

STATE OF FLORIDA  
BOARD OF MASSAGE THERAPY

DEPARTMENT OF HEALTH,

Petitioner,

vs.

Case No.: 2008-11963

License No.: MM 19597

#1 ANGEL SPA, INC.,

Respondent.

\_\_\_\_\_ /

**FINAL ORDER FOR DETERMINATION OF WAIVER**

This matter appeared before the Board of Massage Therapy at a duly-noticed public meeting on October 29, 2009, in Orlando, Florida, for a hearing not involving disputed issues of material fact pursuant to Sections 120.569 and 120.57(2), Florida Statutes, pursuant to Petitioner's Motion for Final Order. Petitioner has filed an Administrative Complaint seeking disciplinary action against the license. A copy of the Administrative Complaint was served on Respondent by certified mail and is attached to and made a part of this Final Order. At the hearing, Petitioner was represented by S.J. DiConcilio, Assistant General Counsel, Department of Health. Respondent was not present.

Upon consideration it is ORDERED:

1. The material facts are not in dispute. The Respondent was duly served with the Administrative Complaint and has waived the right to request a hearing by failing to respond to the Administrative Complaint within 21 days of service.
2. Petitioner's motion for final order is granted.
3. The allegations of fact set forth in the Administrative Complaint, are approved, adopted, and incorporated herein by reference as the findings of fact made by the Board.

4. The allegations of law alleged and set forth in the Administrative Complaint are approved, adopted, and incorporated herein by reference as the conclusions of law made by the Board.

5. The violations set forth in the Administrative Complaint warrant disciplinary action by the Board.

**THEREFORE IT IS ORDERED AND ADJUDGED:**

6. Respondent's license is hereby Reprimanded and Revoked.

7. Respondent shall pay an administrative fine in the amount of \$4750.00 within 30 days of the date this Final Order is filed.

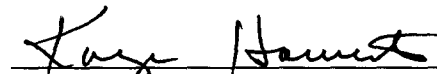
8. Respondent shall pay \$1238.04 costs of investigation and prosecution to the Board within 30 days of the date this Final Order is filed.

9. Payment of fines and costs shall be made to the Board of Massage Therapy and mailed to, DOH-Client Services, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Massage Therapy Compliance Officer.

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

**DONE AND ORDERED** this 24<sup>th</sup> day of November, 2009.

**BOARD OF MASSAGE THERAPY**



**KAYE HOWERTON**

**EXECUTIVE DIRECTOR FOR  
LYNDA SOLIEN-WOLFE, CHAIR**

## NOTICE OF APPEAL RIGHTS

PURSUANT TO SECTION 120.68 FLORIDA STATUTES, A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW UNLESS WAIVED. PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF THE 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 APPEALS, 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 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. Mail to #1 Angel Spa, Inc., 213 State Road 434 North, Longwood, Florida 32750 by interoffice mail to Allison Dudley, Assistant Attorney General, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; to S.J. DiConcilio, Assistant General Counsel, Department of Health, 4052 Bald Cypress Way, Bin # C-65, Tallahassee, Florida 32399-3265 this 25 day of November, 2009.

Angele Barton  
Deputy Agency Clerk

7004 2510 0004 9660 8316

U.S. Postal Service	
<b>CERTIFIED MAIL<sup>TM</sup> RECEIPT</b>	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a> .	
<b>OFFICIAL USE</b>	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Postmark Here	
Sent To <u>#1 Angel Spa, Inc</u>	
Street, Apt. No., or PO Box No. <u>213 State Rd. 434 N.</u>	
City, State, ZIP+4 <sup>®</sup> <u>Longwood FL 32750</u>	

**STATE OF FLORIDA**  
**DEPARTMENT OF HEALTH**

**DEPARTMENT OF HEALTH,**

**PETITIONER,**

**v.**

**CASE NO. 2008-11963**

**#1 ANGEL SPA, INC.,**

**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 against Respondent, #1 Angel Spa, Inc. (Angel), and in support thereof alleges:

1. Petitioner is the state department 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 establishment within the state of Florida, having been issued license number MM19597 on or about April 10, 2007.

3. Respondent's address of record is 213 SR 434 N, Longwood, Florida 32750.

4. During March 2008, the City/County Investigative Bureau (CCIB) in Seminole County conducted surveillance and an investigation of possible prostitution occurring at #1 Angel Spa, Inc. (hereinafter referred to as Angel), located at the above address.

5. On or about March 4, 2008, during the investigation, a male, M.T., exited Angel and was detained and questioned by a CCIB agent regarding services rendered. M.T. stated that he paid in US currency and received a half hour "body scrub" from U.J.S., whom he identified from a photo provided by a CCIB agent.

6. A review of Petitioner's licensure records revealed that U.J.S. is not a licensed massage therapist in the State of Florida.

7. On or about March 5, 2008, during the investigation, at approximately 10:27 hours, a male, J.R., exited Angel and was detained and questioned by a CCIB agent regarding services rendered. J.R. gave a sworn statement that he received a "body scrub" and a massage from J.M.C., and that she masturbated him to climax, in

exchange for US currency. J.R. identified J.M.C. from a photo provided by a CCIB agent.

8. On or about March 12, 2008, at approximately 1413 hours, a male, B.P.S., exited Angel and was detained and questioned by a CCIB agent regarding services rendered. B.P.S. gave a sworn statement that he received a massage from S.L., and that S.L. masturbated him in exchange for US currency. B.P.S. positively identified S.L. from a photograph provided by a CCIB agent.

9. Also, on or about March 12, 2008, at approximately 1657 hours, a male, J.S., exited Angel and was detained and questioned by a CCIB agent regarding services rendered. J.S. gave a sworn statement that he received a massage from an Asian female and that she masturbated him to completion, in exchange for US currency.

10. On or about March 18, 2008, at approximately 1506 hours, a male, T.J.S., exited Angel and was detained and questioned by a CCIB agent regarding services rendered. T.J.S. gave a sworn statement that he received a massage from U.J.S, whom he identified from U.J.S.'s Florida drivers license provided to him by a CCIB agent, in exchange for US currency.

11. On or about March 18, 2008, at approximately 1613 hours, a

male, J.S.P., exited Angel and was detained and questioned by a CCIB agent regarding services rendered. J.S.P. gave a sworn statement that he received a massage from J.M.C. whom he identified a photo provided by a CCIB agent, and that J.M.C. masturbated him to completion, in exchange for US currency.

12. On or about March 18, 2008, at approximately 1818 hours, a male, D.R.K., exited Angel and was detained and questioned by a CCIB agent regarding services rendered. D.R.K. gave a sworn statement that he received a massage from J.M.C. whom he identified from a photo provided by a CCIB agent, and that J.M.C. masturbated him to completion, in exchange for US currency.

13. On or about March 18, 2008, at approximately 2148 hours, a male, C.W., exited Angel and was detained and questioned by a CCIB agent regarding services rendered. C.W. gave a sworn statement that he received a massage from J.M.C., and that J.M.C. masturbated him to completion, in exchange for US currency.

14. On or about March 19, 2008, at approximately 1550 hours, a male, J.T.C., exited Angel and was detained and questioned by a CCIB

agent regarding services rendered. C.W. gave a sworn statement that

he received a massage from J.M.C. whom he identified by a photo provided by a CCIB agent. C.W. stated that J.M.C. masturbated him to completion, in exchange for US currency.

15. Based on the evidence gathered during the March 2008 surveillance and subsequent investigations at Angel, S. L. was arrested and entered a plea of nolo contendere on or about July 17, 2008, to Prostitution, Lewdness or Assignment, in violation of Section 796.07(2)(e), Florida Statutes.

16. Based on the evidence gathered during the March 2008 surveillance and subsequent investigations at Angel, J.M.C. was arrested and entered a plea of nolo contendere on or about September 9, 2008, to three counts of Prostitution, Lewdness or Assignment, in violation of Section 796.07(2)(e), Florida Statutes.

17. Based on the evidence gathered during the March 2008 surveillance and subsequent investigations at Angel, U.J.S. was arrested and entered a plea of nolo contendere on or about May 30, 2008, to the unlawful practice of massage in violation of Section 480.047(1)(a), Florida Statutes.



## COUNT I

18. Petitioner realleges paragraphs one (1) through seventeen (17), as if fully copied herein.

19. Section 480.046(1)(o), Florida Statutes (2007), provides that violating any provision of chapter 480 or chapter 456, or any rule adopted pursuant thereto constitutes grounds for disciplinary action by the Board of Massage Therapy.

20. Rule 64B7-26.010(1), (2), (3), and (4), Florida Administrative Code, provides the following:

(1) Sexual activity by any person or persons in any massage establishment is absolutely prohibited.

(2) No massage establishment owner shall engage in or permit any person or persons to engage in sexual activity in such owner's massage establishment or use such establishment to make arrangements to engage in sexual activity in any other place.

(3) 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.

(4) As used in this rule, "sexual activity" means any 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 stimulate and includes sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse.

21. Respondent allowed J.M.C. to engage in or offer to engage in sexual activity at Angel on one or more clients on one or more occasions, including March 5, 2008, when J.M.C. masturbated J.R.; on March 18, 2007, when J.M.C. masturbated J.S.P., D.R.K. and C.W.; and on March 19, 2007, when J.M.C. masturbated J.T.C.

22. Respondent allowed S.L. to engage in or offer to engage in sexual activity at Angel on one or more clients on one or more occasions, including March 12, 2008, when S.L. masturbated B.P.S.

23. Based on the foregoing, Respondent violated Section 480.046(1)(o), Florida Statutes (2007), and Rule 64B7-26.010 (1), (2), (3), and (4), Florida Administrative Code.

## COUNT II

24. Petitioner realleges and incorporates paragraphs one (1) through seventeen (17), as if fully copied herein.

25. Section 480.046(1)(e), Florida Statutes (2007), provides that aiding, assisting, procuring, or advising any unlicensed person to

practice massage is grounds for disciplinary action by the Board of  
Massage Therapy.

26. Respondent aided, assisted and procured, and allowed U.J.S., an unlicensed person, to perform massages at Angel on one or more clients on one or more occasions, including March 4 and March 18, 2008.

27. Based on the foregoing, Respondent violated Section 480.046(1)(e), Florida Statutes (2007).

### COUNT III

28. Petitioner realleges and incorporates paragraphs one (1) through seventeen (17), as if fully set forth herein.

29. Section 480.046(1)(j), Florida Statutes (2007), provides that delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform constitutes grounds for disciplinary action by the Board of Massage Therapy.

30. Respondent delegated professional responsibilities to U.J.S., an unlicensed person, and allowed her to perform massages at

Angel on one or more clients on one or more occasions, including

March 4 and March 18, 2008, when Respondent knew or had reason to know that U.J.S. did not have a valid massage therapist license.

31. Based on the foregoing, Respondent violated Section 480.046(1)(j), Florida Statutes (2007).

#### COUNT IV

32. Petitioner realleges paragraphs one (1) through seventeen (17), as if fully copied herein.

33. Section 480.046(1)(o), Florida Statutes (2007), provides that violating any provision of chapter 480 or chapter 456, or any rule adopted pursuant thereto constitutes grounds for disciplinary action by the Board of Massage Therapy.

34. Section 480.047(1)(c), Florida Statutes (2007), provides that it is unlawful for any person to permit an employed person to practice massage unless duly licensed as prescribed herein.

35. Respondent allowed U.J.S., an unlicensed person, to practice massage on one or more clients, on one or more occasions, including March 4, 2008.

36. Based on the foregoing, Respondent violated Section 480.046(1)(o), and 480.047(1)(c), Florida Statutes (2007).

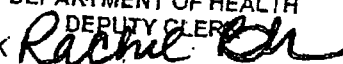
WHEREFORE, the Petitioner respectfully requests that the Board of Massage Therapy enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the 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 9 day of July, 2009.

Ana M. Viamonte Ros, M.D., MPH  
State Surgeon General

  
S. J. DiConcilio

Assistant General Counsel  
DOH Prosecution Services Unit  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, FL 32399-3265  
Florida Bar # 0949027  
(850) 245-4640, Ext. 8129  
(850) 245-4684 FAX

FILED  
DEPARTMENT OF HEALTH  
DEPUTY CLERK  
CLERK   
DATE JUL 10 2009

PCP: 7-9-09

PCP Members:

Harrison & Haynes

**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.**

**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.**