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BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE OF THE STATE OF UTAH

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IN THE MATTER OF THE LICENSE OF  
**RICHARD DWAILEEBE** TO PRACTICE  
AS A MASSAGE THERAPIST IN THE  
STATE OF UTAH

EMERGENCY ORDER

Case No. DOPL - 2012 - 263

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The Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah (the "Division") initiated an Emergency Adjudicative Proceeding pursuant to Utah Code Ann. § 63G-4-502, the Utah Administrative Procedures Act; Utah Code Ann. § 58-1-108(2), the Division of Occupational and Professional Licensing Act; and Utah Administrative Code R151-46b-16, the Department of Commerce Administrative Procedures Act Rules. The Division initiated the Emergency Administrative Proceeding upon evidence that the continued practice of Richard Dwaileebe (the Respondent) as a massage therapist represented an immediate and significant danger to the public health, safety, and welfare; and that the threat required immediate action by the agency.

Before taking this action, the Chair of the Massage Therapy Board appointed a three-member committee to review with the Division the proposed action in this matter, pursuant to Utah Code Ann. § 58-1-108(2).

Pursuant to the Open and Public Meetings Act, Utah Code Ann. § 52-4-1, the Division provided notice of the meeting of the committee for 9:00 p.m. on June 6, 2012, at the Heber M. Wells Building located at 160 East 300 South, Salt Lake City, Utah. Notice of the Emergency Hearing was placed in the lobby of the Heber Wells Building and on the DOPL/public information website on or about June 5, 2012. The committee convened at the appointed date and time. The meeting of the committee was closed pursuant to Utah Code Ann. § 52-4-205(1)(a) in order to discuss the professional competence and character of an individual. The presiding committee member affirmed under oath that the meeting was closed for that purpose. The committee reviewed the Division's proposed action and considered information in the form of testimony and exhibits. The Division, having considered the committee's recommendations, makes the following Findings of Fact, Conclusions of Law, and Order.

#### **FINDINGS OF FACT**

1. Since February 9, 1999, Respondent has been licensed by the Division to practice as a massage therapist under the Massage Therapy Practice Act, Utah Code Ann. §§ 58-47b-101 to 503.
2. From July 2011 to April 2012, the Respondent worked under contract with New Image Day Spa.
3. The Respondent performed a total of 12 massages on Client 1 (name withheld to protect privacy) during 2009, with the last massage occurring around the end of that summer.

4. During one massage, the Respondent spoke with Client 1 about performing a sacral adjustment, and told her that this was done by inserting fingers into the anus in order to adjust muscles under the sacrum. He told Client 1 that he had received training in this technique while in another part of the United States. Thereafter, the Respondent put on latex gloves and performed the procedure he had described.

5. Client 1 fell asleep during her last massage by the Respondent, and woke up to feel the Respondent thrusting his finger forcefully in and out of her vagina, also stimulating her external genitals. Client 1 attempted to sit up and told the Respondent to stop, but he pushed her down on the table and told her that he knew what her body needed, and to relax and enjoy it. As a result of the Respondent's acts Client 1 had an orgasm, and afterwards experienced bleeding.

6. Client 2 (name withheld to protect privacy) received four or five massages from the Respondent beginning in January of 2012. During her second massage, the Respondent told Client 2 that he had received training in Europe in vaginal massage, that in the United States this technique may only be performed by a physician, and that it was a therapeutic technique for lymphatic drainage.

7. The Respondent performed lymphatic drainage on Client 2's breasts during the massages, and rubbed her entire breast with the palm of his hand, without obtaining written consent. The lymphatic massage technique included very heavy pressure on Client 2's body which caused extreme pain and burning

8. Client 2's last massage with the Respondent occurred in late April or early May of 2012. During Client 2's last massage from the Respondent he massaged her external genitals, performed vaginal massage, and caused her to climax. The Respondent then began thrusting his fingers inside of Client 2, at which time the massage ended.

9. On May 17, 2012, Michelle P. Solum, the owner of New Image Day Spa, became aware that the Respondent had engaged in the acts described above, and reported them to the Division by filing a complaint on May 18, 2012.

10. To the best of the Division's information and belief, the Respondent is still practicing massage in a massage business and/or by performing massages at the homes of his clients.

11. The Respondent is not certified to perform lymphatic massage.

### **CONCLUSIONS FROM THE FACTS**

1. The Respondent's unlawful and unprofessional conduct as described above poses an immediate and significant danger to the public health, safety, and welfare; and requires immediate action by the Division. In particular, the Respondent performed breast massages on a client without written permission, told a client that vaginal massage is a valid massage techniques for lymphatic drainage and that causing an orgasm is a form of massage.

Furthermore, on many occasions, the Respondent touched his client's external genitals, inserted his fingers into clients' anuses or internal genitals, deliberately stimulated clients' internal and external genitals with the stated purpose of causing an orgasm, and thrust his fingers in and out of clients' internal genitals with the stated purpose of causing an orgasm, which presents an immediate and significant danger to the public health, safety and welfare, and requires immediate action by the Division.

2. The Division finds that, pursuant to Utah Code Ann. § 58-1-401(2)(a), there is a factual basis to conclude that the Respondent has engaged in unprofessional and unlawful conduct, that he poses an immediate and significant danger/threat to the public health, safety, and welfare; and that the Division should take immediate action to suspend and/or revoke his professional licenses.

## CONCLUSIONS OF LAW

1. The Division has jurisdiction and authority to act in this matter and has followed appropriate statutory procedures regarding the initiation of emergency adjudicative actions.
2. Utah Code Ann. § 63G-4-502 provides:
  - (1) An agency may issue an order on an emergency basis without complying with the requirements of this chapter if:
    - (a) the facts known by the agency or presented to the agency show that an immediate and significant danger to the public health, safety, or welfare exists; and
    - (b) the threat requires immediate action by the agency.
  - (2) In issuing its emergency order, the agency shall:
    - (a) limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;
    - (b) issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the agency's utilization of emergency adjudicative proceedings; and
    - (c) give immediate notice to the persons who are required to comply with the order.
  - (3) If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the agency shall commence a formal adjudicative proceeding in accordance with the other provisions of this chapter.
3. The actions of the Respondent constitute an immediate and significant danger to the public health, safety, and welfare; and require immediate action to protect the public health, safety, and welfare.
4. The Respondent, by touching and massaging the breasts of Client 2 without obtaining written permission, engaged in unlawful conduct as defined in Utah Code Ann. § 58-47b-501(3)(b).
5. The Respondent, by touching the anus, external and internal genitals of clients, engaged in unlawful conduct as defined by Utah Code Ann. § 58-47b-501(3)(a).

6. The Respondent, by inserting his fingers and touching or massaging his clients' internal and external genitals deliberately causing them to reach a sexual climax, engaged in unprofessional conduct as defined by Utah Admin. Code R156-47b-502(1).

7. The Respondent, by engaging in the conduct described above, engaged in unprofessional conduct as defined by Utah Code Ann. § 58-1-502(2)(a), (b), (g) and(k), and as defined by Utah Admin. Code R156-47b-502(8).

8. This Order is necessary to prevent harm to the public pending a formal adjudication of the matters addressed in this proceeding. Immediate action is necessary, and this Order is the least restrictive action needed to prevent or avoid the danger to the public health, safety, or welfare.

9. The Respondent may challenge the Order pursuant to Utah Admin, Code R151-46b-16 as follows:

R151-46b-16. Emergency Adjudicative Proceedings. Unless otherwise provided by statute or rule:

(1) When a division commences an emergency adjudicative proceeding and issues an order in accordance with Section 63G-4-502 which results in a continued impairment of the affected party's rights or legal interests, the division that issued the emergency order shall schedule a hearing upon written request of the affected party to determine whether the emergency order should be affirmed, set aside, or modified based on the standards set forth in Section 63G-4-502. The hearing will be conducted in conformity with Section 63G-4-206.

(2) Upon request for a hearing pursuant to this rule, the Division will conduct a hearing as soon as reasonably practical but not later than 20 days from the receipt of a written request unless the Division and the party requesting the hearing agree to conduct the hearing at a later date. The Division shall have the burden of proof to establish, by a preponderance of the evidence, that the requirements of Section 63G-4-502 have been met.

(3) Except as otherwise provided by statute, the division director or his designee shall select an individual or body of individuals to act as the presiding officer at the hearing. The presiding officer shall not include any individual who directly participated in issuing the emergency order.

(4) Within a reasonable time after the hearing, the presiding officer shall issue an order in accordance with the requirements of Section 63G-4-502. The order of the presiding officer shall be considered final agency action with respect to the emergency adjudicative proceeding and shall be subject to agency review in accordance with Section R151-46b-12.

### **ORDER**

1. The license of Richard Dwaileebe to practice as a massage therapist, license number 369249-4701, will be immediately suspended until a hearing can be convened pursuant to Utah Code Ann. § 63G-4-502 and Utah Admin. Code R151-46b-16, and a contravening order is issued. The Division will proceed with a formal adjudicative proceeding to uphold this suspension and/or revoke the Respondent's professional licenses.

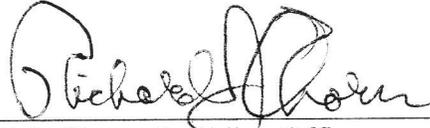
2. The Respondent shall immediately cease and desist from the practice of massage in the State of Utah until a hearing can be convened pursuant to Utah Code Ann. § 63G-4-502 and Utah Admin. Code R151-46b-16, and a contravening order is issued.

### **RIGHT TO REVIEW**

1. In accordance with Utah Admin. Code R151-46b-16, the Division will schedule a hearing upon receipt of a written request from the Respondent. At the hearing it will be determined whether this Emergency Order should be affirmed, set aside, or modified, based on the standards set forth in Utah Code Ann. § 63G-4-502. The hearing will be conducted in conformity with Utah Code Ann. § 63G-4-206.

2. Upon receipt of a request for hearing pursuant to Utah Admin Code R151-46b-16, the Division will conduct a hearing as soon as reasonably practical, but not later than twenty (20) days from receipt of a written request, unless the Division and the party requesting the hearing agree to conduct the hearing at a later date.

DATED this 6<sup>th</sup> day of June, 2012.

A handwritten signature in black ink, appearing to read "Rich Oborn". The signature is written in a cursive style with a large initial "R".

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Rich Oborn, Presiding Officer  
Division of Occupational and Professional Licensing.