

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF PROFESSIONAL LICENSING
BOARD OF MASSAGE THERAPY
DISCIPLINARY SUBCOMMITTEE

In the Matter of

CARL ELLIS, M.T.,
License No. 75-01-004304

Complaint No. 75-18-153258

ORDER OF SUMMARY SUSPENSION

An administrative complaint has been issued against Respondent under the Public Health Code, 1978 PA 368, as amended; MCL 333.1101 *et seq.*, promulgated rules, and the Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCL 24.201 *et seq.*

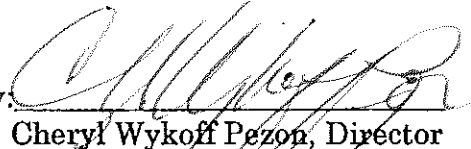
After consideration of the documentation filed in this case and consultation with the Chairperson of the Board of Massage Therapy, the Department concludes that the public health, safety or welfare requires emergency action, as allowed by section 16233(5) of the Public Health Code and section 92(2) of the Administrative Procedures Act.

THEREFORE, IT IS ORDERED that Respondent's license to practice Massage Therapy in the State of Michigan shall be summarily suspended commencing on the date this order is served.

Under Mich Admin Code, R 792.10702, Respondent has the right to petition for the dissolution of this order of summary suspension. This petition shall clearly state that it is a Petition for Dissolution of Summary Suspension and shall be filed with the Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing, P.O. Box 30670, Lansing, Michigan 48909, with a copy served upon the Department of Attorney General, Licensing & Regulation Division, P.O. Box 30758, Lansing, Michigan, 48909. Questions concerning the Order of Summary Suspension may be directed to (517) 373-1146. Upon receipt of such a petition, an administrative hearing will immediately be scheduled before an administrative law judge, who shall dissolve the order of summary suspension unless sufficient evidence is produced to support a finding that the public health, safety, or welfare requires emergency action and a continuation of the suspension order.

DEPARTMENT OF LICENSING AND
REGULATORY AFFAIRS

By:



Cheryl Wykoff Pezon, Director
Bureau of Professional Licensing

Dated: 03/29/19

LF:2019-0242112-B/Ellis, Carl, M.T./Order for SS /2019-03-08

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ADMINISTRATIVE COMPLAINT

Attorney General Dana Nessel, through Assistant Attorney General Bridget K. Smith, on behalf of the Department of Licensing & Regulatory Affairs, Bureau of Professional Licensing (Complainant), files this complaint against Carl Ellis, M.T. (Respondent), alleging upon information and belief as follows:

1. The Board of Massage Therapy, an administrative agency established by the Public Health Code, 1978 PA 368, as amended, MCL 333.1101 *et seq*, is empowered to discipline licensees under the Code through its Disciplinary Subcommittee.
2. Respondent has been licensed as a massage therapist since September 16, 2014 pursuant to the Code.
3. Section 16221(a) of the Code provides the Disciplinary Subcommittee with authority to take disciplinary action against a licensee for a violation of general duty, consisting of negligence or failure to exercise due care, including negligent delegation to, or supervision of employees or other individuals, whether or

not injury results, or any conduct, practice, or condition that impairs, or may impair, the ability to safely and skillfully practice as a massage therapist.

4. Section 16221(b)(i) of the Code authorizes the DSC to take disciplinary action against Respondent for incompetence, which is defined at section 16106(1) of the Code as a “departure from, or failure to conform to, minimal standards of acceptable and prevailing practice for a health profession, whether or not actual injury to an individual occurs.”

5. Section 16221(b)(vi) of the Code provides the Disciplinary Subcommittee with authority to take disciplinary action against a licensee for lack of good moral character, defined at section 1 of 1974 PA 381, as amended; MCL 338.41 *et seq*, as the “propensity on the part of the person to serve the public in the licensed area in a fair, honest and open manner.”

6. Section 16221(e)(vi) of the Public Health Code provides the Disciplinary Subcommittee with authority to take disciplinary action against a licensee for unprofessional conduct consisting of any conduct by a health professional with a patient while he is acting within the health profession for which he is licensed, including conduct initiated by a patient or to which the patient consents, which is sexual or can reasonably be interpreted as sexual.

7. Section 16221(h) of the Code provides the Disciplinary Subcommittee with authority to take disciplinary action against a licensee for a violation, or aiding or abetting in a violation, of this article or of a rule promulgated under this article.

8. Mich Admin Code, R 338.751(a) prohibits a massage therapist from practicing outside of the boundaries of professional competence, based on education, training, and experience. This includes, but is not limited to, providing massage therapy services without ensuring the safety, comfort, and privacy of the client.

9. Section 16233(5) of the Public Health Code provides for the summary suspension of a license, reading, in pertinent part, as follows:

After consultation with the chair of the appropriate board or task force or his or her designee, the department may summarily suspend a license or registration if the public health, safety, or welfare requires emergency action in accordance with section 92 of the administrative procedures act of 1969, being section 24.292 of the Michigan Compiled Laws. If a licensee or registrant is convicted of a felony; a misdemeanor punishable by imprisonment for a maximum term of 2 years; or a misdemeanor involving the illegal delivery, possession, or use of a controlled substance, the department shall find that the public health, safety, or welfare requires emergency action and, in accordance with section 92 of the administrative procedures act of 1969, shall summarily suspend the licensee's license or the registrant's registration.

10. Section 16226 of the Code authorizes the Disciplinary Subcommittee to impose sanctions against persons licensed by the Board if, after opportunity for a hearing, the Disciplinary Subcommittee determines that a licensee violated one or more of the subdivisions contained in section 16221 of the Code.

ALLEGATIONS

COUNT I

11. In 2012, Respondent worked as a masseuse at LaVida Massage in Bloomfield Hills, Michigan. At that time, massage therapists were not licensed in the State of Michigan.

12. On March 3, 2012, C.D. (initials used to protect confidentiality) had a massage scheduled with Respondent at LaVida.

13. During the massage, Respondent began massaging up C.D.'s legs, then he moved her underwear to the side and began performing oral sex on C.D. C.D. told Respondent to leave, and eventually he did.

14. Following the incident, C.D. advised the front desk that something bad occurred, then contacted the Bloomfield Hills Police Department who conducted an investigation; however, no charges were ever issued.

15. As a result of this incident, Respondent was terminated from LaVida.

16. Respondent's conduct as described above constitutes conduct, practice, or condition that impairs, or may impair, the ability to safely and skillfully practice as a massage therapist in violation of section 16221(a) of the Code.

17. Respondent's conduct as described above constitutes a lack of good moral character in violation of section 16221(b)(vi) of the Code.

COUNT II

18. On June 19, 2017, L.C. received a massage from Respondent at Massage Envy located in Birmingham, Michigan.

19. During the massage, Respondent began massaging L.C.'s inner thighs, allowing his fingers to brush against her vagina. L.C. could also feel Respondent pressing his groin against her body and believes he had an erection at that time.

20. Respondent then asked L.C. to turn over on her back. In order to do so, he had her stand up while he held up a towel as if to cover her body from his

view. However, L.C. believes that Respondent was looking over the towel in order to see her naked.

21. Once L.C. laid back on down on the table, Respondent began massaging her neck and then her breasts. Respondent continued to grope L.C.'s breasts and touch her nipples. There was no therapeutic reason for Respondent to touch L.C.'s breasts and nipples.

22. Respondent continued to massage L.C. in a manner that made her uncomfortable, including massaging on or near her vagina, touching her vagina with his fingers. At this point, L.C. asked Respondent to stop and he left the room.

23. Respondent's conduct as described above constitutes conduct, practice, or condition that impairs, or may impair, the ability to safely and skillfully practice as a massage therapist in violation of section 16221(a) of the Code.

24. Respondent's conduct as described above constitutes negligence and a failure to exercise due care in violation of section 16221(a) of the Code.

25. Respondent's conduct as described above constitutes incompetence in violation of section 16221(b)(i) of the Code.

26. Respondent's conduct as described above constitutes a lack of good moral character in violation of section 16221(b)(vi) of the Code.

27. Respondent's conduct as described above constitutes unprofessional conduct consisting of any conduct by a health professional with a patient while he is acting within the health profession for which he is licensed, including conduct

initiated by a patient or to which the patient consents, which is sexual or can reasonably be interpreted as sexual in violation of section 16221(e)(vi) of the Code.

28. Respondent's conduct as described above constitutes providing massage therapy services without ensuring the safety, comfort, and privacy of the client contrary to Mich Admin Code, R 338.751(a).

RESPONDENT IS HEREBY NOTIFIED that, pursuant to section 16231(8) of the Public Health Code, Respondent has 30 days from receipt of this complaint to submit a written response to the allegations contained in it. Pursuant to section 16192(2) of the Code, Respondent is deemed to be in receipt of the complaint 3 days after the date of mailing listed in the attached proof of service. The written response shall be submitted to the Bureau of Professional Licensing, Department of Licensing and Regulatory Affairs, P.O. Box 30670, Lansing, Michigan, 48909, with a copy to the undersigned assistant attorney general.

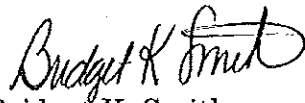
FURTHER, pursuant to section 16231(9) of the Code, failure to submit a written response within the 30 day-period shall be treated as an admission of the allegations contained in the complaint and shall result in transmittal of the complaint directly to the Board's Disciplinary Subcommittee for imposition of an appropriate sanction.

FURTHER, Complainant requests that pending the hearing and final determination Respondent's license to practice as a Massage Therapist in the State of Michigan continue to be summarily suspended pursuant to section 92 of the Administrative Procedures Act and section 16233(5) of the Public Health Code for

the reason that, based upon the allegations set forth herein, to permit Respondent to continue to practice the profession constitutes a danger to the public health, safety and welfare requiring emergency action.

Respectfully submitted,

DANA NESSEL
Attorney General



Bridget K. Smith
Assistant Attorney General
Licensing & Regulation Division
P.O. Box 30758
Lansing, Michigan 48909
(517) 335-7569

Dated: March 25, 2019