

Effective Feb 11, 2006



February 10, 2006 *Protecting, maintaining and improving the health of all Minnesotans*

Mr. Robert Kent Rogers



RE: Determination affecting your massage therapy practice.

200534

Dear Mr. Rogers:

Based on my review of the attached document outlining the facts and law in this matter, I have determined to revoke your right to provide unlicensed complementary and alternative health care as defined in Minnesota Statutes, Chapter 146A. This decision is based on the fact that you have violated Minnesota Statutes, § § 146A.08, subd. 1(d), (e), (f), (g), (q), and (r). Included in this Determination Order is a requirement that you pay a civil penalty in the amount of \$638.

You have the right to challenge this decision in a contested-case hearing as provided under Minnesota Statutes, Chapter 14. Requests for hearing should be made in writing and include specific grounds for challenging the Department's decision. If you wish to request a hearing, please send, deliver, or fax a written hearing request within 30 days of your receipt of this letter to:

Susan Winkelmann, Investigations and Enforcement Manager
Minnesota Department of Health
85 East Seventh Place, Suite 300
P.O. Box 64882
St. Paul, MN 55164-0882
Fax (651) 282-3839

If you have any questions about this matter, contact Ms. Susan Winkelmann, at (651) 282-5623. You will still be required to request a hearing in writing with the grounds for challenging the Department's decision.

Sincerely,

A handwritten signature in cursive script that reads "David J. Giese".

David J. Giese, Director
Division of Compliance Monitoring

cc: Susan Winkelmann, Investigations and Enforcement Manager

**HEALTH OCCUPATIONS PROGRAM
MINNESOTA DEPARTMENT OF HEALTH**

**A Determination In the Matter of Robert Kent Rogers
Unlicensed Complementary and Alternative Health Care Practitioner**

AUTHORITY

1. Minnesota Statutes, § 146A.09, subd. 1, provides that the Office of Unlicensed Complementary and Alternative Health Care Practice (hereinafter "OCAP") within the Minnesota Department of Health (hereinafter "Department") has the authority to revoke, suspend, censure, reprimand, impose limitations or conditions, and impose a civil penalty not exceeding \$10,000 for each separate violation, the amount of the civil penalty to be fixed so as to deprive the practitioner of any economic advantage gained by reason of the violation or to reimburse the office for all costs of the investigation and proceeding when there is a violation of law as defined in Minnesota Statutes, § 146.08, subd. 1.
2. Pursuant to Minnesota Statutes, § 146A.01, subd. 4, complementary and alternative health care practices include the broad domain of complementary and alternative healing methods and treatments, including but not limited to: (3) aroma therapy, (8) energetic healing, and (17) bodywork, massage and massage therapy. Minnesota Statutes, section 146A.01, subd. 6 defines practitioners as those who hold themselves out to the public as being complementary and alternative health care practitioners and does not restrict practitioners to those who provide services for remuneration.
3. Minnesota Statutes, § 146A.08, subd. 1(d) prohibits sexual contact with a client or engaging in contact that may be reasonably interpreted by a client as sexual, and engaging in verbal behavior that is seductive or sexually demeaning to the client.
4. Minnesota Statutes, § 146A.08, subd. 1(e) prohibits false or misleading advertising.
5. Minnesota Statutes, § 146A.08, subd. 1(f) prohibits conduct likely to harm the public or demonstrating a willful or careless disregard for the health, welfare, or safety of a client.
6. Minnesota Statutes, § 146A.08, subd. 1(g) prohibits engaging in complementary and alternative health care practices without reasonable safety.
7. Minnesota Statutes, § 146A.08, subd. 1(q) prohibits undertaking or continuing a professional relationship with a client in which the objectivity of the practitioner would be impaired.
8. Minnesota Statutes, § 146A.08, subd. 1(r) prohibits failing to provide each client with a Client Bill of Rights.

FINDINGS OF FACT

1. Practitioner was a massage therapist working in Minnesota from 1992 to 2004. Practitioner states that he stopped practicing in November 2004, but Practitioner has a few clients and works out of his home.
2. Practitioner has a high school diploma, attended community college, and completed about 700 hours of training in massage therapy in 1975 in California.
3. Practitioner worked at Golden Sun Chiropractic Offices (hereinafter "Golden Sun") as an independent contractor from 2003 to 2004. Practitioner charged between \$50 to \$80 per hour and charged the higher rate if insurance reimbursement was involved. Practitioner stated that the owner of the business at Golden Sun took care of the billing. Practitioner did not take notes or keep charts on clients. Practitioner states that he made about \$5,700 while working at Golden Sun.
4. Practitioner's business name is *Magic Hands Massage*. In Practitioner's business brochure, he uses the title, "CMT" and stated he uses that title because he obtained certification in California. Practitioner does not belong to any professional massage therapy organizations.
5. In his practice, Practitioner uses about 200 oils and states that Rose oil is used for clearing pain around the heart chakra and attends to deep-seated fears of not being loved and traumas. Practitioner also stated that Rose oil brings out a connection to God.
6. Practitioner's brochure lists his practice areas: Swedish, reflexology, shiatsu, esalon, acupressure, sports massage and polarity energy balancing. Practitioner's brochure describes his practicing as being "the evolution of over 25 years of experience, *Magic Hands Therapeutic Massage has served thousands of clients* in premier health spas, athletic clubs, licensed therapeutic massage facilities, and in private practice in California, Montana, Minnesota, and abroad."
7. Practitioner provided about eight massages to Client One, an adult male friend from church. Practitioner stated he regularly donates his massage services to persons from his church. During massages, Client One told Practitioner personal things about his childhood and about his family.
8. Practitioner knew Client Two, a thirteen year old female, the daughter of Client One, through church. Practitioner had a personal relationship with Client One, Client One's ex-wife, and Client Two for several years before giving Client Two a massage. Practitioner stated that Client One told Practitioner personal things about Client Two over the years including that Client Two was nervous and jittery due to stress.

9. Practitioner gave a massage to Client Two twice, the first time in early 2004. In the first massage, there were no problems. On November 9, 2004, Practitioner gave Client Two a second massage. For this massage, Practitioner determined that it was appropriate to give Client Two both Rose oil and an oil called "inner child" to help her with her heart chakra issues. With Client Two's eyes covered by a folded cloth, Practitioner massaged Client Two's sternum area, breast area and admits that parts of his hands may have touched Client Two's nipples. In his October 17, 2005, interview with MDH, Practitioner stated that he calls the breast area, a "heart charka" and further described it as "a balancing of the energy of the life force that flows through the spiritual centers of the charkas".

10. Practitioner stated that he did not inform Client Two that he was going to massage her breast area and explained that as a massage therapist, he is a very intuitive person and he cannot necessarily communicate everything he is going to do and that his hands just do the job to release the stresses in the body. Practitioner further explained that with a young person like Client Two, you might not communicate the same way as you would with an adult because they do not have the same reasoning ability as an adult.

11. Practitioner stated in the October 17, 2005 interview that he can understand why a client might not like being massaged on their breast area.

12. Practitioner stated that he has massaged the sternum and breast area on hundreds of clients in Minnesota and no one else has complained.

13. When Practitioner learned that Client One was going to report the incident with Client Two to the police, Practitioner requested that they handle the problem through the church instead and there was a meeting with two ministers from the church. Client One did report the incident to the police within one day of the incident.

14. Practitioner pled guilty to disorderly conduct in Minnesota in 1999 for conduct unrelated to massage therapy practice.

CONCLUSION

Practitioner violated Minnesota Statutes, sections 146A.08, subds. 1(d), (e), (f), (q), and (r).

DETERMINATION

Practitioner's right to practice complementary and alternative health care practice, including massage therapy, bodywork, aroma therapy, and energy healing in Minnesota is revoked.

Practitioner also is assessed a civil penalty in the amount of \$638 representing the costs of investigation and proceedings to date.