

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CAROL RANGLE GILMORE,)
)
 Petitioner,)
)
 vs.) Case Nos. 97-4400
) 98-1344
 DEPARTMENT OF BUSINESS AND)
 PROFESSIONAL REGULATION, BOARD OF)
 MASSAGE THERAPY,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on May 20, 1998, at Tampa, Florida, before Richard A. Hixson, a duly designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Carol Rangle Gilmore, pro se
520 107th Avenue North
Naples, Florida 34108

For Respondent: Lee Ann Gustafson, Esquire
Department of Legal Affairs
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUES

The issues for determination in these consolidated cases are whether Petitioner's applications for approval as a continuing education provider should be approved.

PRELIMINARY STATEMENT

On July 10, 1997, Respondent, Board of Massage Therapy

(Board), denied the initial application of Petitioner, Carol Rangle Gilmore, for approval as a continuing education provider. Petitioner's initial application sought approval as a continuing education provider for several courses including professional ethics, manual lymph drainage, reflexology, and aromatherapy. Petitioner also initially sought approval for a course entitled Understanding Muscle Balance; however, Petitioner no longer offers this course, and is not presently seeking approval for this course. Subsequent to the Board's denial of her initial application, Petitioner filed a timely request for formal hearing which was referred to the Division of Administrative Hearings on September 17, 1997. This matter was designated as Case No. 97-4400, and set for hearing to be held on January 16, 1998.

On January 9, 1998, the Board denied Petitioner's second application for approval as a continuing education provider. Petitioner's second application pertained to courses for sports massage and HIV/AIDS. Petitioner filed a timely request for formal hearing, which was referred to the Division of Administrative Hearings and designated as Case No. 98-1344. Pursuant to an agreed motion for continuance and consolidation, the above-referenced cases were consolidated and rescheduled for hearing on May 20, 1998.

At hearing Petitioner testified in her own behalf and presented eight exhibits which were received in evidence. Respondent presented the testimony of one witness, Joe R. Baker,

Jr., Executive Director of the Board of Massage Therapy, and submitted five exhibits which were received in evidence. At the conclusion of the hearing the parties requested and were granted leave to file their proposed recommended orders fifteen days subsequent to the filing of the transcript of the hearing. On June 1, 1998, Petitioner filed a letter stating her position with regard to the matters presented at hearing. The transcript of the hearing was filed on June 5, 1998. On June 17, 1998, Respondent filed a proposed recommended order.

FINDINGS OF FACT

1. Petitioner, Carol Rangle Gilmore, is a licensed massage therapist in the State of Florida. Petitioner also holds a certificate to practice massage therapy which was issued by the city of San Diego, California.

2. On February 12, 1991, Petitioner received a certificate from the Mueller College of Holistic Studies in San Diego, California, stating that Petitioner had completed the prescribed course of training in anatomy, physiology, and human relations, and passed a creditable examination in the art of massage. Petitioner completed 9 credit hours in anatomy, 9 credit hours in physiology, 9 credit hours in history, theory and ethics, and 75 credit hours in practice and demonstration, for a total of 100 credit hours of instruction at Mueller College of Holistic Studies. The certificate of completion issued to Petitioner by Mueller College of Holistic Studies was as a Massage Technician.

3. Mueller College of Holistic Studies was not at the time of the issuance of Petitioner's certificate of completion in 1991, nor is Mueller College of Holistic Studies now, a Board-approved massage school for purposes of licensure in Florida under Rule 64B7-32.003, Florida Administrative Code.

4. On September 16, 1992, Petitioner received a certificate of completion of a course of 1000 hours of holistic studies from the Desert Resorts School of Soma Therapy (Desert Resorts) in Desert Hot Springs, California. Petitioner's certificate of completion from Desert Resorts states that the course of study consisted of a 100-hour massage technician certificate course (which was credited from Mueller College), and 900 hours of "postgraduate work" in anatomy, physiology, acupressure, nutrition, business ethics, history, theory, and practice of both Eastern and Western forms of massage, specializing in specific forms used in various types of bodywork. Petitioner's transcript from Desert Resorts reflects the 100 hours of credit for her massage technician course from Mueller College, and 48 credit hours in each of the following subjects: Acupressure I; Acupressure II; Advanced Massage I (Aromomatherapy, Manual Lymph Drainage); Advanced Massage Therapy II (Sports Massage); Anatomy & Physiology; Kinesiology; Communication Skills & Ethics; Body/Mind Integration; and Health and Nutrition. Additionally, Petitioner's transcript from Desert Resorts reflects 468 credit

hours in Assessment & Remediation. Petitioner's certificate from Desert Resorts designated her a holistic health practitioner.

5. Desert Resorts School of Soma Therapy was not at the time of the issuance of Petitioner's certificate of completion in 1992, nor is Desert Resorts now, a Board-approved massage school for purposes of licensure in Florida under Rule 64B7-32.003, Florida Administrative Code.

6. Subsequent to completion of her studies at Mueller College of Holistic Studies and Desert Resorts School of Soma Therapy, Petitioner applied for licensure as a massage therapist in the State of Florida. Rule 64B7-32-002, Florida Administrative Code, requires graduation from a Board-approved massage school for licensure eligibility in Florida. Pursuant to Rule 64B7-32.003, Florida Administrative Code, the minimum requirements for Board approval of a massage school includes 500 classroom hours of coursework as follows: 150 hours in Anatomy and Physiology; 225 hours in Basic Massage Theory and Clinical Practicum; 10 hours in Florida Statutes/Rules and History of Massage; 15 hours in Theory and Practice of Hydrotherapy; 97 hours in Allied Modalities; and 3 hours in HIV/AIDS. Because neither Mueller nor Desert Resorts were Board-approved massage schools, Petitioner, in order to meet Florida licensure eligibility requirements, was required to transfer credit through a massage school approved by the Board. To meet Florida

requirements, Petitioner was further required to complete coursework in HIV/AIDS, Florida statutes and rules, and the history of massage therapy. Petitioner successfully completed the Florida licensure eligibility requirements by receiving further instruction at the Core Institute in Tallahassee, Florida, a Board-approved massage school, and by completing her HIV/AIDS course at another Board-approved massage school in Atlanta, Georgia. Petitioner's coursework from Mueller and Desert Resorts was transferred through, and included in, her credited hours for licensure eligibility in Florida by completion of her instruction at the Board-approved massage schools she attended in Florida and Georgia.

7. As indicated above, subsequent to her licensure as a massage therapist in Florida, Petitioner applied to the Board for approval as a continuing education provider for six courses in the following subjects: professional ethics, manual lymph draining, reflexology, aromatherapy, sports massage, and HIV/AIDS. For several years Petitioner has been preparing and offering correspondence or home study courses related to massage therapy under the corporate name Tranquility, Inc. Petitioner's correspondence courses are used as part of the curriculum of Applied Kinesiology Studies, a school of massage/bodywork in Reston, Virginia. Applied Kinesiology Studies is not a Board-approved massage school. Petitioner's home study courses are also used as part of the continuing education program at the

Alternative Conjunction, which is a Board-approved school of massage in Lemoyne, Pennsylvania.

8. The requirements for approval as a continuing education provider are set forth in Rule 64B7-28.010, Florida Administrative Code, as more fully set out below. There is no dispute that Petitioner is ineligible for approval as a continuing education provider under Rule 64B7-28.010(2)(c)1., 2.a., or 2.b., Florida Administrative Code, in that Petitioner does not hold a bachelor's degree from a college or university accredited by the Department of Education, has not had a minimum of two years teaching experience in the subject matter to be offered, and has not taught the courses three times in the past two years before a professional convention, professional group, or at a massage therapy school. Although Petitioner's correspondence courses are offered through at least two massage therapy schools, Petitioner does not serve on the faculty of any massage therapy school, and does not present classes of instruction at any massage therapy school.

9. The dispute in this matter arises in regard to the application of Rule 64B7-28.010(2)(c) 2.c., Florida Administrative Code, which allows for approval as a continuing education provider if a person has graduated from a school of massage which has equivalency to a Board-approved school, has completed three years of professional experience in the practice of massage, and "has completed specialized training in the

subject matter and has a minimum of two years of practical experience in the subject." Petitioner takes the position that her coursework at Desert Resorts, which includes 900 hours of "postgraduate work," constitutes "specialized training" for the purposes of approval as a continuing education provider under Rule 64B7-28.010, Florida Administrative Code. Respondent takes the position that Petitioner's "postgraduate" coursework at Desert Resorts in California was not specialized training, but primarily basic massage training. Moreover, Respondent contends that Petitioner's training was not conducted at a Board-approved massage school, and the credit for this training was already considered as part of the fulfillment of Petitioner's basic licensure eligibility requirements which was afforded Petitioner by the Board approved schools she attended in order to obtain licensure in Florida.

10. A comparison of the educational requirements for licensure in Florida found in Rule 64B7-32.003, Florida Administrative Code with the coursework completed by Petitioner at Mueller College and Desert Resorts Schools shows that:

(a) Petitioner completed 75 hours of practice and demonstration at Mueller College and 468 hours of assessment and remediation at Desert Resorts, a combined 543 hours which correspond to the requirements in basic massage theory and clinical practicum. The transcript shows that 318 of the 500

hours Petitioner completed in excess of the Florida minimum requirements were in clinical practicum, and not in the subjects in which Petitioner seeks specialized training designation and continuing education provider approval.

(b) Petitioner's training in lymphatic systems is part of the Florida requirement for 150 hours of study in anatomy and physiology, and is not specialized training.

(c) The coursework credited by Desert Resorts School to meet the requirement of 150 hours in anatomy and physiology does not total 150 hours, but 109 hours as follows: Massage Technician 13 hours; Anatomy and Physiology 48 hours; Advanced Massage/Active 48 hours. Accordingly, when Petitioner's credits were transferred to a Florida approved massage school, additional credits were needed to meet the Florida anatomy and physiology requirements, which Petitioner would have had to take at the Core Institute although her transcript from Core was not submitted.

(d) 144 hours coursework taken at the Desert Resorts School are not equivalent to any of the Florida requirements, and include 48 hours of study in each of the following: communication skills and ethics, body/mind integration, and health and nutrition. None of these courses relate to the six topics of continuing education courses for which Petitioner seeks approval, and are therefore irrelevant.

(e) Of the 500 excess hours of study taken by Petitioner at Desert Resort, 462 of those hours do not constitute advanced or

specialized training in manual lymph drainage, aromatherapy, sports massage or HIV/AIDS. There is nothing on the transcripts that indicated any study in reflexology, for which Petitioner seeks approval as a continuing education provider and there is no indication from the transcript that reflects study in HIV/AIDS.

(f) The only training Petitioner has demonstrated in HIV/AIDS is the continuing education courses necessary to renew her license.

11. The documentation Petitioner provided does not demonstrate any specialized training in addition to the transcripts from which she was granted initial licensure in Florida, and there is no evidence other than what was reflected on Petitioner's transcripts in the areas of manual lymph drainage, relexology, aromatherapy, or sports massage.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction of the parties and the subject matter of this cause, pursuant to Section 120.56(5), Florida Statutes.

13. Rule 64B7-28.010(2)(c), Florida Administrative Code, requires that approved continuing education programs be instructed by a person who meets at least one of the following criteria:

1. Holds a minimum of a bachelor's degree from a college or university which is accredited by a regional accrediting body recognized by the U.S. Department of Education or a substantially equivalent accrediting body of a foreign sovereign

state, with a major in a subject directly related to the content of the program to be offered, or

2. Has graduated from a school of massage or an apprenticeship program which has a curriculum equivalent to requirements in this state and was approved by a state licensing authority, a nationally recognized massage therapy association, or a substantially equivalent accrediting body, or the Board, and has completed three years of professional experience in the practice of massage, and

(a) Has, within the last five years of practical experience, had a minimum of two years teaching experience in the subject matter to be offered, or

(b) Has taught the same courses on this approved subject a minimum of 3 times in the past 2 years before a professional convention, professional group or at a massage therapy school, or

(c) Has completed specialized training in the subject matter and has a minimum of two years of practical experience in the subject, or

3. Is licensed as a massage therapist in another state or foreign sovereign state having standards of education or apprenticeship training substantially similar to or more stringent than those required for licensure in Florida and has practiced massage therapy for a minimum

of 10 years teaching experience in the subject matter to be offered, or

a. Has, within the last five years of practical experience, had a minimum of two years teaching experience in the subject matter to be offered, or

b. Has taught same courses on this approved subject a minimum of 3 times in

the past 2 years before a professional convention, professional group or at a massage therapy school, or

c. Has completed specialized training in the subject matter and has a minimum of two years of practical experience in the subject, or

4. Has taught at a school of massage which has a curriculum equivalent to requirements in this state and was approved by a state licensing authority, a nationally recognized massage therapy association, or a substantially equivalent accrediting body, or the Board for a minimum of two years, and

a. Has, within the last five years of practical experience, had a minimum of two years teaching experience in the subject matter to be offered, or

b. Has taught the same courses on this approved subject a minimum of 3 times in the past 2 years before a professional convention, professional group or at a massage therapy school, or

c. Has completed specialized training in the subject matter and has a minimum of two years of practical experience in the subject.

14. For courses in areas other than massage theory, history or techniques, Rule 64B7-28.010(2)(d) requires the instructor to meet at least one of the following criteria:

1. Holds a minimum of a bachelor's degree from a college or university which is accredited by a regional accrediting body recognized by the U.S. Department of Education or a substantially equivalent accrediting body of a foreign sovereign state, with a major in a subject directly related to the content of the program to be offered, or

2. Has, within the last five years of practical experience, had a minimum of two years teaching experience in the subject matter to be offered, or

3. Has taught the same courses on this approved subject a minimum of 3 times in the past 2 years before a professional convention, professional group or at a massage therapy school, or

4. Has completed specialized training in the subject matter and has a minimum of two years of practical experience in the subject.

15. Petitioner has the burden of establishing entitlement to approval as a continuing education provider. Golfcrest Nursing Home v. Agency for Health Care Administration, 662 So. 2d 1330 (Fla. 1st DCA 1995); Young v. Department of Community Affairs, 625 So. 2d 831 (Fla. 1993).

16. Petitioner has not established her entitlement to approval as a continuing education provider. Petitioner's training in four of the areas for which she seeks approval, professional ethics, manual lymph drainage, aromatherapy, and sport massage was taken as part of her basic massage therapy instruction at a school not approved by the Board, and cannot be considered specialized training under Rule 64B7-28.010, Florida Administrative Code. There is no indication of specific training in reflexology. Petitioner's instruction in HIV/AIDS (the sixth subject), although credited from a Board approval school, was taken to meet Florida licensure eligibility requirements, and likewise cannot be considered specialized training under

Rule 64B7-28.010, Florida Administrative Code.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that Respondent enter a Final Order denying Petitioner's request for approval as a continuing education provider.

DONE AND ENTERED this 6th day of July, 1998, in Tallahassee, Leon County, Florida.

RICHARD A. HIXSON
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847

Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of July, 1998.

COPIES FURNISHED:

Carol Rangle Gilmore, pro se
520 107th Avenue North
Naples, Florida 34108

Lee Ann Gustafson, Esquire
Department of Legal Affairs
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

Lynda L. Goodgame
General Counsel
Department of Business and
Professional Regulation
1940 North Monroe Street

Tallahassee, Florida 32399-0792

Joe Baker, Executive Director
Board of Massage
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0792

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.