

IN THE MATTER OF

**LUBIN HERNANDEZ
PALOMINO, LMT
Respondent**

License Number: M04050

*** BEFORE THE MARYLAND
* STATE BOARD OF MASSAGE
* THERAPY EXAMINERS
* Case Number: 21-12M**

* * * * *

CONSENT ORDER

On the September 28, 2021 the Maryland State Board of Massage Therapy Examiners (the “Board”) charged **LUBIN HERNANDEZ PALOMINO** (the “Respondent”), License Number **M04050**, under the Maryland Massage Therapy Act (the “Act”), Md. Code Ann., Health Occ. §§ 6-101 *et seq.* (2014 Repl. Vol & 2020 Supp.). Specifically, the Board charged the Respondent with violating the following provisions of the Act under Health Occ. § 6-308:

- (a) *In general; grounds.* -- Subject to the hearing provision of § 6-309 of this subtitle, the Board may deny a license or registration to an applicant, reprimand a licensee or registration holder, place any licensee or registration holder on probation, or suspend or revoke the license of a licensee or the registration of a registration holder if the applicant, licensee, or registration holder:
 - (8) Does an act that is inconsistent with generally accepted professional standards in the practice of massage therapy;
 - (11) Has violated any provision of this title;
 - (20) Engages in conduct that violates the professional code of ethics;
 - (21) Knowingly does an act that has been determined by the Board to be a violation of the Board's regulations[.]

The violations of professional code of ethics and Board regulations include:

Md. Code Regs. 10.65.03.02. Definitions

B. Terms Defined.

- (2) “Non bona fide treatment” means when a license holder or registration holder treats or examines a client in a way that involves sexual contact, but there is no therapeutic reason for the procedure, or the procedure falls outside of reasonable massage therapy.
- (5) “Therapeutic deception” means when a license holder or registration holder misrepresents sexual conduct as a legitimate form of treatment or instruction to a client or a student.

Md. Code Regs. 10.65.03.03. Standards of Practice

- A. The license holder or registration holder shall be concerned primarily with the welfare of the client.
- C. A license holder or registration holder shall:
 - (1) Use professional discretion and integrity in relationships with members of the public and health care community;
 - (2) Engage in professional conduct at all times, with honesty, integrity, self-respect, and fairness;
 - (5) At all times respect the client’s dignity, autonomy, and privacy;

Md. Code Regs. 10.65.03.04. Relationship with Client.

- A. A license holder or registration holder shall:
 - (1) Use professional judgment in the use of evaluation and treatment procedure[.]

Md. Code Regs. 10.65.03.05. Professional Boundaries.

- A. A license holder or registration holder shall:
 - (2) Respect and maintain professional boundaries and respect the client’s, staff member’s, or student’s reasonable expectation of professional conduct.

- B. A license holder or registration holder may not:
- (1) Exploit a relationship with a client, staff member, or student for the license holder's or registration holder's personal advantage, including, but not limited to, a personal, sexual, romantic, or financial relationship;
 - (2) Engage in a sexually intimate act with a client; or
 - (3) Engage in sexual misconduct that includes, but is not limited to:
 - (a) Therapeutic deception;
 - (b) Non bona fide treatment; or
 - (c) A sexually exploitative relationship.

Md. Code Regs. 10.65.03.06. Records, Confidentiality, and Informed Consent.

- A. A license holder or registration holder shall:
- D. Provide sufficient information to a client to allow the client to make an informed decision regarding treatment, including:
- (1) The purpose or nature of an evaluation or treatment regimen;
 - (5) The right of the client to withdraw from treatment at any time, including the risks associated with withdrawing from treatment[.]

FINDINGS OF FACT

The Board makes the following findings of fact:

I. BACKGROUND

1. At all times relevant hereto, the Respondent was and is licensed to practice massage therapy in the State of Maryland. The Respondent was originally licensed to practice massage therapy in Maryland on December 22, 2008, under License Number M04050. The Respondent's license is current through October 31, 2022.

2. At all times relevant hereto, the Respondent worked as a massage therapy practitioner at a massage therapy practice (the “Practice”) in Montgomery County, Maryland.¹

3. On or about May 10, 2021, the Board received a complaint from a client of the Respondent (“Client”), who alleged that on February 22, 2021, the Respondent inappropriately touched her in a sexual manner and made inappropriate comments during a scheduled massage.

4. Based on the information provided in the complaint, the Board initiated an investigation.

II. BOARD INVESTIGATION

5. As part of its investigation, the Board subpoenaed client records from the Practice, obtained copies of the Client’s email to the owner of the Practice on February 24, 2021, obtained copies of the Client’s email and report to the Police Department on February 24, 2021, and interviewed the Client and the Respondent.

6. According to records from the Practice, the Client had a 90-minute massage with the Respondent on February 22, 2021.

7. On May 25, 2021, the Board’s investigator interviewed the Client under oath, at which time, the Client reported the following:

- a. On February 22, 2021, the Client met the Respondent at the Practice for a 90-minute massage that the Client scheduled online.

¹ For confidentiality reasons, the names of all massage facilities, clients, or other individuals referenced in this document will not be identified by name. The Respondent may obtain the identity of any facility, client, or individual referenced herein by contacting the assigned administrative prosecutor.

- b. On that day, prior to the massage, the Respondent sat down with the Client and asked her if she had any pain. The Client informed the Respondent that she had lower back pain on one side. The Respondent asked the Client, “[D]o you sit down a lot?” to which the Client answered, “[Y]es, I do work like sitting down a lot.” The Respondent asked, “[D]o you exercise every day?” The Client thinks she said “yes or no.” The Respondent then said, “[O]kay, I know exactly what it is,” and told her it was the psoas muscle.² The Client asked, “[W]hat is the psoas muscle?” The Respondent “wasn’t very forthcoming.” The Respondent said to the Client, “I’m the one who’s the professional. I’ll be able to find the muscles that are yelling at me . . . I don’t need your assistance.”
- c. During the massage, while the Client was lying face down, the Respondent asked, “[S]o, are you still laying there worried about what’s going to happen to you next?”
- d. Later during the massage, the Respondent said to the Client, “[Y]ou have pretty skin,” “You have really athletic, good legs,” and “[Y]ou’re still such a young cub.”
- e. The Respondent told the Client, “[B]e aware you’re probably going to have some weird dreams after this.” When she asked the Respondent why, he said, “[T]his kind of work just sometimes brings up a lot of stuff for people.”
- f. During the massage, the Respondent’s body brushed up against the Client’s fingers, the Client’s hand flinched away, and the Respondent stated, “I think it’s so funny when my clients flinch away from me if their hand just brushes up against me. Like, don’t you know I have the whole rest of your body over here in my hands[?]”
- g. The Respondent massaged the Client’s pelvic area and the Client’s pubic bone. The Respondent pressed down hard on the Client’s pubic bone “less than an inch from . . . the clitoris and the top of the labia.”
- h. After massaging the Client’s pubic bone, the Respondent massaged the Client’s groin on “the very side of [her] vagina.” The

² The psoas muscle is attached to the lumbar region of the spine and extends down through the pelvis to the femur.

Respondent's hands were underneath the sheet while massaging the Client's groin. The Client was "panicked" and "frozen."

- i. Next, the Respondent lifted the Client's left leg with a bent knee to her chest. The Respondent told the Client to relax and stated, "I'm the one driving this car right now."
- j. The Client felt that she was not properly draped while the Respondent was lifting her left leg with bent knee. The Client thought that the Respondent could see "under [her] underwear, or maybe they were over to the side."
- k. The Client felt pain and soreness in the vaginal area after the massage.
- l. On Wednesday, February 24, 2021, the Client informed an employee and the owner of the Practice about the Respondent's statements and actions on February 22, 2021 during the massage appointment.
- m. Later on Wednesday, February 24, 2021, the owner of the Practice informed the Client that she terminated the Respondent's employment that day.
- n. On Wednesday, February 24, 2021, the Client contacted the Police Department. The Client gave police officers a verbal and written account of the Respondent's statements and actions on February 22, 2021 during the massage appointment.

8. On July 6, 2021, the Board's investigator interviewed the Respondent under oath, at which time, the Respondent reported the following:

- a. The Respondent had a 90-minute massage appointment with the Client on February 22, 2021.
- b. The Client told the Respondent that her biggest complaint was her right lower back pain for a year.
- c. The Respondent told the Client, "I just don't do a rub. I'm trained to do different modalities. I do some stretching. I do some deep tissue. I do some energy work depending on what the body is requiring. I am a track and field coach. I have been to the Olympics as a competitor. I know the body."

- d. The Respondent told the Client that he would “rule out some other things before we find out if it’s the psoas muscle.”
- e. The Respondent decided that the Client’s pain was not back pain, but pain from the psoas muscle.
- f. When asked how the Respondent was able to rule out the other things before deciding on the psoas muscle, the Respondent said, “Again, I’ve been coaching and I’ve been running for just my entire life. So I know a little bit about muscles and body parts. I’m not just someone who decided to go to massage school because I couldn’t find a job.”
- g. The Respondent described how he conducted the massage on the psoas muscle: “So I explained to [the Client] this is how, this is where the psoas muscle starts from her belly button, T12 and runs through L5. . . I just put the palm of my hand on her hip and put enough pressure on her so she allows me and her tissue allows it to do synching. I mean, I was right at the edge of her hip. . . So I’m right at the edge of the hip and her tissues starts becoming softer. And then again I put my fingers on the same area and I show her, now, this is what psoas feels like.”
- h. When asked what type of massage the Respondent gave the Client, he said, “I don’t just do a massage. I work the body. . . Again, I tell every single of my clients I don’t just rub, you know, because that’s not what I do.”
- i. The Respondent stated that the psoas muscle is in the pelvis.
- j. The Respondent stated that a massage therapist could “work on the pubic area to relieve the abdominal muscles,” and “the pubic area is where all the terminal muscles are attached to,” so it is “not unusual” to massage there. The Respondent stated he did not massage the Client’s pubic or groin area because “we were looking at the psoas,” which is “in a different area than the pubic area[.]”
- k. The Respondent conceded that he told the Client that she may experience “weird dreams” after the massage. When asked about this, the Respondent stated, “The psoas muscle in Chinese medicine . . is part of emotional health. . . You can look it up anywhere in Oriental

medicine. . . That’s the problem with having ignorant people come in to have—anyway, yes.”

- l. The owner of the Practice terminated the Respondent’s employment at the Practice on February 24, 2021.
- m. When asked about his reaction to being fired from the Practice, the Respondent stated, “I got hit in the gut for no reason. Well, that’s what it feels like, being accused by someone who has no idea of their body. . . It is just unbelievable that someone could come in who lays on the couch, teaches kids how to paint, assumes that—what is she trying to do now?”

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent’s conduct as set forth above is a violation of Md. Code Ann., Health Occ. §§ 6-308(a)(8), (11), (20), and (21), as well as COMAR 10.65.03.03, COMAR 10.65.03.04, COMAR 10.65.03.05, COMAR 10.65.03.06.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 22nd day of December 2021, by a majority of the Board, it is hereby

ORDERED that the Respondent is placed on **PROBATION**, for a minimum period of **TWO (2) YEARS**.³ During the probationary period the Respondent shall comply with the following probationary terms and conditions:

1. Within **180 DAYS**, the Respondent is required to take and successfully complete two Board-approved courses in **Client Communications**, and two Board-

³ If the Respondent’s license expires during this two-year period, the two-year period and any conditions will be tolled.

approved courses in **Ethics and Preventing Sexual Misconduct**. The following terms apply:

- (a) it is the Respondent's responsibility to locate, enroll in, and obtain the Board's approval of the courses before the courses begin;
- (b) the Board may accept courses taken in person or online;
- (c) the Respondent must provide documentation to the Board that the Respondent has successfully completed the courses;
- (d) the courses may not be used to fulfill the continuing education credits required for license renewal;
- (e) the Respondent is responsible for the costs of the courses.

2. The Respondent shall submit to the Board written **quarterly self-reports** describing the Respondent's practice.

3. The Respondent shall at all times cooperate with the Board, any of its agents or employees, and with the Board-assigned investigator, in the monitoring, supervision, and investigation of the Respondent's compliance with the terms and conditions of the Consent Order;

4. The Respondent shall comply with the Maryland Massage Therapy Act, Md. Code Ann., Health Occ. §§ 6-101 – 6-602, and all laws and regulations governing the practice of massage therapy in Maryland; and it is further

ORDERED that after the conclusion of the **TWO (2) YEAR** probationary period, the Respondent may submit a written petition to the Board requesting termination of

probation. After consideration of the petition, the probation may be terminated through an order of the Board. The Board at its discretion may grant termination if the Respondent has fully and satisfactorily complied with all the terms and conditions of the Consent Order, and there are no pending investigations or complaints against the Respondent, and the Board deems termination of probation appropriate. If the Respondent fails to make any such petition, then the probationary period status may continue indefinitely, subject to the conditions set forth in this Order; and it is further

ORDERED that if the Board determines that the terms or conditions of this Order have not been successfully completed, the Board may modify the terms and conditions of Respondent's probation, upon notice to the Respondent; and it is further

ORDERED that if the Respondent allegedly fails to comply with any of the terms and conditions of this Consent Order, the Respondent shall be given notice and an opportunity for a hearing. If, in its sole discretion, the Board determines that there is a genuine dispute as to a material fact, the hearing shall be an evidentiary hearing before the Board. If there is no genuine dispute as to a material fact, the Respondent shall be given a show cause hearing before the Board; and it is further

ORDERED that, after the appropriate hearing, if the Board determines that the Respondent has failed to comply with any term or condition of probation or this Consent Order, the Board may reprimand the Respondent, place the Respondent on probation with appropriate terms and conditions, or suspend or revoke the Respondent's license to practice massage therapy in Maryland. The Board may, in addition to one or more of the

sanctions set forth above, impose a civil monetary fine upon the Respondent; and it is further

ORDERED that the Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

ORDERED that, unless stated otherwise in the order, any time prescribed in this order begins when the Consent Order goes into effect. The Consent Order goes into effect upon the signature of the Board's Executive Director, who signs on behalf of the Board; and it is further

ORDERED that for purposes of public disclosure and as permitted by Md. Code Ann., Gen. Prov. § 4-333(b)(6), this document consists of the foregoing Findings of Fact, Conclusions of Law, and Order, and is reportable to any entity to whom the Board is obligated to report; and it is further

ORDERED that this Order is a Final Order and as such is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Prov. § 4-333(b)(6), and Md. Code Ann., Health Occ. § 1-607.

12/22/2021

Date

Sharon Oliver

Sharon J. Oliver, MBA
Executive Director
Maryland State Board of Massage
Therapy Examiners


CONSENT

I, Lubin Hernandez Palomino, LMT, by affixing my signature hereto, acknowledge that:

1. I am represented by counsel, Cory Silkman, Esquire, and I have consulted with counsel in this matter. I have knowingly and voluntarily agreed to enter into this Consent Order. By this Consent, and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.
2. I have knowingly and voluntarily agreed to enter into this Consent Order. By this Consent, I agree to be bound by this Consent Order and all its terms and conditions and understand that the Board will not entertain any request for amendments or modifications to any condition.
3. I am aware of my right to a formal evidentiary hearing, pursuant to Md. Code Ann., Health Occ. § 6-309 and Md. Code Ann., State Gov't §§ 10-201 *et seq.* concerning the pending charges. I waive this right and have elected to sign this Consent Order instead.
4. I acknowledge the validity and enforceability of this Consent Order as if entered after the conclusion of an evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my behalf, and to all other substantive and procedural protections as provided by law. I waive those procedural and substantive protections. I acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order.
5. I voluntarily enter into and agree to comply with the terms and conditions set forth in the Consent Order as a resolution of the charges. I waive any right to contest the Findings of Fact and Conclusions of Law set out in the Consent Order. I waive my right to a full evidentiary hearing, as set forth above, and any rights to appeal this Consent Order.
6. I acknowledge that by failing to abide by the conditions set forth in this Consent Order, I may be subject to further disciplinary actions.
7. I sign this Consent Order voluntarily, without reservation, and I fully understand and comprehend the language, meaning, and terms of this Consent Order.

Date

12/13/2021


Lubin Hernandez Palomino, LMT
Respondent

NOTARY

STATE OF District of Columbia

CITY/COUNTY OF Washington

I HEREBY CERTIFY that on this 13th day of December 2021, before me, a Notary Public of the foregoing State and City/County, personally appeared Lubin Hernandez Palomino, and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.

Darrell L. Green
Notary Public

My Commission expires: 01-31-2025

