

**FILED**  
Department of Business and Professional Regulation  
Deputy Agency Clerk  
CLERK Brandon Nichols  
Date **10/5/2010**  
File # **2010-09359**

**STATE OF FLORIDA**  
**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**  
**BOARD OF COSMETOLOGY**

DIVISION OF  
ADMINISTRATIVE  
HEARINGS

**DEPARTMENT OF BUSINESS AND  
PROFESSIONAL REGULATION,  
BOARD OF COSMETOLOGY**

**Petitioner,**

v.

**DOAH CASE NO.: 10-1506PL  
LICENSE NO.: FV 9527661**

**TRANG DOAN,**

**Respondent.**

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**FINAL ORDER**

THIS CAUSE came before the BOARD OF COSMETOLOGY

(Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, at a duly noticed public meeting on July 20, 2010, in Orlando, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order. Petitioner was represented by Jason White, Esquire. Respondent was not present and was not represented by counsel.

Upon review of the Recommended Order, the argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions:

**FINDINGS OF FACT**

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

2. There is competent, substantial evidence to support the findings of fact found by the Board.

#### CONCLUSIONS OF LAW

3. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 477, Florida Statutes.

4. The conclusions of law set forth in the Recommended Order in Paragraphs 8-9 and 13-18 are approved and adopted and incorporated herein by reference.

5. The Board voted to modify paragraphs numbered 10-12 of the Recommended Order after determining the modifications are as reasonable as or more reasonable than what had been put forth by the Administrative Law Judge.

6. Paragraph 10 of the Recommended Order shall read as follows:

If Respondent were to have made the alleged out- of -court statements to the investigator-witness, the alleged statements may have been admissions by a party opponent. Admissions by a party opponent would have been admissible in evidence for the truth of the matter stated, even though a party opponent denies the admissions. §90.803(18)(a); Lee v. Department of Health and Rehabilitative Services, 689 So.2d 1194, 1200 (Fla. 1977); Christopher v. State, 583 So.2d 642, 645 (Fla. 1991); Costa v. School Board of Broward County, 701 So.2d 414, 415 (Fla. 4<sup>th</sup> DCA 1997) and Seaboard cost Line Railroad company v. Nieuwendaal, 253 So.2d 451, 452 (Fla. 2d DCA 1971). If Respondent had qualified the investigative report as a business record under §90.803(6) and the out of court statements had been admissible under a separate exception to the hearsay rule, the out of court statements may have been admissible in evidence for the truth of the matter stated. *See* Ward v. State, 965 So.2d 308 (Fla. 3d DCA 2007). For example,

if a third-party witness is quoted in a business record concerning a particular fact, the evidence of that statement is not admissible under §90.803(6), although it may be admissible under another exception. No attempt was made to qualify the Respondent's statements in the investigative report as admissions against party interest under §90.803(18)(a) or the statements of the Respondent's employer under §90.803(18)(d).

7. Paragraph 11 of the Recommended Order shall read as follows:

The disputed statements in this proceeding are statements allegedly made by the investigator-in-absentia to the investigator-witness. The investigator-witness did not testify that Respondent made any statement to the investigator-witness or that the investigator-witness heard any statements from Respondent. The investigator-witness testified that the Respondent's employer told her that the Respondent had worked in her doing wax treatments. No attempt was made to qualify the employer's statements as a hearsay exception under §90.803(18)(d), Florida Statutes and the evidence is properly excluded.

8. Paragraph 12 of the Recommended Order shall read as follows:

The investigator -in-absentia was not present at the hearing, did not testify that Respondent made the statements to him, and was not available for cross-examination by Respondent. Therefore, the statements allegedly made by the investigator-in absentia to the investigator-witness are hearsay within the meaning of Subsections 90.801(1) and (2) and are inadmissible pursuant to Section 90.802, absent qualification of the investigative report and any statements by Respondent or her employer contained in the report under any hearsay exception.

DISPOSITION

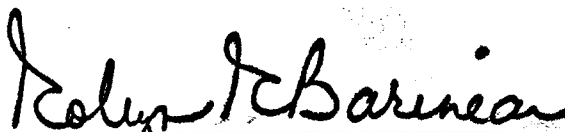
The Administrative Law Judge's Recommendation is approved and adopted by the Board in its entirety.

WHEREFORE, IT IS HEREBY ORDERED and ADJUDGED that:

The Department of Business and Professional Regulation, Board of Cosmetology, enter a final order finding Respondent not guilty of the violations charged in the Administrative complaint.

This Final Order shall take effect upon being filed with the Clerk of the Department of Business and Professional Regulation.

DONE AND ORDERED this 1st day of October, 2010.



**Robyn Barineau,**  
**Executive Director**  
**BOARD OF COSMETOLOGY**

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 BUSINESS AND PROFESSIONAL REGULATION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. 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 furnished by U.S. Mail to Trang Doan, 1105 Reserve Court #301, Naples, Florida 34105 and to Daniel Manry, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, FL 32399-3060; and by interoffice mail to Jason White, Prosecuting Attorney, Department of Business and Professional Regulation, 1940 N. Monroe Street, Tallahassee, Florida 32399-0790;, and to Jaime Doyle Liang, Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; this 5<sup>th</sup> day of October, 2010.

Brandon M. Nichols