

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

IN RE: The Emergency Restriction of the License of
Ismael Garcia, L.M.T.
License Number MA 79473
Case Number 2022-23003

ORDER OF EMERGENCY RESTRICTION OF LICENSE

Joseph A. Ladapo, MD, PhD, State Surgeon General, ORDERS the Emergency Restriction of the license of Ismael Garcia, L.M.T., (Mr. Garcia) to practice as a massage therapist in the State of Florida. Mr. Garcia holds license number MA 79473. His address of record is 23 Red Cedar Drive, Fort Myers, Florida 33907. An alternative address is 11595 Kelly Road, Fort Myers, Florida 33908. The following Findings of Fact and Conclusions of Law support the emergency restriction of Mr. Garcia's license to practice as a massage therapist in the State of Florida.

FINDINGS OF FACT

1. The Department of Health (Department) is the state agency charged with regulating massage therapists in the State of Florida, pursuant to chapters 20, 456, and 480, Florida Statutes (2022). Section 456.073(8), Florida Statutes (2022), authorizes the State Surgeon General to summarily

restrict Mr. Garcia's license to practice as a massage therapist in the State of Florida, in accordance with section 120.60(6), Florida Statutes (2022).

2. At all times material to this Order, Mr. Garcia was licensed to practice massage therapy in the State of Florida, pursuant to chapter 480.

3. At all times material to this Order, Mr. Garcia practiced massage therapy at Massage Luxe, a massage establishment in Bonita Springs, Florida.

4. Patient C.B., a 40-year-old woman, presented to Mr. Garcia at Massage Luxe for a massage on June 11, 2022.

5. In preparation for her massage, Patient C.B. disrobed entirely, laid down on the massage table, and covered herself with the provided drape.

6. Mr. Garcia entered the massage room and proceeded to massage Patient C.B.

7. Mr. Garcia failed to ask Patient C.B. any questions regarding her massage preference or explain the expected draping techniques before the massage began.

8. While Patient C.B. was face down, Mr. Garcia reached under the draping and placed his entire palm on one of her bare buttocks with his fingers in the crevice of her buttocks.

9. Mr. Garcia then ran his hand down her buttocks and his fingers down the crevice of her buttocks.

10. Patient C.B. shifted away from Mr. Garcia in a startled movement.

11. Mr. Garcia quickly removed his hand and resumed the massage.

12. While Patient C.B. was face up, Mr. Garcia massaged Patient C.B.'s upper thigh by moving his hands in stroking motions up toward her pubic area.

13. Mr. Garcia touched Patient C.B.'s outer labia in an up-and-down stroking motion.

14. Mr. Garcia touched Patient C.B.'s inner labia and clitoris with his ungloved fingers.

15. Mr. Garcia began stroking Patient C.B.'s inner labia and clitoris in the same stroking motion.

16. After the second stroke, Patient C.B.'s knee jerked up and she said "no, no."

17. Patient C.B. felt that the contact was sexual in nature, and she was shocked and frozen.

18. Patient C.B. reported this incident to management at Massage Luxe.

19. Patient C.B. reported this incident to law enforcement.

20. The massage therapist-patient relationship is founded on mutual trust. The practice of massage therapy places patients in isolated, vulnerable settings where they can be subject to abuse by their massage therapists. Due to the potential for abuse that is inherent under these circumstances, massage therapists must possess good judgment and good moral character in order to practice massage therapy professionally and within the boundaries of the generally accepted examination or treatment of a patient. Massage therapists must also refrain from engaging in conduct that harms the patient or placing the patient in a situation that violates their safety and welfare.

21. Mr. Garcia willfully abused his position as a massage therapist to sexually violate a patient who trusted him to act professionally and within the boundaries of generally accepted massage therapy and treatment. Mr. Garcia's deviant actions demonstrate that he poses a significant danger to

female patients. Mr. Garcia's violation of the massage therapist-patient relationship indicates that Mr. Garcia lacks the good judgment and good moral character necessary to safely practice massage therapy, and therefore is a significant danger to female patients.

22. Mr. Garcia's lack of good judgment and good moral character, his disregard for the laws and regulations governing massage therapists in this state, his ability to conceal his deviant behavior due to the inherent intimacy of the massage therapy setting, and his disregard for his patient's physical and emotional well-being represent a significant likelihood that Mr. Garcia will cause harm to female patients in the future unless his license is restricted. This probability constitutes an immediate, serious danger to the health, safety, or welfare of the citizens of the State of Florida.

23. The nature of massage therapy involves the delivery of services in a one-on-one manner for an extended period of time. Because of the inherent intimacy of this setting, a restriction where a chaperone must be present for massages is not feasible. Therefore, nothing short of the immediate restriction of Mr. Garcia's license to practice as a massage therapist in the State of Florida will protect the public from the dangers created by Mr. Garcia's continued, unrestricted practice of massage therapy.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the State Surgeon General concludes as follows:

1. The State Surgeon General has jurisdiction over this matter pursuant to sections 20.43 and 456.073(8), Florida Statutes (2022), and chapter 480.

2. Section 480.046(1)(p), Florida Statutes (2021), subjects a massage therapist to discipline, including restriction, for violating any provision of chapters 480 or 456 or any rules adopted pursuant thereto.

3. Section 480.0485, Florida Statutes (2021), prohibits sexual misconduct in the practice of massage therapy and defines sexual misconduct, in pertinent part, as a:

[V]iolation 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.

4. Rule 64B7-23.005, Florida Administrative Code, provides in pertinent part:

- (1) "Sexual Activity" means any direct or indirect contact by any person, or between persons, with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, or which is likely to cause such humiliation, harassment, degradation, arousal or sexual gratification:
 - a. With or without the consent of either person or persons;
 - b. With or without verbal or non-verbal communication that the sexual activity is undesired;
 - c. With or without the use of any device or object;
 - d. With or without the occurrence of penetration, orgasm or ejaculation;
 - e. Including, but not limited to intentional contact with the genitalia, groin, femoral triangle, anus, buttocks, gluteal cleft, breast or nipples, mouth, or tongue; and
 - f. Including, but not limited to the intentional removal of any drape without written specific informed consent of the patient.
- (2) Sexual activity by any massage therapist in the context of massage therapy practice or in a massage therapy establishment is prohibited.
- (3) A licensed massage therapist must not use the therapist-client relationship to induce or attempt to induce or engage or attempt to engage in sexual activity with any client. Such attempts or engagements constitute sexual misconduct in the practice of massage therapy.

5. Mr. Garcia violated section 480.046(1)(p) by violating section 480.0485 and/or Rule 64B7-23.005 by:

- a. using the massage therapist-patient relationship to engage, or attempt to engage, Patient C.B. in sexual activity outside the scope of practice or generally accepted examination and treatment by touching Patient C.B.'s outer labia, inner labia, and clitoris;
- b. by engaging in sexual activity; and/or
- c. by using the therapist-client relationship to induce or attempt to induce or engage or attempt to engage in sexual activity with Patient C.B.

6. Rule 64B7-23.011, Florida Administrative Code, provides in pertinent part:

Failure to practice massage therapy with the level of care, skill and treatment which is recognized by a reasonably prudent similar massage therapist as acceptable under similar conditions and circumstances constitute misconduct and negligence in the practice of massage therapy. Acts of misconduct or negligence include:

- (1) Failure to properly assess the patient;
- (2) Failure to explain draping techniques to the patient;
- (3) Failure to appropriately drape the patient;
- (4) Failure to obtain informed consent from the patient, the patient's parent, or the patient's guardian for massage therapy treatment;

- (5) Failure to obtain specific informed consent from the patient, the patient's parent, or the patient's guardian before undraping a patient;
- (6) Undraping a patient in a manner inconsistent with the specific informed consent given;
- (7) Administering treatment which poses a significant health risk to the patient;
- (8) Administering treatment in a negligent manner;
- (9) Administering treatment which the massage therapist is not competent by training or experience to perform;
- (10) Administering treatment which the massage therapist is not qualified by training or experience to perform;
- (11) Violating the confidentiality of information or knowledge concerning a patient;
- (12) Offering massage therapy at a sporting event, convention, or trade show without obtaining the written approval of the owner or property manager of the site of the sporting event, convention or trade show or the organizer of the sporting event, convention, or trade show.

7. Mr. Garcia violated section 480.046(1)(p) by violating Rule 64B7-23.011 by failing to explain the expected draping techniques to Patient C.B.

8. Section 120.60(6) authorizes the State Surgeon General to summarily restrict a massage therapist's license upon a finding that the massage therapist presents an immediate, serious danger to the public health, safety, or welfare.

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9. Mr. Garcia's continued unrestricted ability to provide massage services constitutes an immediate, serious danger to the health, safety, or welfare of the public and this summary procedure is fair under the circumstances to adequately protect the public.

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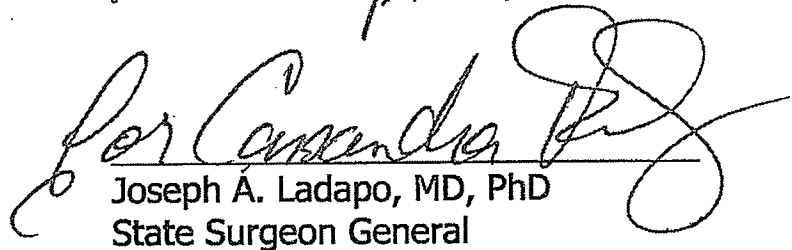
WHEREFORE, in accordance with section 120.60(6), it is **ORDERED**

THAT:

1. The license of Ismael Garcia, L.M.T., license number MA 79473, is hereby immediately restricted to prohibit him from practicing massage therapy on female patients.

2. A proceeding seeking formal discipline of the license of Ismael Garcia, L.M.T., to practice as a massage therapist will be promptly instituted and acted upon in compliance with sections 120.569 and 120.60(6), Florida Statutes (2022).

DONE and ORDERED this 9th day of September, 2022.


Joseph A. Ladapo, MD, PhD
State Surgeon General

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NOTICE OF RIGHT TO JUDICIAL REVIEW

Pursuant to sections 120.60(6) and 120.68, Florida Statutes (2022), this Order is judicially reviewable. Review proceedings are governed by the Florida Rules of Appellate Procedure. Proceedings are commenced by filing a Petition for Review, in accordance with Florida Rule of Appellate Procedure 9.100, with the District Court of Appeal, accompanied by a filing fee prescribed by law, and a copy of the Petition with the Agency Clerk of the Department within 30 days of the date this Order is filed.