

STATE OF FLORIDA
BOARD OF MASSAGE THERAPY

FILED DATE - **MAY 14 2021**
Department of Health

By: *Stephan Farnel*
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2018-29110
DOAH CASE NO.: 20-5181PL
LICENSE NO.: MA 91037

DEVIN TRIPLETT,

Respondent.

FILED
2021 MAY 20 PM 2:39
DIVISION OF
ADMINISTRATIVE HEARINGS

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 telephonic meeting on April 27, 2020, 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 Alyssa Ward, Assistant General Counsel. Respondent was present at the meeting.

PROCEDURAL HISTORY

1. In June 2019, the Department of Health (DOH) filed an Administrative Complaint against Respondent, Devin Triplett.
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) and a hearing was held via Zoom on January 25, 2021.

4. Respondent was present and appeared pro se.
5. Petitioner was represented by Alyssa Ward, Assistant General Counsel for the Department of Health.
6. Administrative Law Judge, Brian A. Newman, (ALJ) issued a Recommended Order (RO) on March 2, 2021.
7. Petitioner timely filed exceptions to the recommended order.
8. After review of the complete record in this case; the Board makes the following findings and conclusions:

EXCEPTIONS

9. Petitioner's first exception is to a conclusion of law found at paragraph 17 of the RO. Section 120.57(1)(k), F.S. sets out the standard for Board consideration of an RO's conclusion of law.

The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and **must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified.**

(emphasis added)

The Board noted that Rule 64B7-30.001(4), Florida Administrative Code states in part: "As used in this rule, draping means towels, gowns, sheets or clothing."

The Board declines to modify the ALJ's conclusion of law found in paragraph 17 that "underwear is clothing."

Petitioner's exception one is rejected.

10. Petitioner's second exception is directed to paragraph 22 of the RO. The Board again declines to modify the ALJ's conclusion that underwear is a form of clothing.

Petitioner's exception two is rejected.

11. Petitioner's third exception is directed to paragraph 8 of the RO. Paragraph 8 make reference to the testimony of an expert in massage therapy. However, that paragraph goes on to state:

...the rule itself [64B7-30.001(4)] adequately defines the standard of care for draping massage clients under the circumstances at issue her, rendering expert testimony on the subject unnecessary in this case.

The Board again declines to modify the ALJ's conclusion that Rule 64B7-30.001(4) clearly defines the standard of care for draping.

Petitioner's exception three is rejected.

12. Petitioner's exception four is directed to paragraphs 18-21 of the RO. The Board declines to modify the ALJ's conclusion that the patient was covered by underwear and not exposed.

Petitioner's exception four is rejected.

FINDINGS OF FACT

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

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

CONCLUSIONS OF LAW

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

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

DISPOSITION

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

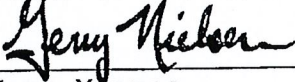
WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

18. The Administrative Complaint filed against Devin Triplett is DISMISSED.

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

DONE AND ORDERED this 11 day of May, 2021.

BOARD OF MASSAGE THERAPY

 for

Kama Monroe,
Executive Director for
Christopher Brooks,
Chair

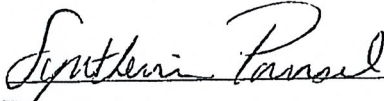
NOTICE OF RIGHT TO JUDICIAL REVIEW

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: **DEVIN TRIPLETT**, 264 Tavestock Loop, Winter Springs, FL 32708; and 116 Elkwood Court, Winter Springs, FL 32708; 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 14th day of
May, 2021.



Deputy Agency Clerk