BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

MARTY DEVITT, L.M.T. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on July 12, 2000.

Upon the Report and Recommendation of Daniel Roberts, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

The certificate of Marty Devitt [a.k.a Daniel M. Devitt], L.M.T., to practice massage therapy in the State of Ohio shall be PERMANENTLY REVOKED.

This Order shall become effective immediately upon the mailing of notification of approval by the Board.

Anand G. Garg, M.D.
Secretary

(SEAL)

JULY 12, 2000
Date

STATE MEDICAL BOARD
OF OHIO

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REPORT AND RECOMMENDATION
IN THE MATTER OF MARTY DEVITT [a.k.a DANIEL M. DEVITT], L.M.T.

The Matter of Marty Devitt [a.k.a Daniel M. Devitt], L.M.T., was heard by Daniel Roberts, Attorney Hearing Examiner for the State Medical Board of Ohio, on May 16, 2000.

INTRODUCTION

I. Basis for Hearing

A. In a Notice of Automatic Suspension and Opportunity for Hearing, dated December 8, 1999, the State Medical Board of Ohio [Board] notified Marty Devitt [a.k.a Daniel M. Devitt], L.M.T., that, pursuant to Section 4731.22(F), Ohio Revised Code (as in effect prior to March 9, 1999), his license to practice message therapy in the State of Ohio had been automatically suspended as of November 4, 1998. The Board further advised Mr. Devitt that this automatic suspension was based upon his conviction of one count of gross sexual imposition, a felony of the third degree. The Board also advised Mr. Devitt that continued practice would be considered practicing message therapy without a certificate.

Moreover, the Board notified Mr. Devitt that the Board had proposed to take disciplinary action against his certificate based upon his November 4, 1998, conviction for gross sexual imposition, in violation of Section 2907.05(A)(4), Ohio Revised Code, and the underlying facts upon which that conviction was based.

The Board alleged that Mr. Devitt was convicted in the Court of Common Pleas, Carroll County, Ohio, on November 4, 1998, and placed on community control with a number of conditions. The acts underlying the judicial finding of guilt included that Mr. Devitt had sexual contact with another, or caused another to have sexual contact with Mr. Devitt, where the victim was not his spouse and was less then 13 years of age.

The Board alleged that the judicial finding of guilt, as alleged above, constitutes "'(a) plea of guilty to, or a judicial finding of guilt of, a felony,' as that clause is used in Section 4731.22(B)(9), Ohio Revised Code (as in effect prior to March 9, 1999).

Accordingly, the Board advised Mr. Devitt of his right to request a hearing in this matter. (State's Exhibit 1A)

B. On January 5, 2000, Mr. Devitt submitted a written hearing request. (State's Exhibit 1B)

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II. Appearances

A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Rebecca J. Albers, Assistant Attorney General.

B. On behalf of the Respondent: Having been advised of his right to be represented by counsel, Mr. Devitt represented himself at hearing.

EVIDENCE EXAMINED

I. Testimony Heard

A. Presented by the State

Richard Taff

B. Presented by the Respondent

Marty Devitt [a.k.a Daniel M. Devitt], L.M.T.

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A-1K: Procedural exhibits.

2. State's Exhibit 2: Certified copy of November 4, 1998, Judgment Entry, Plea Sheet and Waiver of Rights captioned *State of Ohio v. Daniel M. Devitt, Case No. 3918,* in the Court of Common Pleas, Carroll County, Ohio.

B. Presented by the Respondent

Respondent's Exhibit A: Copy of February 4, 2000, letter to the Board from Mr. Devitt.

SUMMARY OF THE EVIDENCE

All exhibits and transcripts of testimony, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

1. On November 4, 1998, in the Court of Common Pleas, Carroll County Ohio, while represented by legal counsel, Marty Devitt [a.k.a Daniel M. Devitt], L.M.T., pleaded no contest to and was

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found guilty of gross sexual imposition, in violation of Section 2907.05(A)(4), Ohio Revised Code, a felony of the third degree. The Court imposed community control sanctions for a period of five years subject to a number of conditions. These conditions included serving 30 days in the county jail, paying fines and costs, performing 200 hours of community service, having no contact with the victim, and following the instructions of his probation officer. (Transcript [Tr.] at 15, 20-22; State's Exhibit [St. Ex.] 2; Respondent's Exhibit [Res. Ex.] A)

At hearing, Mr. Devitt testified that he is in compliance with the terms of his community control and is working towards completing its requirements. (Tr. 20-22)

2. Richard Taff is a Carroll County, Ohio, Deputy Sheriff, assigned to work in the Carroll County Prosecutor's office on a Sexual Abuse Task Force. Deputy Taff testified that in the course of his employment he became aware of a sexual abuse allegation against Mr. Devitt. Deputy Taff interviewed the victim and others. From these interviews he learned that on June 3, 1998, Mr. Devitt had exposed himself to the 11 year old victim, taken her hand, and placed her hand on his penis. Deputy Taff then interviewed Mr. Devitt who confirmed that the victim's statement of the facts had been correct. As a result of the criminal investigation Mr. Devitt was indicted in September 1998 on one count of gross sexual imposition. Deputy Taff stated that Mr. Devitt had been cooperative with the investigation. (Tr. 12-18, 23)

3. Mr. Devitt testified that the crime he committed was a serious one. He explained that shortly after committing the offense the victim disclosed what had happened to a third party. Mr. Devitt further testified that after he had been confronted by a family member he admitted his conduct to his pastor. The pastor referred Mr. Devitt to a counseling center. According to Mr. Devitt, the counselor "was obligated by law to report the incident" to law enforcement officers. Mr. Devitt explained that he, his wife, and the victim continued to attend counseling while the judicial process went forward. Mr. Devitt asserted that the victim is doing well under the circumstances because she has had good counseling as well as good support from family and friends. (Tr. 19-23; Res. Ex. A)

Mr. Devitt testified that he had participated in two different counseling programs. However he is not currently in counseling. He noted that participation in offenders group counseling has been particularly helpful. Mr. Devitt noted that he particularly values the techniques these programs had taught him. (Tr. 22-23; Res. Ex. A)

Mr. Devitt testified that he had worked very hard to obtain his license as a massage therapist. He also testified that he has always practiced in a professional manner and that the crime he committed was unconnected to his practice. Mr. Devitt asked that the Board take this into consideration and not permanently revoke his license. (Tr. 18-20; Res. Ex. A)

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FINDINGS OF FACT

1. On November 4, 1998, in the Court of Common Pleas, Carroll County Ohio, Marty Devitt [a.k.a Daniel M. Devitt], L.M.T., pleaded no contest to and was found guilty of gross sexual imposition, in violation of Section 2907.05(A)(4), Ohio Revised Code, a felony of the third degree.

2. In June 1998 Mr. Devitt had sexual contact with another, or caused another to have sexual contact with Mr. Devitt, where the victim was not his spouse and was less then 13 years of age.

CONCLUSIONS OF LAW

The judicial finding of guilt of Marty Devitt [a.k.a Daniel M. Devitt], L.M.T., as described in Findings of Fact 1, constitutes "(a) plea of guilty to, or a judicial finding of guilt of, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code (as in effect prior to March 9, 1999).

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Marty Devitt [a.k.a Daniel M. Devitt], L.M.T., to practice massage therapy in the State of Ohio shall be PERMANENTLY REVOKED.

This Order shall become effective immediately upon the mailing of notification of approval by the Board.

Daniel Roberts
Attorney Hearing Examiner

State Medical Board of Ohio

77 S High Street, 17th Floor • Columbus, Ohio 43266-0313 • 614/ 466-3934 • Website www state oh us/med/

NOTICE OF AUTOMATIC SUSPENSION
AND
OPPORTUNITY FOR HEARING

December 8, 1999

Marty Devitt, L.M.T.
a.k.a. Daniel M. Devitt
4076 Antiqua Road SW
Carrollton, Ohio 44615

Dear Mr. Devitt:

Pursuant to Section 4731.22(F), Ohio Revised Code (as in effect prior to March 9, 1999), you are hereby notified that your license to practice massage therapy in the State of Ohio has been automatically suspended as of November 4, 1998, by operation of law. This automatic suspension is based upon your conviction of one count of gross sexual imposition, a felony of the third degree, as detailed below. Continued practice after this suspension shall be considered practicing massage therapy without a certificate.

Furthermore, in accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice massage therapy or to reprimand or place you on probation for one or more of the following reasons:

(1) On or about November 4, 1998, in the Court of Common Pleas, Carroll County, Ohio, you pleaded no contest to, and were found guilty of, one count of Gross sexual imposition, in violation of Section 2907.05(A)(4), Ohio Revised Code, with a person less than thirteen years of age, a felony of the third degree.

You were sentenced to serve a definite term of incarceration of four (4) years, which was suspended and you were then sentenced to five years of community control subject to terms and conditions. You were required to pay a fine of $5,000, of which $4,000 was suspended, as well as all court costs generated by this prosecution and restitution as certified by the Carroll County Adult Probation Department.

The terms and conditions included that you serve a period of incarceration of six (6) months in the Carroll County Jail, with all but thirty (30) days suspended; that you perform 200 hours community service; that you have no contact with the victim; that you have no contact whatsoever, either directly or indirectly, with any person under the age of eighteen (18) years without direct supervision of a responsible adult; that you complete a program of mental health counseling for adult sex offenders, you were also advised by the Court of your obligation to report having committed a sexually oriented offense pursuant to Ohio Section 2950., Sexual predators, habitual sex offenders, sexually oriented offenders, Ohio Revised Code.

The acts underlying the judicial finding of guilt, include that you did have sexual contact with another, not the spouse of the offender, or cause another, not the spouse of the offender, to have

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sexual contact with the offender, when the other person was less than thirteen (13) years of age, whether or not you knew the age of that person.

The judicial finding of guilt, as alleged in paragraph (1) above, constitutes "(a) plea of guilty to, or a judicial finding of guilt of, a felony," as that clause is used in Section 4731.22 (B)(9), Ohio Revised Code (as in effect prior to March 9, 1999).

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board shall, in your absence and upon consideration of this matter, enter a final order revoking your license to practice medicine and surgery.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, effective March 9, 1999, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Anand G. Garg, M.D.
Secretary

AGG:jag
Enclosures

CERTIFIED MAIL # Z 233 896 434
RETURN RECEIPT REQUESTED