

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE MASSAGE THERAPY AND BODYWORK THERAPY AFFILIATED
CREDENTIALING BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
JOSIAH L. GROTH, L.M.T.,	:	
RESPONDENT.	:	ORDER 0007990

Division of Legal Services and Compliance Case No. 21 MAB 019

The parties to this action for the purpose of Wis. Stat. § 227.53 are:

Josiah L. Groth, L.M.T.
Marshfield, WI 54449-9216

Wisconsin Massage Therapy and Bodywork Therapy Affiliated Credentialing Board
P.O. Box 8366
Madison, WI 53708-8366

Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190
Madison, WI 53707-7190

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board (Board). The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Respondent Josiah L. Groth, L.M.T., (Year of Birth 1979) is licensed in the state of Wisconsin as a massage therapist or bodywork therapist, having license number 2330-146, first issued on December 16, 2010 and current through February 28, 2023. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is in Marshfield, Wisconsin 54449-9216.

2. On June 2, 2015, the Board issued Order No. 0004035 suspending Respondent's license for one year after Respondent made inappropriate remarks and massaged a client's breasts and pubic bone without consent (Order). The Order allowed removal of the suspension after six

months upon receiving proof that Respondent completed six hours of education in ethics and met with a sexual assault advocate to discuss the impact of sexual victimization. The Order also permanently limited Respondent's license as follows:

- a) Respondent shall obtain written informed specific consent before he touches any part of a female client's breast, buttocks, or area of the client's pubic bones.
- b) Before performing massage or bodywork therapy, Respondent shall inform the client, in writing, of the client's right to have a chaperone present during the massage. If the client declines a chaperone, Respondent shall require the client to sign written documentation of the refusal. The offer of a chaperone and written refusal shall be kept on file for a period of not less than five years.
- c) Respondent shall require all clients to be fully draped.
- d) At the request of the Board's designee, during regular business hours, Respondent shall make available for immediate inspection any facility at which Respondent practices massage therapy and bodywork therapy. Such inspections may occur without advance notice and shall include examination and copying of client records.

3. At all times relevant to this case, Respondent worked as a massage therapist at his own business in Marshfield, Wisconsin (Spa).

4. On December 31, 2021, the Department received a complaint from Client A, a female born in 1990, alleging that Respondent massaged her breasts without her consent and referred to her breasts as "the girls." This case was opened to investigate the complaint.

5. On December 9, 2021, Client A went to the Spa for the first time. Client A signed a general consent form but did not provide specific written consent to have Respondent massage her breasts. Respondent's intake form explicitly asks for the client's initials next to the sensitive part(s) for which the client consents to being included in the massage. Client A did not mark her initials giving consent to Respondent to massage her breasts or any other sensitive part.

6. Respondent posted a sign on the wall of the Spa notifying clients of the option of having a chaperone present during a massage. Respondent did not specifically ask Client A if she wanted a chaperone, nor did he have Client A sign written documentation of her refusal of a chaperone.

7. Prior to the massage, Client A explained to Respondent that she recently had a baby, was breastfeeding, and had tension in her shoulders and neck. Respondent began with Client A face down. After 30 minutes, Respondent had her flip over and he began to massage her shoulders, after which he slid his hands underneath the sheet and began massaging her breasts.

8. According to Client A, at the same time as Respondent began massaging her breasts, he told her that he offers breast massage, to which she replied "ah, okay." Client A says

she was shocked and uncomfortable and was merely acknowledging what Respondent said. Respondent maintains this was Client A's verbal consent to proceed with the breast massage.

9. In resolution of this matter, Respondent consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 460.14(2) and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. Based on the Findings of Fact, Respondent engaged in unprofessional conduct as defined by Wis. Admin. Code § MTBT 5.02(1) by violating Wis. Stat. § 460.14(2)(a) to (j), or any provision of a board order.

3. Based on the Findings of Fact, Respondent engaged in unprofessional conduct as defined by Wis. Admin. Code § MTBT 5.02(9)(a) by performing any act constituting the practice of massage therapy or bodywork therapy on any client without the client's informed consent or after the client has withdrawn informed consent, whether verbally or in writing, or failed to document informed consent.

4. Based on the Findings of Fact, Respondent engaged in unprofessional conduct as defined by Wis. Admin. Code § MTBT 5.02(10) by engaging in any practice or conduct that falls below the standard of minimal competence within the profession that results in unacceptable risk of harm to the client, regardless of whether injury results.

5. Based on the Findings of Fact, Respondent engaged in unprofessional conduct as defined by Wis. Admin. Code § MTBT 5.02(15)(a) by engaging in sexually explicit conduct, sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a client, a client's immediate family member, or a person responsible for the client's welfare. For the purposes of this subsection, the sexual nature of contact shall be determined from the totality of the circumstances and is presumed when the massage therapist or bodywork therapist has contact with a client's intimate parts without legitimate professional justification for doing so.

6. As a result of the above violations, Respondent is subject to discipline pursuant to Wis. Stat. § 460.14(2)(g) and (j).

ORDER

1. The attached Stipulation is accepted.

2. The VOLUNTARY SURRENDER by Respondent of his license to practice massage therapy or bodywork therapy in the state of Wisconsin (license number 2330-146), as well as his right to renew such license, is accepted.


3. This surrender constitutes Respondent's permanent relinquishment of his license to practice massage therapy or bodywork therapy in the state of Wisconsin, and any appurtenant right to renew that license. The Board will not, at any time in the future, process or otherwise consider

an application or attempt at renewal by Respondent of credentials necessary to practice massage therapy or bodywork therapy in the state of Wisconsin.

4. In the event Respondent applies for another credential in the state of Wisconsin under Wis. Stat. chs. 440 through 480, Respondent shall pay the costs of this matter in the amount of \$1,356.00, before any petition or application for a credential will be considered by the applicable board or Department.

5. This Order is effective on the date of its signing.

WISCONSIN MASSAGE THERAPY AND BODYWORK THERAPY AFFILIATED
CREDENTIALING BOARD

By: 
A Member of the Board

5/31/2022
Date

STATE OF WISCONSIN
BEFORE THE MASSAGE THERAPY AND BODYWORK THERAPY AFFILIATED
CREDENTIALING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

JOSIAH L. GROTH, L.M.T.,
RESPONDENT.

STIPULATION

ORDER 0007990

Division of Legal Services and Compliance Case No. 21 MAB 019

Respondent Josiah L. Groth, L.M.T., and the Division of Legal Services and Compliance, Department of Safety and Professional Services, stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondent consents to the resolution of this investigation by Stipulation.

2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives the following rights:

- the right to a hearing on the allegations against Respondent, at which time the State has the burden of proving those allegations by a preponderance of the evidence;
- the right to confront and cross-examine the witnesses against Respondent;
- the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena;
- the right to testify on Respondent's own behalf;
- the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision;
- the right to petition for rehearing; and
- all other applicable rights afforded to Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. Respondent is aware of Respondent's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Massage Therapy and Bodywork Therapy Affiliated Credentialing Board (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

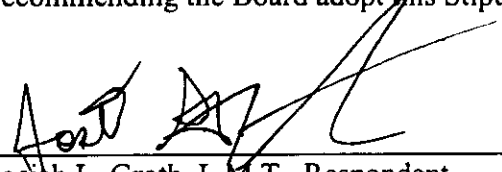
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with deliberations on the Stipulation. Additionally, any such advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

7. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.


8. Respondent is further informed that should the Board adopt this Stipulation, the Board's Final Decision and Order will be reported as required by the National Practitioner Databank (NPDB) Guidebook and as otherwise required by any licensure compact or any other state or federal law.

9. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.



Josiah L. Groth, L.M.T., Respondent
Marshfield, WI 54449-9216
License No. 2330-146

3/30/22
Date



Julie Zimmer, Prosecuting Attorney
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

4/1/2022
Date