

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF
MASSAGE THERAPY,

Petitioner,

vs.

Case No. 12-3990PL

RANJIE XU, L.M.T.,

Respondent.

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted by video teleconference at sites in Tallahassee and Lauderdale Lakes, Florida, on May 9, 2013, before Administrative Law Judge Edward T. Bauer of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Candace Rochester, Esquire
Department of Health
Bin C-65
4052 Bald Cypress Way
Tallahassee, Florida 32399-3265

For Respondent: June H. Zhou, Esquire
June Zhou, PLLC
Suite 209
2136 Saint Andrews Boulevard
Boca Raton, Florida 33433

STATEMENT OF THE ISSUE

The issues in this case are whether Respondent committed the allegations contained in the Administrative Complaint and, if so, the penalty that should be imposed.

PRELIMINARY STATEMENT

On October 17, 2012, Petitioner, Department of Health ("Department"), filed a three-count Administrative Complaint ("Complaint") against Respondent, Ranjie Xu. In Count One of the Complaint, the Department alleges that Respondent violated section 456.072(1)(h), Florida Statutes, in that she obtained her license to practice massage therapy through "error of the Department of Health or by fraudulent misrepresentation." The Department further alleges, in Count Two, that Respondent submitted fraudulent documentation in connection with her application for licensure, contrary to section 456.072(1)(w). Finally, in Count Three, the Department asserts that Respondent's license is subject to revocation pursuant to section 480.041(1)(b), Florida Statutes, which provides that, in order to qualify for licensure as a massage therapist, an applicant must complete a course of study at an approved massage school or complete an appropriate internship program.

Respondent timely requested a formal hearing to contest the allegations, and, on December 12, 2012, the matter was referred to the Division of Administrative Hearings ("DOAH") and assigned

to Administrative Law Judge John G. Van Laningham. Thereafter, on May 6, 2013, Judge Van Laningham transferred this cause to the undersigned for further proceedings.

As noted above, the final hearing was held on May 9, 2013, at the outset of which the Department announced that it had abandoned Counts One and Two of the Complaint.^{1/} The Department called one witness, Melissa Wade, and introduced two exhibits into evidence, numbered 1-2. Respondent testified on her own behalf and introduced 14 exhibits, numbered 1-14.

The final hearing transcript was filed with DOAH on May 21, 2013. Pursuant to Respondent's unopposed request, the deadline for the submission of proposed recommended orders was extended to June 11, 2013. Thereafter, the parties submitted proposed recommended orders, which the undersigned has considered in the preparation of this Recommended Order.^{2/}

FINDINGS OF FACT

A. The Parties

1. The Department and the Board of Massage Therapy ("Board") have regulatory jurisdiction over licensed massage therapists such as Respondent. The Department furnishes investigative services to the Board and is authorized to file and prosecute an administrative complaint, as it has done in this instance, when cause exists to suspect that a licensee has committed one or more disciplinable offenses.

2. On June 18, 2009, the Department issued Respondent license number MA 56426, which authorized her to practice massage therapy in the state of Florida. Respondent's address of record is 7027 West Broward Boulevard, Box 278, Plantation, Florida 33317.

B. The Events

3. Respondent was born in China and, at all times relevant to this proceeding, was a citizen of China. In 2006, Respondent immigrated to the United States and, some two years later, enrolled at Royal Irvin College ("Royal Irvin"), an institution located in Monterey Park, California, that offered massage therapy instruction. In March 2009, upon Respondent's successful completion of a course of study comprising 500 classroom hours, Royal Irvin awarded her a degree.

4. Subsequently, on May 22, 2009, Respondent passed the National Certification Examination for Therapeutic Massage and Bodywork. At or around that time, and in response to a help-wanted advertisement, Respondent relocated to Florida to pursue a career in massage therapy.

5. Upon Respondent's arrival in Florida, her potential employer, Woody McLane, advised her that she needed to obtain a Florida license in order to be hired as a massage therapist. Owing to the fact that Royal Irvin was not a Board-approved massage school, only two paths to licensure were available to

Respondent: complete a course of study at an approved institution; or, alternatively, satisfy the requirements of an apprenticeship program.

6. On May 26, 2009, Respondent and Mr. McLane traveled to the Pompano Beach campus of the Florida College of Natural Health ("FCNH"), a Board-approved massage school. Respondent's ensuing dealings with FCNH's registrar are discussed shortly; first, though, a description of FCNH—and its responsibilities under Florida law—is in order.

7. FCNH, an incorporated nonpublic postsecondary educational entity, holds a license by means of accreditation that authorizes its operation in Florida as an independent college. The Florida Commission for Independent Education ("CIE"), which regulates nonpublic postsecondary institutions, issued the necessary license to FCNH pursuant to section 1005.32, Florida Statutes (2012).^{3/} In addition to being duly licensed by the state, FCNH is accredited by the Accrediting Commission of Career Schools and Colleges and by the Commission on Massage Therapy. Finally, FCNH is a "Board-approved massage school" within the meaning of that term as defined in section 480.033, Florida Statutes.

8. At the times relevant to this proceeding, the minimum requirements for becoming and remaining a Board-approved massage school were set forth in Florida Administrative Code Rule 64B7-

32.003 (Oct. 30, 2007), which provided in relevant part as follows:

(1) In order to receive and maintain Board of Massage Therapy approval, a massage school, and any satellite location of a previously approved school, must:

(a) Meet the requirements of and be licensed by the Department of Education pursuant to Chapter 1005, F.S., or the equivalent licensing authority of another state or county, or be within the public school system of the State of Florida; and

(b) Offer a course of study that includes, at a minimum, the 500 classroom hours listed below

(c) Apply directly to the Board of Massage Therapy and provide the following information:

1. Sample transcript and diploma;
2. Copy of curriculum, catalog or other course descriptions;
3. Faculty credentials; and
4. Proof of licensure by the Department of Education.

(emphasis added).

9. As an institution holding a license by means of accreditation, FCNH must comply with the fair consumer practices prescribed in section 1005.04 and in the rules of the CIE.^{4/} Regarding these required practices, section 1005.04, Florida Statutes (2008), provided during the relevant time frame as follows:

(1) Every institution that is under the jurisdiction of the commission or is exempt from the jurisdiction or purview of the commission pursuant to s. 1005.06(1)(c) or (f) and that either directly or indirectly solicits for enrollment any student shall:

(a) Disclose to each prospective student a statement of the purpose of such institution, its educational programs and curricula, a description of its physical facilities, its status regarding licensure, its fee schedule and policies regarding retaining student fees if a student withdraws, and a statement regarding the transferability of credits to and from other institutions. The institution shall make the required disclosures in writing at least 1 week prior to enrollment or collection of any tuition from the prospective student. The required disclosures may be made in the institution's current catalog;

(b) Use a reliable method to assess, before accepting a student into a program, the student's ability to complete successfully the course of study for which he or she has applied;

(c) Inform each student accurately about financial assistance and obligations for repayment of loans; describe any employment placement services provided and the limitations thereof; and refrain from promising or implying guaranteed placement, market availability, or salary amounts;

(d) Provide to prospective and enrolled students accurate information regarding the relationship of its programs to state licensure requirements for practicing related occupations and professions in Florida;

* * *

(2) In addition, institutions that are required to be licensed by the commission

shall disclose to prospective students that additional information regarding the institution may be obtained by contacting the Commission for Independent Education, Department of Education, Tallahassee.

(emphasis added).

10. At the time of the events giving rise to this proceeding, the CIE's rule relating to fair consumer practices provided in relevant part as follows:

(1) This rule implements the provisions of Sections 1005.04 and 1005.34, F.S., and establishes the regulations and standards of the Commission relative to fair consumer practices and the operation of independent postsecondary education institutions in Florida.

(2) This rule applies to those institutions as specified in Section 1005.04(1), F.S. All such institutions and locations shall demonstrate compliance with fair consumer practices.

(6) Each prospective student shall be provided a written copy, or shall have access to an electronic copy, of the institution's catalog prior to enrollment or the collection of any tuition, fees or other charges. The catalog shall contain the following required disclosures, and catalogs of licensed institutions must also contain the information required in subsections 6E-2.004(11) and (12), F.A.C.:

* * *

(f) Transferability of credits: The institution shall disclose information to the student regarding transferability of credits to other institutions and from other institutions. The institution shall disclose that transferability of credit is

at the discretion of the accepting institution, and that it is the student's responsibility to confirm whether or not credits will be accepted by another institution of the student's choice. . . .
No representation shall be made by a licensed institution that its credits can be transferred to another specific institution, unless the institution has a current, valid articulation agreement on file. Units or credits applied toward the award of a credential may be derived from a combination of any or all of the following:

1. Units or credits earned at and transferred from other postsecondary institutions, when congruent and applicable to the receiving institution's program and when validated and confirmed by the receiving institution.
2. Successful completion of challenge examinations or standardized tests demonstrating learning at the credential level in specific subject matter areas.
3. Prior learning, as validated, evaluated, and confirmed by qualified instructors at the receiving institution.

* * *

(11) An institution is responsible for ensuring compliance with this rule by any person or company contracted with or employed by the institution to act on its behalf in matters of advertising, recruiting, or otherwise making representations which may be accessed by prospective students, whether verbally, electronically, or by other means of communication.

Fla. Admin. Code R. 6E-1.0032 (July 23, 2007) (emphasis added).

11. As a duly-licensed, accredited, Board-approved massage school, FCNH was, at all relevant times, authorized to evaluate the transferability of credits to FCNH from other massage schools, so that credits earned elsewhere (including from schools such as Royal Irvin, which are not Board-approved) could be applied toward the award of a diploma from FCNH. In making such an evaluation, FCNH was obligated to follow the standards for transfer of credit that the Board had established by rule.^{5/} Further, when exercising its discretion to accept transfer credits, FCNH was required to complete, sign, and attach to the student's transcript the Board's Transfer of Credit Form, by which the school's dean or registrar certified that the student's previously-earned credits, to the extent specified, were acceptable in lieu of the student's taking courses at FCNH.

12. Returning to the events at hand, Respondent met with FCNH's registrar, Glenda Johnson, on May 26, 2009. Notably, Ms. Johnson possessed actual authority, on that date and at all relevant times, to generate official transcripts and diplomas on behalf of FCNH.^{6/}

13. The meeting, which took place on a weekday during normal business hours, was held in Ms. Johnson's office—located on the first floor of a multi-story building on FCNH's Pompano Beach campus. Upon Respondent's arrival at the main entrance, a receptionist summoned Ms. Johnson, who, a short time later,

appeared in the lobby and escorted Respondent and Mr. McLane (as noted previously, Respondent's potential employer) to her office.

14. During the meeting that ensued, Respondent reiterated (with her limited English skills) her desire to obtain licensure in Florida as a massage therapist. To that end, Respondent presented Ms. Johnson with various documents, which included her diploma and transcript from Royal Irvin, as well as proof of her national certification.

15. From what can be fairly inferred from the record, it appears that Ms. Johnson led Respondent to believe, erroneously, that her existing coursework and credentials were sufficient for licensure and that all Respondent needed to do was transfer her previously-earned credits to FCNH. (Among other things, Ms. Johnson should have informed Respondent that Board-approved coursework in "HIV/AIDS" and the "prevention of medical errors"—neither of which Respondent completed until after^{7/} the Complaint was filed in this matter—was required^{8/} for licensure.)

16. As the meeting progressed, Ms. Johnson made copies of Respondent's records and asked her to sign an FCNH enrollment agreement, which Respondent did. The agreement reflects (and Respondent's credible testimony confirms) that, on the date of their meeting, Ms. Johnson collected a cash payment from

Respondent totaling \$418.98.^{9/} Ms. Johnson also furnished Respondent with a receipt, the face of which indicated that the payment was for a "transfer of [licensure]."

17. In addition to the enrollment agreement, Respondent signed a three-page form titled, "State of Florida Application for Massage Therapist Licensure." In the application, Respondent truthfully disclosed, among other things, that she had completed 500 hours of study at Royal Irvin; that Royal Irvin was not approved by the Board; and that she had not attended an apprenticeship program.

18. At the end of the meeting, Ms. Johnson advised Respondent that no further action on her part was required and that all she need do was "go home and wait." Thereafter, and on Respondent's behalf, Ms. Johnson submitted to the Department Respondent's application for licensure. The application was accompanied by a number of supporting documents, including two "Certificates of Completion," both of which bore Ms. Johnson's signature and FCNH's official seal. The first such certificate reflected that Respondent had satisfied a two-hour course relating to the prevention of medical errors, while the second indicated the completion of a "Therapeutic Massage Training Program (Transfer of Licensure)." The application package prepared and submitted by Ms. Johnson also contained: a "Transfer of Credit Form" signed by Ms. Johnson, which indicated

that FCNH accepted Respondent's credits from Royal Irvin, and, further, that Respondent's coursework at Royal Irvin included a two-credit class involving the prevention of medical errors and a three-credit course concerning "HIV/AIDS"; an FCNH transcript that bore Ms. Johnson's signature and indicated that Respondent had completed a 500-hour program titled "Therapeutic Massage Training Program (Transfer of Licensure)"; Respondent's diploma and transcript from Royal Irvin; proof of Respondent's national certification as a massage therapist; and a copy of Respondent's permanent resident card. Notably, of the FCNH documents listed above, Respondent was aware only of the "Transfer of Credit Form" prior to the initiation of the current proceeding.

19. Collectively, the credit transfer form, the FCNH certificates, and the FCNH transcript "signify satisfactory completion of the requirements of an educational or career program of study or training or course of study" and constitute a "diploma" within the meaning of that term as defined in section 1005.02(8), Florida Statutes. (These documents, which Respondent's FCNH diploma comprises, will be referred to hereafter, collectively, as the "Diploma.")

20. Subsequently, on June 18, 2009, the Department issued Respondent her license to practice massage therapy. With the exception of the instant proceeding, there is no evidence that

Respondent's license has been the subject of prior disciplinary action.

21. In December 2011, an individual with the National Certification Board for Therapeutic Massage and Bodywork ("NCB") placed a telephone call to Melissa Wade, a managerial employee of FCNH, to report that the NCB had received a number of applications to sit for the National Certification Examination (which the NCB administers) from FCNH graduates whose transcripts seemed irregular. What these applicants had in common was that they had earned their massage therapy diplomas from Royal Irvin, and that the same member of FCNH's administration—i.e., Ms. Johnson—had accepted their transfer credits. The NCB sent copies of the suspicious credentials to FCNH.

22. Ms. Wade reviewed the materials and detected some anomalies in them. She was unable to find records in the school's files confirming that the putative graduates in question had been enrolled as students. Ms. Wade confronted Ms. Johnson with the problematic transcripts and certificates. Ms. Johnson admitted that she had created and signed them, but she denied—untruthfully, at least with respect to her dealings with Respondent—ever having taken money for doing so. (Ms. Johnson provided the rather dubious explanation that she

had been merely trying to "help" people.) Shortly thereafter, in December 2011, FCNH terminated Ms. Johnson's employment.

23. Thereafter, Ms. Wade notified the Department that some of FCNH's diplomates might not have fulfilled the requirements for graduation. This caused the Department to launch an investigation, with which FCNH cooperated. The investigation uncovered numerous graduates, including Respondent, whose credentials FCNH could not confirm.

24. Respondent has not surrendered her Diploma or otherwise acceded to the allegation that the credentials FCNH conferred upon her are invalid. While Ms. Wade testified at hearing that Ms. Johnson should not have conferred Respondent an FCNH Diploma based on Respondent's Royal Irvin credits, there is no evidence that FCNH has initiated a legal proceeding to revoke or withdraw Respondent's Diploma. At present, therefore, there is no legally binding or enforceable determination that the Diploma is void or that Respondent is without rights and privileges thereunder.

CONCLUSIONS OF LAW

A. Jurisdiction

25. DOAH has jurisdiction over the parties and subject matter of this cause, pursuant to section 120.57(1), Florida Statutes.

B. The Burden and Standard of Proof

26. This is a disciplinary proceeding in which the Department seeks to discipline Respondent's license to practice massage therapy. Accordingly, the Department must prove the allegations contained in the Administrative Complaint by clear and convincing evidence. Dep't of Banking & Fin., Div. of Secs. & Investor Prot. v. Osborne Sterne, Inc., 670 So. 2d 932, 935 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292, 294 (Fla. 1987).

27. Regarding the standard of proof, in Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983), the court developed a "workable definition of clear and convincing evidence" and found that of necessity such a definition would need to contain "both qualitative and quantitative standards." The court held that:

[C]lear 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 explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such 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.

Id. The Florida Supreme Court later adopted the Slomowitz court's description of clear and convincing evidence. See In re Davey, 645 So. 2d 398, 404 (Fla. 1994).

C. Statutory Construction/Notice

28. Disciplinary statutes and rules "must be construed strictly, in favor of the one against whom the penalty would be imposed." Munch v. Dep't of Prof'l Reg., Div. of Real Estate, 592 So. 2d 1136, 1143 (Fla. 1st DCA 1992); Camejo v. Dep't of Bus. & Prof'l Reg., 812 So. 2d 583, 583-84 (Fla. 3d DCA 2002); McClung v. Crim. Just. Stds. & Training Comm'n, 458 So. 2d 887, 888 (Fla. 5th DCA 1984) ("[W]here a statute provides for revocation of a license the grounds must be strictly construed because the statute is penal in nature. No conduct is to be regarded as included within a penal statute that is not reasonably proscribed by it; if there are any ambiguities included, they must be construed in favor of the licensee.").

29. Due process prohibits an agency from taking disciplinary action against a licensee based on matters not specifically alleged in the charging instrument. Trevisani v. Dep't of Health, 908 So. 2d 1108, 1109 (Fla. 1st DCA 2005) ("A physician may not be disciplined for an offense not charged in the complaint"); Delk v. Dep't of Prof'l Reg., 595 So. 2d 966, 967 (Fla. 5th DCA 1992) ("[T]he conduct proved must legally fall within the statute or rule claimed [in the administrative

complaint] to have been violated"); § 120.60(5), Fla. Stat. ("No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the entry of a final order, the agency has served, by personal service or certified mail, an administrative complaint which affords reasonable notice to the licensee of facts or conduct which warrant the intended action").

D. The Charges Against Respondent

30. As noted previously, the Department has abandoned Counts One and Two of the Complaint, which alleged, respectively, that Respondent's license was issued in error and that Respondent committed acts of fraud in connection with her application for licensure. Count Three, the Complaint's only remaining charge, alleges a violation of section 480.046(1)(o), a provision which subjects a licensee to discipline for, among other things, running afoul of any provision of chapter 480. Specifically, the Department alleges that Respondent has not "completed a course of study at a board-approved massage school," and has therefore violated a provision of chapter 480—namely, section 480.041(1)(b), which makes completion of such a course of study (or, alternatively, an apprenticeship program) a qualification for licensure as a massage therapist.

31. As an initial matter, the undersigned is dubious of the Department's attempt to punish Respondent for "violating" section 480.041(1), a provision that:

[D]oes not by its terms require compliant behavior, either by prescribing minimum standards of conduct or forbidding conduct deemed wrongful. Rather, this statute merely describes the qualifications that a person must possess to be licensed as a massage therapist. A person who lacks one or more of the statutory requirements is unqualified, but being unqualified is not the same as being a lawbreaker. Because section 480.041(1) is not violable as that term is ordinarily understood, the undersigned is skeptical that any person can be punished for "violating" section 480.041(1).

Dep't of Health, Bd. of Massage Therapy v. Diamond, Case No. 12-3825PL, 2013 Fla. Div. Adm. Hear. LEXIS 204, *30-31 (Fla. DOAH Apr. 9, 2013) (Van Laningham, J.); see also Dep't of Health, Bd. of Massage Therapy v. Jiang, Case No. 12-3610PL, 2013 Fla. Div. Adm. Hear. LEXIS 340, *15 (Fla. DOAH June 11, 2013) (Johnston, J.) ("[S]ection 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."). Even assuming, however, that a licensee can be properly disciplined for having "violated" section 480.041(1)(b), the Department has failed to prove, for the reasons detailed below, that Respondent did not complete a course of study at a Board-approved massage school.

32. At the time Respondent submitted her initial application, Florida Administrative Code Rule 64B7-32.002 provided as follows:

In order to be acknowledged as a graduate of a Board approved massage school as referred to in subsection 480.033(9), F.S., the Board's administrative office must receive an official transcript documenting the applicant's training. Such transcript must document to the satisfaction of the Board that the applicant has successfully completed a course of study in massage which met the minimum standards for training and curriculum as delineated in this rule chapter. A transcript indicating passing grades in all courses, and including dates of attendance, and stating the date of successful completion of the entire course of study, is evidence of successful completion. If the transcript does not specifically state that the student successfully completed the entire course of study, the transcript must be accompanied by a diploma or certificate of completion indicating the dates of attendance and completion.

(emphasis added).

33. As discussed previously, Respondent's application included a Diploma that comprised the FCNH transcript, credit transfer form, and certificates—all of which were issued by the school registrar, who possessed the actual authority to generate documents of that type on behalf of FCNH. After reviewing Respondent's application, the Department determined that the Diploma constituted proof of Respondent's completion of a course of study in massage therapy that met the minimum standards.

(The undersigned infers as much in light of the Department's abandonment of Count One of the Complaint, wherein it alleged that Respondent's license was issued in error.) The Diploma, which FCNH has not rescinded, continues to be exactly what it was in May 2009: evidence of successful completion of a course of study at a Board-approved massage school. The Department contends, nevertheless, that because the registrar should not have issued the Diploma, a fact of which Respondent was unaware until the filing of the Complaint, Respondent's rights under that credential—which include her licensure as a massage therapist—should be terminated.

34. Persuaded by the reasoning expressed in Department of Health, Board of Massage Therapy v. Diamond, Case No. 12-3825PL, 2013 Fla. Div. Adm. Hear. LEXIS 204 (Fla. DOAH Apr. 9, 2013), a case that involved facts nearly identical to those at hand, the undersigned rejects the Department's implicit attempt to nullify Respondent's Diploma. As Judge Van Laningham explained in Diamond:

[T]he questions which the Department has raised implicating the Diploma's validity, namely whether FCNH should have issued Diamond a Diploma and—to the point—whether the Diploma is operative as a legal instrument under which Diamond has certain rights and privileges, are not amenable to adjudication in this administrative proceeding. Neither the Department nor the Board has the authority to revoke or rescind the Diploma, rendering it a nullity, any

more than either agency could revoke a degree from, say, Harvard University or Tallahassee Community College. Diplomas, degrees, and other educational credentials confer rights and privileges in which their holders have a property interest. The power to revoke or withdraw such a valuable credential, once conferred, belongs to the issuing institution, not a third-party state agency, and such action, to be enforceable, must be undertaken in accordance with a legal process ensuring that the rights and interests of the degree holder are protected.

* * *

Diamond's FCNH Diploma certifies to the world that she has completed a course of study at a Board-approved massage school. Because of this certification, which the Diploma represents, the Department's allegation that Diamond has not completed such a course of study is true only if the Diploma is a nullity, a worthless piece of paper signifying nothing. The Diploma is not a nullity, however, unless and until it is revoked.

FCNH has persuaded the Department that the Diploma is invalid. But the Department, which did not confer the Diploma, is powerless to revoke this academic credential. Only FCNH has the authority to revoke the Diploma, provided it does so in accordance with due process of law, and it has not yet taken such action, as far as the evidence in this case shows. The upshot is that, in arguing that Diamond is academically unqualified for licensure as a massage therapist, the Department is attempting to steal a base, taking for granted that the Diploma is void or, alternatively, voidable in this proceeding. Because the Diploma is neither void nor voidable in this forum, the Department's argument is rejected.

* * *

[W]hether the Diploma should be revoked—a question which, as explained, cannot be decided here—is perhaps less clear than the Department and FCNH would have it. This is because Diamond might have equitable defenses to rescission, such as waiver and estoppel, which could preclude FCNH from relying on so-called irregularities to deny the validity of the credentials that Ms. Johnson issued Diamond in her capacity as FCNH's registrar and agent. Obviously such equitable defenses were useless to Diamond here, which is why this proceeding is no substitute for the fair hearing to which she is entitled in the event FCNH seeks to revoke her Diploma.

2013 Fla. Div. Adm. Hear. LEXIS at *36-37, 40 (internal citations omitted); see also Jaber v. Wayne State Univ. Bd. of Governors, 2010 U.S. Dist. LEXIS 88144, *10 (E.D. Mich. Aug. 26, 2010) ("[T]he Board of Governors nonetheless has the exclusive power to revoke degrees. The Board was not involved in Jaber's revocation process. Accordingly, [the] revocation of Jaber's Doctorate degree is void"); Waliga v. Bd. of Trustees, 488 N.E.2d 850, 852 (Ohio 1986) (holding that a college or university acting through its board of trustees is authorized to revoke a degree upon good cause, provided the degree-holder is afforded a fair hearing to protect his interest).

35. Because FCNH has not revoked the Diploma, the Diploma continues to certify that Respondent completed a course of study in massage therapy at a Board-approved school. For these reasons, Count Three fails.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board enter a final order finding Respondent not guilty of the offenses charged in the Complaint.

DONE AND ENTERED this 26th day of June, 2013, in Tallahassee, Leon County, Florida.



EDWARD T. BAUER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of June, 2013.

ENDNOTES

^{1/} See Final Hearing Transcript, pp. 6-7.

^{2/} Unless otherwise noted, all statutory and rule references are to current versions.

^{3/} The undersigned takes official recognition of the public record of the Florida Department of Education concerning FCNH's licensure status, which is available online at <http://app1.fldoe.org/cie/SearchSchools/detail.aspx?schoolid=2217> (last visited June 12, 2013).

^{4/} See § 1005.32(5), Fla. Stat.

^{5/} See Fla. Admin. Code R. 64B7-32.004 (Feb. 27, 2006).

^{6/} Melissa Wade, an FCNH managerial employee, credibly testified that FCNH's registrar possesses actual authority to print and sign official transcripts. See Final Hearing Transcript, p. 41, lines 2-4. With respect to diplomas and certificates, however, Ms. Wade further asserted that the registrar is authorized to print—but not sign—such documents. Id. The undersigned rejects this portion of Ms. Wade's testimony and concludes, based upon the circumstances surrounding Respondent's interaction with Ms. Johnson (and the fact that the Department granted Respondent's application for licensure, notwithstanding the absence of any signature other than the registrar's on the FCNH certificates), that Ms. Johnson had actual authority to sign each of the documents included with Respondent's application.

^{7/} See Respondent's Exhibits 13 & 14.

^{8/} See Fla. Admin. Code R. 64B7-25.001(1)(d) & (1)(f) (June 15, 2009); see also § 456.013(7), Fla. Stat. (2008) ("The boards, or the department when there is no board, shall require the completion of a 2-hour course relating to prevention of medical errors as part of the licensure and renewal process. . . . The course shall be approved by the board or department, as appropriate").

^{9/} According to the enrollment agreement, a tuition fee of \$218.98 was assessed, as well as a transfer fee in the amount of \$150.00.

COPIES FURNISHED:

Candace Rochester, Esquire
Department of Health
Bin C-65
4052 Bald Cypress Way
Tallahassee, Florida 32399-3265

June H. Zhou, Esquire
June Zhou, PLLC
Suite 209
2136 Saint Andrews Boulevard
Boca Raton, Florida 33433

Anthony R. Jusevitch, Executive Director
Board of Massage Therapy
Department of Health
4052 Bald Cypress Way, Bin C-06
Tallahassee, Florida 32399-3256

Jennifer A. Tschetter, General Counsel
Department of Health
4052 Bald Cypress Way, Bin A-02
Tallahassee, Florida 32399-1701

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.