

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF  
MASSAGE THERAPY,

Petitioner,

vs.

Case No. 18-4513PL

MICHAEL T. CORONEOS, L.M.T.,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

On December 18 and 19, 2018, Yolonda Y. Green, a duly-designated Administrative Law Judge of the Division of Administrative Hearings ("Division") conducted a duly-noticed final hearing in Daytona Beach, Florida.

APPEARANCES

For Petitioner: Ross Daniel Vickers, Esquire  
Gerald C. Henley, Esquire  
Department of Health  
Bin C-65  
4052 Bald Cypress Way  
Tallahassee, Florida 32399-3265

For Respondent: Lance O. Leider, Esquire  
The Health Law Firm  
1101 Douglas Avenue  
Altamonte Springs, Florida 32714

STATEMENT OF THE ISSUES

The issues presented in this case are whether Respondent has violated the provisions of chapters 456 and 480, Florida

Statutes, as alleged in the Administrative Complaint; and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On September 21, 2017, the Department of Health ("Petitioner" or "Department") filed a one-count Administrative Complaint against Respondent, Michael Coroneos ("Respondent" or "Mr. Coroneos"), alleging he violated sections 480.046(1)(p) and 480.0485, and Florida Administrative Code Rule 64B7-26.010, by engaging in sexual misconduct in the practice of massage therapy. Respondent timely disputed the allegations in the Administrative Complaint and requested a final hearing. On August 28, 2018, this matter was referred to the Division for assignment of an administrative law judge.

The undersigned issued a notice scheduling this matter for hearing on November 6 and 7, 2018. On October 15, 2018, the parties filed a Joint Motion to Continue Final Hearing, which was granted. The hearing was rescheduled for December 18 and 19, 2018.

The hearing convened as scheduled and continued until conclusion. At hearing, Petitioner presented the testimony of five witnesses: Patients S.W. and C.W.;<sup>1/</sup> Elizabeth Branson, a licensed massage therapist ("LMT") at Daytona College; Khaliff Ali, M.D., director of education at Daytona College; and Christopher Brooks, LMT, program director for therapeutic

massage. Respondent testified on his own behalf and presented the testimony of his wife, Maria Coroneos. The parties' Joint Exhibits 5 through 7 were admitted. Petitioner's Exhibits 2, 3 (over objection), and 4 were admitted into evidence.

Respondent's Exhibits 1 through 3 (over objection) were admitted into evidence.

The hearing Transcript was filed with the Division on January 17, 2019. At the conclusion of the hearing, the parties requested 30 days to submit proposed recommended orders ("PROs"), which the undersigned granted. The parties timely filed their PROs, which have been considered in the preparation of this Recommended Order. Unless otherwise indicated, all references are to the 2017 codification of the rules and statutes in effect at the time the incident occurred.

#### FINDINGS OF FACT

The following findings of fact are based on the testimony, evidence admitted at the formal hearing, and the agreed facts in the pre-hearing stipulation.

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

2. At all times material to the allegations in this case, Respondent was licensed to practice as a massage therapist in the State of Florida, having been issued license number

MA 79509. At all times material to the allegations in this matter, Respondent was employed as a massage therapist at Daytona College, in Daytona Beach, Florida.

3. Respondent's address of record is 10 Spanish Pine Way, Ormond Beach, Florida 32174.

4. S.W. is a licensed mental health counselor who has been licensed for approximately 22 years. She resides in Clermont, Florida, which is where she lived at the time of the massage.

5. In July 2017, S.W. and C.W., her 23-year-old daughter, traveled to the Daytona Beach area to visit S.W.'s elderly mother.

6. On July 19, 2017, S.W. and C.W. went to Daytona College, for the first time, for a massage. Upon arriving at the school, they were greeted by the receptionist.

7. S.W. and C.W. were scheduled for 80-minute massages to take place at 3:30 p.m. However, the ladies arrived ten minutes late, so the massages began late. Upon arrival, the ladies were asked whether they needed to use the restroom, which they did. After using the restroom, the ladies were taken to the massage area for their services.

8. S.W. selected the male massage therapist based on her past positive experiences with male therapists. S.W. had received a number of massages in the past, including massages by men. She allowed her daughter to be scheduled with the female

massage therapist because she believed her daughter preferred a woman. S.W. was scheduled for a massage with Respondent, and C.W. was scheduled with Elizabeth Branson.

9. Respondent escorted S.W. to the massage room first. Ms. Branson escorted C.W. to the room a few minutes later.

10. As Respondent escorted S.W. to the massage room, S.W. described the areas in which she wanted special attention, including her neck, shoulders, scalp, and feet. Respondent asked S.W. whether she needed massage in the sciatic area. S.W. had problems in the sciatic area, so she consented to have the area massaged.

11. The common room where massages occurred at Daytona College contained eight massage tables separated by curtains.

12. Respondent took S.W. into the massage room and instructed her to undress to her comfort level. Respondent left the room while S.W. undressed down to her underwear. When Respondent reentered the room, S.W. was draped with a sheet. Respondent tucked the drape into S.W.'s underwear and lowered it onto her buttocks.

13. A short time later, S.W. could hear her daughter in the area near her, but she could not see her. C.W. whispered to S.W. to let her know she was in the room. At some point, S.W. heard her daughter exit the room.

14. C.W. finished her massage before S.W., even though S.W.'s service began before C.W.'s. C.W. recalled that her mother was unusually quiet during the massage instead of being "chatty," as she normally would be. C.W. waited in the hallway outside the massage room for four or five minutes for S.W.'s massage to finish. After S.W. came out of the massage room, C.W. immediately noticed that something was wrong.

15. When S.W. exited the room, she was "wired" and not relaxed, as she would normally appear after a massage. C.W. described her as appearing nervous and agitated. C.W. could tell that something was wrong, but S.W. did not say anything at that time.

16. The two ladies walked to the front desk. As was her routine, S.W. paid for both massages and left a \$10 tip. She did not make a complaint regarding the massage with the receptionist before leaving the school.

17. Concerned regarding her mother's behavior, C.W. asked S.W. what happened. S.W. stated that something weird happened. The ladies left the school and began driving to their destination. S.W. continued to be upset and ultimately, began crying. She was so upset that initially, she could not articulate what occurred. S.W. ultimately told C.W. that Respondent had placed his hand under her underwear and touched her clitoris.

18. S.W. contacted her friend Mike, a law enforcement officer. S.W. explained to Mike what happened, and he suggested that she contact the police to report what happened to her.

19. S.W. and C.W. called the police and requested that an officer meet the ladies at Daytona College. They also contacted the school and advised them that S.W. had been inappropriately touched during her massage.

20. They arrived back at the school approximately 20 minutes later.

21. The officer arrived shortly after S.W. and C.W. The officer interviewed S.W. and she reported to him that while massaging her thighs, Respondent "grazed" her vaginal area with his finger. S.W. also reported that Respondent touched her clitoris with his finger.

22. S.W. declined to pursue criminal charges and stated she would file a complaint with the Department. However, she expressed that she wanted to ensure there was a record of the incident so another woman would not have the same experience.

23. On or about July 26, 2017, one week later, S.W. filed a complaint with the Department of Health. S.W. submitted a typewritten statement regarding the events involving Respondent. S.W. related that at the beginning of the massage, she gave Respondent permission to pull down her underwear and tuck in the drape. She stated that toward the end of the massage,

Respondent "grazed" her vagina outside her underwear. He then placed his finger under her underwear and began massaging her clitoris for a couple of seconds. She stated that she grabbed Respondent's hand and pushed it away. In response, Respondent abruptly told S.W. that the massage was done.

24. In addition to the report to the police and the Department, S.W. also reported the incident to the school administrators, Dr. Ali and Mr. Brooks. Dr. Ali met with S.W. and C.W. when they returned to the school. Dr. Ali described S.W. as appearing embarrassed, subdued, and uncomfortable.

25. Mr. Brooks was also present during the meeting. He was called to campus after he received a report that something inappropriate happened. He observed that S.W. appeared upset.

26. Although there was no expert offered to testify in this matter, Chris Brooks, LMT, provided insight regarding the type of massage provided to S.W. He explained the difference between sensualized touch and sexualized touch. A sensualized touch is not uncommon in massage. On the other hand, sexualized touch is used to evoke sexual pleasure.

27. At hearing, S.W. was clear and unwavering in her recollection of the events involving Respondent touching her vaginal area. S.W. appeared anxious, uncomfortable, and her voice cracked when she testified that Respondent moved her



underwear and touched her vaginal area. Specifically, she testified that Respondent grazed her vagina on top of the front of her underwear. She was in such shock that it happened she could not say anything. Respondent then put a bare finger underneath her underwear and began massaging her clitoris. She still could not speak, so she quickly grabbed his hand and pushed it away. Consistent with her statement to the police officer and her written statement, she credibly testified that Respondent touched her vaginal area with his finger.

28. At hearing, Respondent denied touching S.W.'s vagina during the massage. He also denied rubbing her clitoris. Mr. Brooks, who is personally and professionally acquainted with Respondent, testified that Respondent seemed shocked to learn of S.W.'s complaint.

29. Respondent testified that he draped S.W.'s legs in such a way that it caused the draping to "bunch" between the area massaged and the genitalia. Respondent argues that S.W. could not determine whether the draping touched her genitals when Respondent massaged her legs. However, when pressed on this point, S.W. unequivocally testified that she was certain it was Respondent's finger that touched her clitoris.

30. Respondent had no prior complaints of inappropriate touching before S.W.'s complaint. Although Mr. Brooks asked him about the complaint on the date of the incident, there was no

evidence offered at hearing that Respondent was formally interviewed by the school administration. However, Respondent was terminated from his job at Daytona College based on S.W.'s complaint. Respondent was also not interviewed by the police officer investigating the complaint.

31. Respondent was not charged with a crime. Respondent has no prior disciplinary action involving his license to practice massage therapy.

32. The evidence demonstrates that Respondent crossed the boundaries of appropriate massage into sexual misconduct when he massaged S.W.'s clitoris with his finger.

33. While Respondent's testimony seemed sincere, S.W. was more persuasive.

34. Based on the totality of the evidence presented at hearing, there is clear and convincing evidence that Respondent touched S.W.'s vaginal area or clitoris with his finger. The placement of a massage therapist's finger on the vaginal area or clitoris of a patient is outside the scope of the professional practice of massage therapy.

#### CONCLUSIONS OF LAW

35. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action in accordance with sections 120.569 and 120.57(1), Florida Statutes (2018).

36. The Department is seeking to take disciplinary action against Respondent's license as a massage therapist. Because disciplinary proceedings are considered to be penal proceedings, the Department has the burden to prove the allegations in the Administrative Complaint by clear and convincing evidence.

Dep't of Banking and Fin. v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

37. As stated by the Supreme Court of Florida:

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 lacking in confusion as to the facts in issue. The evidence must be of such a 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 Henson, 913 So. 2d 579, 590 (Fla. 2005) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

38. Moreover, disciplinary provisions must be strictly construed in favor of the licensee. Elmariah v. Dep't of Prof'l Reg., 574 So. 2d 164 (Fla. 1st DCA 1990); Taylor v. Dep't of Prof'l Reg., 534 So. 782, 784 (Fla. 1st DCA 1988).

39. The Administrative Complaint charged Respondent with violating sections 480.046(1)(p) and 480.0485.

40. Section 480.046(1) (p) provides, in pertinent part, as follows:

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

\* \* \*

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

41. Section 480.0485 provides as follows:

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-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.

42. Rule 64B7-26.010 provides in pertinent part:

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

\* \* \*

(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.

43. Based on the evidence presented at hearing, there is clear and convincing evidence to support the allegations in the Administrative Complaint. While S.W. did not immediately complain to the staff after the massage, she was visibly anxious when she left the school. When she was alone with her daughter, she was upset and began to cry when trying to tell her daughter what happened to her. Consistent with C.W.'s testimony, Dr. Ali, who albeit may have an interest in protecting the school, testified that S.W. appeared uncomfortable, embarrassed, and subdued. Moreover, S.W. described the incident consistently, with few inconsequential variations, when she reported the incident to the police; when she provided her written statement in support of her complaint; and when she testified at hearing.

44. The Board has adopted rule 64B7-30.002, which includes the Board of Massage Therapy's Disciplinary Guidelines for penalties to be imposed upon a finding of violations of statutes or rules governing massage therapy. The penalty for a first-time violation of section 480.485 is a \$2,500 fine and revocation. Aggravating and mitigating factors are identified in rule 64B7-30.002(4) and have been considered.

45. It is noted that Respondent has no prior disciplinary action against his license.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board of Massage Therapy enter a final order finding:

1. Respondent guilty of violating sections 480.046(1)(p) and 480.0485 as further defined in rule 64B7-26.010;
2. Imposing a fine of \$2,500; and
3. Revoking Respondent's license to practice massage therapy.

DONE AND ENTERED this 5th day of April, 2019, in Tallahassee, Leon County, Florida.



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YOLONDA Y. GREEN  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 5th day of April, 2019.

ENDNOTE

<sup>1/</sup> The patients are identified by their initials to protect the confidentiality of their identity.

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.