

State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.
Executive Director

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December 10, 2008

Sara C. Gorbett
900 Courtyard Drive, Apt. K12
Myrtle Beach, SC 29577

RE: Case No. 08-CRF-014

Dear Ms. Gorbett:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Gretchen L. Petrucci, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on December 10, 2008, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal must be taken to the Franklin County Court of Common Pleas.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of an original Notice of Appeal with the State Medical Board of Ohio and a copy of the Notice of Appeal with the Franklin County Court of Common Pleas. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

A handwritten signature in black ink, appearing to read "Lance A. Talmage, M.D.", is written over the typed name.

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3686 5910
RETURN RECEIPT REQUESTED

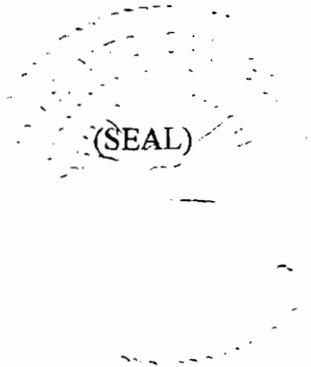
Cc: John P. Kennedy, Esq.
CERTIFIED MAIL NO. 91 7108 2133 3686 5927
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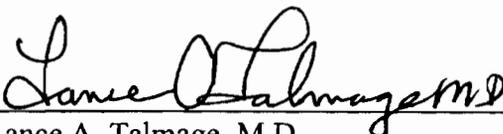
Mailed 12-12-08

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Gretchen L. Petrucci, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on December 10, 2008, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Sara C. Gorbett, Case No. 08-CRF-014, as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.





Lance A. Talmage, M.D.
Secretary

December 10, 2008

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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CASE NO. 08-CRF-014

SARA C. GORBETT

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ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on December 10, 2008.

Upon the Report and Recommendation of Gretchen L. Petrucci, 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:

- A. **DENIAL OF WITHDRAWAL OF MASSAGE-THERAPY CERTIFICATE APPLICATION:** Sara C. Gorbett's oral motion to withdraw her application for a massage-therapy certificate in Ohio is DENIED.
- B. **GRANT OF MASSAGE-THERAPY CERTIFICATE; PROBATION:** The application of Ms. Gorbett for a certificate to practice massage therapy in Ohio is GRANTED, provided that she otherwise meets all statutory and regulatory requirements and subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two years:
1. **Obey Laws in Ohio:** Ms. Gorbett shall obey all federal, state, and local laws; and all rules governing the practice of medicine in the state in which she is practicing.
 2. **Declarations of Compliance:** Ms. Gorbett shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order

becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every sixth month.

3. **Personal Appearances:** Ms. Gorbett shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which this Order becomes effective, or as otherwise directed by the Board. Ms. Gorbett shall also appear upon her request for termination of the probationary period, and/or as otherwise requested by the Board and/or its designee.
4. **Noncompliance Will Not Reduce Probationary Period:** In the event Ms. Gorbett is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.

C. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Ms. Gorbett's certificate will be fully restored.

D. **REQUIRED REPORTING AND DOCUMENTATION OF REPORTING:**

1. **Required Reporting to Employers and Hospitals:** Within thirty days of the effective date of this Board Order, Ms. Gorbett shall provide a copy of this Board Order to all employers or entities with which she is under contract to provide health care services (including but not limited to third party payors) or is receiving training, and the Chief of Staff at each hospital or health-care center where she has privileges or appointments

For massage therapists, the term "health care center" includes but is not limited to entities that may be referred to as wellness center, exercise center, health club, spa, salon, or gymnasium.

Further, Ms. Gorbett shall promptly provide a copy of this Board Order to all employers or entities with which she contracts to provide health-care services (including but not limited to third-party payors), or applies for or receives training, and the Chief of Staff at each hospital or health-care center where she applies for or obtains privileges or appointments. In the event that Ms. Gorbett provides any health care services or health care services or health-care direction or medical oversight to any emergency medical services organization or emergency medical services provider, within thirty days of the effective date of this Board Order, Ms. Gorbett shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

This requirement shall continue until Ms. Gorbett receives from the Board written notification of her successful completion of probation as set forth in paragraph C, above.

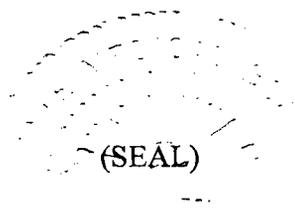
2. **Required Reporting to Other State Licensing Authorities:** Within thirty days of the effective date of this Board Order, Ms. Gorbett shall provide a copy of this Board Order to the proper licensing authority of any state or jurisdiction in which she currently holds any professional license, as well as any federal agency or entity through which she currently holds any license or certificate. Further, Ms. Gorbett shall provide a copy of this Board Order at time of application to the proper licensing authority of any state in which she applies for any professional license or for reinstatement of any professional license.

This requirement shall continue until Ms. Gorbett receives from the Board written notification of his successful completion of probation as set forth in paragraph C, above.

3. **Documentation that the Required Reporting Has Been Performed:** Ms. Gorbett shall provide the Board with **one** of the following documents as proof of each required notification within thirty days of the date of each notification required above: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Board Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was emailed.

- E. **VIOLATION OF THE TERMS OF THIS ORDER:** If Ms. Gorbett violates the terms of this Order in any respect, the Board, after giving her notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of her certificate.

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





Lance A. Talmage, M.D.
Secretary

December 10, 2008

Date

2008 NOV 13 A 11:49

**REPORT AND RECOMMENDATION
IN THE MATTER OF SARA C. GORBETT
Case No. 08-CRF-014**

The Matter of Sara C. Gorbett was heard by Gretchen L. Petrucci, Hearing Examiner for the State Medical Board of Ohio, on October 29, 2008.

INTRODUCTION

Basis for Hearing

By letter dated February 13, 2008, the State Medical Board of Ohio [Board] notified Sara C. Gorbett that it intended to determine whether to deny her application for a certificate to practice massage therapy in Ohio or take other disciplinary action. The Board based its action on an allegation that Ms. Gorbett had stated that she worked as a "Laser Technician/Independent Contractor" at the time she applied for a certificate, and had admitted to using a laser to penetrate the skin, hitting an acupuncture point to stimulate a nerve ending to release endorphins. The Board alleged that Ms. Gorbett's acts, conduct, and/or omissions constitute:

- (a) "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as set forth in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-18-02, Ohio Administrative Code.
- (b) "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed," as set forth in Section 4731.22(B)(10), Ohio Revised Code, to wit: Practice of medicine or surgery without certificate, Section 4731.41, Ohio Revised Code.

Accordingly, the Board advised Ms. Gorbett of her right to request a hearing in this matter. (State's Exhibit 1 at 1-3) By letter received on March 10, 2008, Ms. Gorbett requested a hearing. (State's Exhibit 1B)

Appearances at the Hearing

Nancy H. Rogers, Attorney General, by Barbara J. Pfeiffer, Assistant Attorney General, on behalf of the State of Ohio.

John P. Kennedy, Esq., on behalf of Ms. Gorbett.

EVIDENCE EXAMINED

Testimony Heard

Sara C. Gorbett
Michael Griffin
Jeff Lewis

Exhibits Examined

State's Exhibits 1A, 1B and 1C: Procedural exhibits.

State's Exhibit 2: Ms. Gorbett's February 2007 application for a certificate to practice massage therapy in Ohio, related materials, and certification. [Redacted in part to obscure a social security number and unconvicted charges.]

State's Exhibit 3: Ms. Gorbett's September 2007 responses to the Board's interrogatory requests. [Pages 6 through 24, and 31 were not admitted.]

State's Exhibit 4: Brochure from Advanced Laser Solutions.

State's Exhibit 5: Information regarding the ICL 15 Fiber Laser.

Respondent's Exhibits A, B and C: Portions of Respondent's Closing Argument.

SUMMARY OF THE EVIDENCE

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

Background

1. Sara C. Gorbett entered the Cuyahoga Community College massage-therapy program in August 2005 and graduated in May 2007. Ms. Gorbett holds a certificate from the National Certification Board for Therapeutic Massage and Bodywork. She explained that she had obtained that certificate after taking a "national test." (State's Exhibit [St. Ex.] 2 at 1, 2, 14; St. Ex. 3 at 32; Hearing Transcript [Tr.] at 77)

Ms. Gorbett has not practiced massage therapy since completing massage-therapy school. She currently is a bartender and a waitress in South Carolina. (Tr. at 77)

2. In February 2007, Ms. Gorbett submitted an application for a certificate to practice massage therapy in Ohio. She submitted additional materials thereafter. Ms. Gorbett took the Board's June 2007 Massage Therapy Examination and passed. (St. Ex. 2 at 3; Tr. at 11-12, 78-79)

3. At the time of submitting the licensure application, Ms. Gorbett listed her then-current occupation as "Laser Technician/Independent Contractor" for Advanced Laser Solutions in Garfield Heights, Ohio.¹ (St. Ex. 2 at 14, 15, 24)

Advanced Laser Solutions' Services

4. A brochure regarding Advanced Laser Solutions [ALS] reflects that it had two offices in northeastern Ohio.² It offers laser therapy treatments that allow clients to stop smoking or lose weight. (St. Ex. 4; Tr. at 20) As related to the treatments, the brochure states:

When applied to specific meridian and auricular points, the laser helps to stimulate the production of endorphins, which are the natural chemical pain suppressors produced by the body. The increased production of this chemical will suppress the urge for nicotine.

* * *

Applying the laser to various points on the body can facilitate weight loss by giving the person a feeling of well being which can suppress the desire for excessive food. The laser can also stimulate metabolism and thereby enable the body to utilize food efficiently instead of storing it as fat.

(St. Ex. 4 at 2) Additionally, the brochure reflects the following about the laser:

The same type laser that surveyors use and is used on compact discs can now help with the urge to smoke and appetite control. Laser Beams have been used for a number of years. This is often described as biostimulation of energy on meridian points associated with the desire to smoke. It is similar to acupuncture meridian points, but with soft laser there is no pain or even heat involved; it is entirely painless.

The soft laser works to produce a light beam of high wave length and low energy. The reason the soft laser does not burn is that it is no more powerful than a 60 watt light bulb.

(St. Ex. 4 at 1)

¹Ms. Gorbett also stated in her application that she held a current "license" in Aesthetic Laser Procedures. Upon review of the application materials and the "license," it is clear that Ms. Gorbett received a certificate of completion of a course entitled "Aesthetic Laser Procedures." That certificate of completion is not an Ohio license. (St. Ex. 2 at 14, 24)

²Board investigator Jeff Lewis testified that he had obtained the brochure from ALS' office in mid-2007. Ms. Gorbett confirmed that the brochure was produced and available at ALS in mid-2007. (Tr. at 52, 80-81)

Ms. Gorbett's Employment at Advanced Laser Solutions

5. Ms. Gorbett testified that, in September 2006, when she was 23 years old and in massage therapy school, she had met Michael Griffin. She explained that she had believed Mr. Griffin was one of the owners of ALS. She learned that ALS offers services for weight loss and smoking cessation. (Tr. at 13, 15-16, 75) She described how Mr. Griffin had offered her a position and why she began working at ALS on a part-time basis shortly thereafter:

So [Mr. Griffin] said, "With you going to school for [massage therapy], I have a position open right now, and that when you graduate, I can rent a room to you and then you could also do the laser -- work with the laser with the clients, and then you could also do massage after the clients are finished," and I thought that was a really good opportunity to get in.

So he said that I could come to the office and that he would train me and everything. And I was like, "Well, I've never worked on a laser, what do you do? What kind of training do I have to go through, because I know nothing about lasers?"

He said, "No, there's no such formal training for this laser." He said, "I will just train you in the office because it's a Level 3 laser, it's [a] cold or soft laser, so there's no formal training for it."

So I did go on -- October 6th was my first day, and I went there and he trained me for a couple days, just showing me on clients where to put the laser around their ear and nose, wrist, forearm and hand. And then eventually he sat in the room with me while I started doing it.

(Tr. at 13-14; see also, Tr. at 17-18, 20)

6. Ms. Gorbett and Mr. Griffin attended a two-day training session that took place at ALS on October 16 and 17, 2006, shortly after Ms. Gorbett began working there. Mr. Griffin stated that the training involved safety procedures for a variety of lasers. Ms. Gorbett described the training differently, stating that Mr. Griffin had arranged the training for the office. Additionally, she stated that it had related to the use of a Level 4 laser, which is a hair removal laser and which is not a laser that was used ever at ALS while she was employed there. They both testified that they had received a certificate of completion. (Tr. at 14-15, 42, 75-76; St. Ex. 2 at 24) Further, Ms. Gorbett explained that, at that time, she had questioned Mr. Griffin about the utility of the training:

That was the day that I actually asked if we're not allowed to use this [Level 4 laser], then why are we being trained on it. And that's when Mike Griffin said, "Because there's no formal training for a Level 3, I want some certificate on the wall to make the business look more professional."

(Tr. at 76)

7. Ms. Gorbett and Mr. Lewis identified one of the laser machines at ALS as a Fisioline ICL 15 Fiber laser. Ms. Gorbett acknowledged using that laser machine, but did not know if that machine produced or amplified electromagnetic radiation. Similarly, she did not know if the machine conducted in vivo irradiation of any part of the body. Mr. Lewis testified that the pen-like portion of the laser machine had markings on it, including "910 NM," which he had thought meant 910 nanometers. He did not know if the laser machine produced or amplified any electromagnetic radiation, and he did not operate the laser machine. (Tr. at 21, 32, 53-56, 60; St. Ex. 5)
8. Ms. Gorbett explained that Mr. Griffin had instructed her on the use of the laser equipment and had given her a script to follow when discussing the laser therapy treatments with clients. She noted that the laser therapy treatments were applied to: "the ear, the side of the nose, the inside wrist by the thumb, the forearm, and in between the index finger and the thumb." She further noted that the treatment locations were the same for weight loss and smoking cessation, but the amount of time and frequency of the treatment was greater for weight loss. (Tr. at 14, 17-19)
9. Ms. Gorbett testified that she had not known that she was supposed to have a license in order to perform lawfully her job duties while she was employed at ALS. (Tr. at 25) She explained as follows:

Q. So you thought it was okay to do what you were doing?

A. Yes. And I did ask him a couple times on a couple different occasions, you know, what do I have to do. And I mean, he assured me that he would just train me and that there was no such thing * * * as formal training.

(Tr. at 25-26)

10. Ms. Gorbett stated that she continued to work part-time at ALS until July 2007, when she moved to South Carolina. She estimated that, during her employment at ALS, she had performed acupuncture-type laser therapy on 100 to 150 clients. She further testified that no physician had worked at ALS during the time that she had worked there. (Tr. at 16, 19-20, 28, 75)

Board Investigation of Ms. Gorbett's Laser Usage

11. In June 2007, Ms. Gorbett spoke with a Board investigator. She informed the investigator that, in her position with ALS, she had performed laser therapy on clients who wanted to lose weight or quit smoking. (Tr. at 17)
12. On August 22, 2007, the Board sent interrogatories to Ms. Gorbett. Her responses were received September 24, 2007. She stated that she had been employed as a laser technician at

ALS from October 2006 until July 2007, and again admitted that she had performed laser acupuncture therapy on clients. (St. Ex. 3 at 5)

In response to Interrogatory 49, Ms. Gorbett admitted that the laser she had used “would penetrate through the skin (completely painless) hitting an acupuncture point, stimulating a nerve ending and releasing endorphins throughout the body.” (St. Ex. 3 at 26)

In response to Interrogatory 47, Ms. Gorbett stated that she had received a license/certificate from the Laser Training Institute in October 2006. Ms. Gorbett did not identify a license or certificate to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery.³ (St. Ex. 3 at 26)

13. Ms. Gorbett clarified at hearing that her interrogatory responses regarding the laser therapy that she had conducted while employed at ALS were based upon what she had been told and trained to say during the time that she had been employed at ALS. (Tr. at 80)
14. Mr. Lewis testified that, in the course of the investigation, he had located on the Internet a description of the Fisioline ICL 15 Fiber laser that he had observed at ALS in June 2007. (Tr. at 52-53) That description of the laser includes the following:

ICL 15 Fiber Laser for cold laser therapy. This device delivers an invisible laser light beam in the infrared spectrum, at a wave length of 910 nm. [Graphic omitted.] This super-pulsed cold laser is used for healing tissue at the cellular level. With an application, the body responds in the following way:

1. It increases the ATP levels which allows the cells to grow and replicate faster.
2. It increases Nitric Oxide which increases blood flow.
3. Nerve cells show an increased threshold potential which reduces pain. It has the most effect on the C fibers, which carry the pain signals.
4. There is an increase in activity of the lymph system that helps reduce swelling and fluid removal[.]

(St. Ex. 5)

Ms. Gorbett's Additional Testimony

15. Ms. Gorbett admitted at the hearing that she is not and never has been licensed to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery. (Tr. at 28-29)

³As described in footnote 1, the document that Ms. Gorbett obtained is a certificate of completion of a training course; it is not an Ohio license.

16. Ms. Gorbett explained that she still wishes to obtain a massage therapy certificate. (Tr. at 78)

RELEVANT OHIO LAW

Rule 4731-18-02(A), Ohio Administrative Code, states that a “light based medical device” means “any device that can be made to produce or amplify electromagnetic radiation at wavelengths equal to or greater than one hundred eighty nm but less than or equal to 1.0×10^6 nm and that is manufactured, designed, intended or promoted for in vivo irradiation⁴ of any part of the human body for the purpose of affecting the structure or function of the body.”⁵

Rule 4731-18-02(B), Ohio Administrative Code, states: “[t]he application of light based medical devices to the human body is the practice of medicine and surgery, osteopathic medicine and surgery, and podiatric medicine and surgery.”

Moreover, Rule 4731-18-02(C), Ohio Revised Code, prohibits an Ohio-licensed physician from delegating the application of light-based medical devices to the human body to any person who is not authorized to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery, except as provided in Rules 4731-18-03 and 4731-18-04, Ohio Administrative Code, which do not allow delegation for weight loss or smoking cessation.

MOTION TO WITHDRAW CERTIFICATE APPLICATION

During the hearing, Ms. Gorbett testified that she still wishes to obtain a massage therapy certificate. However, she is fearful that it is not worth pursuing because she may “get in more trouble.” For that reason, she also made a motion to withdraw her application for a certificate to practice massage therapy in Ohio. (Tr. at 78, 89-90)

FINDINGS OF FACT

1. In February 2007, Sara C. Gorbett submitted an application for a massage-therapy certificate with the Board. That application remains pending.
2. On the application, Ms. Gorbett listed her then-current occupation as “Laser Technician/Independent Contractor” for Advanced Laser Solutions in Garfield Heights, Ohio.
3. In June 2007, in a conversation with a Board investigator, Ms. Gorbett stated that, in her then-current job, she performed laser therapy on clients who wanted to lose weight or quit smoking.

⁴According to Dorland’s Illustrated Medical Dictionary, 27th Edition, “in vivo irradiation” means treatment within the living body by photons, electrons, neutrons or other ionizing radiations.

⁵Ms. Gorbett argues that the definition of light-based medical devices is so broad that it is “nearly impossible” for someone to accurately determine whether a specific device is considered a light-based medical device.

4. On August 22, 2007, the Board sent interrogatories to Ms. Gorbett. According to her answers to Interrogatories 2.a, 2.b, 2.c, and 2.d, Ms. Gorbett served as a laser technician at Advanced Laser Solutions from October 2006 until July 2007, and she performed laser acupuncture therapy on clients.

In Interrogatory 49, Ms. Gorbett was asked to explain her understanding of this type of laser therapy. Ms. Gorbett admitted that she had used a laser to penetrate through the skin, hitting an acupuncture point to stimulate a nerve ending to release endorphins.

In Interrogatory 47, Ms. Gorbett was asked to identify any licenses or certificates she held that authorized her to perform laser therapy. Ms. Gorbett identified a certificate presented to her by the Laser Training Institute for completion of the Aesthetic Laser Procedures course she took on October 16-17, 2006. Ms. Gorbett did not identify or list a license or certificate to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery.

At hearing, Ms. Gorbett admitted that she has not been granted a license or certificate to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery in Ohio.

5. Ms. Gorbett has not practiced massage therapy since completing massage-therapy school. She took and passed the Board's June 2007 Massage Therapy Examination.

CONCLUSIONS OF LAW

1. The laser that Ms. Gorbett had used at Advanced Laser Solutions was a "light based medical device" as that term is defined in Rule 4731-18-02(A), Ohio Administrative Code. The definition of "light based medical device" is not so broad that nearly any device could qualify, as Ms. Gorbett has argued. The first portion of that definition is quite broad, but the definition is narrowly tailored, as it also requires that such a device must be "manufactured, designed, intended or promoted for in vivo irradiation of any part of the human body for the purpose of affecting the structure or function of the body." This conclusion is based upon the following credible testimony from both Ms. Gorbett and Mr. Lewis, and the documentary evidence:
 - The Fisioline ICL 15 Laser device was used by Ms. Gorbett on numerous clients, as demonstrated by Ms. Gorbett's testimony and State's Exhibit 3.
 - The device produced electromagnetic radiation at wavelengths of 910 nanometers, as demonstrated by State's Exhibit 5 and Mr. Lewis' testimony.
 - The device was "manufactured, designed, intended or promoted for in vivo irradiation of any part of the human body", as demonstrated by State's Exhibit 5.

- The device was manufactured, designed, intended or promoted for in vivo irradiation of any part of the human body “for the purpose of affecting the structure or function of the body,” as demonstrated by Ms. Gorbett’s testimony and State’s Exhibits 4 and 5.

Ms. Gorbett’s use of the Fisioline ICL 15 Laser device at Advanced Laser Solutions constituted the application of a light based medical device to the human body and, thus, constituted the practice of medicine and surgery, osteopathic medicine and surgery, and podiatric medicine and surgery, as set forth in Section 4731.41, Ohio Revised Code.

2. As set forth in Findings of Fact 2 through 4, Ms. Gorbett’s acts, conduct, and/or omissions individually and/or collectively constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as set forth in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-18-02, Ohio Administrative Code.
3. As set forth in Findings of Fact 2 through 4, Ms. Gorbett’s acts, conduct, and/or omissions individually and/or collectively constitute “[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,” as set forth in Section 4731.22(B)(10), Ohio Revised Code, to wit: Practice of medicine or surgery without certificate, Section 4731.41, Ohio Revised Code. As set forth in Section 4731.99(A), Ohio Revised Code, whoever violates Section 4731.41, 4731.43, or 4731.60, Ohio Revised Code, is guilty of a felony of the fifth degree on a first offense and a felony of the fourth degree on each subsequent offense.

Ms. Gorbett raised a legal argument that the Board should only conclude that her actions constituted the practice of medicine without a certificate if she had been reckless in performing her job duties. The Hearing Examiner rejects that argument. Neither Section 4731.41 nor Section 4731.99, Ohio Revised Code, requires the Board to find recklessness or any other degree of culpability. Moreover, nothing in Chapter 4731, Ohio Revised Code, suggests that an additional element should be included before finding that someone’s actions constituted the practice of medicine without a certificate. The Board should not add such an element into the statutory language.⁶

* * * * *

Ms. Gorbett appeared at hearing to be an honest, cooperative and credible person. She was young and naïve when she began working part-time at ALS in October 2006. The Hearing Examiner accepts that she just relied upon her employer’s statements that she did not need training, beyond the “on-the-job” training that she had received, in order for her to perform legally the laser technician duties.

⁶Willful or reckless misconduct can, however, be considered in deciding what disciplinary action to take in this matter.

It appears that Ms. Gorbett truly wishes to become a massage therapist, but has asked to withdraw her certificate application because she fears the outcome of this proceeding. The Hearing Examiner believes that Ms. Gorbett is worthy of a certificate to practice massage therapy in Ohio, but she should be subject to probationary terms for a period of time. There are several strong mitigating factors in support of this conclusion: Ms. Gorbett did not have a dishonest or selfish motive in performing the laser technician duties; she did not willfully or recklessly practice medicine without a certificate; she made full and free disclosures when the Board inquired; she is very remorseful; and these events are unlikely to occur again.

PROPOSED ORDER

It is hereby ORDERED, that:

- A. **DENIAL OF WITHDRAWAL OF MASSAGE-THERAPY CERTIFICATE APPLICATION:** Sara C. Gorbett's oral motion to withdraw her application for a massage-therapy certificate in Ohio is DENIED.
- B. **GRANT OF MASSAGE-THERAPY CERTIFICATE; PROBATION:** The application of Ms. Gorbett for a certificate to practice massage therapy in Ohio is GRANTED, provided that she otherwise meets all statutory and regulatory requirements and subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two years:
1. **Obey the Law:** Ms. Gorbett shall obey all federal, state, and local laws, and all rules governing the practice of massage therapy in the state in which she is practicing.
 2. **Declarations of Compliance:** Ms. Gorbett shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every sixth month.
 3. **Personal Appearances:** Ms. Gorbett shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which this Order becomes effective, or as otherwise directed by the Board. Ms. Gorbett shall also appear upon her request for termination of the probationary period, and/or as otherwise requested by the Board and/or its designee.
 4. **Noncompliance Will Not Reduce Probationary Period:** In the event Ms. Gorbett is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.

C. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Ms. Gorbett's certificate will be fully restored.

D. **REQUIRED REPORTING AND DOCUMENTATION OF REPORTING:**

1. **Required Reporting to Employers and Hospitals:** Within thirty days of the effective date of this Board Order, Ms. Gorbett shall provide a copy of this Board Order to all employers or entities with which she is under contract to provide health care services (including but not limited to third-party payors) or is receiving training, and the Chief of Staff at each hospital or health-care center where she has privileges or appointments.

For massage therapists, the term "health care center" includes but is not limited to entities that may be referred to as a wellness center, exercise center, health club, spa, salon, or gymnasium.

Further, Ms. Gorbett shall promptly provide a copy of this Board Order to all employers or entities with which she contracts to provide health-care services (including but not limited to third-party payors), or applies for or receives training, and the Chief of Staff at each hospital or health-care center where she applies for or obtains privileges or appointments. In the event that Ms. Gorbett provides any health-care services or health-care direction or medical oversight to any emergency medical services organization or emergency medical services provider, within thirty days of the effective date of this Board Order, Ms. Gorbett shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

This requirement shall continue until Ms. Gorbett receives from the Board written notification of her successful completion of probation as set forth in paragraph C, above.

2. **Required Reporting to Other State Licensing Authorities:** Within thirty days of the effective date of this Board Order, Ms. Gorbett shall provide a copy of this Board Order to the proper licensing authority of any state or jurisdiction in which she currently holds any professional license, as well as any federal agency or entity through which she currently holds any license or certificate. Further, Ms. Gorbett shall provide a copy of this Board Order at time of application to the proper licensing authority of any state in which she applies for any professional license or for reinstatement of any professional license.

This requirement shall continue until Ms. Gorbett receives from the Board written notification of her successful completion of probation as set forth in paragraph C, above.

3. **Documentation that the Required Reporting Has Been Performed:** Ms. Gorbett shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each notification required above: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a

copy of the Board Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was emailed.

- E. **VIOLATION OF THE TERMS OF THIS ORDER:** If Ms. Gorbett violates the terms of this Order in any respect, the Board, after giving her notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of her certificate.

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



Gretchen L. Petrucci
Hearing Examiner

State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127



Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

February 13, 2008

Case number: 08-CRF-014

Sara C. Gorbett
7606 Jameson Road
Parma, OH 44129

Dear Ms. Gorbett:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio [Board] intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice massage therapy, or to reprimand you or place you on probation .

This determination is based upon one or more of the following reasons:

- (1) In or around February 2007, you caused to be submitted to the Board an Application for Certificate to Practice A Limited Branch - Massage Therapy [Application], which remains pending. On the Application, you listed your then current occupation as "Laser Technician/Independent Contractor" for Advanced Laser Solutions in Garfield Heights, Ohio. On or about June 12, 2007, in a conversation with a Board investigator, you stated that, in your then current job, you performed acupuncture type laser therapy on clients who wanted to lose weight or quit smoking.
- (2) On or about August 22, 2007, the Board sent you interrogatories, which you received on or about September 6, 2007. According to your answers to Interrogatories 2.a., b., c., and d., you served as a laser technician at Advanced Laser Solutions from October 2006 until July 2007, and you performed laser acupuncture therapy on clients. In response to Interrogatory 49, when asked to explain your understanding of this type of laser therapy, you admitted that you used a laser to penetrate through the skin, hitting an acupuncture point to stimulate a nerve ending to release endorphins.
- (3) In Interrogatory 47, you were asked to identify any licenses or certificates you held that authorized you to perform laser therapy. You identified a certificate presented to you by the Laser Training Institute for completion of the

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Aesthetic Laser Procedures course you took on or about October 16-17, 2006. You did not identify or list a license or certificate to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery.

As set forth in Rule 4731-18-02(B), Ohio Administrative Code, "The application of light based medical devices to the human body is the practice of medicine and surgery, osteopathic medicine and surgery and podiatric medicine and surgery." Further, as set forth in Rule 4731-18-02(C), Ohio Administrative Code, the application of light based medical devices to the human body cannot be delegated to "any person not authorized to practice medicine and surgery, osteopathic medicine and surgery or podiatric medicine and surgery," except under the limited conditions provided in Rules 4731-18-03 and 4731-18-04, Ohio Administrative Code, which do not apply to laser therapy for weight loss and smoking cessation.

Your acts, conduct, and/or omissions as alleged in paragraphs (1), (2) and (3) above, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-18-02, Ohio Administrative Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1), (2) and (3) above, individually and/or collectively, constitute "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Practice of medicine or surgery without certificate, Section 4731.41, Ohio Revised Code. As provided in Section 4731.99(A), Ohio Revised Code, "whoever violates section 4731.41, 4731.43, or 4731.60 of the Revised Code is guilty of a felony of the fifth degree on a first offense and a felony of the fourth degree on each subsequent offense."

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 days of the time of mailing this notice.

You are further advised that, if you timely request a hearing, 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 days of the time of mailing of this notice, the State Medical Board may, in your absence and upon

consideration of this matter, determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice massage therapy or to reprimand you or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, 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,



Lance A. Talmage, M.D.
Secretary

LAT/CDP/flb

Enclosures

CERTIFIED MAIL #91 7108 2133 3934 3690 5098
RETURN RECEIPT REQUESTED

Duplicate Service
Restricted Delivery

Sara C. Gorbett
4894 Lusterleaf Circle, #202
Myrtle Beach, SC 29577-7700

CERTIFIED MAIL #91 7108 2133 3934 3690 5036
RETURN RECEIPT REQUESTED