

FILED DATE **MAY 28 2015**

Department of Health

By: Carol Sanders  
Deputy Agency Clerk

STATE OF FLORIDA  
BOARD OF MASSAGE THERAPY

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2013-13886  
DOAH CASE NO.: 14-2552PL  
LICENSE NO.: MA 59275

HONG TANG,

Respondent.

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DIVISION OF  
ADMINISTRATIVE  
HEARINGS

FINAL ORDER

THIS CAUSE came before the BOARD OF MASSAGE THERAPY (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on April 30, 2015, in Tampa, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order (a copy of which is attached hereto as Exhibit A) in the above-styled cause. Petitioner was represented by Louise St. Laurent, Assistant General Counsel. Respondent was not present and was represented by Jack A. Goldberger, Esquire.

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.

RULINGS ON EXCEPTIONS TO FINDINGS OF FACT

1. Petitioner takes exception to the findings of fact in paragraph 6 of the Recommended Order, which states:

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"The deputy asked if the massage was 'full service.' This is the first reference to sexual activity in any conversation between the deputy and respondent Tang."

Petitioner asserts that there is no competent substantial evidence to support a finding that the term "full service" referred to sexual activity. There was no testimony from the witness who testified to the use of the term "full service" regarding its meaning. Respondent objected to such testimony. This exception is approved and the following language is deleted from the finding of facts in paragraph 6:

"This is the first reference to sexual activity in any conversation between the deputy and respondent Tang."

2. Petitioner takes exception to paragraph 9 of the Recommended Order which states:

Manual masturbation of the deputy's penis would have been outside the scope of the practice of massage."

Petitioner asserts that paragraph 9 contains a conclusion of law rather than a finding of fact. The exception is approved.

#### EXCEPTIONS TO CONCLUSIONS OF LAW

1. Petitioner takes exception to the conclusion of law in paragraph 16 of the recommended order which states:

Petitioner has proved by clear and convincing evidence that Respondent Tang attempted to engage the deputy in sexual activity outside the scope of practice, but Petitioner never charged Respondent Tang with this offense."

Petitioner asserts that the conclusion is based on an erroneous interpretation of the term "induce." The recommended order concluded that the deputy, not the respondent, was the inducer. The conclusion was based on the unsupported finding that the term "full service" constituted a request for "full-service sex."

The Recommended Order relies on *Ciampi v. Odgen Chrysler Plymouth*, 634 NE 2d 448 (Ill. 1994), an Illinois case concerning fraud in the inducement in a contract case. The case is inapposite. In the instant case, the deputy was not attempting to fraudulently enter into a contract for services. The Recommended Order misapplies *State v. Murphy*, 124 So. 3d 323 (Fla. 1<sup>st</sup> DCA 2013). Applying *State v. Murphy* to the facts in evidence, even if "full service" is assumed to mean "full-service sex," results in a conclusion that Respondent Tang induced or attempted to induce the deputy to engage in sexual activity.

The exception to paragraph 16 is approved.

2. Petitioner takes exception to paragraph 17 of the Recommended Order, which concluded that the deputy testified to initiating sexual activity. There is no evidence in the record to support this conclusion of law, and for the reasons expressed in paragraph 1 above, the exception is approved.

3. Petitioner takes exception to paragraph 18 of the Recommended Order wherein the Administrative Law Judge concludes that the deputy was the causative agent of sexual activity. For the reasons set forth in paragraph 1 above, the exception is approved.

4. Petitioner takes exception to paragraph 23 of the Recommended Order because it is based on the finding of fact that "full service" meant "full-service sex" and Respondent Tang "reduced the scope of the sexual activity." For the reasons set forth in paragraph 1 above, the exception is approved.

#### FINDINGS OF FACT

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

2. There is competent substantial evidence to support the findings of fact as amended.

#### CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 464, Florida Statutes.

2. The conclusions of law set forth in paragraphs 10, 11, 13, 14, 15, 19, 20, 21, and 22 the Recommended Order are approved and adopted and incorporated herein by reference.

3. The following language is substituted for the conclusion of law in paragraph 16 of the Recommended Order:

Petitioner has proved by clear and convincing evidence that Respondent induced or attempted to induce the deputy to engage in sexual activity outside the scope of practice.

#### PENALTY

Upon a complete review of the record in this case, the Board determines that the recommendation in the recommended order is rejected.

The license of HONG TANG is hereby REVOKED.

The licensee must pay an administrative fine of \$2,500.00 within 30 days of the date this Final Order is filed. Payment shall be made to the Board of Massage Therapy and mailed to, DOH-Compliance Management Unit, 4052 Bald Cypress Way, Bin C-06 Tallahassee, Florida 32399-3276, Attention: Massage Therapy Compliance Officer. **Payment must be made by cashier's check or money order ONLY.** Personal checks will not be accepted.

RULING ON MOTION TO ASSESS COSTS

The Board retains jurisdiction to assess costs in this case.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 27 day of May, 2015.

BOARD OF MASSAGE THERAPY



Christy Robinson  
Executive Director for  
Bridget Burke-Wammack, CHAIR

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY,

ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, 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 Final Order has been provided by U.S. mail to Robert E. Meale, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060 and by email to Jack A. Goldberger, Esquire, [igoldberger@agwpa.com](mailto:igoldberger@agwpa.com) and Louise St. Laurent Department of Health-PSU, [Matthew.Witters@flhealth.gov](mailto:Matthew.Witters@flhealth.gov) this 28<sup>th</sup> day of May, 2015.



**Deputy Agency Clerk**

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