

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH,
BOARD OF MASSAGE THERAPY,

Petitioner,

vs.

Case No. 13-0502PL

JINCHUN CUI, L.M.T.,

Respondent.

RECOMMENDED ORDER

On June 19, 2013, pursuant to notice, a hearing was conducted in Tallahassee, Florida before Administrative Law Judge Lisa Shearer Nelson of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Louise St. Laurent, Esquire
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For Respondent: Lance O. Leider, Esquire
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STATEMENT OF THE ISSUE

The issue to be determined is whether Respondent violated sections 456.072(1)(h), 456.072(1)(w), and 480.041(1)(b), Florida

Statutes (2010), as alleged in the Amended Administrative Complaint and if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On October 9, 2012, Petitioner, Department of Health, filed an Administrative Complaint against Respondent, Jinchun Cui, L.M.T., alleging violations of chapters 456 and 480, Florida Statutes. On November 13, 2013, Respondent filed a Motion for Formal Hearing and on February 11, 2013, the case was referred to the Division of Administrative Hearings for the assignment of an administrative law judge.

The case was originally scheduled for May 1, 2013. In response to Respondent's unopposed Motion for Continuance, the case was rescheduled for June 19, 2013, and proceeded as scheduled. On June 12, 2013, Petitioner filed a Motion to Amend the Administrative Complaint, which was granted by Order dated June 17, 2013. The parties filed a Joint Prehearing Stipulation that included certain stipulated facts which, where relevant, have been included in the Findings of Fact below.

At hearing, Petitioner presented the testimony of Anthony Jusevitch, Executive Director of the Board of Massage Therapy, and of Jinchun Cui. Petitioner's Exhibits 1 and 4 were admitted into evidence. Respondent testified on her own behalf and presented the testimony of Melissa Wade, and Respondent's Exhibits 1-11 were admitted into evidence. Official recognition

was also taken of recommended orders issued by other administrative law judges, as well as several administrative rules and other materials listed in the Motion for Official Recognition dated June 17, 2013.

The Transcript of the hearing was filed with the Division on July 11, 2013. Respondent's Unopposed Motion to Extend the Time to File Proposed Recommended Orders was granted and the time for filing post-hearing submissions was extended to July 29, 2013. Both parties timely filed their Proposed Recommended Orders, which have been carefully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner is the state agency charged with regulating the practice of massage therapy pursuant to section 20.43 and chapters 456 and 480, Florida Statutes (2013).

2. At all times relevant to the Amended Administrative Complaint, Respondent has been a licensed massage therapist in the State of Florida, having been issued license number MA 63711.

3. Respondent is a native of China, and immigrated to the United States in approximately 2007. She speaks limited English.

4. Respondent wanted to become a massage therapist. To that end, Respondent attended the massage therapy training program offered at Healing Hands Institute for Massage Therapy (Healing Hands) and completed her training program on or about

October 17, 2010. The program at Healing Hands consisted of a 600-hour curriculum.

5. At all times relevant to the allegations in the Amended Administrative Complaint, Healing Hands was a school accredited by the Commission on Massage Therapy Accreditation (COMPTA) and approved by the New Jersey Board of Massage Therapy. It was not, however, a Florida board-approved school for purposes of obtaining licensure in Florida. After Respondent's attendance at Healing Hands, the school closed in good standing with COMPTA.

6. Healing Hands had campuses in Flushing, New York, as well as in New Jersey. Respondent completed most of her course work at the Flushing campus because there were people there who spoke Chinese, making it easier for her to understand the curriculum.

7. While still a student at Healing Hands, Respondent took and passed the National Certification Examination for Therapeutic Massage and Bodywork. She received notification that she had passed the examination by letter dated June 8, 2010. It is unclear from the letter whether it is actually dated June 8, 2010, or is referring to an examination given that date. In any event, after receiving notice that she had passed the necessary examination, Respondent applied for and received a license to practice massage therapy in the State of New Jersey. Her

original license was issued February 24, 2011, and her current license in New Jersey is valid through November 30, 2014.

8. Respondent received assistance in filling out the paperwork related to her New Jersey application from a friend named "Mike" who is a lawyer. Mike did not charge her for his assistance. According to Respondent, Mike completed the application forms for her and she reviewed them and signed them.

9. There are no allegations in the Amended Administrative Complaint to indicate that her educational program at Healing Hands was not legitimate; that she did not take and pass the National examination; or that any actions taken to obtain her New Jersey license were fraudulent. Respondent was not required to provide any additional coursework or certifications beyond her Healing Hands transcript and proof of passing her national certification exam in order to obtain her New Jersey license.

10. Respondent wished to move to Florida because she had heard that there are good jobs in massage therapy here. She knew that she would have to obtain a Florida license in order to work in Florida.

11. To that end, she sought assistance from a person at Healing Hands that she identified as "Sean." Although she referred to Sean as one of her instructors who taught the majority of her courses, there is no instructor listed on her transcript whose first name is identified as Sean. Although

there is no direct evidence other than Respondent's testimony regarding Sean, it seems more likely that, rather than being an instructor, Sean was an interpreter for the students who spoke Chinese.

12. Respondent asked Sean to assist her with the process for getting a Florida license because other students had told her he had assisted them in obtaining licenses from other states. She paid Sean \$1,000.00 to cover the cost of applying for her Florida license. Some of the money was paid in cash, and some was in the form of a money order. Respondent could not remember how much of the total was in money order form.

13. The application fee and initial license fee are significantly less than \$1,000.

14. Respondent received her license to practice massage therapy in Florida on June 5, 2011. However, what actually happened between the time she asked Sean for help and when she got her license is unclear at best.

15. On or about March 17, 2011, Respondent's State of Florida application for licensure as a massage therapist was submitted to the Florida Department of Health, Board of Massage Therapy. The application was submitted electronically, and does not include Respondent's signature. Respondent testified that she never filled out the application and never saw it before it was submitted to the Department of Health. While it is clear

that Respondent did not personally submit the application, it is not clear who did. There is no competent evidence to demonstrate who completed the application and submitted it to the Board office.

16. Respondent's application indicated that she did not attend an apprenticeship program. It also indicates that, at the time of the application, she has never held a license or certificate, regardless of status, to practice any licensed profession; that she has not completed a 10-hour Florida laws and rules course; that she has not completed a two-hour course in the prevention of medical errors; and that she has not completed a three-hour HIV/AIDS course.

17. On or about May 9, 2011, a transcript from the Florida College of Natural Health (FCNH) was submitted to the Department of Health in support of Respondent's application. Also submitted were a Transfer of Credit Form and FCNH Certificates of Completion for 12 hours of Therapeutic Massage Training Program and two hours of Prevention of Medical Errors. Also submitted that day were a transcript from Healing Hands and a copy of the Official Candidate Score Report for the National Certification Examination for Therapeutic Massage and Bodywork, indicating that Respondent had achieved a passing grade.

18. FCNH is an incorporated, nonpublic, post-secondary educational entity which holds a license issued by the Florida

Commission for Independent Education, which regulates nonpublic post-secondary institutions pursuant to section 1005.32, Florida Statutes. FCNH is also accredited by the Accrediting Commission of approved schools and Colleges and by the Commission on Massage Therapy. FCNH is a board-approved massage school as that term is defined in section 480.033.

19. In order to be a board-approved massage school, a school is required to offer a course of study that includes, at a minimum, 500 class hours, and is also required to supply to the Board as part of its application a sample transcript and diploma; a copy of curriculum, catalog or other course descriptions; faculty credentials; and proof of licensure by the Department of Education. Fla. Admin. Code Rule 64B7-32.003.

20. As a licensed, accredited, and board-approved massage school, FCNH was and continues to be authorized to evaluate the transferability of credits from another institution to FCNH, including schools that are not board-approved. Any transferred credits could then be applied by FCNH toward the award of a diploma from FCNH, provided that FCNH adhered to the standards in rule 64B7-32.004, and completed, signed, and attached to the school's transcript, the Board's Transfer of Credit form, certifying the extent to which a student's previously-earned credits were acceptable for transfer to FCNH.

21. While the minimum number of class hours for licensure is 500 hours, the program at FCNH consists of 768 hours.

22. At all times relevant to the allegations in the Amended Administrative Complaint, Glenda Johnson was FCNH's registrar. Ms. Johnson had been employed by FCNH since 1996, and had the apparent authority to evaluate the transferability of credits from other educational institutions to FCNH, and to execute a Transfer of Credit Form certifying to the Board that a student's credits earned at another institution would be acceptable to FCNH.

23. The Transfer of Credit form stated that FCNH had evaluated Respondent's transcript from Healing Hands and that the evaluation was conducted on April 18, 2011. The form indicated that Respondent needed ten hours of Florida laws and rules and two hours of medical errors instruction in order to qualify for licensure. The form, which was signed by Glenda Johnson as Registrar of FCNH, accepted a total of 488 hours from Healing Hands, including three hours for HIV/AIDS education.

24. The FCNH transcript, signed by Glenda Johnson as registrar of FCNH, indicated completion of 500 program hours, including three hours for HIV/AIDS education as of April 22, 2011. It indicates completion of coursework regarding prevention of medical errors or Florida laws and rules.

25. Like the transcript and the Transfer of Credit form, the certificates of completion for Therapeutic Massage Training Program (Transfer of Licensure) and for Prevention of Medical Errors were signed by Glenda Johnson.

26. Respondent's transcript from Healing Hands was also submitted with the documents received by the Board office on May 9, 2011. The transcript indicates that Respondent completed a 600-hour program at Healing Hands, including three hours for HIV/AIDS awareness.

27. It appears that the documents submitted on May 9, 2011, were most likely submitted to the Board office by Glenda Johnson, as many of them are signed by her and appear to be documents from FCNH, where she worked. As registrar of the school, Ms. Johnson had the apparent authority to evaluate Respondent's hours at Healing Hands for transfer, and that evaluation can be performed electronically. In other words, a student did not have to visit a FCNH campus in order for his or her prior credits to be evaluated for transfer.

28. Neither Ms. Johnson nor Sean testified at hearing. Respondent testified that she never met Ms. Johnson and never set foot on any of FCNH's campuses. While it was assumed at hearing that Sean conspired with Ms. Johnson to create false documents in order for Respondent to obtain a Florida license, there was no competent evidence from which such a finding can be made. There

is no evidence from which it can be determined whether Sean was complicit in fraud or being duped by Ms. Johnson. The only finding that can be made based on the evidence presented is that someone submitted, on Respondent's behalf, documents that indicate that sufficient credits were transferred from Healing Hands to FCNH, a board-approved school; completion of all required courses; successful completion of the national examination; and that those documents on their face were sufficient to demonstrate Respondent met the requirements for licensure.

29. Melissa Wade is a managerial employee of FCNH. At some point after Respondent received her license, Ms. Wade received a telephone call from someone from the National Certification Board for Therapeutic Massage and Bodywork (NCB) to report that NCB had received several applications to sit for the national certification examination from purported FCNH graduates whose transcripts seemed irregular. Respondent was not among those individuals identified as having suspicious credentials, as she had taken the examination prior to any purported contact with FCNH.

30. Ms. Wade reviewed the credentials for those applicants identified by NCB, and found several things in the documents that she considered to be suspicious. While these irregularities may have been red flags for Ms. Wade and those who routinely review

transcripts, it is not clear that these irregularities would be apparent to a casual observer. However, the students for whom the transcripts and Transfer Forms were prepared were not found in FCNH's records as actually being students of the school.

Ms. Wade confronted Ms. Johnson regarding the irregular transcripts and certificates. Ms. Johnson was terminated by FCNH in December 2011.

31. Ms. Wade notified the Board of Massage that some people who had applied for licensure as graduates of FCNH might not have met the requirements for graduation. The Department initiated an investigation, with which FCNH cooperated. This investigation uncovered approximately 200 graduates, including Respondent, whose credentials FCNH could not confirm. Although Ms. Wade reviewed Respondent's documents that comprise Respondent's application for licensure and testified that Ms. Johnson did not have the authority to evaluate the hours from Healing Hands for transfer to FCNH, she did not testify that the courses which were purportedly accepted for transfer would in fact be unacceptable.

32. Anthony Jusevitch, Executive Director for the Board of Massage Therapy, testified that typically it is the school, as opposed to the applicant, that submits transcripts and certificates regarding completion of curriculum requirements. There was no credible, competent evidence to indicate exactly who decided to create the documents submitted to the Board of Massage

on Respondent's behalf, or that Respondent knew of or authorized their creation. What is clear, however, is that Respondent did not know of their creation or their submission to the Board office.

33. Once Respondent was notified of the alleged deficiency in her credentials for her Florida license, she took two home-study courses through Life Education of Florida on the subjects of Medical Errors and HIV/AIDS, for two and three hours, respectively. She also took a Florida Laws and Rules course for 10 hours through Advanced Massage Techniques' online program.

34. The use of continuing education courses is valid for obtaining initial licensure.

35. Respondent currently meets all of the requirements for licensure in the State of Florida. She continues to live in New Jersey.

36. It was not proven by clear and convincing evidence that the Respondent had any intent to defraud the Department or the Board. However, at the time her licensure application was processed by the Board staff, Respondent did not meet the requirements for licensure because she had not taken the required prevention of medical errors and Florida Laws and Rules courses.

CONCLUSIONS OF LAW

37. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this case

pursuant to sections 120.569 and 120.57(1), Florida Statutes (2013).

38. This is a proceeding in which the Department seeks to take disciplinary action against Respondent's license to practice massage therapy. Accordingly, the Department is required to prove the allegations in the Amended Administrative Complaint by clear and convincing evidence. Dep't of Banking and Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

39. The Supreme Court of Florida 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 at 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)). This burden of proof may be met where the evidence is in conflict, but "seems to preclude evidence that is ambiguous." Westinghouse Elec. Corp. v. Shuler Bros., 590 So. 2d 986, 988 (Fla. 1st DCA 1991).

40. Moreover, Respondent can be disciplined only for matters alleged in the Amended Administrative Complaint. Trevisani v. Dep't of Health, 908 So. 2d 1108 (Fla. 1st DCA 2005); Ghani v.

Dep't of Health, 714 So. 2d 1113 (Fla. 1st DCA 1998); Willner v. Dep't of Prof. Reg., 563 So. 2d 805 (Fla. 1st DCA 1990).

41. The Amended Administrative Complaint contains the following factual allegations upon which the charges against Respondent are based:

4. On or about March 17, 2011, Respondent, or her agent on Respondent's behalf, submitted a State of Florida Application for Licensure as a massage therapist ("Application") to the Florida Department of Health Board of Massage Therapy ("Florida Board").

5. Respondent's Application further reveals that Respondent did not attend an apprenticeship program.

6. Pursuant to Section 480.041(1)(b), in order to qualify for licensure as a massage therapist in the State of Florida pursuant to Chapter 480, Florida Statutes, a person must complete a course of study at a board-approved massage school or complete an apprenticeship program that meets the standards adopted by the board.

7. Submitted to the Florida Board with Respondent's Application was a transcript from Florida College of Natural Health ("FCNH").

8. The FCNH transcript represents that Respondent earned five hundred credit hours in the FCNH Therapeutic Massage Training Program (Transfer of Licensure).

9. The FCNH transcript represents that Respondent started the FCNH Therapeutic Massage Training Program (Transfer of Licensure) on April 21, 2011, and completed the program on April 22, 2011.

10. Respondent also submitted, with her Application, a FCNH Certificate of Completion of twelve hours of Therapeutic Massage Training Program (Transfer of Licensure) dated April 22, 2011.

11. Also submitted with Respondent's Application was a FCNH Certificate of Completion of two hours of Prevention of Medical Errors dated April 22, 2011.

12. On or about July 19, 2012, the Vice President of Compliance and Institutional Effectiveness for FCNH ("V.P.") certified that the FCNH transcript Respondent submitted with her Application is fraudulent.

13. On or about July 19, 2012, the V.P. also certified that Respondent did not complete the courses identified in the certificates Respondent submitted with her application.

14. Having not completed courses at, or obtained certificates of completion from, a Florida Board certified school, as required by Section 480.041(1)(b), Florida Statutes (2010), Respondent is not qualified to be licensed, or to practice, as a massage therapist in the State of Florida.

42. The Department proved by clear and convincing evidence that an application for licensure was submitted in Respondent's name, and that additional documents in support of the application were also submitted at a later date. However, the Department did not prove who submitted either the application or the supporting documentation.

43. The more persuasive testimony at hearing also indicated that Respondent completed a 600-hour course at Healing Hands, a

COMPTA-accredited institution; that there was no indication that the majority of those hours would not have been appropriate for transfer to a board-approved school; and that Respondent passed a national certification test required for licensure. Although she had not taken the appropriate laws and rules or prevention of medical errors courses at the time the application was submitted, she has since done so.

44. Count One of the Amended Administrative Complaint charges Respondent with violating section 456.072(1)(h), Florida Statutes, which provides:

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

* * *

(h) Attempting to obtain, obtaining, or renewing a license to practice a profession by bribery, by fraudulent misrepresentation, or through error of the department or the board.

Similarly, Count Two charges a violation of section 456.072(1)(w), by "[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."

45. Fraud requires a false statement with respect to any material fact, made with knowledge of its falsity and with the intent to induce another's reliance, and consequent injury to the person acting in reliance of the false representation. Cohen v. Kravit Estate Buyers, 843 So. 2d 989, 991 (Fla. 4th DCA 2003). Respondent did not fill out or see the application that was submitted to the Board on her behalf. She did not authorize anyone to submit fraudulent documents in support of her application. In short, there is no competent, credible evidence to indicate that Respondent intended to defraud anyone. Respondent speaks little English and has been in the United States for a short period of time. She had received a license from another state based upon her Healing Hands transcript and her passing score for the national examination. It is plausible that she thought the same was required for Florida, and the Department did not prove otherwise.

46. Petitioner also argues that section 456.072(1)(h) authorizes discipline for obtaining a license through error of the Board, with no requirement of intent or knowledge on Respondent's part. First, there is not clear and convincing evidence that the Board staff committed any error. The Board was presented with an application which, on its face, met the statutory and rule requirements for licensure. Second, even assuming that an error was proven, there has to be some culpable

act on the part of Respondent. Penal statutes are required to be strictly construed in favor of the licensee. Camejo v. Dep't of Bus. & Prof'l Reg., 812 So. 2d 583, 583-84 (Fla. 3d DCA 2002); Elmariah v. Dep't of Prof'l Reg., 574 So 2d 164 (Fla. 1st DCA 1990). See also Griffis v. Fish & Wildlife Conserv. Comm'n, 57 So. 3d 929 (Fla. 1st DCA 2011) (statutes imposing a penalty must never be extended by construction).

47. Subsection 456.072(1) provides that "the following acts" shall constitute grounds for discipline as specified in subsection (2). Subsection (2), in turn, provides that "[w]hen the board . . . finds any person guilty of the grounds set forth in subsection (1)" Taken together, the only reasonable interpretation of section 456.072(1)(h) is that it requires, at a minimum, some knowledge of an error by the Board and some culpability by Respondent. Pic N' Save Cent. Fla., Inc. v. Dep't of Bus. & Prof'l Reg., 601 So. 2d 245, 250 (Fla. 1st DCA 1992) ("one's license to engage in an occupation is not to be taken away except for misconduct personal to the licensee.").

48. Moreover, as noted by Judge Van Laningham in Dep't of Health, Board of Massage Therapy v. Diamond, DOAH Case No. 12-3825PL (Fla. DOAH Apr. 9, 2013; Fla. Bd. of Massage Ther. Aug. 21, 2013),

the Department's "unilateral error" theory is inconsistent with the general procedure for licensing as set forth in section 120.60, which provides in pertinent part as follows:

(1) Upon receipt of an application for a license, an agency shall examine the application and, within 30 days after such receipt, notify the applicant of any apparent errors or omissions and request any additional information the agency is permitted by law to require. An agency shall not deny a license for failure to correct an error or omission or to supply additional information unless the agency timely notified the applicant within this 30-day period.

Given that the law clearly prohibits an agency from denying a license for failure to correct an error or omission or to supply additional information unless the agency timely notified the applicant of the particular deficiency within 30 days after receiving the application, to allow the agency later to revoke a license pursuant to section 456.072(1)(h) based solely on a purported deficiency in the licensee's application not only would erode the protection that section 120.60 affords license applicants, but also would undermine the integrity of licenses in general.

49. With respect to Count Two, the Department simply alleged a violation by "obtaining her license to practice massage therapy in the State of Florida through error of the Department of Health or through fraudulent misrepresentation by submitting a false

transcript and fraudulent Certificates of Completion with her application." This is the same conduct charged and not proven with respect to Count One. Both Counts should be dismissed.

50. Count Three charges Respondent with violating section 480.041(1)(b), "because she failed to complete a course of study at a Florida Board-approved massage school and failed to complete an apprenticeship program that meets the standards adopted by the Florida Board."

51. Section 480.041, Florida Statutes (2010), provides:

480.041 Massage therapists; qualifications; licensure; endorsement.—

(1) Any person is qualified for licensure as a massage therapist under this act who:

(a) Is at least 18 years of age or has received a high school diploma or graduate equivalency diploma;

(b) Has completed a course of study at a board-approved massage school or has completed an apprenticeship program that meets standards adopted by the board; and

(c) Has received a passing grade on an examination administered by the department.

(2) Every person desiring to be examined for licensure as a massage therapist shall apply to the department in writing upon forms prepared and furnished by the department. Such applicants shall be subject to the provisions of s. 480.046(1). Applicants may take an examination administered by the department only upon meeting the requirements of this section as determined by the board.

(3) Upon an applicant's passing the examination and paying the initial licensure fee, the department shall issue to the applicant a license, valid until the next scheduled renewal date, to practice massage.

(4) The board shall adopt rules:

- (a) Establishing a minimum training program for apprentices.
- (b) Providing for educational standards, examination, and certification for the practice of colonic irrigation, as defined in s. 480.033(6), by massage therapists.
- (c) Specifying licensing procedures for practitioners desiring to be licensed in this state who hold an active license and have practiced in any other state, territory, or jurisdiction of the United States or any foreign national jurisdiction which has licensing standards substantially similar to, equivalent to, or more stringent than the standards of this state.

52. As a preliminary matter, the undersigned agrees with Judge Van Laningham's conclusion in Diamond that section 480.041(1) does not by its terms require compliant behavior, either by prescribing minimum standards or forbidding behavior identified as wrongful. The statute is a definitional provision describing the qualifications for licensure. One cannot commit a violation of a definition.

53. The application filed on Respondent's behalf, but not reviewed or approved by her, did not indicate that she was licensed in another jurisdiction. The evidence presented at hearing established that she was, and is, licensed in New Jersey. The Amended Administrative Complaint does not acknowledge the avenue for licensure by endorsement.

54. There is no dispute Respondent did not complete an apprenticeship program. The evidence also established that she has a transcript from a board-approved school, FCNH, although

there are questions about its accuracy. Nonetheless, the Department did not allege that there was any deficiency in the hours taken at Healing Hands and submitted for transfer to FCNH, and there was no evidence that the majority of hours reflected in the Healing Hands transcript would not be acceptable.^{1/} The documents submitted on May 9, 2011, taken together, signify satisfactory completion of the requirements of an educational or career program of study or training or course of study, and constitute a "diploma" as defined in section 1005.02(8), Florida Statutes.

55. Even assuming that Respondent is not qualified for licensure by examination because, as she readily admitted, she did not attend FCNH, section 480.041(4)(c) provides a method for licensure for those massage therapists already licensed in another state. The Board has adopted Florida Administrative Code Rule 64B7-25.004, which provides:

Endorsements.

(1) The Department shall issue a license to a person who:

(a) Pays to the Department the initial licensure fee set forth in subsection 64B7-27.008(2), F.A.C., and

(b) Submits a completed application on form DH-MQA 1115, "Application for Licensure," . .

(c) Is currently licensed and has practiced massage under the laws of another state, and was required, in order to be so licensed to meet standards of education or apprenticeship training substantially

similar to, equivalent to, or more stringent than those required for licensure by Florida law and these rules; and

(d) Demonstrates that his out-of-state license was issued upon the satisfactory completion of an examination comparable to the examination approved by the Board; and

(e) Has no outstanding or unresolved complaint filed against him or her in the jurisdiction of licensure.

(f) Completes a current curriculum course from a Board approved school covering the Florida statutes and rules related to massage therapy.

(g) Completes the HIV/AIDS course requirement in Rule 64B7-25.0012, F.A.C.

(h) Completes a course relating to the prevention of medical errors as required by Section 456.013(7), F.S.

56. Like Florida, New Jersey requires a course of study comprising 500 hours. Respondent's course at Healing Hands was a 600-hour course. It is unclear whether Respondent was required to take a national examination for licensure in New Jersey, but she in fact took and passed such an examination, the results of which were submitted to Florida. Respondent has completed the HIV/AIDS course, the prevention of medical records course, and the Florida laws and rules course required for licensure. She meets the qualifications for licensure by endorsement.

57. The Department did not establish the violation alleged in Count Three by clear and convincing evidence.

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 in its entirety.

DONE AND ENTERED this 9th day of September, 2013, in Tallahassee, Leon County, Florida.



LISA SHEARER NELSON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of September, 2013.

ENDNOTE

^{1/} Petitioner did not allege any problems with Respondent's education at Healing Hands, but did question Respondent about her education there in an attempt to challenge her credibility. Her answers were not always consistent. However, in the undersigned's view, the discrepancies were not a result of any attempt by Respondent to be dishonest, but were a result of her unfamiliarity with both the language and the licensure and disciplinary processes. Her demeanor at hearing reflected a confused and frightened young woman caught in the middle of a controversy created by the actions of others.

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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.