B)(12) and 16.7.2.8(C)(1) NMAC, and failed to conduct his business and professional activities with honesty and integrity by: failing to keep proper client records and SOAP notes; failing to obtain informed consent prior to working near the complainant's private areas; and by making complainant feel uncomfortable during her treatments.

13. There was not a preponderance of evidence to indicate a violation of either 16.7.2.8(B)(2) NMAC or 16.7.2.8(G)(1) & (2) NMAC.

## **ORDER**

Respondent violated the Massage Therapy Practice Act and the Board's rules, as specifically set forth in the Hearing Officer's Findings of Fact, unanimously adopted by the Board and incorporated by reference, and as set forth above in the Board's Conclusions of Law. **IT IS THEREFORE ORDERED** that Respondent's license shall be **SUSPENDED** until such time as Respondent fulfills the following requirements:

A. Respondent shall pay the Board a fine in the amount of three thousand dollars (\$3,000).

B. Respondent shall take, and successfully pass, the New Mexico Massage Therapy Jurisprudence Examination. The exam must be taken and returned to the Board, with Respondent receiving a passing score of at least 75%.

C. Respondent shall successfully complete the following continuing education classes: twenty-five (25) hours of ethics; fifty (50) hours of anatomy and physiology; and fifty (50) hours of pathology.

Board Chair, Elizabeth Harris, LMT, is designated to sign this Final Decision and Order. A copy of this Final Decision and Order shall be filed and served upon the Respondent in accordance with the law.

### **NOTICE OF RIGHT TO APPEAL**

Pursuant to Section 61-1-17 of the ULA, a person aggrieved by a final decision or order of the Board may appeal the decision to district court pursuant to the provisions of

NMSA 1978, Section 39-3-1.1. To obtain such review, a notice of appeal must be filed in the proper district court within thirty (30) days after the date of this Final Decision and Order.

**IT IS SO ORDERED.**

FOR THE NEW MEXICO  
MASSAGE THERAPY BOARD

Oct 30, 2014\_  
Date

*Elizabeth Harris*\_  
Elizabeth Harris, LMT  
Board Chair