

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD )  
OF MASSAGE THERAPY, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 00-2442  
 )  
HAE SUK BORNHOLDT, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case before Larry J. Sartin, an Administrative Law Judge of the Division of Administrative Hearings, in West Palm Beach, Florida, on July 5, 2000.

APPEARANCES

For Petitioner: Dennis G. King, Esquire  
Rudolph C. Campbell, Esquire  
Agency for Health Care Administration  
2727 Mahan Drive  
Fort Knox Building 3, Mail Stop 39  
Tallahassee, Florida 32308

For Respondent: Lawrence K. Fagan, Esquire  
LaValle, Brown, Ronan & Soff  
750 South Dixie Highway  
Boca Raton, Florida 33432

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent, Hae Suk Bornholdt, committed the offense alleged in an Amended

Administrative Complaint issued June 12, 2000, and, if so, what penalty should be imposed upon Respondent.

PRELIMINARY STATEMENT

On or about April 28, 2000, an Emergency Suspension Order was filed against Respondent. On or about May 16, 2000, Petitioner, the Department of Health, Board of Massage Therapy, issued an Administrative Complaint alleging that Respondent had violated Chapters 456 and 480, Florida Statutes, and seeking to impose punishment upon her for said violations. On June 12, 2000, Respondent filed a Response to Administrative Complaint denying the allegations of the Administrative Complaint and requesting a formal administrative hearing. On June 12, 2000, an Amended Administrative Complaint was issued by Petitioner.

By letter filed June 13, 2000, the Agency for Health Care Administration filed the Administrative Complaint, the Response thereto, and the Amended Administrative Complaint with the Division of Administrative Hearings. The matter was designated Case No. 00-2442 and was initially assigned to Administrative Law Judge Michael Parrish. The case was subsequently transferred to the undersigned.

Official recognition of the rules and statutes which govern the practice of massage therapy in the State of Florida was taken.

At the formal hearing Petitioner presented the testimony of Robert F. Flechus, a detective with the Boca Raton Police Department, and Angela Richardson, custodian of records for the Board of Massage Therapy. Petitioner offered 5 exhibits. Petitioner's Exhibits numbered 1 through 4 were accepted into evidence. Petitioner's Exhibit 5 was not offered. Respondent testified on her own behalf. Respondent offered no exhibits.

A Transcript of the hearing was filed on July 31, 2000. Proposed orders were, therefore, required to be served on or before August 10, 2000. On August 10, 2000, Petitioner filed Petitioner's Proposed Recommended Order. No post-hearing submittal has been filed by Respondent. Petitioner's Proposed Recommended Order has fully considered in entering this Recommended Order.

#### FINDINGS OF FACT

1. Petitioner, the Department of Health, Board of Massage Therapy (hereinafter referred to as the "Board"), is the state agency charged with the authority and duty to regulate the practice of massage therapy in the State of Florida.

Chapters 20, 456, and 480, Florida Statutes.

2. Respondent, Hae Suk Bornholdt, applied for licensure as a massage therapist in the State of Florida on December 1, 1999. Ms. Bornholdt's application for licensure was approved and she was licensed as a massage therapist in the State of Florida

effective December 28, 1999. Respondent's license number is MA 30419.

3. At all times relevant to this proceeding, Ms. Bornholdt was employed by Fame Limited, Inc. (hereinafter referred to as "Fame"). Fame is located at 4799 North Federal Highway, Boca Raton, Florida. Fame is a massage establishment.

4. On December 2, 1999, an undercover policy investigation was begun of Fame in response to anonymous complaints of sexual activities between massage therapists and male clients of Fame.

5. Robert F. Flechus, a detective with the Boca Raton Police Department, entered Fame posing as a client. Detective Flechus paid \$80 for a massage. He was greeted by Ms. Bornholdt, who identified herself as "Tina."

6. Ms. Bornholdt led Detective Flechus to a locker room where he undressed, left his clothes in a locker, and wrapped a towel around himself. Detective Flechus took a sauna and was then led by Ms. Bornholdt to a shower room where he showered. Ms. Bornholdt washed Detective Flechus, including his buttocks, with a sponge.

7. After showering, Ms. Bornholdt led Detective Flechus into a room where she gave him a massage. During the massage, Ms. Bornholdt suggested that Detective Flechus masturbate while she massaged his stomach. When he refused, Ms. Bornholdt took Detective Flechus' hand and attempted to place it on his penis.

Detective Flechus immediately pulled his hand away.

Ms. Bornholdt then removed the towel that was partially covering Detective Flechus' genitalia and began to stroke his penis. Detective Flechus stopped Ms. Bornholdt and got up off the massage table.

8. Ms. Bornholdt failed to properly drape Detective Flechus when she allowed his penis to be exposed to her during the shower and while he was on the massage table.

9. Ms. Bornholdt was not licensed as a massage therapist on December 2, 1999. Ms. Bornholdt acted as a massage therapist with Detective Flechus and other clients prior to receiving her license on December 28, 1999.

10. Detective Flechus' testimony in this matter was clear, consistent, and credible. Ms. Bornholdt's testimony on the other hand was inconsistent, unconvincing, and not credible.

#### CONCLUSIONS OF LAW

##### A. Jurisdiction.

11. The Division of Administrative Hearings has jurisdiction of the parties to, and the subject matter of, this proceeding. Section 120.57, Florida Statutes (1999).

##### B. The Burden and Standard of Proof.

12. The Board had the burden of proving the allegation of the Amended Administrative Complaint by clear and convincing evidence. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

C. Ms. Bornholdt's Violations of Chapter 480, Florida Statutes, and Rules 64B7-26.010(1), (3), and (4) and 64B7-30.001(5), Florida Administrative Code.

13. Although the acts which Ms. Bornholdt committed were conducted before the effective date of her licensure by the Board, Section 455.624(2), Florida Statutes, authorizes the Board to take action against Respondent:

(2) When the board . . . finds any person guilty . . . of the grounds set forth in the applicable practice act, including conduct constituting a . . . violation of the applicable practice act which occurred prior to obtaining a license, it may enter an order imposing one or more of the following penalties:

. . . .

(b) Suspension or permanent revocation of a license.

(c) Restriction of practice

(d) Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense.

(e) Issuance of a reprimand.

(f) Placement of the license on probation for a period of time and subject to such conditions as the board . . . may specify. . . .

(g) Corrective action.

14. Chapter 480, Florida Statutes, is the practice act applicable to massage therapists. The Amended Administrative Complaint issued by the Board alleges violations of Chapter 480, Florida Statutes, in two counts. In Count I, it is alleged that Ms. Bornholdt's actions on December 2, 1999, were in violation of Section 480.0485, Florida Statutes, and Rule 64B7-26.010(1),

(3), and (4), Florida Administrative Code, thereby violating Section 480.046(1)(k), Florida Statutes. In Count II, it is alleged that Ms. Bornholdt's actions on December 2, 1999, violated Rule 64B7-30.001(5), Florida Administrative Code, and thereby violated Section 480.046(1)(k), Florida Statutes.

15. Section 480.046(k), Florida Statutes, provides the following ground for taking disciplinary action against a massage therapist:

(k) Violating any provision of this chapter, a rule of the board or department, or a lawful order of the board or department previously entered in a disciplinary hearing, or failing to comply with a lawfully issued subpoena of the department.

The particular provisions of Chapter 480, Florida Statutes, and the Board's rules, which Ms. Bornholdt has been charged with violating, include Section 480.0485, Florida Statutes, Rule 64B7-26.010, Florida Administrative Code, and Rule 64B7-30.001, Florida Administrative Code.

16. Section 480.0485, Florida Statutes, provides the following prohibition concerning sexual misconduct in the practice of massage therapy:

The massage therapist-patient relationship is founded on mutual trust. Sexual misconduct in the practice of massage therapy means violation of the massage-therapist relationship through which the massage therapist uses that relationship to induce or attempt to induce the patient to engage, or to engage or attempt to engage

the patient, in sexual activity outside the scope of practice or the scope of generally accepted examination or treatment of the patient. Sexual misconduct in the practice of massage therapy is prohibited.

17. The evidence in this case proved that Ms. Bornholdt violated Section 480.0485, Florida Statutes. Her violation of Section 480.0485, Florida Statutes, constitutes a violation of Section 480.046(1)(k), Florida Statutes.

18. Rule 64B7-26.010, Florida Administrative Code, provides, in pertinent part, the following:

(1) Sexual activity by any person or person in any massage establishment is absolutely prohibited.

. . . .

(3) No licensed massage therapist shall use the therapist-client relationship to engage in sexual activity with any client or to make arrangements to engage in sexual activity with any person.

(4) As used in this rule, "sexual activity" means any direct or indirect physical contact by any person or between persons which is intended to erotically stimulate either person or both or which is likely to cause such stimulation and includes sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse. For purposes of this subsection, masturbation means the manipulation of any body tissue with the intent to cause sexual arousal. As used herein, sexual activity can involve the use of any device or object and is not dependent on whether penetration, orgasm, or ejaculation has occurred. . . .



19. The evidence in this case proved that Ms. Bornholdt violated these provisions when she told Detective Flechus to masturbate, when she placed his hand on his penis, and when she touched his penis and attempted to stroke him. Her violation of Rule 64B7-26.010(1), (3), and (4), Florida Administrative Code, constitutes a violation of Section 480.046(1)(k), Florida Statutes.

20. Rule 64B7-30.001(5), Florida Administrative Code, provides the following:

The following acts shall constitute the failure to practice massage therapy with that level of care, skill, and treatment which is recognized by a reasonably prudent similar massage therapist as being acceptable under similar conditions and circumstances:

. . . .

(5) Failure to appropriately drape a client. Appropriate draping of a client shall include draping of the buttocks and genitalia of all clients, and breasts of female clients, unless the client gives specific informed consent to be undraped.

21. Ms. Bornholdt violated this rule when she went into the shower with Detective Flechus and when she failed to properly drape him during the massage on December 2, 1999. Her violation of Rule 64B7-30.001(5), Florida Administrative Code, constitutes a violation of Section 480.046(1)(k), Florida Statutes.

22. In addition to the Board's authority to take disciplinary action against Ms. Bornholdt, Section 455.624(3), Florida Statutes, authorizes the Board to "assess costs related to the investigation and prosecution of the case" in addition to any discipline imposed.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered by the Board of Massage Therapy finding that Hae Suk Bornholdt committed the offense alleged in the Amended Administrative Complaint issued on June 12, 2000; it is further

RECOMMENDED that the Board of Massage revoke Ms. Bornholdt's license to practice massage therapy and assess the costs of investigating and prosecuting this case.

DONE AND ENTERED this 16th day of August, 2000, in  
Tallahassee, Leon County, Florida.

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LARRY J. SARTIN  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 16th day of August, 2000.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.