

FILED DATE - SEP 29 2021

Department of Health

By: Cammie Maus
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MASSAGE THERAPY

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2018-04422
2020-07089
DOAH CASE NO.: 20-4754PL
20-4755PL
LICENSE NO.: MA 11149

KENNETH JAMES DIPERSIO,

Respondent.

_____ /

FINAL ORDER

THIS CAUSE came before the BOARD OF MASSAGE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, at the properly noticed meeting on July 8, 2021, in Panama City Beach, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order (RO), (a copy of which is attached hereto as Exhibit A) in the above-styled cause. Petitioner was represented by Anne Prescott, Assistant General Counsel. Respondent's Counsel, Richard Greenberg, Esq., was present at the meeting. Respondent was not present.

PROCEDURAL HISTORY

1. In August 2020, the Department of Health (DOH) filed two Administrative Complaint against Respondent, KENNETH JAMES DIPERSIO.

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DIVISION OF
ADMINISTRATIVE HEARINGS
FILED

2. Respondent timely filed an election of rights stating that material facts were in dispute.

3. The case was referred to the Division of Administrative Hearing (DOAH) in October 23, 2020. The cases were consolidated for all purposes.

4. A final hearing was scheduled for January 2021 later rescheduled and conducted by Zoom Video Conference on March 4 and 5, 2021.

5. At the hearing, Petitioner was represented by Ann Prescott and Julisa Renaud, Assistant General Counsels for the Department of Health.

6. Richard A Greenberg, Esq., appeared for Respondent.

7. Administrative Law Judge, Brian A. Newman, (ALJ) issued a Recommended Order on May 26, 2021.

8. No exceptions were filed.

9. After review of the complete record in this case; the Board makes the following findings and conclusions:

FINDINGS OF FACT

10. There is competent substantial evidence to support the findings of fact.

11. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

CONCLUSIONS OF LAW

12. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 480, Florida Statutes.

13. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

PENALTY

14. Upon a complete review of the record in this case, the Board determines that the recommendation of the Administrative Law Judge is ACCEPTED.

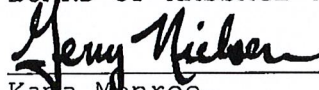
WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

15. Both Administrative Complaints, 2018-04422, and 2020-07089 filed against Respondent are **DISMISSED**.

This Final Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 28th day of September, 2021.

BOARD OF MASSAGE THERAPY

 for

Kama Monroe,
Executive Director for
Christopher Brooks,
Chair

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S Mail to: **KENNETH JAMES DIPERSIO** C/O **Richard A Greenberg, Esq.**, Rumberger Kirk & Caldwell, 101 North Monroe Street, Suite 120, Tallahassee, FL 32301; and by U.S. Mail to: **Brian A. Newman**, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by e-mail to: **Andrew Pietrylo**, Chief Legal Counsel, Department of Health, Andrew.pietrylo@flhealth.gov; and **Diane L. Guillemette**, Assistant Attorney General, at diane.guillemette@myfloridalegal.com, this 29th day of September, 2021.



Deputy Agency Clerk

Mission:

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



Ron DeSantis
Governor

Scott A. Rivkees, MD
State Surgeon General

Vision: To be the Healthiest State in the Nation

**INTEROFFICE
MEMORANDUM**

DATE: Monday, September 27, 2021

TO: Joe Baker
Acting HCPR Bureau Chief

FROM: Kama Monroe, J.D., Executive Director
Boards of Acupuncture, Massage Therapy, Osteopathic
Medicine, Speech- Language Pathology & Audiology and the
Council of Licensed Midwifery

SUBJECT: Delegation of Authority

This is to advise that while I am out of the office for the days of Monday, September 27, 2021 and Tuesday, September 28, 2021, Gerry Nielsen has delegated authority to serve as Acting Executive Director for the Boards of Acupuncture, Massage Therapy, Osteopathic Medicine, Speech-Language Pathology & Audiology and the Council of Licensed Midwifery. Mr. Nielsen can be reached at (850) 245-4586.

KM/js