

BEFORE THE STATE OF OREGON
BOARD OF MASSAGE THERAPISTS

In the Matter of

Case No. 1392

RAINWATER, LUCAN CODY,

FINAL DEFAULT ORDER
(Revocation)

Respondent.

1.

Pursuant to ORS chapter 687, the Oregon Board of Massage Therapists (Board) is the agency responsible for licensing, disciplining and regulating massage therapists in the State of Oregon.

2.

Lucan Cody Rainwater (Respondent) is currently licensed to practice as a massage therapist in the State of Oregon and is subject to the jurisdiction of the Board. Respondent's last known address is 616 NW GARSWOOD TERR, BEAVERTON, OR 97006.

FINDINGS OF FACTS

3.

The Board received a complaint regarding issues of professional misconduct of a sexual nature. Contact was made, police reports were obtained, interviews were conducted, and the Licensee was found to be in violation.

4.

4.1 The Board received a complaint alleging the Licensee sexually abused Victim AA during a massage session. The complaint indicated that a police report had been filed with Hillsboro Police Department. The Board obtained a copy of the police report, which indicated that Victim AA had received three massage sessions at the Licensee's place of business from the Licensee prior to the assault. During the prior massage sessions, the Victim left her underwear on. However, during the last massage, the Licensee advised the Victim that she may want to remove her underwear during her next massage so he would access her hip flexors. As such, when the Victim arrived for her massage session on 3/20/2012, she removed her underwear as advised at the prior session. At approximately 60-minutes into the scheduled 80-minute massage session, the Licensee began massaging the inside of the Victim's thigh, moving toward her genitals and then he started massaging her clitoris. He then inserted his fingers

1 into her vagina and continued massaging. He attempted to put his other hand on her breasts, but the
2 victim reached up and blocked him, stopping him from touching her breasts. When the Victim stopped
3 him from touching her breasts, he said "I'm sorry" to her. He still had a finger inside of her vagina at this
4 point, so he removed his finger from her vagina. He then finished the massage on her face, and the
5 session ran about 10-minites longer than scheduled. When the massage was over, the Licensee told the
6 Victim she could dress and he would have water waiting for her when she was ready. Once she was
7 dressed and ready to leave, he handed her the water and said, "I'm sorry for what happened in there.
8 When you opened your leg I thought that was what you wanted." The Victim explained to the officer that
9 she called the manager of the establishment on 4/4/2012 to report the incident. She explained that the
10 massage on 3/30/2012 was the first time that the Licensee had done anything inappropriate with her
11 during a massage session.

12 4.2 On 1/2/2013 a Board investigator met with the Licensee. The Licensee stated he
13 had worked on the complainant previously and she had always worn underwear; he told her, however,
14 not to wear any on their next appointment so he could massage her hip. At the next session, the
15 complainant did not wear underwear, but the Licensee kept a diaper drape on the entire time. The
16 Licensee admitted that while working on the complainant's left leg he may have accidently brushed
17 against the vaginal area with the back of his hand, however there was no intent to touch the area. The
18 Licensee reported that while he worked on the right leg she pulled her knee up and opened her leg and
19 hip. The Licensee said he "thought it was what she wanted." The Licensee looked ashamed as he
20 reported the incident. The investigator asked him if he thought the complainant wanted him to touch her
21 sexually; the Licensee responded that he thought she wanted him to work close in that area. The
22 investigator then asked if he had touched the clitoris to which the Licensee said he was not sure but may
23 have touched the "lips." The Licensee reported that the complainant sat up abruptly and he ended the
24 massage and left the room. He stated that he felt the issue came down to the fact that the complainant
25 had a relationship and her partner did not know she was receiving massages.

26 4.3 On 2/15/2013 the investigator spoke with the complainant. She stated that during
their massages the Licensee regularly used a loose drape and put his hands under it but never touched

1 her inappropriately. She stated that, during the session in which the incident occurred, the Licensee was
2 massaging the outside of the complainant's leg before moving to the inside. Complainant reported she
3 was not sure why. The Licensee proceeded to massage her clitoris then inserted his finger into her
4 vagina. The complainant said she froze, but when he reached up to touch her breast she stopped him
5 and asked what he was doing. She reported that the Licensee told her he thought it was what she
6 wanted and finished the massage with her lying face down. The Licensee got the complainant some
7 water and apologized, again saying it's what he thought she wanted. Her statement coincided with the
8 statements she gave the Hillsboro Police Department. The investigation continued as a sexual crime
9 investigation in the Hillsboro Police Department. The investigator spoke with a detective who advised him
10 he planned to arrest the Licensee on 5/23/2013.

11 4.4 On 06/25/2013, the Board Compliance office confirmed via telephone call that
12 Licensee was arrested for Sexual Abuse I on 05/23/2013.

13 5.

14 On August 5, 2013, a Notice of Proposed Action (Civil Penalty) and Notice of Right to Hearing
15 (Notice) were served upon the Respondent by regular and certified mail. The 21-days in which to request
16 a hearing expired on 8/26/2013. The regular and certified mail were returned to the board office as the
17 United States Postal Service was unable to deliver the notices to the address of the respondent. The
18 board received no request for hearing. In the Notice of Proposed Action, the Notice indicated that for the
19 purposes of default, the Board record herein would be used as prima facie evidence of the record. In the
20 Notice of Proposed Action, the Notice indicated that for the purposes of default, the Board record herein
21 would be used as prima facie evidence of the record.

22 CONCLUSIONS OF LAW

23 6.

24 Based on the acts and conduct described above, Respondent committed:

25 6.1 One violation of ORS 687.051(2), an applicant must be a person of good moral character.

26 For purposes of this section, the lack of good moral character may be established by reference to acts or
conduct reflecting moral turpitude or to acts or conduct that would cause a reasonable person to have

1 substantial doubts about the applicant's ability to practice massage in accordance with ORS 687.011 to
2 687.250, 687.895 and 687.991 and rules of the board;

3 6.2 One violation of ORS 687.081.(1)(a), The State Board of Massage Therapists may
4 discipline a licensee, deny, suspend, revoke or refuse to renew a license, issue a reprimand, censure a
5 licensee or place a licensee on probation if the licensee: violated any provision of ORS 687.011 to
6 687.250, 687.895 and 687.991 or any rule of the board adopted under ORS 687.121;

7 6.3 One violation of ORS 687.081(1)(i), The State Board of Massage Therapists may discipline
8 a licensee, deny, suspend, revoke or refuse to renew a license, issue a reprimand, censure a licensee or
9 place a licensee on probation if the licensee: Engages in unprofessional or dishonorable conduct;

10 6.4 One violation of OAR 334-010-0025(3)(a)(A)(B)(C)(D), A massage therapist must use safe
11 and functional coverage/draping practices during the practice of massage when the client is disrobed.
12 Safe and functional coverage/draping means: LMT explains, maintains and respects coverage/draping
13 boundaries; Client gives informed consent; Genitals and gluteal cleft of male and female clients and the
14 breast area of female clients are not exposed; Massage or movement of the body does not expose
15 genitals, gluteal cleft or breast area;

16 6.5 One violation of OAR 334-030-0005(1)(b)(g), Standard I: Responsibility -- the relationship
17 between the LMT and the profession. The LMT must: act within the context of professional practice
18 standards, codes of ethics, and relevant statutes and regulations; be accountable for his or her actions
19 and commitments and assume personal and professional responsibility to do his or her best;

20 6.6 One violation of OAR 334-030-0005(2)(a)(c), Standard II: Therapeutic Relationship -- the
21 relationship between the LMT and the client. The LMT must: Be accountable to his or her clients for the
22 quality and effectiveness of care and services and for creating the basic conditions and boundaries
23 necessary to foster safety and trust in the client-professional relationship; ensure that their actions with a
24 client are based on understanding and implementing the core values of caring, respect, compassion,
25 appropriate boundaries, and appropriate use of personal power;

26 6.7 One violation of OAR 334-040-0010(19)(a)(A), Unprofessional or dishonorable conduct which
includes but is not limited to: any conduct involving inappropriate physical contact or sexual misconduct

1 which includes: sexual abuse which is conduct which constitutes a violation of any provision of ORS
2 163.305 through 163.465; and

3 6.8 One violation of OAR 334-040-0010(19)(a)(C)(i)(iii), sexual impropriety which is any
4 behavior, gestures, or expressions that are seductive or sexually demeaning to a client; inappropriate
5 procedures, including, but not limited to: disrobing or draping practices that reflect a lack of respect for
6 the client's privacy, deliberately watching a client dress or undress instead of providing privacy for
7 disrobing; an examination or touching of genitals

8
9 **ORDER**

10 7.

11 Based on the foregoing, the Board ORDERS:

12 7.1 Licensee's Oregon Massage License number 15426 is revoked as provided in
13 ORS 687.081(1); and

14 7.2 Licensee is assessed costs of this disciplinary proceeding, including attorney fees.
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16 DATED AND SERVED upon the above-named Respondent by regular and certified mail,
17 addressed to Respondent at last known address, this 5th day of September, 2013.
18

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20 **BOARD OF MASSAGE THERAPISTS**
21 State of Oregon

22 **Signature on File**
23

24 A party is entitled to judicial review of the Final Order. Judicial review is by the Oregon Court of Appeals
25 pursuant to the provisions of ORS 183.482. Judicial review may be obtained by filing a petition for review
26 with the Office of State Court Administrator, Supreme Court Building, Salem, Oregon 97310. ORS 183.482
requires that an appeal is requested by filing a petition in the Court of Appeals within 60 days following the
date the order upon which the petition is based is served.

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9.

If you fail to timely request a hearing, withdraw a hearing request, or fail to appear at a scheduled hearing, you shall have waived your right to a hearing and the Board may issue a Final Order by Default and impose against you the above sanctions. If the Board issues a Final Order by Default, it designates its file on this matter as the record for the purposes of proving a *prima facie* case.

DATED AND SERVED upon the above-named Respondent by regular and certified mail, addressed to Respondent at last known address, this 5th day of August, 2013.

BOARD OF MASSAGE THERAPISTS
State of Oregon

Signature on File