

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF  
MASSAGE THERAPY,

Petitioner,

vs.

Case No. 12-3824PL

MEIHUA QIU, L.M.T.,

Respondent.

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RECOMMENDED ORDER

On April 2, 2013, a final administrative hearing was held in this case by video teleconference at sites in Tallahassee and Orlando before J. Lawrence Johnston, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Candace Rochester, Esquire  
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For Respondent: Maggie Schultz, Esquire  
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STATEMENT OF THE ISSUE

The issue in this case is whether the Department of Health, Board of Massage Therapy, should discipline the Respondent,

Meihua Qiu, based on the manner in which she applied for and obtained her license.

PRELIMINARY STATEMENT

The Department of Health (Department) filed an Administrative Complaint against the Respondent alleging: in Count I, that she obtained her license through the Department's error or through fraudulent misrepresentation; in Count II, that she failed to provide information or timely updated information, or made misleading, untrue, deceptive, or fraudulent representations on her license application; and, in Count III, that she failed to complete the course of study required for licensure. The Respondent disputed the charges and requested an administrative hearing.

At the hearing, the Department had Petitioner's Exhibits 1 through 4 admitted in evidence. The Respondent testified and had Exhibits R-1 and R-8 through R-13 admitted in evidence. The Transcript of the final hearing was filed, and the parties filed proposed recommended orders that have been considered.

FINDINGS OF FACT

1. The Respondent, who was born in China, came to the United States in 2001. She enrolled in Royal Irvin College in California to study massage therapy. She completed a 500-hour course of study and graduated in September 2007. The course of study included classes on HIV/AIDS and prevention of medical

errors. In November 2007, she sat for and passed the examination administered by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB).

2. The Respondent moved to Florida because she had family and friends there. One of her friends knew someone who had gone to the Florida College of Natural Health (FCNH), which is approved by the Board of Massage Therapy (Board). In December 2007, the Respondent went to FCNH's Pompano campus to determine what was necessary for the Respondent to be licensed in Florida as a massage therapist.

3. When the Respondent arrived at FCNH's Pompano campus on December 21, 2007, the receptionist directed her to see Glenda Johnson, who was the school's student coordinator and functioned as the registrar. The Respondent showed Johnson a copy of her Royal Irvin College diploma and transcript and her NCBTMB certificate, which Johnson reviewed. The diploma and transcript were not official, but the Department does not dispute that they are true and correct.

4. It was not FCNH's normal practice at the time for Johnson to review transcripts to determine how much credit to accept from another school. This was normally done by the school's education department. However, Johnson was acting as the school's registrar and appeared to have the authority to make

the determination; and it was reasonable for the Respondent to believe that Johnson was authorized to do so.

5. Johnson then had the Respondent fill out and sign an application for licensure in Florida by examination based on her 500-hour course of study at, and diploma from, Royal Irvin College and her NCBTMB certificate. Everything in the application filled out and signed by the Respondent was true and correct at that time.

6. Johnson also had the Respondent fill out and sign an FCNH enrollment agreement. Johnson signed the agreement, acting as school registrar, to enroll the Respondent at FCNH. The enrollment agreement included a statement that FCNH would evaluate collegiate and post-secondary training, military experience, or civilian occupations, and that the Respondent would be given appropriate credit, if criteria to measure the value of such training and experience were met, as determined by FCNH.

7. Johnson then gave the Respondent a copy of the April 2003 edition of the statutes and rules governing the practice of massage therapy in Florida and materials for FCNH's course in Prevention of Medical Errors and brought her to a classroom. There was an instructor in the classroom who explained the materials to the Respondent and answered her questions as she read and studied the materials for about three

to four hours. There were other students and staff in the classroom with the Respondent but they were not studying the same materials as the Respondent and the instructor was directing his explanations and answers to questions to the Respondent, not the other students. The Respondent was not tested or graded on what she studied.

8. When the Respondent finished studying the materials, Johnson told her that she had completed the course requirements. The Respondent did not have any reason to doubt Johnson, who was acting as the school's registrar. Cf. § 1005.04(1)(a) & (d), Fla. Stat. (2012) (a nonpublic, secondary institution accredited by the Commission for Independent Education must disclose to prospective students the transferability of credit to and from other institutions and accurate information regarding the relationship of its programs to state licensure requirements).

9. Actually, even if credit for all other educational requirements for Florida licensure by examination were transferred from the Royal Irvin College, the Respondent was required to complete a ten-hour class in Florida statutes and rules. Fla. Admin. Code R. 64B7-32.003 (Apr. 25, 2007). (Notwithstanding some testimony to the contrary, other mandatory courses of study are not required by rule to be Florida-specific.) Id. Like all other educational requirements for

licensure by examination, this class had to be taken in-person, with a faculty member present. Fla. Admin. Code R. 64B7-32.001 (Mar. 25, 1986).

10. Johnson had the Respondent pay \$520 for FCNH's tuition and the Board's \$205 license application fee. Johnson said she would file the application for the Respondent. The Respondent did not speak to Johnson again or return to FCNH's Pompano campus after December 21, 2007.

11. At some point in time on or after December 21, 2007, Johnson completed section III of the Florida license application, which is a transfer of credit form, and the Respondent's FCNH transcript. The transfer of credit form indicated that FCNH was accepting: 150 credit hours from Royal Irvin College in the category Anatomy and Physiology (for a course titled Musculoskeletal); 225 credit hours in the category Basic Massage Therapy and Clinical Practicum (for a course titled Neuromuscular Massage); 15 credit hours in the category Theory and Practice of Hydrotherapy (without specifying the course taken); 95 credit hours in the category Allied Modalities (for a course titled Sports Massage); and 3 hours in the category HIV/AIDS (for a course titled HIV/AIDS). The form indicated that to qualify for examination the Respondent needed to take ten hours in the category Statutes/Rules and History of Massage and two hours in the category Allied Modalities (for medical errors prevention) at

FCNH. Finally, the form showed the total credit hours for all schools: 150 credit hours in the category Anatomy and Physiology; 225 credit hours in the category Basic Massage Therapy and Clinical Practicum; ten credit hours in the category Statutes/Rules and History of Massage; 15 credit hours in the category Theory and Practice of Hydrotherapy; 97 credit hours in the category Allied Modalities; and 3 credit hours in the category HIV/AIDS.

12. At some point in time on or after December 21, 2007, Johnson also completed a FCNH transcript for the Respondent indicating that the Respondent completed all the credit hours on the credit transfer form (a total of 500 credit hours, including 12 hours having been taken at FCNH), and assigning credits for those credit hours (a total of 25.84 credits, including 0.8 credit earned at FCNH).

13. At some point in time on or after December 21, 2007, Johnson also completed FCNH certificates of completion for the Respondent indicating that the Respondent took and successfully completed FCNH's two-hour class titled Prevention of Medical Errors and 12 hours of FCNH's Therapeutic Massage Training Program (Transfer of License).

14. Johnson sent the Respondent's license application (with \$205 fee), Royal Irvin College diploma and transcript, and NCBTMB certificate, together with the documents Johnson completed on or

after December 21, 2007. She did not provide copies to the Respondent. The Board received the submission on December 27, 2007.

15. On December 28, 2007, the Board sent the Respondent a copy of her application, without the supporting documentation, and a letter saying the application was incomplete because her driver license number was omitted. The Respondent added the driver license number and re-submitted the application on January 7, 2008. On January 9, 2008, the Board issued the Respondent massage therapy license MA 52312.

16. The Respondent paid Johnson by check. There was no evidence as to what happened to the balance of the money paid to Johnson. No canceled check was produced, and the evidence is not clear if the check was made payable to FCNH or to Johnson. Either way, subsequent events suggest Johnson probably pocketed the difference between the \$520 paid and the \$205 license application fee.

17. The Respondent's license application included both the representation that the answers and statements in or in support of her application were true and correct and the acknowledgement that any false information on or in support of the application was cause for denial, suspension, or revocation of her license. Although true and correct when the Respondent filled it out and signed it, the Respondent's application was not true and correct



as submitted to the Board on her behalf, with the false supporting documentation prepared by Johnson.

18. In December 2011, it came to the attention of Melissa Wade, FCNH's vice-president for Compliance and Institutional Effectiveness, that a number of people were claiming to have graduated from FCNH's Pompano campus based on documentation indicating that they did not complete FCNH's 768-hour course of study that was approved by the Board. Wade investigated and was unable to find any record of the individuals having been students at FCNH. Wade investigated further and discovered discrepancies in the documentation being submitted by those individuals. Wade investigated further and discovered that Johnson never registered these individuals as enrolled students. Johnson was terminated from her employment as registrar for the school.

19. Beginning in January or February 2012, Wade began notifying the Board about the individuals purporting to be FCNH graduates, but who never actually were registered as enrolled students and did not complete the school's Board-approved course of study. As more such individuals were identified, the Board was notified. The Respondent was one of the individuals reported to the Board.

20. At some point in time, the Respondent became aware of the Department's concerns about the manner in which she obtained her Florida massage therapist license. In October 2012, in an

attempt to resolve the Department's issues regarding her license, the Respondent took and successfully completed a Board-approved continuing education (CE) course consisting of six hours of Ethics and Standards, two hours of Preventing Medical Errors, two hours of Laws and Rules Massage Practice, two hours of Pathology of Chronic Conditions for Massage Therapists, and Living with HIV/AIDS.

21. In October 2012, the Department filed emergency suspension orders and administrative complaints against a number of licensees who submitted suspect FCNH documentation with their applications, including the Respondent.

22. Between her licensure and the emergency suspension order, the Respondent practiced massage therapy in Florida. During that time, there were no complaints of any kind against the Respondent either by the Department or any consumer.

23. It was not proven by clear and convincing evidence that the Respondent had any intent to defraud the Department or the Board. However, even assuming that Johnson had at least apparent authority to transfer credit hours from Royal Irvin College and assign FCNH credit, it is clear that the application submitted on the Respondent's behalf by Johnson was supported by documentation that falsely represented that the Respondent took 12 hours of classes at FCNH, including a ten-hour class on Florida statutes and rules and a two-hour class in Prevention of Medical Errors.

At the same time, those false misrepresentations were made by FCNH, through its registrar, not by the Respondent.

CONCLUSIONS OF LAW

24. Since this is a license discipline case, the Department must prove its allegations by clear and convincing evidence.

Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

The Supreme Court has stated:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and lacking in confusion as to the facts in issue. The evidence must be of such a weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

25. In Count I, the Department charged the Respondent with "[a]ttempting to obtain, obtaining, or renewing a license to practice a profession . . . by fraudulent misrepresentation, or through an error of the department or the board."

§ 456.072(1)(h), Fla. Stat. (2009). In Count II, the Department charged the Respondent with "[f]ailing to comply with the requirements for profiling and credentialing, including, but not limited to, failing to provide initial information, failing to

timely provide updated information, or making misleading, untrue, deceptive, or fraudulent representations on a profile, credentialing, or initial or renewal licensure application."

§ 456.072(1)(w), Fla. Stat. (2009).

26. Fraud requires a false statement concerning a material fact (which could include nondisclosure when under a duty to disclose), made with knowledge of its falsity and with the intent to induce another's reliance, and consequent injury to the person acting in reliance on the false representation. See, e.g., Cohen v. Kravit Estate Buyers, Inc., 843 So. 2d 989, 991 (Fla. 4th DCA 2003). The evidence was not clear and convincing that the Respondent had the knowledge or intent necessary to be guilty of having made fraudulent misrepresentations in her license application.

27. Similarly, the evidence was not clear and convincing that the Respondent herself made misleading, untrue, or deceptive representations on her license application, notwithstanding Johnson's representations and statements in the application signed by the Respondent that the answers and statements in or in support of her application were true and correct and that any false information on or in support of the application was cause for denial, suspension, or revocation of the license.

28. The evidence also was not clear and convincing that the Respondent's license was issued through an error of the

Department or the Board. The Board was presented with an application supported by what appeared to be a transcript and certificates of completion issued by FCNH, which indicated that the Respondent had completed a Board-approved course of study and was entitled to licensure by examination. See Fla. Admin. Code R. 64B7-32.002 (Feb. 21, 1996).

29. Even if the Respondent's license were issued through an error of the Department or Board, there would have to be some culpable conduct on the part of the Respondent for her to be disciplined for such an error. In this case, the evidence was not clear and convincing that the Respondent engaged in any conduct that would warrant discipline due to an error of the Department or Board. That evidence indicates that it was just as reasonable for the Respondent to rely on FCNH to determine whether she was entitled to a transcript and certificates of completion of FCNH's Board-approved course of study as it was for the Department and Board to do so.

30. In Count III, the Department alleges that the Respondent violated section 480.046(1)(o), Florida Statutes (2009), which subjects a licensee to discipline for violating any provision of chapter 480 or 456, by violating section 480.041(1)(b), which sets out the qualifications for licensure, including the qualification of having completed a course of study at a Board-approved massage school. First,

section 480.046(1)(o) sets out qualifications for an applicant for licensure; it does not, strictly speaking, make it a violation to obtain a license without being qualified. Second, if it did, it adds nothing to the violations alleged in Counts I and II, and Count III would be resolved as they were.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board of Massage Therapy enter a final order dismissing the Administrative Complaint against the Respondent.

DONE AND ENTERED this 17th day of June, 2013, in Tallahassee, Leon County, Florida.



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J. LAWRENCE JOHNSTON  
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Filed with the Clerk of the  
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this 17th day of June, 2013.

COPIES FURNISHED:

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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.