

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF  
MASSAGE THERAPY,

Petitioner,

vs.

Case No. 17-1832PL

MEIE LI CRISP, L.M.T.,

Respondent.

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RECOMMENDED ORDER

On July 26, 2017, a final hearing was held by video teleconference at locations in Orlando and Tallahassee, Florida, before Lynne A. Quimby-Pennock, an Administrative Law Judge (ALJ), assigned by the Division of Administrative Hearings (DOAH) to preside over this matter.

APPEARANCES

For Petitioner: Philip Aaron Crawford, Esquire  
Ann L. Prescott, Esquire  
Department of Health  
Prosecution Services Unit  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, Florida 32399

For Respondent: Thomas D. Sommerville, Esquire  
Law Offices of Thomas D. Sommerville, P.A.  
820 North Thornton Avenue  
Orlando, Florida 32803

STATEMENT OF THE ISSUES

The issues to be determined are whether Meie L. Crisp, L.M.T., Respondent, engaged in sexual misconduct in the practice of massage therapy, in violation of section 480.046(1)(o), Florida Statutes (2012), through a violation of section 480.0485, Florida Statutes (2012); and, if so, what is the appropriate sanction.

PRELIMINARY STATEMENT

On March 4, 2016, Petitioner, Department of Health (Department), filed a First Amended Administrative Complaint against Respondent, a licensed massage therapist. The complaint charged Respondent with sexual misconduct in the practice of massage therapy, in violation of section 480.0485. Respondent disputed material issues of fact in the complaint and requested a "formal" hearing before an administrative law judge appointed by DOAH.

Prior to the final hearing, the parties filed a joint pre-hearing stipulation, which included 13 facts which were admitted. To the extent relevant, those facts are included in this Recommended Order.

At hearing, Petitioner offered the testimony of law enforcement officer Q.A. and Respondent. In addition, Petitioner's Exhibit 6 was received in evidence without objection. Respondent testified on her own behalf, and did not

offer any exhibits. An official translator provided by the State of Florida was sworn in to translate all testimony for Respondent as English is not her first language.

Petitioner had issued a subpoena to Jennifer Mason, L.M.T., to appear at the hearing, yet she failed to appear. Petitioner orally motioned to allow time to obtain Ms. Mason's deposition. Over objection from Respondent's counsel, the undersigned granted Petitioner until August 30, 2017, to obtain Ms. Mason's deposition testimony. On August 29, 2017, Ms. Mason's deposition was admitted as Petitioner's Exhibit 7. The hearing record was closed by an Order issued on August 30, 2017.

The parties were allowed to submit proposed recommended orders within ten days after the filing of both the deposition transcript and the final hearing transcript. Both Transcripts were filed by August 30, 2017, and the parties were notified to file their proposed recommended orders on or before the close of business on September 8, 2017.<sup>1/</sup> Both parties timely filed a Proposed Recommended Order, and each has been considered.

Unless otherwise indicated, citations to the Florida Statutes or rules of the Florida Administrative Code refer to the versions in effect on September 6, 2012, the time of the alleged violations.

## FINDINGS OF FACT

1. Petitioner is the state agency charged with regulating the practice of massage therapy in the State of Florida, pursuant to section 20.43 and chapters 456 and 480, Florida Statutes.

2. At all times material to the complaint, Respondent was licensed to practice massage therapy in the state of Florida, having been issued license number MA67145. She has been licensed since 2012.

3. At all times material to the complaint, Respondent was employed as a massage therapist at the Asian Flower Massage (AFM), located at 1001 West Colonial Drive, Orlando, Florida 32804.

4. The Metropolitan Bureau of Investigation (MBI) is a joint police task force for the Ninth Judicial Circuit, which includes Orange County and Osceola County. MBI routinely investigates vice, human trafficking crimes, and mid-level to upper-level narcotic organizations.

5. Officer Q.A. has been a deputy sheriff with the Orange County Sheriff's Office since 2007 and was working in the Vice and Organized Crime Unit of MBI on September 6, 2012.

6. In or around September 2012, MBI received a lot of complaints regarding prostitution taking place within AFM. Officer Q.A. went to AFM on September 6, 2012, to conduct an undercover investigation.

7. Officer Q.A. entered AFM at approximately 7:15 p.m., posing as a client, and met Respondent. Officer Q.A. requested a 60-minute massage from Respondent.

8. Officer Q.A. paid Respondent \$100 for the massage. Respondent led Officer Q.A. to a massage room where Officer Q.A. entered, disrobed completely and laid face down on the massage table. Respondent then entered the room, and placed Officer Q.A.'s \$30 change on a nearby table. (The charge for a 60-minute massage was \$70 at AFM.)

9. As Officer Q.A. laid on his stomach, with his buttocks exposed, Respondent did not place a towel or drape on him, although towels were available in the room. Respondent began performing a massage on him. For the first 30 to 40 minutes Respondent manipulated Officer Q.A.'s skin, muscle and tissue with her hands. As she was rubbing Officer Q.A., the two started a conversation. As the conversation continued, Respondent massaged Officer Q.A.'s inner thighs, and slapped his buttocks.

10. After the first 30 to 40 minutes, Respondent directed Officer Q.A. to turn over and lay on his back. Respondent did not drape Officer Q.A.'s genitals during the second portion of this massage, even though towels were easily accessible in the room.

11. Respondent continued to massage Officer Q.A. by manipulating his skin, muscle and tissue, including his inner

thigh, and she touched his penis. Respondent then pointed to Officer Q.A.'s penis, made a clenched fist and moved it up and downward, and asked "do you want?" Respondent's hand gesture is colloquially understood to indicate manual masturbation of the penis.

12. Officer Q.A. then pointed to Respondent's vagina, clinched his fist and thrust his pelvic bone to simulate sexual intercourse. Officer Q.A. asked Respondent "how much?" and Respondent responded by saying "\$150."

13. Officer Q.A. stated he did not have the time for sexual intercourse. He dressed and told Respondent he would come back again, and pay her for sex.

14. Shortly after Officer Q.A. left, Respondent was arrested.

15. Respondent denied Officer Q.A.'s account. At the hearing, Respondent testified that she had "covered him with a towel." However, when asked if she covered him and he removed the cover, she responded with "Sometimes maybe the towel just dropped somehow, but I can't remember particularly." Then later, when confronted with her April 19, 2017, deposition testimony where she responded that she did not remember whether she covered him or not, she testified: "I answered I don't remember. Today I think that I remember. I said I put a towel on table. I said on table. I did not say on him. I said I don't remember."

Respondent also testified she did not touch Officer Q.A.'s penis and she did not mean to agree to have sex with him.

16. Respondent admitted that she lied to Officer Q.A. during their discussion about the use of a credit card reader. She claimed that Officer Q.A. could not use a credit card for payment, when in fact another client had paid with a credit card. Respondent's testimony is not credible, and is rejected.

17. Ms. Mason is a licensed massage therapist and based on her education, training, and experience she is accepted as an expert in massage therapy. A full-body massage means that "after a client is laid down and fully draped, you massage from the top of the head to the toes, but genitalia are always draped and avoided." A full-body massage is for relaxation and pain relief, and does not include touching or massaging the male genitalia because it could cause sexual stimulation. The touching of the male genitalia (specifically a man's penis) is sexual misconduct.

18. As noted in the deposition testimony of Ms. Mason, there is no reason for and no accepted practice within the scope of licensed massage therapy that allows a therapist to ever touch the genitalia of a patient.

19. Respondent's actions on September 6, 2012, were outside the scope of generally accepted treatment of massage therapy patients.

20. The following constituted sexual activity outside the scope of massage therapy and sexual misconduct in the practice of massage therapy: Respondent's touching of Officer Q.A.'s penis, Respondent's gesturing with her clenched fist in an up and downward motion indicating masturbation, and Respondent agreeing to have sexual intercourse with Officer Q.A.

21. There is no evidence that Respondent has ever had any prior discipline imposed against her license.

#### CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 480.046(4), 120.569, and 120.57(1), Florida Statutes (2017).

23. Petitioner has authority to investigate and file administrative complaints charging violations of the laws governing licensed massage therapists. § 456.073, Fla. Stat.

24. A proceeding to suspend, revoke, or impose other discipline upon a professional license is penal in nature. State ex rel. Vining v. Fla. Real Estate Comm'n, 281 So. 2d 487, 491 (Fla. 1973). Petitioner must therefore prove the allegations against Respondent by clear and convincing evidence. Fox v. Dep't of Health, 994 So. 2d 416, 418 (Fla. 1st DCA 2008) (citing Dep't of Banking & Fin. v. Osborne Stern & Co., Inc., 670 So. 2d 932 (Fla. 1996)).



25. The clear and convincing standard of proof has been described by the Florida Supreme Court:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983). "Although this standard of proof may be met where the evidence is in conflict, . . . it seems to preclude evidence that is ambiguous." Westinghouse Electric Corp. v. Shuler Bros., Inc., 590 So. 2d 986, 988 (Fla. 1st DCA 1991) (citations omitted).

26. Disciplinary statutes and rules "must be construed strictly, in favor of the one against whom the penalty would be imposed." Griffis v. Fish & Wildlife Conserv. Comm'n, 57 So. 3d 929, 931 (Fla. 1st DCA 2011); Munch v. Dep't of Prof'l Reg., Div. of Real Estate, 592 So. 2d 1136, 1143 (Fla. 1st DCA 1992).

27. A respondent may not be found guilty of an offense which has not been charged. See, e.g., Trevisani v. Dep't of Health, 908 So. 2d 1108 (Fla. 1st DCA 2005) (administrative complaint charged physician with a failure to make medical

records; proof of a failure to retain medical records cannot support a finding of guilt).

28. The First Amended Administrative Complaint against Respondent alleges that "Respondent engaged in sexual misconduct when she used the massage therapist-patient relationship to induce or attempt to induce the patient to engage, or to engage or attempt to engage, the patient," Officer Q.A., in sexual activity outside the scope of practice of massage therapy.

29. Section 480.046(1)(o) provides:

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

\* \* \*

(o) Violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.

30. Section 480.0485 provides:

The massage therapist-patient relationship is founded on mutual trust. Sexual misconduct in the practice of massage therapy means violation of the massage therapist-patient 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.

31. Florida Administrative Code Rule 64B7-26.010 provides in pertinent part:

(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 client.

(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. Nothing herein shall be interpreted to prohibit a licensed massage therapist, duly qualified under Rule 64B7-31.001, F.A.C, from practicing colonic irrigation.

32. The Department presented clear and convincing evidence that Officer Q.A. had a massage therapist-patient relationship with Respondent by demonstrating that he received a paid massage from Respondent at AFM.

33. The Department proved by clear and convincing evidence that Respondent engaged in sexual misconduct in the practice of massage therapy in violation of section 480.0485 and rule 64B7-26.010, when she: touched Officer Q.A.'s penis; gestured to him

with her clenched fist in an up and downward motion indicating masturbation; and agreed to have sex with Officer Q.A.

34. The Board of Massage Therapy imposes penalties upon licensees in accordance with the disciplinary guidelines prescribed in Florida Administrative Code Rule 64B7-30.002. See Parrot Heads, Inc. v. Dep't of Bus. and Prof'l Reg., 741 So. 2d 1231 (Fla. 5th DCA 1999).

35. Rule 64B7-30.002(1) provides that the penalty for violating section 480.0485 is a \$1,000 fine and revocation of the massage therapist's license.

36. Rule 64B7-30.002(3) provides aggravating and mitigating circumstances which may be taken into account, allowing the Board to deviate from the penalties for violations charged.

37. Because the penalty recommended is within the disciplinary guidelines, it is unnecessary to make any findings related to the aggravating or mitigating factors set out in rule 64B7-30.002(3).

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered by the Department of Health, Board of Massage Therapy, finding that Meie Li Crisp, L.M.T., violated section 480.046(1)(o), by violating section 480.0485. For these violations, it is recommended that the Board impose a \$1,000 administrative fine on

Respondent and revoke Respondent's license to practice massage therapy.

DONE AND ENTERED this 28th day of September, 2017, in Tallahassee, Leon County, Florida.



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LYNNE A. QUIMBY-PENNOCK  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 28th day of September, 2017.

ENDNOTE

<sup>1/</sup> The Division of Administrative Hearings was closed on September 8, 2017, and did not reopen until September 13, 2017, due to Hurricane Irma.

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.