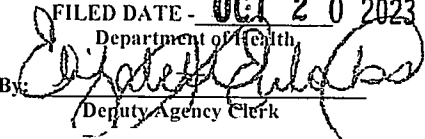


FILED DATE - OCT 20 2023
Department of Health
By: 
Deputy Agency Clerk

**STATE OF FLORIDA
BOARD OF MASSAGE THERAPY**

DEPARTMENT OF HEALTH,

Petitioner,

vs.

Case No.: 2022-18604

License No.: MA 95791

SERGIO DA SILVA BORGES,

Respondent.

_____ /

FINAL ORDER

This matter appeared before the Board of Massage Therapy at a duly-noticed public meeting on July 27, 2023, in Orlando, Florida, for a hearing not involving disputed issues of material fact pursuant to Sections 120.569 and 120.57(2), Florida Statutes. Petitioner filed an Administrative Complaint seeking disciplinary action against Respondent’s license to practice massage therapy. A copy of the Administrative Complaint is attached to and made a part of this Final Order. Respondent filed an Election of Rights stating no material facts were in dispute. Petitioner filed a Motion for Final Order After Hearing Not Involving Disputed Issues of Material Facts. Petitioner was represented by Dannie Hart, Assistant General Counsel, the Department of Health. Respondent was present with an interpreter.

FINDINGS OF FACT

No material facts are in dispute.

The investigative file was received into evidence and the Board finds the uncontested facts adequately support the allegations. Therefore, the Board adopts as its finding of facts the facts set forth in the Administrative Complaint.

In addition, the Board finds the following aggravating factors as listed Rule 64B7-

30.002(3), Florida Administrative Code:

- (a) The potential danger to the public;
- (d) The length of time licensee has practiced;
- (e) The actual or potential harm, physical or otherwise, caused by the violation;
- (f) The deterrent effect of the penalty imposed; and
- (m) Evidence of fraud or misrepresentation.

CONCLUSIONS OF LAW

Based upon the Findings of Fact, the Board concludes the respondent has violated Section 480.046(1)(p), by 480.0485 Florida Statutes and/or 64B7-26.010(1), (3), F.A.C.

The Board is empowered by Sections 480.046(2) and 456.072(2), Florida Statutes, to impose a penalty against the licensee. Therefore, it is ORDERED that:

The license of **SERGIO DA SILVA BORGES** is **REVOKED**.

Respondent must pay a fine of \$10,000.00 and investigative costs of \$2581.11 within 90 days of the date this Final Order is filed. Payment shall be made to the Board of Massage Therapy and mailed to: DOH-Compliance Management Unit, Bin C-76, 4052 Bald Cypress Way, Tallahassee, Florida 32399, Attention: Massage Therapy Compliance Officer. Payment must be made by cashier's check or money order ONLY. Personal checks will not be accepted.

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

DONE AND ORDERED this 19 day of October, 2023.

BOARD OF MASSAGE THERAPY

Allen Hall
Allen Hall, Acting Executive Director for
Christopher Brooks, LMT, Chair

NOTICE OF APPEAL RIGHTS

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 THE RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S and Certified mail to: **SERGIO DA SILVA BORGES**, 1019 S. Hiawassee Rd., Apartment 3812, Orlando, FL 32835; and by e-mail to; **Diane Guillemette**, Assistant Attorney General, Diane.Guillemette@myfloridalegal.com; and **Dannie Hart**, Assistant General Counsel, Department of Health, Dannie.hart@flhealth.gov; on this 20 day of October, 2023.

Certified Article Number

9414 7266 9904 2185 1415 66

SENDER'S RECORD


Deputy Agency Clerk

Sergio Da Silva Borges
1019 S. Hiawassee Rd.
Apt. 3812
Orlando, FL 32835

**STATE OF FLORIDA
BOARD OF MASSAGE THERAPY**

DEPARTMENT OF HEALTH,

Petitioner,

v.

CASE NO. 2022-18604

SERGIO DA SILVA BORGES, L.M.T.,

Respondent.

ADMINISTRATIVE COMPLAINT

COMES NOW Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Massage Therapy ("Board") against Respondent, Sergio Da Silva Borges, L.M.T., and in support thereof alleges:

1. Petitioner is the state agency charged with regulating the practice of massage therapy pursuant to section 20.43, Florida Statutes; chapter 456, Florida Statutes; and chapter 480, Florida Statutes.
2. At all times material to this Complaint, Respondent was a licensed massage therapist in the State of Florida, having been issued license number MA 95791.

3. Respondent's mailing address of record is 1019 S. Hiawassee Road, Apartment 3812, Orlando, Florida 32835.

4. On or about April 19, 2022, Patient K.H. presented to Path Medical, located at 6220 South Orange Blossom Trail, Orlando, Florida 32809 for a massage therapy appointment with Respondent.

5. During the course of the massage, Respondent placed his penis in Patient K.H.'s hand.

6. During the course of the massage, Respondent attempted to place his erect penis into Patient K.H.'s mouth.

7. During the course of the massage, Respondent digitally penetrated Patient K.H.'s vagina.

8. Placing the therapist's penis on a patient and/or digitally penetrating a patient's vagina are actions outside the scope of the practice of massage therapy and/or outside the scope of generally accepted examination or treatment of a patient.

9. Section 480.046(1)(p), Florida Statutes (2021), provides that violating any provision of this chapter or chapter 456, or any rules adopted thereto constitutes grounds for discipline.

10. Section 480.0485, Florida Statutes (2021), prohibits sexual misconduct in the practice of massage and specifically provides that:

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.

11. Rule 64B7-26.010(2), Florida Administrative Code, provides that sexual activity by any person or persons in any massage establishment is absolutely prohibited.

12. Rule 64B7-26.010(4), Florida Administrative Code, 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.

13. Rule 64B7-26.010(1), Florida Administrative Code, provides in pertinent part that "sexual activity" means:

[A]ny 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.

14. On or about April 19, 2022, Respondent engaged in unlawful sexual activity and engaged or attempted to engage in sexual misconduct outside of the scope of the practice of massage therapy or the scope of generally accepted examination or treatment of massage therapy patients in one or more of the following ways:

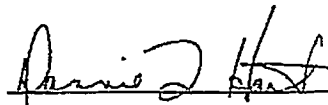
- a. Placing his penis in or on Patient K.H.'s hand;
- b. Attempting to place his penis in Patient K.H.'s mouth; and/or
- c. Digitally penetrating Patient K.H.'s vagina

15. Based on the foregoing, Respondent violated section 480.046(1)(p), through a violation of section 480.0485 and/or rule 64B7-26.010(1) and/or (3).

WHEREFORE, Petitioner respectfully requests that the Board of Massage Therapy enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this **5th** day of **December** 2022.

Joseph A. Ladapo, MD, PhD
State Surgeon General



Dannie L. Hart
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar # 820989
(850) 558-9896
(850) 245-4684 fax
Dannie.Hart@flhealth.gov

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK

CLERK: *Elizabeth Eubanks*

DATE: December 05, 2022

PCP: December 1, 2022

PCP Members: Groover-Skipper, Whitridge

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested. A request or petition for an administrative hearing must be in writing and must be received by the Department within 21 days from the day Respondent received the Administrative Complaint, pursuant to Rule 28-106.111(2), Florida Administrative Code. If Respondent fails to request a hearing within 21 days of receipt of this Administrative Complaint, Respondent waives the right to request a hearing on the facts alleged in this Administrative Complaint pursuant to Rule 28-106.111(4), Florida Administrative Code. Any request for an administrative proceeding to challenge or contest the material facts or charges contained in the Administrative Complaint must conform to Rule 28-106.2015(5), Florida Administrative Code.

Please be advised that mediation under Section 120.573, Florida Statutes, is not available for administrative disputes involving this agency action.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.