

STATE OF FLORIDA  
DEPARTMENT OF HEALTH  
BOARD OF ACUPUNCTURE

Final Order No. DOH-07-2806-fg-MQA  
FILED DATE - 12-26-07  
Department of Health  
By: Rachel [Signature]  
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

v.

Case No. 2004-27932  
DOAH CASE NO. 06-4117 PL

ELHAM KHARABI, A.P.

Respondent.

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**FINAL ORDER**

This matter came on for consideration by the Board of Acupuncture at its duly noticed meeting on December 7, 2007 in Ft. Lauderdale, Florida, for consideration of the Recommended Order entered by the Administrative Law Judge after a 120.57(1), F.S., proceeding at the Division of Administrative Hearings, the sixteen exceptions filed by the Respondent and the Responses thereto filed by the Petitioner, and Petitioner's Motion for Costs.

The Board was supplied the complete file, including the transcript of the hearing, the Administrative Complaint, the Recommended Order of the Administrative Law Judge, the Exception of the Petitioner and Response of the Petitioner, Petitioner's Motion for Costs and Objections thereto filed by the Respondent.

The Parties made brief opening statements.

**Rulings on the Exceptions**

1. As a threshold matter, the Board, on advice of council, reviewed each exception to determine whether they were required to rule on the exception under Section 120.57(1)(k),

Florida Statutes. After that review it was determined that the was not required to rule on the following exceptions 1, 2, 3, 4, 5, 6, 7, 8, 9, 13, 14, and 15, because of failures to (a) Identify the disputed portion of the Order by page or paragraph, (2) Failure to identify a legal basis for the exception or (3) Failure to include appropriate and specific citations. The Board voted to decline to consider the Exceptions which did not meet the threshold for consideration.

2. The Board then considered the remaining Exceptions, numbered 10, 11, 12 and 16, individually. Each party was given an opportunity to address the Board on its position with regard to the Exception.

3. As regards Exception 10, The Board determined that there was competent substantial evidence in the record to support the finding that Luis Yllanee was told about the incident two days after the incident.

4. As regard Exception 11, the Board determined that there was competent substantial evidence to support the ALJ's finding .

5. As regards Exception 12, the Board determined that there was competent substantial evidence to support the ALJ's reliance upon the testimony of Dr. Garcia rather than that of Dr. Haber.

6. As regards Exception 16, the Board determined that there was competent substantial evidence contradicting the testimony of the Respondent and supporting the Factual Finding that the violation occurred.

#### **Ruling on the Recommended Order**

Having declined to rule on twelve of the Exceptions, and found competent substantial evidence to support the findings of the Administrative Law Judge on the remaining four Exceptions, the Board:

7. Adopted the Facts found by the Administrative Law Judge in his Recommended Order as its Findings of Fact. The Recommended Order is attached hereto as Exhibit "A," and adopted and incorporated by reference herein.

8. Adopted the Conclusions of Law reached by the Administrative Law Judge in his Recommended Order as its Conclusions of Law..

#### **Penalty**

It is HEREBY Ordered and Adjudged that the Recommendations of the ALJ are adopted and incorporated by reference, to wit:

1. Count Three of the Administrative Complaint is dismissed.
2. Respondent shall receive a written reprimand,
3. Respondent is assessed an Administrative Fine in the amount of \$1000.00, to be paid within nine (9) months of the effective date of this Order.
4. Respondent's license is suspended for six months.
5. Following the period of suspension, the Respondent is placed on probation for a period of two years, with the following terms and conditions:
  - a.. Respondent shall submit to a PRN evaluation within 60 days of the effective date of this Order.
  - b. Respondent shall comply with each PRN recommendation.

#### **Motion for Costs**

Pursuant to Section 456.072(4), Florida Statutes, the Department moved for assessment of costs, and submitted its Motion for an assessment in the amount of 37, 266.23, with supporting documentation..

1. The Respondent Objected on the grounds that the amount was excessive, because fees

and costs for its representation as of August 24, 2007 were only \$17,500.00. Respondent also objected on the grounds that the descriptions in the supporting documentation were too broad, the legal fees too high when compared to similar cases, and that it did not cause delays in the prosecution of the case. Finally, the Respondent Objected on the ground some of the costs sought under the Acupuncture case were attributable to the companion Massage case

2. Petitioner proposed a reduction in the amount sought by \$1,658.70. Petitioner asserted that the costs already awarded in the Massage case were distinct from those sought in this case. Petitioner stated that although some of the work attributed to the Acupuncture case, was work done on the Massage case, the work was only billed once. Since Petitioner's counsel took over the case from the attorney for the Board of Acupuncture, she tended to bill work to the acupuncture case not the massage case.

Petitioner's Motion is granted in the amount of \$23,902.78, to be paid within five (5) years of the effective date of this Order.

DONE AND ORDERED this 17 day of December, 2007.

**BOARD OF ACUPUNCTURE**

  
Pamela King, Executive Director  
for Board of Acupuncture

**NOTICE OF RIGHT TO JUDICIAL REVIEW**

A party who is adversely affected by this final order is entitled to judicial review pursuant to section 120.68, Florida Statutes, review proceedings are governed by the

**Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a 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 appeal in the appellate district where the party resides, or where the Agency is located. 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 provided by U.S. Mail to **Elham Kharabi c/o Louise R. Caro, Esquire**, 3683 Avacado Avenue, Coconut Grove, Florida 33133, and by interoffice mail to **Allison M. Dudley, Assistant General Counsel**, Prosecution Services Unit, 4052 Bald Cypress Way, Bin C-65, Tallahassee, Florida 32399-3265 and to **Barbara Edwards, Assistant Attorney General**, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050, on this 30 day of December, 2007.



**Deputy Agency Clerk**