

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF  
MASSAGE THERAPY,

Petitioner,

vs.

Case No. 20-0505PL

MARIA NADAL-CABRAL, L.M.T.,

Respondent.

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RECOMMENDED ORDER

On March 20, 2020, Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted the final hearing by telephone in Miami and Tallahassee, Florida. All parties participated by separate telephone connections due to the coronavirus pandemic.

APPEARANCES

For Petitioner: Dannie L. Hart, Esquire  
Christina Arzillo Shideler, Esquire  
Prosecution Services Unit  
Department of Health  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, Florida 32399-3265

For Respondent: Maria Nadal-Cabral, pro se  
(address of record)

## STATEMENT OF THE ISSUES

The issues are whether Respondent failed to submit to background screening, as required by sections 456.0135(1) and 480.041(6), Florida Statutes (2014), and, if so, what penalty should be imposed, pursuant to sections 480.046(1) and 456.072(2).

## PRELIMINARY STATEMENT

By Administrative Complaint dated October 30, 2017, Petitioner alleged that Respondent failed timely to submit to background screening by January 31, 2015, as required by section 456.0135. The Administrative Complaint seeks a range of discipline from revocation or suspension to corrective action or continuing education.

Respondent timely requested a formal administrative hearing. Petitioner transmitted the file to DOAH on January 30, 2020.

At the hearing, Petitioner called one witness and offered into evidence one exhibit, Petitioner Exhibit 1, which was admitted. Respondent called one witness and offered into evidence no exhibits.

The court reporter filed the transcript on April 8, 2020. Petitioner filed a proposed recommended order on May 8, 2020.

## FINDINGS OF FACT

1. Respondent is a licensed massage therapist, holding license MA 48309. Respondent has been continuously licensed since October 2, 2006, renewing her license every two years. Respondent has not previously been disciplined. Respondent has discontinued providing massage services.

2. As detailed in the Conclusions of Law, by January 31, 2015, existing licensees were required to submit to the background screening requirements of section

456.0135. Each existing licensee was required to submit to Petitioner their fingerprints taken by a live scan vendor that makes, stores, and transmits the fingerprints electronically without the necessity of a hard copy. Petitioner provided considerable support to persons required to comply with this new requirement.

3. Respondent never submitted her fingerprints to a live scan vendor, although, at some point, she seems to have submitted her fingerprints in hard copy form to the Department of Financial Services for an unrelated purpose. Given Petitioner's repeated efforts to induce compliance with the electronic-fingerprinting requirement, it is impossible to credit Respondent's claim that she thought that she had complied when she submitted hard-copy fingerprints to an unrelated state agency. Obviously, Respondent has been aware for over two and one-half years that Petitioner has never received her electronic fingerprints and has done nothing.

4. Treating Respondent's noncompliance as cause for discipline, but not nonrenewal, Petitioner renewed Respondent's license in 2017, but also commenced this proceeding. Notwithstanding a two-year delay in transmitting the file to DOAH, Respondent still has not obtained electronic fingerprints to comply with this requirement. The inference is inescapable that Respondent has displayed a complete lack of interest in maintaining her license.

#### CONCLUSIONS OF LAW

5. DOAH has jurisdiction over the subject matter. §§ 120.569, 120.57(1), and 480.046(6), Fla. Stat.

6. Section 480.041(6) requires that, by January 31, 2015, a massage therapist who held a license before July 1, 2014, must submit to the background screening requirements of section 456.0135. Section 456.0135(1) requires that a license application must include fingerprints pursuant to procedures established by Petitioner through a vendor approved by the Florida Department of Law Enforcement for the submittal of electronic fingerprints.

7. Chapter 480 governs the practice of massage therapy. Section 480.046(1)(p) authorizes Petitioner to impose discipline against the license of a person who has violated any provision of chapter 480 or 456.

8. For any violation of section 480.046(1), section 480.046(2) authorizes Petitioner to impose the discipline set forth in section 456.072(2), which includes revocation, suspension, probation, a reprimand, or an administrative fine. For a first offense, Florida Administrative Code Rule 64B7-30.002(3)(II) (2014) provides a penalty of suspension until compliant and a \$1000 fine.

9. In its proposed recommended order, Petitioner has sought a suspension until Respondent complies with the background screening requirements and a \$1000 fine. The penalties are appropriate, although a \$500 fine is more suitable for an offense that essentially amounts to the cessation of practice without a formal surrender of a license.

#### RECOMMENDATION

It is

RECOMMENDED that the Department of Health enter a final order imposing a \$500 fine and suspending Respondent's license until she has submitted all of the required background screening materials, including electronic fingerprints through an approved vendor.

DONE AND ENTERED this 14th day of May, 2020, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the  
Division of Administrative Hearings  
this 14th day of May, 2020.

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.