

**STATE OF FLORIDA
BOARD OF MASSAGE THERAPY**

DEPARTMENT OF HEALTH,

Petitioner,

v.

CASE NO. 2022-18604

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

Respondent.

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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:

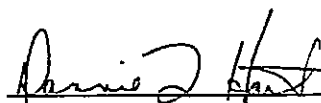
- a. Placing his penis in or on Patient K.H.'s hand;
- b. Attempting to place his penis in Patient K.H.'s mouth; and/or
- c. Digitally penetrating Patient K.H.'s vagina

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



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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.