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**REPORT OF BARNES & THORNBURG TO
THE OHIO STATE UNIVERSITY ON
THE MASSAGE THERAPIST INVESTIGATION**

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REPORT EXHIBIT INDEX

#	Exhibit
1	<i>In the Matter of REDACTED, M.T., Entry of Order (March 30, 2021)</i>

I. Executive summary

This investigation arises from a complaint filed on March 14, 2020, with the State Medical Board of Ohio alleging that a female licensed massage therapist was offering free therapeutic massages to members of the Ohio State University football team, using those massages as a means to initiate sexual interactions with some of the football student athletes, and then demanding payment. The investigation by the Medical Board was delayed for approximately a year, until March 4, 2021, when a Medical Board investigator first shared the complaint with the Ohio State University Police Division. After a joint interview with the massage therapist on March 10, 2021, the OSU Police Division determined that it lacked jurisdiction to investigate further because the alleged events occurred off campus and because there was no allegation of a crime committed; accordingly, they notified the OSU Office of Legal Affairs on March 11, 2021, which in turn notified the OSU Office of University Compliance and Integrity and directed them to conduct an attorney-client privileged investigation of the matter.

On March 12, OSU Compliance began investigating the matter further. Due to information obtained and the scope of the investigation, OSU decided to engage outside counsel to conduct an independent investigation into the allegations related to the massage therapist. Less than a week after receiving notification, on March 18, 2021, OSU engaged Barnes & Thornburg as Special Counsel, through the Ohio Attorney General, to conduct an independent, confidential, and attorney-client privileged investigation.

Barnes & Thornburg conducted an independent investigation. The investigation concentrated on whether any student athlete contacted by the massage therapist was a victim of a crime or other predatory behavior, whether any violations of NCAA rules occurred, and whether university employees had knowledge of the massage therapist's contact with the student athletes. Barnes & Thornburg received logistical assistance from OSU Compliance, but OSU Compliance did not interfere with Barnes & Thornburg's investigation or limit the manner or methods by which Barnes & Thornburg chose to conduct its investigation.

The investigation found that the massage therapist offered massages to OSU football student athletes via social media under the guise of having a legitimate massage therapy business but with the intent of engaging OSU football student athletes in sexual encounters. The massage therapist used whatever approach was most effective to be physically near football student athletes and to appear legitimate, including cultivating perceived friendships with individual football student athletes. Overall, the massage therapist utilized two general methods to attempt to initiate sexual encounters with the football student athletes. First, she would attempt to isolate the football student athlete to get them in a vulnerable position and then attempt to engage in a sexual encounter or in the second, she

would send out overtly sexual messages and see if she could engage their interest in a sexual encounter.

The massage therapist carried out her scheme from 2018 through 2021 (largely in off-campus housing or in hotels). She occasionally, but not always, allowed the player to pay for the first massage. She often refused to accept payment when the football student athletes attempted to pay her. Her scheme, as uncovered in the investigation, included providing or offering to provide the football student athletes with receipts as if they had paid. This was in an effort to manipulate the football student athletes into believing that she was operating a legitimate massage therapy business. In reality, the receipts rarely reflected the service, were not following normal book-keeping standards, and frequently did not reflect massage services rendered.

The investigation did not uncover any evidence that any current or former coaches or staff members for the OSU football team were aware of the massage therapist or of her contacts with the football student athletes. In addition, no University policies were violated. There were also no indications that the massage therapist pursued or even contacted student athletes from OSU sports teams other than the football team.

The massage therapist's conduct targeted OSU football student athletes who were young (ranging from 18 to early 20s), but the evidence uncovered during the investigation did not reveal that her interactions with the football student athletes rose to the level of any crimes. According to the current and former football student athletes interviewed, the sexual activities that occurred were consensual. Further, in the instances where she attempted to initiate sexual activity during a massage (e.g., where she made brief contact with their genitals while giving them massages), those football student athletes characterized the touching as incidental and stated that while it was unwanted, she stopped the inappropriate touching when the football student athletes objected.

The massage therapist had no connection to OSU, its Athletic Department, or to anyone connected to the University. The investigation found no evidence that the massage therapist is or was acting on behalf of an agent or any particular person or entity in professional or collegiate sports, much less on behalf of OSU athletics. Rather, the facts indicate that she seemed to be acting for her own sexual gratification and that she acted alone. Accordingly, there is no foundation for a finding that "extra benefits" were provided to football student athletes or that the rules addressing preferential treatment, benefits, or services apply under the NCAA bylaws.

II. Investigative facts

A. The complaint to the Medical Board, initial investigation, and suspension

The State Medical Board of Ohio received the underlying complaint over a year ago, on March 14, 2020. The complaint alleged that the massage therapist reached out to multiple NCAA football student athletes at a local university (now known to be OSU) offering to massage them, and that some of these massages turned into sexual encounters for which the woman allegedly demanded money.¹

The investigation by the Medical Board was delayed for approximately a year, until March 4, 2021, when a Medical Board investigator first shared the complaint with the Ohio State University Police Division. On March 10, 2021, a Medical Board investigator and two OSU Police Division detectives jointly interviewed the massage therapist. Before the conclusion of the interview, the detectives advised the massage therapist that she should not have any further contact with any OSU football student athletes. Subsequently, the detectives concluded that the OSU Police Division lacked jurisdiction to investigate further because the alleged events occurred off campus, and no criminal activity was alleged. The detectives notified the OSU Office of Legal Affairs on March 11, 2021, which in turn notified the OSU Office of University Compliance and Integrity and directed them to conduct an attorney-client privileged investigation of the matter.

On March 12, OSU Compliance began investigating the matter further. Based on information obtained and in light of the scope of the investigation, Barnes & Thornburg was engaged less than a week later on March 18, 2021. On March 19, 2021, the entire football team was notified that an external, independent investigation had been commenced. The football student athletes were also told to preserve all information they might have that related to the investigation, to cooperate with external investigators, and advised of support resources.

As noted above, the Ohio State University engaged Barnes & Thornburg as Special Counsel, through the Ohio Attorney General, to conduct an independent, confidential, and attorney-client privileged investigation. During the investigation, 117 current and former OSU football student athletes were interviewed, along with 44 current and former coaches and staff.

On March 22, 2021, the massage therapist surrendered her license to the State of Ohio in order to forego an investigation into the allegations that she engaged in “sexual misconduct with one or more clients” as defined in Rule 4731-

¹ Pursuant to Medical Board rules all investigative materials are confidential, including the Complaint, and not available to the public. This report generally describes the allegations while preserving the confidentiality of all parties involved and adhering to Medical Board rules.

26-01, Ohio Administrative Code, “including making inappropriate sexual comments to and having sexual interactions with massage therapy clients and/or potential clients.” *In the Matter of REDACTED, M.T.*, “Entry of Order” (March 30, 2021), attached as Exhibit A. On March 30, 2021, the Medical Board ordered that the massage therapist’s license to practice massage therapy in the State of Ohio be permanently revoked. *Id.*

B. The massage therapist’s history and interactions with OSU football student athletes

The massage therapist is 41 years old and lives about two hours northeast of OSU. She operated her massage scheme to make contact with OSU football student athletes. She appeared to be driven by her desire for physical and sexual contact with members of the OSU football team. The investigation did not uncover any evidence that she engaged in any form of extortion or other financial coercion. The investigation did not reveal that she had contact with student athletes participating in sports other than football at OSU.

The massage therapist obtained her massage therapy license in Ohio in 2009 and claims to have clients in the NFL, the NBA, the MLB, and the NHL, as well as in NCAA football. She has various social-media accounts that portray her general interest in sports, with OSU football being of particular interest. In 2017, one of her social-media accounts listed her as “Chief Sports Agent” for Overhand Pro Boxing in Cleveland, which the investigation learned purports to promote professional and amateur boxing. It is unclear how long the massage therapist worked in the area of professional and amateur boxing, but she does not currently hold a Match Maker license with the Ohio Athletic Commission for boxing promotion.

The massage therapist’s LinkedIn page shows her past massage therapy work history at various chiropractic and sports therapy clinics in the Cleveland area. Despite this history of working at various clinics, she indicated to investigators that she has been working for about the last eight to nine months exclusively as a private massage therapist. In a post on her LinkedIn page from about a year ago, she posted that while she is not associated with an “unmentioned” football team, she privately massaged almost all the starting line-up, which had been a self-professed aspiration or goal of hers since massage therapy school.

C. Initial interaction with OSU football student athletes

The investigation did not conclusively determine the football student athlete to whom the massage therapist first began offering her massage services. The first instance identified by the investigators where the massage therapist contacted an OSU football student athlete via social media offering massage therapy services

was in the fall of 2018 to SA030.² The massage therapist had given SA030 at least one massage before meeting a second football student athlete, SA029, at the off-campus housing complex where both lived.³ The massage therapist gave SA030 two or three massages in total.

The massage therapist initially sent SA029 direct messages about massage services, but then changed the tenor and suggestion of those messages from massages to sexual activities, specifically oral sex. SA029 never got a massage from her. But instead, the massage therapist pursued oral sex with him on multiple occasions.

A critical factor in the massage therapist's scheme was gaining access to the football student athletes' off-campus living environment. Therefore, the massage therapist appeared to focus her early efforts on one football student athlete, SA004, to gain acceptance and access to other members of the OSU football team.

D. The massage scheme and access to OSU football student athletes

During the massage therapist's early contacts with the OSU football student athletes, she appeared to simply inquire through her messages if the contacted football student athletes were interested in a private massage, while holding herself out as a licensed massage therapist with professional athletes as clients. However, she eventually found an unwitting resource that increased her credibility and access to the OSU football student athletes. In early 2019, the investigation showed that the massage therapist cultivated a friendship with SA004 that she used to legitimize herself as a massage therapist as she pursued sexual encounters with other OSU football student athletes.

² During the investigation, Barnes & Thornburg informed interviewees that while it would be reporting the results of its investigation, it would take reasonable measures to keep interviewees' identities confidential. This standard practice of Barnes & Thornburg is essential to the candid cooperation of interviewees. Accordingly, all identifying information (including name, class, etc.) has been withheld to protect the parties' identities. The alphanumeric combinations assigned to the people who were interviewed are random.

³ When interviewed, the massage therapist said her interactions with OSU football student athletes began about two years ago, in early 2019. She claimed that SA029 agreed to help her develop her massage therapy business. She further claimed her business grew by word-of-mouth as SA029 allegedly agreed to tell the entire team she was his massage therapist. The investigation found no evidence to substantiate these claims.

In March 2019, the massage therapist contacted SA004 indicating that she was a massage therapist working with pro athletes and a couple of his teammates, and inquiring if he wanted a massage. When SA004 asked her which teammates she worked with, the massage therapist claimed that HIPAA⁴ privacy law prevented her from disclosing names but that she would reach out to his teammate to see if she could get his permission to disclose his name. The messages between the massage therapist and SA004 do not reveal that she ever provided him with a teammate's name. At some point, the massage therapist began to routinely massage SA004 in his off-campus apartment. The massage therapist characterized their relationship as close friends. At the time, SA004 perceived a friendship with the massage therapist.

The massage therapist used the friendship she cultivated with SA004 to provide her with regular and steady access to off-campus housing where many of the football student athletes resided. Once she gained access to the building and was finished massaging SA004, she would sometimes wander the building, knocking on doors, looking for other OSU football student athletes to massage. Moreover, her association with SA004 provided her with additional acceptance and legitimacy amongst the football team and with potential referral sources that she likely would not have had but for the perceived close friendship she had cultivated with him.

The investigation revealed that at some point in 2020, the massage therapist adapted her initial outreach to the OSU football student athletes. Instead of waiting until the student athletes were an established part of the football team, the massage therapist began contacting committed recruits on National Signing Day. Several student athletes indicated receiving messages on Signing Day from a previously unknown massage therapist who claimed to be the massage therapist for the OSU Team.

The massage therapist's outreach to the student athletes also became more aggressive as time went on. She would continue to direct message them several times even if they had not responded to her initial message offering massage therapy services. In addition, the massage therapist offered one- to two-hour, full-body massages that she would provide in the student athletes' own apartments or sometimes in a hotel room in Columbus. The football student athletes could not get one-to-two hour, full-body massages through the OSU Athletic Department. Not only was she persistent in her effort to pressure the football student athletes by continually offering massage services, but she also made it convenient by offering to come to their apartments. The massage therapist's flexibility of schedule and convenience of coming to the football student athletes (even during COVID times) provided her with a lure to attract more football student athletes.

⁴ Health Insurance Portability and Accountability Act of 1996 (HIPAA).

The massages were the means by which the massage therapist would introduce the prospect of sexual contact. When a football student athlete rejected the massage therapist's attempt to engage in sexual activity, her offers of massage therapy generally ceased. For example, SA008 told investigators that the massage therapist contacted him offering him a free massage. When he did not immediately respond, she got more aggressive in her follow up. The massage therapist contacted SA008 multiple days apart (sometimes a month apart), without SA008 responding. One day when he got back to his apartment, the massage therapist was massaging his roommate. Despite his previous lack of response, she again asked him if he wanted a massage and he agreed to get one. During the massage, she tried to touch his genitals, which SA008 was uncomfortable with. SA008 did not receive any further massages.

The investigation also found that part of the massage therapist's scheme appeared to be either offering massages to the football student athletes for free or letting the football student athletes pay for the first one, and then providing later massages for free. She appeared to use whatever approach was most effective with the football student athletes. Often the football student athletes indicated they would try to pay the massage therapist but she would refuse, and then the football student athletes were confused as to how to respond. But this appears to be part of her overall manipulation. She would refuse to accept payment, many times with a platitude "we're cool," and then she would also provide some of the football student athletes with receipts as if they had paid. The massage therapist's actions were contrived to deceive the football student athletes into a false sense that she was operating a legitimate massage therapy business. There was, however, one football student athlete who was an outlier, because he served an essential purpose for the massage therapist's scheme by unwittingly legitimizing her massage therapy services for other football student athletes. During his interview, SA004 indicated he paid \$100 for each of the first three or four massages, but then the massage therapist gave him subsequent massages for free. SA004 estimated he received 50 to 60 massages in total. As discussed above, the massage therapist used SA004 to gain access to other football student athletes in her pursuit of sexual encounters.

1. Sexual interactions

The investigation conducted 117 interviews with current and former OSU football student athletes who were all questioned about the massage therapist and her interactions with the football team. During these interviews, the football student athletes were forthcoming even though they were asked to discuss and describe, sometimes in great detail, personal situations that revealed them to be

vulnerable in many aspects.⁵ The investigation determined that a total of 83 OSU football student athletes either had no knowledge or interaction with the massage therapist (68), or very limited knowledge of the massage therapist (15) prior to their investigatory interview.⁶

The investigation determined that a total of 34 football student athletes had knowledge of the massage therapist: 9 football student athletes either interacted with her over social media or directly knew about her from other football student athletes, 20 football student athletes received massages only, and 5 football student athletes acknowledged during interviews that they engaged in sexual activities with the massage therapist.⁷ Virtually all of the football student athletes who were massaged by the massage therapist only received between 1-3 massages. The football student athletes ranged in age from 18 to early 20s when the sexual encounters with the massage therapist occurred. All of the football student athletes who engaged in sexual encounters described them as consensual. In most situations, the massage therapist initially made her offer of massage therapy to the OSU football student athletes via social media, then often would send several follow-up messages. Some of the messages merely had sexual undertones, but in other instances the messages were both sexually explicit and included naked pictures.

The massage therapist used massages as a means to gauge whether a football student athlete was interested in sex, and as noted above she stopped pursuing anyone who did not respond to her aggressive tactics. Since the vast majority of football student athletes solicited by the massage therapist either did not respond to her sexual advances or did not reply to her offer of a massage, she stopped pursuing most OSU football student athletes and concentrated on a select few.

More generally, the massage therapist carried out her scheme through social media messages by sending sexually explicit photos and messages to football

⁵ Barnes & Thornburg was sensitive to the toll it took on many of the football student athletes to be questioned about and discuss these events, a toll which was physically manifested in some interviews. In conjunction with OSU Compliance, the football student athletes were reminded of the counseling resources and support services that are available to them through the University and were also encouraged to reach out for assistance when needed.

⁶ Examples of very limited knowledge include recognizing her when shown a picture during the investigatory interview or overhearing her first name in passing.

⁷ The terms "sexual activities" and "sexual encounters" are purposefully used in this Report as the investigation revealed examples ranging from oral sex to sexual intercourse. In addition, two football student athletes in this category also received massages.

student athletes. The football student athletes recounted that, consistent with her scheme, the massage therapist, sent multiple messages offering massage services – even when the football student athletes had not responded to her first inquiry. She would often times make references to their anatomy and even sent naked pictures to a few football student athletes.

There were two general methods used by the massage therapist to attempt to initiate sexual encounters with the football student athletes. In both methods she was attempting to utilize her massage therapy business with the football student athletes. First, the massage therapist would get the football student athlete alone with her in a vulnerable position and then attempt to engage in a sexual encounter or in the second, she would send out overtly sexual messages and see if she could engage their interest in a sexual encounter.

When interviewed by investigators, the massage therapist admitted to having sexual encounters with two football student athletes. However, during her interview she sought to minimize the effects of her own actions by stating that she sought to maintain a distinction between her “professional” and “sexual” activities. This rationalized differentiation combined with her vague recounting of details with individual football student athletes, made the massage therapist’s statements to investigators confusing, incomplete and unreliable.

2. Unwanted, inappropriate touching under the guise of massage therapy

As discussed above, the massage therapist used her massage therapy services as a pretext to become part of the football student athletes’ lives in an attempt to engage in a sexual encounter with them. When interviewed, many football student athletes described her as touching their genital area either accidentally or in an inappropriate way during massages. None of them reported the incidents to law enforcement or OSU staff, particularly because the massage therapist stopped when the football student athletes objected. Several of the football student athletes remarked that the contact was unprofessional and seemed “weird.”

SA002 indicated that when he had his first massage from the massage therapist, she told him to get fully naked and put a sheet over himself. He said that at one point during the massage, the massage therapist slipped and accidentally touched him near his genital area. SA002 said that the massage therapist apologized and that this was the only time it happened. SA002 also indicated that he received another massage from her after that incident.

SA017 stated that he received one massage from the massage therapist, in approximately July 2020. During the massage, according to SA017 she purposely brushed up against his genitals a couple of times and would say, “my bad,” each time in response to the touching. He thought the massage was not as professional

as a massage he had previously received. He did not talk with anyone else about it afterwards, but he also did not refer her to anyone because of his experience.

SA018 heard about the massage therapist from SA004, and then she knocked on his door one day offering a massage. He said no at that time, but maybe some other time. At some other date, the massage therapist returned to the apartment complex and offered SA018 a massage. SA018 said she set up her massage table in his living room and told him to take off all his clothes and to lie down with a sheet as a covering. Before the massage, she asked if he had any alcohol, which struck him as weird. During the hour-and-a-half massage, SA018 said she came close to his genitals several times. He said, "Hey," when this happened and gave her a look to indicate that she did not have permission to touch him there. In his opinion, if he had not reacted the way he did, she would have continued and touched his genitals and it may have led to oral sex. When he later told his roommate, SA008, what had happened, SA008 said that the same thing had happened to him and that SA008, too, had put a stop to her advances.

Two other football student athletes also reported similar incidents with the massage therapist.

III. Investigative findings

A. No direct evidence of force or sex with a minor, but evidence of a calculated effort to harass and get close to OSU football student athletes

The facts uncovered do not indicate that the massage therapist forced sexual contact on any OSU football student athletes or had sexual contact with any minor OSU football student athletes. Nevertheless, the circumstances in this case leads to the recommendation that it would be prudent to consult with prosecutors. There is no evidence to suggest that the massage therapist used means such as physical force or drugging to initiate sexual contact.⁸ In addition, there is no evidence that she had sexual contact with a minor. Ohio sexual-exploitation laws provide that a professional using a position of trust or power may be as culpable as someone using force, but while those laws include physicians and mental health providers as occupations holding such positions of trust or power, they do not list licensed massage therapists as a covered position. In other words, while the massage therapist used her position as a certified, licensed massage therapist to manipulate and aggressively influence young adults for sexual benefit, she does not fall within the expressly enumerated occupations covered by Ohio sexual-exploitation laws. Additionally, while the massage therapist's use of the internet to develop sexual encounters with OSU football student athletes did appear to reach the level of

⁸ Which are criminal elements under Ohio laws.

harassment with some of the young adults, there were no reports of substantial emotional distress received during the investigation.

The massage therapist's actions were deliberative and calculating in order to get close to OSU football student athletes and appear to have been motivated by a desire to engage in sexual activities with them. For example, she would present an appearance of legitimacy by stating on social media that she works with professional sports teams (not just professional athletes), implying that the teams and not the individuals are her clients. She also made this deceptive claim to several OSU football student athletes, stating that she massaged specific professional athletes who played for professional teams in the NFL and the NBA, likely in an effort to validate her offer of massage therapy sessions and with the understanding that playing professional football was a realistic goal for many of those she pursued. At the same time she stated to the football student athletes that HIPAA prevented her from revealing clients' names which effectively bolstered her credibility by indicating a level of professionalism and simultaneously stymied efforts to question her claims. Yet, days later in direct messages to some of these OSU football student athletes she would often ignore her earlier admonitions and use the first and last name of OSU football student athletes, not hesitating to indicate that they were her clients—which would be a HIPAA violation without consent from those clients.

Moreover, her actions with respect to SA004 reveal the calculated manner in which she carried out her scheme. She ingratiated herself into the life of SA004 in multiple aspects, many of which he was unaware, and then used her association with him to get access to other OSU football student athletes. The massage therapist attempted to become friendly with SA004's roommate, knocked on the doors of the other football student athletes on SA004's floor to offer massages, and even contacted SA004's family. SA004 was aware that the massage therapist had spoken with members of his family at some point, but unbeknownst to him she had sent one family member messages of a sexual nature. SA004 had no knowledge that the massage therapist was sending these messages to his family members, while pretending to be his friend.

The massage therapist's comments and behavior during her interview with Barnes & Thornburg Investigators clearly highlight her scheme and that she was calculating and deceptive in how she interacted with the OSU football student athletes. Specifically, her responses reveal that she thought through how she could get close to the football student athletes. When asked about her interaction with them, she alleged a deep concern for the OSU football student athletes who were "clients," and she referred to them as "kids" or "her boys." Then, she produced a three-ring binder that contained the NCAA rules, in an apparent attempt to bolster her assertion of concern. However, when asked if she kept an appointment book, she said "no" and that she kept all the information on her "clients" in her head. She was then asked if she had any other documentation of her business, and she

provided a receipt book. As discussed above, the receipt book does not meet ordinary book-keeping standards and is inconsistent with multiple statements made by the OSU football student athletes who were candid in their interviews, despite the difficult topic. It also appeared that many of the receipt slips had been recently completed.⁹

Finally, the massage therapist also took steps to cover up her conduct. After being jointly interviewed on March 10, 2021, OSU detectives told the massage therapist not to have any further contact with any OSU football student athletes. Despite this instruction, on March 17, 2021, the massage therapist contacted at least seven OSU football student athletes and told them to erase all proof of any communications they had with her. She sent one football student athlete a message around March 17, 2017, asking him to call her and tell her how his interview went. Then, after Barnes & Thornburg investigators spoke with the massage therapist on April 1, 2021, it appears she felt concerned and contacted another OSU football student athlete to inquire about what he told the investigators.

While none of the OSU football student athletes expressed an interest in pressing criminal charges, based on the facts and circumstances discovered in this matter, it is, nevertheless, recommended that prosecutors be consulted.

B. No University awareness

The investigation, which included interviewing 117 current and former OSU football student athletes and 44 current and former staff and coaching members, did not reveal any information suggesting that any player informed OSU employees of the massage therapist's conduct or that any OSU employees were otherwise aware of the massage therapist and her behavior. The investigation considered mandatory reporting obligations of the University, but the facts learned did not implicate any such requirements. Given that OSU staff were not aware of the massage therapist's interactions with the football student athletes, no University policies were violated.

Furthermore, OSU coaching staff and trainers provided the football student athletes with guidance intended to protect them from being exploited, as discussed more fully below. For example, position coaches often had meetings with their football student athletes, sometimes even one-on-one, warning them about the dangers of people offering them free things or wanting to be in their lives for no apparent reason. These same coaches and training staff often checked in with football student athletes and also talked amongst themselves (the staff) weekly in an effort to maintain physically and emotionally healthy football student athletes.

⁹ The massage therapist allowed the investigators to retain the receipt book.

C. No NCAA implications of the massage therapist's interactions with OSU football student athletes

The investigation included reviewing lists of donors to the OSU Athletic Department, OSU Booster Clubs, and lists of individuals who are or have been associated with the OSU football program. There is no evidence that the massage therapist has ever had any relationship with the OSU Football Program or the staff and employees of OSU, including its Athletics Department. The investigation, which included interviews of 44 staff as well as the coaching staff, showed that the massage therapist and her business were unknown to OSU. Such knowledge and relationship is a touchstone for NCAA involvement and is absent here.

The investigation also found a robust and thorough compliance program, complemented by coaches and staff who interact with football student athletes about real-life situations. All football student athletes are required to take annual compliance training that is tailored to their specific program needs (*i.e.*, NCAA regulations regarding extra benefits, drug testing, gambling) and to take a related quiz before they are issued their gear in the fall. In addition, OSU Compliance staff provide situational reminders to the football student athletes that are delivered through various platforms such as panel discussions with former football student athletes, email reminders, compliance jeopardy, specific educational sessions on sexual violence training, dealing with law enforcement, and a program called "Real Life Wednesdays" that strives to provide the football student athletes with additional tools to survive life after college. The OSU guidance informed the football student athletes that they should not receive any benefit not generally available to the public. Further, a September 3, 2019 compliance program specifically mentioned that any private massage therapists engaged outside the OSU athletic program needed to be approved by the OSU training staff.¹⁰ The compliance offerings of OSU are wide ranging and cover all relevant subject matters. The incident that occurred with the massage therapist was not due to a lack of compliance training for the football student athletes. The OSU compliance program was found to be fulsome in its efforts to protect the physical and emotional well-being of its football student athletes, in addition to protecting against those who wish to take advantage of the football student athletes for their own gain.

IV. Barnes & Thornburg's investigative methods

The investigation began on March 18, 2021, when Barnes & Thornburg was appointed as Special Counsel to conduct a fact-finding investigation. The OSU Office of Legal Affairs authorized Barnes & Thornburg to interview student

¹⁰ During the course of the investigation, one student athlete, SA027, was forthcoming and indicated that he had received an unrelated service without paying full market value. Accordingly, such instance will need to be evaluated by OSU Compliance.

athletes, current and former OSU personnel, and other individuals who might have relevant information and generally conduct its own, independent investigation without any impediments.

After this appointment, the Barnes & Thornburg team received a briefing on March 22 from OSU Compliance regarding relevant work completed to-date and other resources that were available for the investigative team's use. OSU Compliance also provided Barnes & Thornburg with relevant documents relating to the work it had completed, recent rosters for the football team, and contact information for other current and former football personnel as well.

In the course of the investigation, Barnes & Thornburg interviewed a number of relevant individuals or groups of individuals, including:

- all members of the OSU football team;
- all football personnel (*e.g.*, football coaches, strength coaches who work with the football team, and graduate assistants);
- certain former football staff;
- certain former OSU football student athletes; and
- the massage therapist.

Barnes & Thornburg requested and received information pertaining to relevant compliance program offerings provided to the OSU football team.

V. Conclusion

The massage therapist carried out a scheme for what appeared to fulfill her personal infatuation with Ohio State football student athletes. She had no connection to the Athletics Department or the University. The apparent purpose of the scheme was to engage in sexual encounters with OSU football student athletes. No coaches or staff had any knowledge of the massage therapist or her scheme. No deficiencies were detected in the OSU compliance program to protect against such schemes or other threats to the physical safety of its football student athletes. Although there was no determination of a criminal violation, it nevertheless would be prudent to refer the massage therapist's activity to a prosecutor for consideration.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'Roscoe C. Howard, Jr.', with a long horizontal flourish extending to the right.

Roscoe C. Howard, Jr.
David DeVillers
C. David Paragas
Meena T. Sinfelt
Special Counsel to
The Ohio State University
BARNES & THORNBURG LLP

EXHIBIT 1

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

*

ENTRY OF ORDER

On March 22, 2021, [REDACTED], executed a Surrender of her license to practice massage therapy in Ohio with consent to permanent revocation, which document is attached hereto and fully incorporated herein.

Wherefore, upon ratification by the Board of the surrender, it is hereby ORDERED that Certificate No. [REDACTED] authorizing [REDACTED], to practice massage therapy in the State of Ohio be permanently REVOKED.

This Order is hereby entered upon the Journal of the State Medical Board of Ohio for the 30th day of March 2021, and the original thereof shall be kept with said Journal.

Kim G. Rothermel MD/KEA per
Kim G. Rothermel, M.D. *authorization*
Secretary

(SEAL)

March 30, 2021
Date

**STATE OF OHIO
THE STATE MEDICAL BOARD
PERMANENT SURRENDER OF CERTIFICATE
TO PRACTICE MASSAGE THERAPY**

Do not sign this agreement without reading it. An individual who permanently surrenders a certificate issued by the Board is forever thereafter ineligible to hold a certificate to practice or to apply to the Board for reinstatement of the certificate or issuance of any new certificate. You are permitted to be accompanied, represented and advised by an attorney, at your own expense, before deciding to sign this voluntary agreement.

I, [REDACTED] am aware of my rights to representation by counsel, the right of being formally charged and having a formal adjudicative hearing and do hereby freely execute this document and choose to take the actions described herein.

I, [REDACTED] do hereby voluntarily, knowingly, and intelligently surrender my certificate to practice massage therapy, License [REDACTED], to the State Medical Board of Ohio [Board], thereby relinquishing all rights to practice massage therapy in Ohio.

I understand that as a result of the surrender herein I am no longer permitted to practice massage therapy in any form or manner in the State of Ohio.

I agree that I shall be ineligible for, and shall not apply for, reinstatement or restoration of a certificate to practice massage therapy License [REDACTED] or issuance of any other certificate pursuant to the authority of the State Medical Board of Ohio, on or after the date of signing this Permanent Surrender of Certificate to Practice Massage Therapy. Any such attempted reapplication shall be considered null and void and shall not be processed by the Board.

I hereby authorize the State Medical Board of Ohio to enter upon its Journal an Order permanently revoking my certificate to practice massage therapy, License [REDACTED], in conjunction with which I expressly waive the provision of Section 4731.22(B), Ohio Revised Code, requiring that six (6) Board Members vote to revoke said certificate, and further expressly and forever waive all rights as set forth in Chapter 119., Ohio Revised Code, including but not limited to my right to counsel, right to a hearing, right to present evidence, right to cross-examine witnesses, and right to appeal the Order of the Board revoking my certificate to practice massage therapy.

I, [REDACTED] hereby release the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

This document shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. I, [REDACTED] acknowledge that my social security number will be used if this information is so reported and agree to provide my social security number to the Board for such purposes.

I stipulate and agree that I am taking the action described herein in lieu of further investigation pursuant to Section 4731.22(B)(20), Ohio Revised Code, "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any

provisions of this chapter or any rule promulgated by the board," to-wit "Prohibitions," Rule 4731-26-02, Ohio Administrative Code, related to engaging in sexual misconduct with one or more clients as defined in 4731-26-01, including making inappropriate sexual comments to and having sexual interactions with massage therapy clients and/or potential clients.

EFFECTIVE DATE

It is expressly understood that this Permanent Surrender of Certificate is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below. Further, I specifically acknowledge that the electronic transmission of a scanned or photostatic copy of any executed signature to this Permanent Surrender of Certificate, upon being received by the Board, shall be deemed to have the full legal force and effect as the original.

[Redacted Signature]

Kim G Rothermel MD/ KGA

KIM G. ROTHERMEL, M.D.
Secretary

Per authorization

3/22/21
DATE

3/30/21
DATE

N/A
Attorney for [Redacted]

Bruce R. Saferin DPM/
BRUCE R. SAFERIN, D.P.M.
Supervising Member

KGA Per authorization

DATE

3/30/21
DATE

Cheryl D. Pokorny
CHERYL D. POKORNY
Enforcement Attorney

3/23/21
DATE