

FILED DATE - **OCT 12 2017**

Department of Health

By: *Amber Greene*
Deputy Agency ClerkSTATE OF FLORIDA
BOARD OF MASSAGE THERAPYIN RE: THE PETITION
FOR DECLARATORY
STATEMENT OF
MICHELLE LYNN MILLER-SCHUMACHER
_____ /**FINAL ORDER**

THIS CAUSE came before the Board of Massage Therapy (hereinafter Board) pursuant to §120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code, at a duly-noticed meeting in by telephone conference call, Florida on September 6, 2017, for the purpose of considering the Petition for Declaratory Statement (attached as Exhibit A) filed on behalf of MICHELLE LYNN MILLER-SCHUMACHER (hereinafter Petitioner). Having considered the petition, the arguments submitted by counsel for Petitioner, and being otherwise fully advised in the premises, the Board makes the following findings and conclusions.

FINDINGS OF FACT

1. This petition was noticed by the Board in Vol. 43, No. 158, dated August 15, 2017 of the Florida Administrative Register.
2. Petitioner is a massage therapist licensed to practice in the State of Florida, having license number MA 83974.
3. Petitioner plans to specialize in geriatric massage.
4. Petitioner would like to offer massage therapy services to the residents of a local nursing and rehabilitation center.
5. Petitioner would operate as an independent contractor, providing the necessary equipment and being paid by the client.

6. Petitioner may provide services to clients in their room, but is interested in setting up a room for massages on the first floor of the facility.

7. Section 480.046(1)(o), Florida Statutes,¹ provides that it is grounds for discipline to practice “massage at a site, location, or places which is not duly licensed as a massage establishment, except that a massage therapist . . . may provide massage services . . . at the residence of a client, at the office of the client, at a sports event, at a convention, or at a trade show.”

8. The rooms of patients at the nursing and rehabilitation facility fall within the exceptions cited in the statute.

9. A separate room provided for the purpose of providing massages to the patients at the facility does not fall within the exceptions.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code.

2. The petition filed in this cause is in substantial compliance with the provisions of Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code.

3. Providing massages to patients of a nursing and rehabilitation facility in a room set up for that purpose requires a massage establishment license.

WHEREFORE, the Board hereby finds that under the specific facts of the petition, as set forth above, Petitioner must obtain a massage establishment license to provide massage services to patients in a room set up for that purpose.

¹ Petitioner correctly cites the language of this subsection, but gives an incorrect statutory cite to Section 456.072(2), Florida Statutes.

DONE AND ORDERED this 11th day of October

, 2017.

BOARD OF MASSAGE THERAPY


Kama Monroe, Executive Director
for Lydia Nixon, Chair

NOTICE OF APPEAL RIGHTS

Pursuant to Section 120.569, Florida Statutes, the parties are hereby notified that they may appeal this Final Order by filing one copy of a notice of appeal with the clerk of the department and by filing a filing fee and one copy of a notice of appeal with the District Court of Appeal within thirty days of the date this Final Order is filed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U.S. Mail to Petitioner MICHELLE LYNN MILLER-SCHUMACHER, 311 Como Street #201, Tampa FL 33606, and by email to Donna Oxford, Paralegal Specialist, Donna.Oxford@myfloridalegal.com this 12th day of Oct., 2017.



Deputy Agency Clerk

Mission:

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



Rick Scott
Governor

Celeste Philip, MD, MPH
Surgeon General and Secretary

Vision: To be the Healthiest State in the Nation

INTEROFFICE MEMORANDUM

DATE: October 11, 2017

TO: Adrienne Rodgers, J.D., Bureau Chief
Bureau of Health Care Practitioner Regulation

FROM: Kama Monroe, J.D.
Executive Director, Boards of Acupuncture, Massage Therapy, Osteopathic Medicine, Speech-Language Pathology & Audiology and the Council of Licensed Midwifery

SUBJECT: Delegation of Authority

This is to advise that while I am out of the office Wednesday, October 11, 2017 and Thursday, October 12, 2017, Carol Taylor has delegated authority to serve as Acting Executive Director for the Board of Acupuncture, Massage Therapy, Osteopathic Medicine, Speech-Language Pathology & Audiology and the Council of Licensed Midwifery. Ms. Taylor can be reached at 850-245-4588.

Florida Department of Health

Division of Medical Quality Assurance
4052 Bald Cypress Way, Bin C-06 • Tallahassee, FL 32399
PHONE: (850) 245-4161 • FAX (850) 412-2681



Accredited Health Department
Public Health Accreditation Board

August 7, 2017

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
Angel Sanders
CLERK
DATE
AUG 10 2017

RECEIVED

Department of Health's Agency Clerk's Office
4052 Bald Cypress Way, Bin #A02
Tallahassee, Florida 32399-1703

DEPARTMENT OF HEALTH
LEGAL OFFICE

Petition for Declaratory Statement Before the Florida Board of Massage Therapy

Petitioner: Michelle Lynn Miller-Schumacher, LMT MA 83974
311 Como St. #201, Tampa, FL 33606
813-363-3970
MichelleSchumacher2015@gmail.com

Re:

480.046, Florida Statutes:

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(o) Practicing massage at a site, location, or place which is not duly licensed as a massage establishment, except that a massage therapist, as provided by rules adopted by the board, may provide massage services, excluding colonic irrigation, at the residence of a client, at the office of the client, at a sports event, at a convention, or at a trade show.

Dear Board Members,

I am an LMT seeking to specialize in Geriatric Massage. A local nursing and rehabilitation center is interested in my offering my services to their short and long term residents.

At this center, I would potentially see clients 1) by setting up in the hair salon on the first floor and 2) wherever is most convenient for the resident, including in their wheelchair or hospital bed which, at the time of the massage, may be in their semi-private or private room, or in a common area such as the TV room. I would only see clients who reside at the center. Additionally, I would be an independent contractor, paid directly by the clients, providing my own intake forms and keeping my own client records, and providing the table, linens, lotion, etc.

I am requesting a declaratory statement advising if setting up in a room on the first floor of this facility would be acceptable under the statutory provision above. If yes, I also like clarification on whether a massage establishment license would be needed. Please also advise of any other requirements I must be aware of and abide by.

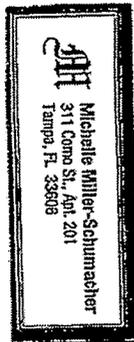
Thank you for your time and consideration.

Respectfully,

Michelle Lynn Miller-Schumacher

Michelle Lynn Miller-Schumacher,
LMT MA 83974

8/7/17
Date



Department of Health's Agency Clerk's Office
405a Bald Cypress Way, Bin # A02
Tallahassee, FL 32399-1703

DEPARTMENT OF HEALTH
LEGAL OFFICE

RECEIVED SAINT PETERSBURG, FL
AUG 13 2017
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