

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 DENIAL OF	:	
THE REINSTATEMENT OF THE LICENSE OF	:	
<b>TANYA REBEKA RODRIGUEZ</b>	:	<b>O R D E R</b>
TO PRACTICE AS A	:	
MASSAGE THERAPIST	:	
IN THE STATE OF UTAH	:	Case No DOPL-2007-241

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The attached Findings of Fact, Conclusions of Law and Recommended Order are hereby adopted by the Director of the Division of Occupational and Professional Licensing of the State of Utah.

Dated this 2 day of April, 2008.



S E A L

  
F David Stanley  
Director

Agency review of this Order may be obtained by filing a request for agency review with the Executive Director, Department of Commerce, within thirty (30) days after the date of this Order. The laws and rules governing agency review are found in Section 63-46b-12 of the Utah Code, and Section R151-46b-12 of the Utah Administrative Code.

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
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IN THE MATTER OF THE DENIAL OF  
THE REINSTATEMENT OF THE LICENSE OF  
**TANYA REBEKA RODRIGUEZ**  
TO PRACTICE AS A MASSAGE THERAPIST  
IN THE STATE OF UTAH

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:       **FINDINGS OF FACT**  
:       **CONCLUSIONS OF LAW**  
:       **AND RECOMMENDED ORDER**  
:  
:       Case No. DOPL-2007-241

**Appearances:**

Tanya Rebeke Rodriguez for Respondent

Lenore Epstein for the Division of Occupational and  
Professional Licensing

**BY THE BOARD:**

A January 15, 2008 hearing was conducted in the above-entitled proceeding before J. Steven Eklund, Administrative Law Judge for the Department of Commerce, and the Board of Massage Therapy. Board members present were Craig M. Sauer (Chair), Richard C. Engar, Ruth Werner, Jennifer H. Pruetz and Carolyn M. Redington. F. David Stanley, Director of the Division of Occupational and Professional Licensing, was also present.

Thereafter, evidence was offered and received. The Board now enters its Findings of Fact, Conclusions of Law and submits the following Recommended Order for review and action by the Division

## FINDINGS OF FACT

1. Applicant became licensed on October 6, 1997 to practice as a massage therapist in this state. Applicant worked as an independent contractor on a part-time and seasonal basis from late 2004 through April 2007 at the Grand Summit Resort Health Club and Spa, located at the Canyons Resort in Park City, Utah. Applicant thus provided massage services an average of eight (8) hours per week for approximately five (5) months each winter season at the Spa.

2. Applicant also practiced as a independent contractor offering massage services for approximately nine (9) months during 2005-2006 while associated with a Dr. James R. Park, who is a chiropractor. Applicant commenced full-time employment in February 2007 with a company known as Williams International That employment is not related to Respondent's massage practice

3 Applicant's license expired on May 31, 2007 when she did seek to renew that license. Applicant elected not to seek a license renewal at that time because she was not practicing as a massage therapist, she was attending school approximately 20 hours per week, she was working full-time at Williams International and she had limited financial ability to pay for the cost of a license renewal

4. Applicant subsequently decided to seek to reinstate her expired license because she wanted the ability to provide massage

services for friends and neighbors and to possibly barter her massage services for tradeouts Applicant thus submitted a reinstatement application to the Division on or about November 1, 2007.

5. The application includes a qualifying questionnaire, which contains an inquiry whether Applicant has "pled guilty to, pled no contest to, been convicted of, made a plea in abeyance to, or entered into a deferred sentence with respect to any felony or misdemeanor in any jurisdiction" since Applicant's last renewal of her license. The questionnaire also contains an inquiry whether Applicant has "been charged with or arrested for any felony or misdemeanor in any jurisdiction" since her license was last renewed.

6 Applicant responded affirmatively to both of the above inquiries. Applicant also submitted a November 1, 2007 letter, which included various court documents, to explain her responses on the application questionnaire

7. Applicant was arrested on August 31, 2006 at 2:00 a.m. during a road block conducted in Centerville, Utah. Applicant was charged on August 31, 2006 with possession of marijuana, a controlled substance, and possession of paraphernalia She was charged on September 5, 2006 with driving under the influence of a metabolite.

8. Applicant pled guilty to the above three (3) offenses on

January 23, 2007. Pursuant to a plea agreement, each guilty plea was to be held in abeyance for up to eighteen (18) months.

Applicant was ordered to pay a \$50 plea in abeyance rehabilitation fee and she was to enroll in a drug diversion program with Weber County Human Services. Applicant commenced that program on January 29, 2007.

9. Applicant has not engaged in any marijuana use since August 2006. Applicant fully complied with all requirements of the drug diversion program, which included random drug testing with individual and group therapy. Applicant successfully completed that six (6) month program on or about August 1, 2007. Based on the substantial evidence presented, Applicant's guilty pleas were dismissed, given her compliance with the plea in abeyance agreement.

10. Upon a review by the Division of Applicant's request to reinstate her license, the Division issued a November 8, 2007 letter to Applicant. The letter recites the Division was concerned with Applicant's past criminal history. However, the Division informed Applicant that it would offer a restricted license to her to practice as a massage therapist

11 The Division thus provided Applicant with a proposed Memorandum of Understanding, which set forth the possible terms and conditions as to govern any license reinstatement The proposal provides Applicant "shall only work under the direct

supervision of a licensed massage therapist" and she may not "work as a private practitioner". That proposal also provides the probationary term as to Applicant's license shall not be satisfied when Applicant does not practice as a massage therapist and Applicant "must work at least sixteen (16) hours per week" to be considered "practicing" in her profession.

12 The November 8, 2007 letter also recites Applicant's request to reinstate her license is denied unless the Division were to receive an executed Memorandum of Understanding by December 8, 2007. Pursuant to a November 11, 2007 e-mail message, Applicant informed the Division that she had received the proposed Memorandum of Understanding

13. However, Applicant also informed the Division that she would not be able to satisfy the proposed terms of that agreement because any subsequent work she may obtain as a massage therapist at the Spa would not be supervised. Applicant further informed the Division that any seasonal work at the Spa would not be full-time, but rather limited to eight (8) hours per week over approximately five (5) months a year Applicant thus informed the Division that she would challenge the denial of her request for license reinstatement

#### **CONCLUSIONS OF LAW**

Applicant acknowledges she engaged in criminal misconduct. However, Applicant hopes to regain her license as to provide

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message services for friends and neighbors whenever she may have the opportunity to do so. Applicant also may seek to resume her seasonal work at the Spa during the winter of 2008. Applicant is willing to submit to random drug testing and meet with the Board to monitor her compliance with probationary terms and conditions.

The Division acknowledges a proper factual and legal basis exists to reinstate Applicant's license. However, the Division urges Applicant's license should be restricted to adequately protect the public and allow the Board to meaningfully monitor Applicant's massage practice for a sufficient time.

Specifically, the Division contends Applicant should be subject to periodic drug testing and she should be required to meet with the Board as directed. The Division concedes Applicant need not be required to practice as a massage therapist on a full-time basis while her license is restricted.

However, the Division asserts Applicant should be subject to some degree of supervision when offering massage services at the Spa or in conjunction with another business. The Division also asserts Applicant's employer in any practice setting should be required to submit periodic reports to the Board to address whether Applicant has been practicing while impaired. The Division thus urges Applicant's practice should be governed by whatever terms and conditions the Board may conclude is warranted upon its review of the proposed Memorandum of Understanding.

Utah Code Ann. §58-1-401(2) provides the Division may refuse to issue a license to an applicant if.

(a) the applicant . . . has engaged in unprofessional conduct, as defined by statute or rule under this title . . . .

§58-1-501(2) generally defines unprofessional conduct to include:

(c) engaging in conduct that results in . . . a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation with respect to . . . any other crime that, when considered with the functions and duties of the occupation or profession for which the license . . . is to be issued, bears a reasonable relationship to the applicant's ability to safely or competently practice the occupation or profession, and

(e) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the . . . applicant to safely engage in the occupation or profession.

§58-1-304 authorizes the Division to grant a restricted license to an applicant for reinstatement of licensure if.

(a) the applicant appears to meet the qualifications for licensure, but has engaged in unlawful, unprofessional, or other conduct bearing upon the applicant's qualifications; and

(b) the division determines the need to observe the applicant in a monitored or supervised practice of the applicant's occupation or profession or to attach other reasonable restrictions upon the applicant in order to accommodate licensure, while protecting the public health, safety, and welfare

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The Board finds and concludes Applicant has engaged in unprofessional conduct violative of §58-1-501(2)(c) and (e). Specifically, Applicant has engaged in conduct which prompted her guilty pleas held in abeyance to crimes that bear a reasonable relationship to Applicant's ability to safely practice as a massage therapist. Further, Applicant engaged in conduct relative to the use of drugs to the extent that such conduct might reasonably be considered to impair Applicant's ability to safely engage in her profession.

The Board further finds and concludes Applicant appears to meet the qualifications for licensure as a massage therapist, but she has engaged in unprofessional conduct which bears upon her qualifications. Moreover, the Board finds and concludes the issuance of a restricted license to Applicant is warranted to observe her in a monitored practice setting and reasonable restrictions should exist to adequately protect the public health, safety and welfare

The Board readily concludes Applicant should be subject to random drug testing as the means to monitor her continued abstinence from any unauthorized drug use. The Board notes Applicant is a social drinker. Although the criminal conduct set forth herein did not involve Applicant's consumption of any alcohol, the Board concludes Applicant should also be required to abstain from any alcohol consumption while her license is

restricted as set forth herein.

Given the limited and somewhat unique massage employment settings which Applicant has maintained since late 2004, the Board concludes it would not be warranted to require Applicant to be employed on a full-time basis while her license is restricted. However, the Board does conclude Applicant should be monitored in any massage practice to facilitate the submission of periodic written reports to the Board to reflect whether Applicant has engaged in that practice while impaired. Those reports should thus be required from an individual who has the opportunity to generally observe Applicant immediately prior or subsequent to the sessions when Applicant would be or has been providing massage services.

The Board notes Applicant's preference to barter her massage services and receive some compensation in trade from friends and/or neighbors. The Board concedes Applicant may elect to provide massage services for no compensation. However, the Board concludes Applicant shall not receive any direct or indirect compensation from a client and Applicant must confine her compensatory services to practicing massage therapy in a commercial setting where general supervision - as set forth herein - is available.

The Board further concludes Applicant should be required to provide written notice to the Board prior to commencing such

compensatory services in a commercial setting. The notice should identify the individual who would provide written reports to the Board in that regard. Moreover, Applicant should be required to meet with the Board at its next regularly scheduled meeting after the issuance of an Order in this proceeding and then meet with the Board on a periodic basis if Applicant is providing massage services on a compensatory basis in a commercial setting.

Finally, the Board concludes the restrictions on Applicant's license should commence with the issuance of the license pursuant to the Order entered in this proceeding. Those restrictions should be at least two (2) years in duration, even though it appears likely Applicant will only be periodically engaged in providing massage services on a compensatory basis in a commercial setting if she were to resume her affiliation with the Spa in question. Based on a review of Applicant's employment as a massage therapist under the just-stated circumstances, the Board will determine whether any proper basis exists to extend any restrictions on Applicant's license beyond April 2010.

#### **RECOMMENDED ORDER**

WHEREFORE, IT IS ORDERED Applicant shall be granted a restricted license to practice as a massage therapist, consistent with the terms set forth herein. Applicant's license shall be restricted for at least two (2) years, effective the date this Recommended Order may be adopted by the Division

Applicant's restricted license shall thus be subject to the following terms and conditions:

1 Applicant shall abstain from the personal use or possession of controlled substances and prescription drugs, unless such controlled substance or prescription drug is lawfully prescribed to Applicant for a current bona fide illness or condition by a licensed practitioner and taken by Applicant in accordance with that practitioner's instructions.

2. Applicant shall abstain from the use of any and all other mood altering substances or the use of mood altering substances for any other purpose than the purpose for which the substance is intended Although the use or possession of alcohol is generally legal for persons age 21 and older, Applicant shall abstain from the personal use or possession of alcohol in any form.

3. Applicant shall provide samples (urine, blood, saliva, hair or any other type of sample requested) for drug analysis upon the request of the Division to be conducted by any company with which the Division has contracted to conduct drug testing. The designated company may also request such samples and Applicant shall comply with such requests. The Division shall determine when and where Applicant is to submit herself for testing

4 Applicant shall pay for the costs of drug testing She shall also accurately complete and sign any and all release forms requested by the Division or the drug testing company with respect to drug testing, including but not limited to forms authorizing the company to send the drug test results to the Division

5. Any report from a drug testing company which indicates that Applicant failed to provide a sample for drug analysis as directed will be considered a positive drug test result for Applicant and will subject Applicant to a disciplinary sanction Any drug test result or pattern of results that indicates that the sample provided by Applicant for drug analysis is diluted to the extent it cannot be analyzed, will be considered a positive drug test for Applicant and will subject Applicant's license to disciplinary sanction.

6. Applicant shall meet with the Board within thirty (30) days of the date of the Order entered in this proceeding. Applicant shall then meet with the Board on a quarterly basis or such other greater or lesser frequency as determined by the Board and Division for the duration of the two (2) year period set forth herein. Applicant shall meet with an assigned staff member prior to the first Board meeting to address any questions regarding the operation of this Order

7. Applicant shall notify the Board in writing within one (1) week of commencing practice as a massage therapist on a compensatory basis in a commercial setting. The notice shall also identify the individual in that setting who will observe Applicant as to provide written reports to the Board on a quarterly basis regarding whether Applicant has engaged in any massage services while impaired.

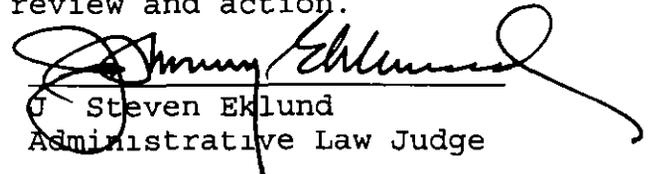
8. Applicant shall not practice as a massage therapist in any setting where she would receive direct compensation from the client or where Applicant would not be observed as set forth herein by an individual in a commercial setting who could provide quarterly written reports to the Board as to identify whether Applicant appears to have practiced as a massage therapist while impaired. Applicant shall not provide massage services for any direct or indirect compensation other than as set forth herein.

9. In conjunction with Applicant's last meeting with the Board during the initial two (2) year restrictions on her license, the Board will review the course of Applicant's practice as a massage therapist during those two years and determine whether the restrictions should be extended. The fact that Applicant may have maintained a massage practice on only a seasonal and/or part-time basis shall not require that the restrictive period herein be extended. Rather, the Board shall determine whether the extent of Applicant's massage practice and the degree of monitoring by the Board of that practice has been sufficient that no further extension of the restrictive period would be warranted.

Should Applicant fail to comply with the terms and conditions set forth herein, or otherwise violate any statute or

rule which governs her practice as a massage therapist, further proceedings shall be conducted and a determination made whether Applicant's license should be subject to a disciplinary sanction beyond the restrictions set forth herein

On behalf of the Board of Massage Therapy, I hereby certify the foregoing Findings of Fact, Conclusions of Law and Recommended Order were submitted to F. David Stanley, Director of the Division of Occupational and Professional Licensing, on the 15<sup>th</sup> day of April, 2008 for his review and action.

  
Steven Eklund  
Administrative Law Judge