

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

**GEORGIA BOARD OF MASSAGE
THERAPY,**

Petitioner,

v.

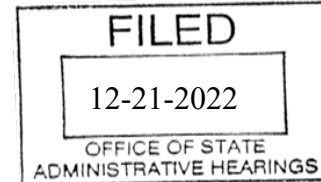
ROY LIVERMORE,

Respondent.

Docket No.: 2301553

2301553-OSAH-PLBD-MT-60-Barnes

Agency Reference No.: 2301553



INITIAL DECISION

I. Introduction

Petitioner, the Georgia Board of Massage Therapy (“Board”) brought this action seeking a cease-and-desist order against Respondent Sahias Unkudu, a.k.a. Roy Livermore, to prevent him from performing massage therapy and from holding himself out as a massage therapist, unless and until he obtains a license. The evidentiary hearing took place on October 14, 2022, before the undersigned administrative law judge. The Board was represented by Jennifer Milton, Esq., Assistant Attorney General. Respondent represented himself. After careful consideration of the evidence and the arguments of the parties, and for the reasons stated below, Respondent is hereby **ORDERED to CEASE AND DESIST** from performing massage therapy and from holding himself out as a massage therapist in Georgia, unless and until he obtains a license to do so.

II. Findings of Fact

1.

Respondent has never been issued a license to practice massage therapy in Georgia. (Testimony of Mutinda Parris, former investigator for the Office of the Secretary of State of the

State of Georgia).¹

2.

On January 23, 2020, the Board received a complaint alleging that Respondent was practicing massage therapy without a license at NEM Magical Massage and Meditation, located at 600 Bronner Bros Way, SW, Atlanta, Georgia 30310. (OSAH Form 1). The complaint was submitted by one of Respondent's clients, who had been unsatisfied with the massage they received from Respondent and, after conducting "their own investigation," suspected that he was not a licensed massage therapist. Agent Parris was assigned to investigate Respondent on February 27, 2020. (Testimony of Agent Parris).

3.

In the course of his investigation, Agent Parris discovered that Respondent maintained a website at the URL "nem-massage.com." On this website, the word "massage" was used frequently—as in "Massage and Guided Meditation Services," and "Choose your magical massage or meditation experience now!" The site provided a list of services—including 60- or 90-minute full-body massages, and 60- or 90-minute couples' massages—and listed prices for each. Massages were described as incorporating "Deep Tissue Massage, Swedish Massage, Reflexology Massage, Sports Massage, stretching and Energy Healing." Visitors were able to book massages directly through the website. The website also displayed photos of Respondent performing massages.² (Exhibit P-1A; Testimony of Agent Parris).

¹ Agent Parris is currently employed with the Georgia Office of the Insurance Commissioner. He worked for the Office of the Secretary of State from June 2019 to November 2021, during which time he was involved in Respondent's case.

² In the course of his investigation, Agent Parris had obtained a copy of Respondent's driver's license photo and was able to positively identify him.

4.

Agent Parris also discovered a Groupon listing for Respondent's business titled "The Science of NEM." Like the website, this page advertised "60- or 90-Min Full Body massage or 60-Min Couples Massage" and allowed customers to book through the site. The Groupon page also included two customer reviews, one of which read, in part, "I had a lovely massage!" (Exhibit P-2; Testimony of Agent Parris).

5.

At the time, Respondent also maintained a Facebook page under the name "sahiasunkudu." This page also contained advertisements for massages and pictures of people receiving massages. (Exhibit P-3A; Testimony of Agent Parris).

6.

As part of his investigation, Agent Parris spoke to Respondent on July 6, 2020. According to Agent Parris, Respondent initially denied that he performed massage therapy, but once Agent Parris confronted him with the advertisement on his website, Respondent said that he used to perform massage therapy but no longer does. Respondent also confirmed during that conversation that he did not have a license. (Testimony of Agent Parris).

7.

As of the morning of the hearing (October 14, 2022), Respondent still maintains a website for his business, except now it is located at "nemmagicalmassage.com." Like the former website, his current site describes massage services, offers a list of prices, and lets customers book massages. The site now describes his service, however, as an "Esole Massage,"³ a "new type of

³ Alternatively spelled as Esole' or Esolé.

massage.” The Esole Massage is described as follows:

The Esole Massage can help you rapidly attain optimal health! Your Esole massage specialist naturopathically massages your whole body with oils like grapeseed, safflower and hemp while simultaneously taking your body through sequences of stretching and joint manipulations applying pressure with their hands, touching, rubbing, stimulating the flow of chi in and around your body’s main vital energy centers. Your Esole massage specialist also refreshes your chastity and governor meridians with touch and energy work. . .

This is not massage therapy but a naturopathic and alternative approach to healing!

(Exhibit P-1B; Testimony of Agent Parris).

8.

As of the morning of the hearing, Respondent still maintains a Facebook page, now called “Nem Magical Massage & Meditation,” which stated that his business offers “Alternative Healing Esole massage (non-massage therapy).” (Exhibit P-3B; Testimony of Agent Parris).

9.

As of the morning of the hearing, Respondent also maintains an Instagram page, which features photos of Respondent performing massages. Agent Parris testified that in at least one post Respondent used the hashtag “#massagetime.” Agent Parris said he could not recall whether he saw an Instagram page for Respondent in 2020. (Exhibit P-4; Testimony of Agent Parris).

10.

Respondent’s wife, Bria Unkudu, testified at the hearing. She said that she created Respondent’s initial website, not knowing that she was not allowed to use the phrase “massage therapy.” She said that after her husband’s conversation with Agent Parris in 2020, she removed that phrase from the website. She added that while she helped create the current website, her husband primarily runs it. (Testimony of Bria Unkudu).

11.

Respondent testified that his Esole Massage technique, which he created, is entirely different from “massage therapy.” For example, he stated that, while traditional massage therapists start with the client facedown, he starts with them face up. He also says that he works from the head downward. The “draping” on the massage table is different as well. Respondent explained that his work is less “mild” than traditional massage therapy, and that he considers it “extreme.” He presses harder “where it hurts” (with the client’s permission), which he says “forces the body to move through pain.” He also might “yank on the limbs a little bit” to “jolt” them or “pop” the elbow. His method involves stretching and “a lot of weird twisting and contorting the body.” His method is also not just limited to massage. He also works on the “energy system,” which involves chanting, “sound therapy,” and something similar to reiki that he calls “hot hand healing.” (Testimony of Respondent).

12.

Respondent confirmed that his massages involve touching the body, applying pressure to the body, and moving the body in a systematic way. He also said that the overall goal of his massage technique was to improve health and well-being. However, he said that the massage aspect was “only 35 to 40 percent” of what he does, and that the rest is about “holding his hands over the body,” and “dealing with energy.” (Testimony of Respondent).

13.

Respondent said that many of his clients are people struggling with mobility issues, often after accidents or surgery. He said the “overwhelming theme” in feedback from clients is that they were suffering from some sort of physical limitation—they could not touch their toes, or could not get their hands over their heads—but that those issues were resolved after a massage from

Respondent. He conceded that he has no formal training in anatomy. Instead, his knowledge comes only from his martial arts training and his life experience: he says that he has been active his entire life and is therefore “versed” with the body. He added that in the almost four years he has been performing massages he has “only generated five-star reviews,” which he believes is a testament to his capabilities. (Testimony of Respondent).

14.

While Respondent uses the term “massage” frequently throughout his advertising, he does not believe that this implies that he practices massage therapy in violation of the law. Instead, he argues that his use of the word “massage” cannot possibly “indirectly suggest” that he is a massage therapist because, throughout his materials, he explicitly states that what he does is not massage therapy. And while he admits that he uses hashtags such as “#fullbodymassage,” “#massagetherapist,” “#massagetime,” and “#massagelife,” he claims that these do not imply he practices massage therapy. Hashtags, he says, are used only to drive traffic to his site. The goal is that people who search for content related to massage therapy using one of these hashtags will find his service, which he presents as an “alternative” to massage therapy. He added that after reading his informed consent waiver, which he has all of his clients and potential clients do, “there is no way someone could mistake [him] as a massage therapist.” He added that “so many other modalities”—such as shiatzu massage, Thai massage, and stone massage—use the word “massage” and that “people know that’s not massage therapy.” (Testimony of Respondent).

II. Conclusions of Law

1.

The Board bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07.

The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

When a contested case is referred to the Office of State Administrative Hearings for a hearing, the administrative law judge assigned to the case has “all the powers of the ultimate decision maker in the [referring] agency.” O.C.G.A. § 50-13-41(b). The hearing is *de novo*, and the administrative law judge “shall make an independent determination on the basis of the competent evidence presented at the hearing.” Ga. Comp. R. & Regs. 616-1-2-.21(1).

3.

The Board seeks to impose disciplinary action against Respondent pursuant to O.C.G.A. §§ 43-1-1 *et seq*; The Massage Therapy Practice Act (“the Act”), O.C.G.A. § 43-24A-1; the rules of the Georgia Board of Massage Therapy Practice Act, and the general statutory provisions related to professional licensing boards. *See* Ga. Comp. R. & Regs. Chapter 345 and O.C.G.A. §§ 43-1-1 *et seq*.

4.

The General Assembly acknowledges that the practice of massage therapy is a therapeutic health care service delivered by health care professionals that affects the public health, safety, and welfare of Georgians. Massage therapists must have a knowledge of anatomy and physiology and an understanding of the relationship between the structure and function of the tissue being treated and the total function of the body. Massage is therapeutic, and regulations are necessary to protect the public from unqualified practitioners. It is in the interest of the public to set standards of qualifications, education, training, and experience for those who seek to practice massage therapy; to promote high standards of professional performance for those licensed to practice massage therapy; and to protect the public from unprofessional conduct by persons and entities licensed to practice or teach massage therapy.

O.C.G.A. § 43-24A-2.

5.

Georgia law provides that “[n]o person may practice massage therapy in the state who is not a licensed massage therapist.” O.C.G.A. § 43-24A-8(a).

6.

“Massage therapy” or “massage” is defined as “the application of a system of structured touch, pressure, movement, and holding to the soft tissue of the body in which the primary intent is to enhance or restore health and well-being.” O.C.G.A. § 43-24A-3(9). A “massage therapist” is “a person licensed . . . as a massage therapist who administers or teaches massage or massage therapy for compensation.” § 43-24A-3(8).

7.

Pursuant to O.C.G.A. § 43-24A-15(b)(1), no person may advertise “as a massage therapist unless the person holds a valid license.” Further, O.C.G.A. § 43-24A-15(c) provides that “it shall be a violation of this chapter for a person or entity, or the employees, agents, or representatives of such person or entity, to practice massage therapy or to use in connection with such person’s or entity’s name or business activity the terms ‘massage,’ ‘massage therapy,’ ‘massage therapist,’ ‘massage practitioner,’ or the letters ‘M.T.,’ ‘L.M.T.,’ or any other words, letters, abbreviations, or insignia indicating or implying directly or indirectly that massage therapy is provided or supplied unless such massage therapy is provided by a massage therapist licensed and practicing in accordance with this chapter.” Additionally, no person may offer massage therapy services for compensation unless they are licensed. § 43-24A-15(f).

8.

As an enforcement mechanism, the Board of Massage Therapy may issue cease and desist

orders, preventing individuals from engaging in the unlicensed practice of massage therapy. O.C.G.A. § 43-1-20.1(a). The Board is authorized to issue a fine of \$500.00 per each violation of a cease-and-desist order, with each day a person practices in violation of the Act constituting a separate violation. § 43-1-20.1(b).

9.

Respondent has engaged in massage therapy without a license. Under the business name “NEM Magical Massage and Meditation” he has maintained a website and other social media presences advertising his massage services. He admits to having performed massages and to receiving compensation for those massages.

10.

Respondent’s argument that his Esole technique is entirely different from massage therapy appears to be based upon a misunderstanding of the difference between “massage” and “massage therapy.” Under O.C.G.A. § 43-24A-3(9), both “massage therapy” and “massage” refer to “the application of a system of structured touch, pressure, movement, and holding to the soft tissue of the body in which the primary intent is to enhance or restore well-being.” Respondent stated that Esole Massage involves a systematic process of applying touch and pressure to the soft tissues of the body with the goal of improving a client’s health and well-being. While Respondent may believe that there is a distinction between the method he has established and more mainstream massage therapy, there is no legally significant difference between the two.

11.

Respondent also notes that his method encompasses more elements than just physical massage as defined by the Act, such as chanting and energy work. Even so, he still practices

massage therapy, even if that massage therapy only constitutes one component of the experience he provides to his clients.

12.

Additionally, Respondent is incorrect when he states that other massage methods, such as shiatzu massage, Thai massage, or stone massage, are not considered massage therapy. To the extent that those methods involve “the application of a system of structured touch, pressure, movement, and holding to the soft tissue of the body in which the primary intent is to enhance or restore health and well-being,” they are legally considered massage therapy and would be subject to the provisions of the Act. *Id.*

13.

Respondent also rejects the contention that his use of the word “massage” in his promotional materials creates an implication that he is a massage therapist. He says that his choice of words cannot indirectly suggest that he is a massage therapist because he directly states that his practice is not massage therapy, and that he is not a massage therapist. The issue with Respondent’s argument is that his practice *is* massage therapy under the law, regardless of what he calls it.

III. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, this Court hereby **ORDERS** Respondent to **CEASE AND DESIST** from offering or performing massage services unless and until he obtains a valid license from the Georgia Board of Massage Therapy. This Cease-and-Desist Order may be enforced by Petitioner through any and all means provided by law. Respondent will be issued a fine of \$500.00 per violation of the Cease-and-Desist Order, with each day he practices in violation of the Act constituting a separate violation.

SO ORDERED, this 21st day of December, 2022.



Shakara M. Barnes
Administrative Law Judge

