

**STATE OF FLORIDA**  
**DIVISION OF ADMINISTRATIVE HEARINGS**

DEPARTMENT OF HEALTH, BOARD OF  
MASSAGE THERAPY,

Petitioner,

vs.

Case No. 22-0525PL

WILLIAM DANIEL CORLEY, L.M.T.,

Respondent.

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RECOMMENDED ORDER

On May 2, 2022, Administrative Law Judge Yolonda Y. Green, of the Division of Administrative Hearings (DOAH), conducted a final hearing pursuant to section 120.57(1), Florida Statutes (2021), by Zoom video conference.

APPEARANCES

For Petitioner: Collie Lynne Nolen, Esquire  
Department of Health  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, Florida 32399

For Respondent: William Daniel Corley, L.M.T., pro se  
1085 Atlantic Boulevard, Apartment 85  
Jacksonville, Florida 32233

STATEMENT OF THE ISSUES

The issues to be determined are whether Respondent, William Daniel Corley, L.M.T. (Respondent or Mr. Corley), violated section 480.046(1)(p), Florida Statutes (2021), through a violation of section 480.0485, Florida Statutes (2021), and/or Florida Administrative Code Rule 64B7-26.010(1) and/or (3), by engaging in sexual misconduct as charged in the Amended

Administrative Complaint; whether Respondent violated section 480.046(1)(p), Florida Statutes (2021), through a violation of rule 64B7-30.001(5), as alleged in the Amended Administrative Complaint; and if so, what disciplinary penalty is appropriate.

PRELIMINARY STATEMENT

On December 13, 2021, Petitioner (Petitioner, Department, or Board of Massage Therapy) filed an Administrative Complaint against Respondent alleging Respondent engaged in sexual misconduct and failed to drape a client in violation of section 480.046(1)(p), as defined in section 480.0485, and rules 64B7-26.010(1) and (3) and 64B7-30.001(5).

Respondent timely disputed the allegations in the Administrative Complaint and requested a final evidentiary hearing. Petitioner then referred this case to DOAH for assignment to an administrative law judge to conduct a hearing.

On April 8, 2022, Petitioner filed an Unopposed Motion to Amend the Administrative Complaint, which the undersigned granted. Thus, the charging document is the Amended Administrative Complaint filed on April 20, 2022.

The hearing was initially scheduled for March 30, 2022. On March 1, 2022, the Department filed an Unopposed Motion to Continue Final Hearing, which the undersigned granted. The case was rescheduled for a hearing on May 2, 2022, by Zoom video conference.

Prior to the hearing, the Parties filed a Joint Pre-Hearing Stipulation. To the extent relevant, all stipulated facts have been adopted and incorporated into the Findings of Fact below.

Additionally, Petitioner filed a Motion for Confidentiality. At the hearing, Petitioner's Motion for Confidentiality was granted. Petitioner also filed two Motions in Limine. Petitioner's First Motion in Limine to Exclude Evidence as Inadmissible Character and Reputation Evidence, as Inadmissible Hearsay, and as Irrelevant and Unfairly Prejudicial, was denied on the merits. Petitioner's Second Motion in Limine to Exclude Respondent's Exhibits was denied as moot.

The hearing commenced as scheduled. Joint Exhibits 1, 4, 5A, 5B, and 6 through 9 were admitted into evidence. Joint Exhibits 2 and 3 were withdrawn. At the final hearing, Petitioner presented the testimony of five witnesses: P.D. (massage therapy client); B [REDACTED] N [REDACTED]; C [REDACTED] D [REDACTED]; Shamika James; and Dr. David Chesire, Ph.D. (offered as a lay witness). Respondent testified on his own behalf and did not offer any other witnesses.

After the conclusion of the hearing, the parties were informed of the ten-day timeframe provided by rule for filing proposed recommended orders (PROs), which runs from the date of filing of the hearing transcript at DOAH.

The one-volume Transcript of the hearing was filed with DOAH on June 8, 2022. Petitioner timely filed its PRO on June 17, 2022, which has been considered in preparing this Recommended Order. Respondent did not file a post-hearing submittal.

Unless otherwise provided, citations to Florida Statutes are to the 2021 codification, and any citations to rules in the Florida Administrative Code are to the versions in effect at the time of the acts alleged to warrant discipline. *McClosky v. Dep't of Fin. Servs.*, 115 So. 3d 441, 444 (Fla. 5th DCA 2013).

## FINDINGS OF FACT

1. The Department, 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. Respondent is a licensed massage therapist in the State of Florida, having been issued license number MA 92274.

3. At all times material to the Amended Administrative Complaint, Respondent was employed as a massage therapist at Essential Massage, located at 14444 Beach Boulevard, Suite 3-4, Jacksonville, Florida 32250.

4. P.D. scheduled a one-hour deep tissue massage appointment for July 5, 2021, at Essential Massage and requested Respondent to be her massage therapist. P.D. selected Respondent because he previously provided a massage to P.D. during a couples massage, and she had no issues with him during that service.

5. On July 5, 2021, P.D. arrived for her massage appointment. After P.D. checked in at the reception desk, Respondent escorted her to the massage room. Respondent asked P.D. if she had been to Essential Massage prior to the July 5, 2021, appointment and she replied, yes.

6. Respondent asked P.D. if she had any problem areas, and she told him that she injured her right hamstring while playing with her daughter. Based on P.D.'s response, Respondent told P.D. that he would focus more attention on the injured hamstring area.

7. After entering the massage room, Respondent instructed P.D. to undress to her comfort level, lie face down on the massage table, and cover herself with the sheet he provided. Respondent left the room and P.D. removed all her clothing, laid face down on the table, and covered herself with the sheet.

8. Respondent returned to the massage treatment room and closed the door behind him. Unlike the couples massage, P.D. was in the massage room alone with Respondent.

9. For the first 30 minutes of the massage, Respondent's actions seemed appropriate. Respondent began with moving the draping sheet to P.D.'s lower back and massaged her back, neck, and shoulders. He then redraped P.D.'s back.

10. Respondent then undraped P.D.'s right leg and massaged her right leg and right inner thigh. While massaging P.D.'s right leg, Respondent used the side of his hand (the side of the hand where the pinky is located) and touched the labia of P.D.'s vaginal area. In response to Respondent's action, P.D. recalls that her body "tensed up," but she believed Respondent's actions were unintentional at that time.

11. Respondent continued to massage P.D.'s right leg, moving to her right thigh. While massaging her right thigh, Respondent's hand touched the area where P.D.'s thigh meets her vaginal area for a second time. This time, P.D. was certain that Respondent had intentionally touched her vagina.

12. As Respondent continued to massage P.D.'s right leg he touched her clitoris with his finger.

13. Respondent then redraped P.D.'s right leg, and undraped her left buttock and left leg down to P.D.'s left foot. Respondent then massaged P.D.'s left thigh, left buttock, and left hip.

14. After Respondent completed massaging the left leg, he removed the draping from P.D.'s body, leaving her uncovered and exposed on the massage table. Then, while using both of his hands in an alternating motion, Respondent rubbed P.D.'s buttocks and at the same time began touching P.D.'s vagina with the palm of his hand. During this action, Respondent spread open P.D.'s uncovered buttocks with his hands, exposing her anus and vagina.

15. At no time during the massage did P.D. consent to Respondent's conduct. She explained that she was unable to verbally command him to stop because her body was "frozen" and she could not move. Despite feeling uncomfortable, she tried to ignore it, dismiss her thoughts, and "get through

it.” The entire inappropriate sexual misconduct portion of the massage happened during the last thirty minutes of the massage. At no point during the massage did P.D. give Respondent consent to touch her vagina, clitoris, or uncovered buttocks.

16. Respondent never redraped P.D. during the remainder of the massage. P.D. did not give Respondent consent to leave her buttocks or any part of her body undraped. She also did not give him consent to expose her anus or vagina.

17. After P.D.’s massage, Respondent offered P.D. water and stepped out of the massage room so P.D. could get dressed. After P.D. dressed, Respondent handed P.D. water outside the massage room, and then P.D. went to the restroom.

18. P.D. left the restroom and walked toward the reception desk in the lobby. As she walked toward the lobby, Respondent stopped P.D. and provided instructions for range of motion, stretching, and warm up tips so she could prevent future injury.

19. P.D. checked out at the reception desk in the front lobby. She also paid a tip to avoid any unwanted additional attention as she wanted to leave as quickly as possible.

20. After the massage, P.D. confided in her sisters, significant others, and her therapist regarding her discomfort with Respondent’s conduct during the massage. She also ultimately reported the incident to law enforcement.

21. P.D. first confided in her sisters, B [REDACTED], N [REDACTED], and C [REDACTED] D [REDACTED], after she left Essential Massage by calling them via a video call on her mobile phone. She described to them the events that happened with Respondent. She told them that Respondent touched her vagina during the massage. As she was explaining details, her sister, Ms. N [REDACTED], interrupted P.D.’s description about the incident because P.D. was “choking up on her words and started to cry.” Ms. N [REDACTED], a former sexual assault victim advocate, then encouraged P.D. to speak to her therapist about the incident.

22. P.D. also texted her romantic partners, Anisha Johnson and Shamika James, via group text and told them that “something” happened during her massage on July 5, 2021. She did not go into detail about what happened. However, P.D. explained to Ms. Johnson and Ms. James that she did not want to be touched intimately and needed to talk to her therapist.

23. Despite what happened, P.D. tried to go forward with the remainder of her day. She went car shopping with her father, as previously planned. However, she remained upset about what happened during the massage appointment with Respondent.

24. Based on the encouragement of her friends and family, on the morning of July 6, 2021, P.D. attended an appointment with her therapist, Dr. Chesire. The counseling session with Dr. Chesire was conducted by Zoom video conference. Dr. Chesire described P.D. as unlike her usual gregarious self. He testified that as the appointment continued, P.D. appeared increasingly upset, anxious, and tearful.

25. P.D. explained to Dr. Chesire that she “froze” during Respondent’s actions, and she could not move or speak. Dr. Chesire testified that, in his experience—though he was not testifying as an expert witness—when people are faced with difficult or scary situations, those situations can overwhelm the prefrontal cortex, the logical part of the processing area in the brain. Dr. Chesire explained that the brain starts to shut down the higher-ordered attention, problem solving, and impulse control, and individuals retreat to a more primitive area in the brain. Dr. Chesire compared this phenomenon to “lizard brain,” where individuals go into “survival mode.” Dr. Chesire testified that individuals freeze and cannot act because the brain is stuck trying to process if what is happening is a threat, and if it is a threat, how to respond. Dr. Chesire explained the time period for “freezing” can be anywhere from a split second to much longer. Dr. Chesire further explained that this phenomenon is a very common experience for most, if not all, people when confronted with a dangerous situation such as sexual assault. During

the session, Dr. Cheshire encouraged P.D. to file a complaint with the police.

26. P.D. followed Dr. Cheshire's advice, and later in the day on July 6, 2021, she reported Respondent's conduct to the Jacksonville Sheriff's Office (JSO). The interview with JSO was captured on the police body camera. P.D. described the details of the events on July 5, 2021, which were consistent with details to which P.D. testified at the hearing. Similar to her demeanor during the interview, P.D. appeared visibly distraught, shaken, and upset.

27. Overall, P.D.'s testimony was sincere and believable and, as a result, P.D.'s testimony is found to be credible. In addition, P.D.'s testimony was corroborated by the credible testimony of Ms. N██████, Ms. D██████, Ms. James, and Dr. Chesire, the individuals to whom she contemporaneously disclosed the events involving Respondent.

28. During his deposition, Respondent attempted to undermine P.D.'s credibility by suggesting that P.D. might be trying to get a check or an "easy settlement" by fabricating the allegations. However, there was no evidence offered during the deposition or at the final hearing that P.D. has filed a lawsuit or has any other basis for reporting a false complaint.

29. Respondent testified to a similar chronology of the events as P.D. described them. Respondent met P.D. in the front lobby and took her back to the massage treatment room where they discussed that P.D. saw him once prior as a former client, and he asked P.D. if she had any problem areas. Respondent testified that P.D. told him that her right hamstring was sore from doing gymnastics with her daughter, and he decided that extra time would be spent on P.D.'s right thigh. Respondent's testimony about the remaining details were similar to P.D.'s testimony. The difference with Respondent's description was that Respondent's version of the massage did not include the sexual activity. He denied that he engaged in any inappropriate conduct and instead, performed a routine massage.

30. In contrast to P.D.'s testimony, Respondent's testimony lacks credibility. Given that this case rests on a classic case of P.D.'s version of the



events against Respondent, as they were the only two individuals present in the massage room, the undersigned finds that P.D.'s testimony is more persuasive, credible, clear, and convincing regarding the events on July 5, 2021.

Ultimate Findings of Fact

31. The parties stipulated that if Respondent touched and/or rubbed and/or cupped P.D.'s vagina or clitoris, on July 5, 2021, as alleged, that would be considered sexual misconduct as defined in section 480.0485. Based on the credible, clear, and convincing evidence, Respondent touched and rubbed P.D.'s vagina with his hand, and as a result, engaged in prohibited sexual misconduct as defined in section 480.0485.

32. The parties stipulated that if Respondent touched and/or rubbed and/or cupped P.D.'s vagina or clitoris, on July 5, 2021, as alleged, that would be considered sexual activity as defined rule 64B7-26.010(4). Based on the credible, clear, and convincing evidence, Respondent touched and rubbed P.D.'s vagina with his hand, and as a result, engaged in prohibited sexual activity as defined in rule 64B7-26.010(4).

33. The parties stipulated that if Respondent rubbed P.D.'s exposed buttocks, on July 5, 2021, as alleged, that would be considered sexual misconduct as defined in section 480.0485. The credible, clear, and convincing evidence demonstrated that Respondent rubbed P.D.'s exposed buttocks, and as a result, engaged in prohibited sexual misconduct as defined in section 480.0485.

34. The parties stipulated that if Respondent rubbed P.D.'s exposed buttocks, on July 5, 2021, as alleged, that would be considered sexual activity as defined in rule 64B7-26.010(4). The credible, clear, and convincing evidence demonstrated that Respondent rubbed P.D.'s exposed buttocks, and as a result, engaged in prohibited sexual activity as defined in rule 64B7-26.010(4).

35. The parties stipulated that if Respondent spread P.D.'s buttocks and exposed her anus and/or vagina, on July 5, 2021, as alleged, that would be considered sexual misconduct as defined in section 480.0485. The credible, clear, and convincing evidence demonstrated that Respondent spread P.D.'s buttocks and exposed her anus and vagina, and as a result, engaged in prohibited sexual misconduct as prohibited in section 480.0485.

36. The parties stipulated that if Respondent spread P.D.'s buttocks and exposed her anus and/or vagina, on July 5, 2021, as alleged, that would be considered sexual activity as defined in rule 64B7-26.010(4). The credible, clear, and convincing evidence demonstrated that Respondent spread P.D.'s buttocks and exposed her anus and vagina, and as a result, engaged in prohibited sexual activity as defined in rule 64B7-26.010(4).

37. The parties stipulated that if Respondent failed to appropriately drape P.D., on July 5, 2021, as alleged, by removing the drape and exposing P.D.'s buttocks, anus, and/or vagina without P.D.'s specific informed consent to be undraped, that would constitute the failure to practice massage therapy with that level of care, skill, and treatment which is recognized by a reasonably prudent similar massage therapist as being acceptable under similar conditions and circumstances, as outlined in rule 64B7-30.001(5). The credible, clear, and convincing evidence demonstrated that Respondent failed to appropriately drape P.D., as required by rule 64B7-30.001(5).

#### CONCLUSIONS OF LAW

38. DOAH has jurisdiction over the subject matter and the parties, pursuant to sections 120.569, 120.57(1), and 456.073(5).

39. According to Petitioner's Amended Administrative Complaint, Petitioner seeks to suspend, revoke, or impose other discipline upon Respondent's license. Thus, this proceeding is penal in nature. *State ex rel. Vining v. Fla. Real Est. Comm'n*, 281 So. 2d 487, 491 (Fla. 1973). Therefore, Petitioner must prove the allegations in the Complaint by clear and

convincing evidence. *Dep't of Banking & Fin., Div. of Sec. & Inv. Prot. v. Osborne Stern & Co.*, 670 So. 2d 932, 933-34 (Fla. 1996); *Wright v. Dep't of Health, Bd. of Med.*, 973 So. 2d 1233, 1235 (Fla. 4th DCA 2008).

40. 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 at 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.

41. *In re Henson*, 913 So. 2d 579, 590 (Fla. 2005) (quoting *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)). This burden of proof may be met where the evidence is in conflict; however, "it seems to preclude evidence that is ambiguous." *Westinghouse Elec. Corp. v. Shuler Bros., Inc.*, 590 So. 2d 986, 988 (Fla. 1st DCA 1991).

42. Penal statutes and rules authorizing discipline against a professional license must be strictly construed, with any ambiguity resolved in favor of the licensee. *Elmariah v. Dep't of Pro. Regul., Bd. of Med.*, 574 So. 2d 164, 165 (Fla. 1st DCA 1990).

43. Further, disciplinary action must be predicated on facts alleged and charges set forth in an administrative complaint. *See* § 120.60(5), Fla. Stat.; *Trevisani v. Dep't of Health*, 908 So. 2d 1108, 1109 (Fla 1st DCA 2005); *Cottrill v. Dep't of Ins.*, 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996).

44. Here, Count I of the Amended Administrative Complaint charges Respondent with violating section 480.046(1)(p), through a violation of section 480.0485 and/or rule 64B7-26.010(1) and/or (3), by touching P.D.'s clitoris with his finger(s); by rubbing P.D.'s exposed buttocks; by spreading P.D.'s buttocks and exposing her anus and/or vagina; and/or by placing his hand on P.D.'s vagina in a cupping fashion.

45. Section 480.046(1)(p) provides that violating any provision of chapters 480 or 456, or any rules adopted pursuant thereto, constitutes grounds for disciplinary action.

46. Section 480.0485 prohibits sexual misconduct in the practice of massage therapy as follows:

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.

47. Rule 64B7-26.010(1) provides that sexual activity by any person or persons in any massage establishment is absolutely prohibited.

48. Rule 64B7-26.010(3) provides that 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.

49. Rule 64B7-26.010(4) defines “sexual activity,” in pertinent part, as follows:

[A]ny 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. ... 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.

50. Petitioner proved by clear and convincing evidence that Respondent violated section 480.046(1)(p), through a violation of section 480.0485 and

rule 64B7-26.010(1) and (3), by engaging in sexual misconduct in the practice of massage therapy, by using his position as a massage therapist to induce or attempt to induce, or to engage or attempt to engage P.D. in sexual activity outside of the scope of practice as a massage therapist as follows: a) by touching P.D.'s vagina and clitoris with his hand and fingers; b) by rubbing P.D.'s exposed buttocks with his hands; c) by spreading P.D.'s buttocks and exposing her anus and vagina; and d) by rubbing his hand on P.D.'s vagina.

51. Count II charges Respondent with violating section 480.045(1)(p) by violating rule 64B7-30.001(5).

52. Rule 64B7-30.001 provides in pertinent part:

The following acts shall constitute the failure to practice massage therapy with that level of care, skill, and treatment which is recognized by a reasonably prudent similar massage therapist as being acceptable under similar conditions and circumstances:

(5) Failure to appropriately drape a client. Appropriate draping of a client shall include draping of the buttocks and genitalia of all clients, and breasts of female clients, unless the client gives specific informed consent to be undraped.

53. Petitioner proved by clear and convincing evidence that Respondent violated section 480.046(1)(p) through a violation of rule 64B7-30.001(5) by failing to appropriately drape P.D. by removing the drape from her body and exposing P.D.'s buttocks without P.D.'s specific informed consent to be undraped.

54. Section 456.079, requires the Board of Massage Therapy to adopt disciplinary guidelines for specific offenses. Penalties imposed must be consistent with any disciplinary guidelines prescribed by rule. *See Parrot Heads, Inc. v. Dep't of Bus. & Pro. Regul.*, 741 So. 2d 1231, 1233-34 (Fla. 5th DCA 1999).

55. At the time of Respondent's conduct, the disciplinary guidelines, codified in rule 64B7-30.002, were the guidelines in effect and applicable to this matter. Fla. Admin. Code R. 64B7-30.002, (effective Oct. 8, 2020).

56. Rule 64B7-30.002 provides that the recommended discipline for a first-time violation of section 480.046(1)(p) includes a reprimand, an administrative fine ranging from \$250 to \$1,000, and continuing education.

57. Rule 64B7-30.002 provides that the recommended discipline for a first-time violation of section 480.0485 or rule 64B7-26.010 ranges from a \$2,500 administrative fine to revocation.

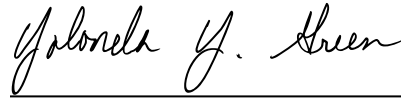
58. Respondent's conduct demonstrates a clear violation of the client-massage therapist relationship as he was is in a position of trust that he used for his own sexual gratification. Given that the appropriate penalty is within the disciplinary guidelines, discussion about aggravating and mitigating factors is not necessary here.

#### RECOMMENDATION

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

- a) finding that Respondent, William Daniel Corley, violated section 480.046(1)(p) through a violation of section 480.0485 and rule 64B7-26.010(1) and (3);
- b) finding that Respondent violated section 480.046(1)(p) through a violation of rule 64B7-30.001(5);
- c) revoking Respondent's license to practice massage therapy; and
- d) imposing an administrative fine in the amount of \$2,500.

DONE AND ENTERED this 8th day of July, 2022, in Tallahassee, Leon  
County, Florida.



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YOLONDA Y. GREEN  
Administrative Law Judge  
1230 Apalachee Parkway  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 8th day of July, 2022.

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.