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

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

STIPULATION FOR SURRENDER
OF LICENSURE

Case No. DOPL - 2012 - 263

Richard Dwaileebe (the Respondent) and the Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah (“Division”) stipulate and agree as follows:

1. The Respondent admits the jurisdiction of the Division over the Respondent and over the subject matter of this action.
2. The Respondent acknowledges that the Respondent enters into this Stipulation knowingly and voluntarily.
3. The Respondent understands that the Respondent has the right to be represented by counsel in this matter, and the Respondent’s signature below signifies that the Respondent has either consulted with an attorney or the Respondent waives the Respondent’s right to counsel in this matter.

4. The Respondent understands that the Respondent is entitled to a hearing before the Utah Board of Massage Therapy or other Division Presiding Officer, at which time the Respondent may present evidence on the Respondent's own behalf, call witnesses, and confront adverse witnesses. The Respondent acknowledges that by executing this document the Respondent hereby waives the right to a hearing and any other rights to which the Respondent may be entitled in connection with said hearing.

5. The Respondent acknowledges that this Stipulation and Order, if adopted by the Director of the Division, will be classified as a public document. The Division may release this Stipulation for Surrender of Licensure, and will release other information about this disciplinary action against Respondent's license, to other persons and entities.

6. The Respondent admits that the following facts are true:

- a. Since February 9, 1999, the 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.
- b. From July 2011 to April 2012, the Respondent worked under contract with New Image Day Spa.
- c. From 2009 to April 2012 the Respondent Richard Dwaileebe performed vaginal and anal massage on multiple clients. The vaginal and anal massages consisted of inserting fingers into the anus and or vagina of clients as well as stimulating the external genitals. During the vaginal massage several clients experienced an orgasm.
- d. The Respondent Richard Dwaileebe admits he knew that massaging or touching by a licensee in the course of practicing or engaging in massage therapy, the genitals or anus of any client is a violation of the Utah Massage Therapy practice Act [58-47b-501 (3)(a)].
- e. The Respondent Richard Dwaileebe admits that he massaged or touched the breasts of female clients without written consent a violation of the Utah Massage Therapy Act [58-47b-501(3)(b)].
- f. The Respondent Richard Dwaileebe admits that in the course of practicing or engaging in the practice of massage therapy as a licensed massage therapist in

the State of Utah, he violated the Utah Massage Therapy Code of Ethics and Standards of Practice as follows:

Standard I: Professionalism

The therapist must provide optimal levels of professional massage and bodywork services and demonstrate excellence in practice by promoting healing and well being through responsible, compassionate and respectful touch. In his professional role the therapist shall:

- a) Adhere to the Utah Law, Rules, Code of Ethics, Standard of Practice, policies and procedures.

....

- c) Conduct themselves in a manner in all settings meriting the respect of the public and other professionals.

....

- l) Be knowledgeable of their scope of practice and practice only with these limitations.

Standard II: Legal and Ethical Requirements

The therapist must comply with all the legal requirements in applicable jurisdictions regulating the profession of massage therapy and bodywork. In his professional role the therapist shall:

- a) Obey all applicable local, state, and federal laws.
- b) Refrain from any behavior that results in illegal or unethical actions.

Standard V: Roles and Boundaries

The therapist shall adhere to ethical boundaries and perform the professional roles designed to protect the client, the practitioner, and safeguard the therapeutic value of the relationship. In his professional role the therapist shall:

....

- c) Recognize and limit the impact of transference and counter-transference between the client and therapist.
- d) Not engage in any sexual activity with a client.

Standard VI: Prevention of Sexual Misconduct

The therapist shall refrain from any behavior that sexualizes, or appears to sexualize the client/therapist relationship. The therapist recognizes the intimacy of the therapeutic relationship may activate practitioner and/or

client needs and/or desires that weaken objectivity and may lead to sexualizing the therapeutic relationship. In his professional role the therapist shall:

- a) Refrain from participating in a sexual relationship or sexual conduct with the client, whether consensual or otherwise, from the beginning of the client/therapist relationship and for a minimum of six months after the termination of the client/therapist relationship.
- b) In the event that the client initiates sexual behavior, clarify the purpose of the therapeutic session, and, if such conduct does not cease, terminate or refuse the session.
- c) Recognize that sexual activity with clients, students, employees, supervisors, or trainees is prohibited even if consensual.
- d) Not touch the genitalia.

[58-1-501 (2)(a)(b)(g)(h)(j)]

- g. 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.

7. Based on the Division's allegations, and after complying with all required notice and procedures, the Division issued an emergency order on June 6, 2012 suspending the Respondent's license to practice as a massage therapist pursuant to Utah Code Ann. § 63G-4-502. The Respondent admits that the emergency order was justified by sufficient evidence, and that the Respondent's continued practice as a massage therapist poses an immediate and significant danger to the public health, safety, and welfare and requires immediate action to protect the public health, safety, and welfare.

8. The Respondent acknowledges that he is entitled to to a hearing before the Board of Massage Therapy to review the emergency order pursuant to Utah Administrative Code § R151-4-111, and the Respondent knowingly and voluntarily waives his right to a hearing or any rights to which he may be entitled in connection with such a hearing.

9. Respondent admits that the conduct described above constitutes unlawful and unprofessional conduct as defined by Utah Code Ann. §§ 58-47b-501(3)(b), § 58-1-501(3)(a), (b), (g), and (k), and Utah Administrative Code § R156-47b-502(8), and provides a sufficient basis to discipline the Respondent's license under Utah Code Ann. §§ 58-1-401(2)(a) and (b).

10. The Respondent agrees to hereby surrender his license to practice as a massage therapist, including all rights to renewal or reinstatement of that license, and the Respondent agrees not to reapply for licensure in the State of Utah.

11. If the Division Director accepts the terms of this Stipulation and Order, the Respondent forfeits all rights to practice as a massage therapist in the State of Utah.

12. This Stipulation and Order, upon approval by Director of the Division or his designee, shall be the final compromise and settlement of this matter. The Respondent acknowledges that the Director is not required to accept the terms of this Stipulation and Order and that if the Director does not do so, this Stipulation and the representations contained therein shall be null and void, except that the Division and the Respondent waive any claim of bias or prejudgment the Respondent might have with regard to the Director by virtue of his having reviewed this Stipulation, and this waiver shall survive such nullification.

13. This document constitutes the entire agreement between the parties and supersedes and cancels any and all prior negotiations, representations, understandings or agreements between the parties regarding the subject of this Stipulation and Order. There are no verbal agreements that modify, interpret, construe or affect this Stipulation.

14. If the Respondent violates any term or condition of this Stipulation and Order, the Division may take action against the Respondent, including imposing appropriate sanction, in the manner provided by law.

15. The Respondent has read each and every paragraph contained in this Stipulation and Order. The Respondent understands each and every paragraph contained in this Stipulation and Order. The Respondent has no questions about any paragraph or provision contained in this Stipulation and Order.

DIVISION OF OCCUPATIONAL &
PROFESSIONAL LICENSING

RESPONDENT

BY: 

SALLY A STEWART
Bureau Manager

BY: 

RICHARD DWAILEEBE

DATE: 06/07/2012

DATE: 6/7/12

MARK L. SHURTLEFF
ATTORNEY GENERAL

BY: 

LENORE EPSTEIN
Counsel for the Division

DATE: 06/07/2012

ORDER

THE ABOVE STIPULATION, in the matter of **RICHARD DWAILEEBE**, is hereby approved by the Division of Occupational and Professional Licensing, and constitutes my Findings of Fact and Conclusions of Law in this matter. The issuance of this Order is disciplinary action pursuant to Utah Administrative Code R156-1-102(6) and Utah Code Ann. § 58-1-401(2)(a) and (b). The terms and conditions of the Stipulation are incorporated herein and constitute my final Order in this case.

DATED this 7 day of June, 2012.

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING



MARK B. STEINAGEL
Director

Investigator: Allyson Robinson



CERTIFICATE OF SERVICE

I hereby certify that on the 7 day of June, 2012, a true and correct copy of the foregoing STIPULATION FOR SURRENDER OF LICENSURE has been served on the parties of record in this proceeding by mailing a copy thereof, properly addressed by first class mail with postage prepaid, to the following:

Richard A. Dwaileebe
3656 Monroe Blvd
South Ogden UT 84403

Hand delivered copy to:

Lenore Epstein, Assistant Attorney General



Carol Inglesby
Admin. Assistant
Division of Occupational
and Professional
Licensing