

STATE OF FLORIDA
BOARD OF MASSAGE THERAPY

FILED DATE MAY 19 2016

Department of Health

By: Angel Saubert
Identify Agency Clerk

DEPARTMENT OF HEALTH, BOARD
OF MASSAGE THERAPY

Petitioner,

vs.

DOH CASE NO.: 2014-21983

DOAH CASE NO.: 15-1103

LICENSE NO.: MM 32546

QUEEN SPA, INC.,

Respondent.

DEPARTMENT OF HEALTH, BOARD
OF MASSAGE THERAPY

Petitioner,

vs.

DOH CASE NO.: 2014-12347

DOAH CASE NO.: 15-1565PL

LICENSE NO.: MA68834

JIANPING LIU, LMT,

Respondent.

FILED
MAY 20 11 29
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 21, 2016, 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 Shoshana Silver, Assistant General Counsel. Respondent was not present. Respondent was represented by Vana Renejuste, 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.

RULING ON EXCEPTIONS

1. Respondent's 1st exception is rejected on the grounds that it does not meet the definition of an exception. Respondent's counsel appeared at the DOAH hearing on August 5, 2015.

2. Respondent's 2nd exception is rejected on the grounds that it does not meet the definition of an exception. Respondent submitted a proposed recommended order that was considered by the ALJ.

3. Respondent's 3rd exception is rejected on the grounds that it does not meet the definition of an exception. It is a statement of fact concerning the statutory and rule requirements applicable to the filing of exceptions and the deadline established by the ALJ.

4. Respondent's 4th exception is rejected on the grounds that it does not meet the definition of an exception. Whether Respondent's exceptions were timely filed is a question of jurisdiction for the Board. Petitioner has not objected to the timeliness of the filing of Respondent's exceptions.

5. Respondent's 5th exception is rejected on the grounds that the Board does not have substantive jurisdiction to second guess the evidentiary rulings of the ALJ. In addition, the exception does not meet the requirements of Rule 28-106.217(1), Florida Administrative Code.

6. Respondent's 6th exception is rejected on the grounds that the Board does not have substantive jurisdiction to second guess the evidentiary rulings of the ALJ. In addition, the exception does not meet the requirements of Rule 28-106.217(1), Florida Administrative Code.

7. Respondent's 7th exception is rejected on the grounds that the Board does not have substantive jurisdiction to second guess the evidentiary rulings of the ALJ. In addition, the exception does not meet the requirements of Rule 28-106.217(1), Florida Administrative Code.

8. Respondent's 8th exception is rejected on the grounds that the Board does not have substantive jurisdiction to second guess the evidentiary rulings of the ALJ. In addition, the exception does not meet the requirements of Rule 28-106.217(1), Florida Administrative Code.

9. Respondent's 9th exception is rejected on the grounds that there is no such thing as a "home license." The ALJ acknowledged at ¶7 of the RO that Respondent had an occupational license to perform massages in her home. However, there is no dispute that Chapter 480 requires a massage establishment license, and that Respondent did not have a massage establishment license for her home. In addition, the exception does not meet the requirements of Rule 28-106.217(1), Florida Administrative Code.

10. Respondent's 10th exception is rejected on the grounds that it does not meet the definition of an exception. In addition,

the exception does not meet the requirements of Rule 28-106.217(1), Florida Administrative Code.

11. Respondent's 11th exception is rejected on the grounds that it does not meet the definition of an exception. In addition, the exception does not meet the requirements of Rule 28-106.217(1), Florida Administrative Code.

12. Respondent's 12th exception is rejected on the grounds that it does not meet the requirements of Rule 28-106.217(1), Florida Administrative Code. In addition, the exception requires the Board to re-evaluate the evidence presented to the ALJ, which the Board is not authorized to do.

13. Respondent's 13th exception is rejected on the grounds that the Board cannot change the recommended penalty without a complete review of the record and without stating with particularity its reasons therefor in the order by citing to the record to justify the departure. Respondent failed to cite to the record to justify a departure from the recommended penalty.

14. Respondent's 14th exception is rejected on the grounds that the Board does not have substantive jurisdiction to second guess the evidentiary rulings of the ALJ concerning the qualifications or admissibility of expert testimony. In addition, the exception does not meet the requirements of Rule 28-106.217(1), Florida Administrative Code.

15. Respondent's 15th exception is rejected. The willingness of Respondent to exercise her administrative and constitutional

rights does not constitute mitigation. Learning that sexual misconduct is a violation of the Massage Therapy Practice Act is prohibited after committing sexual misconduct after being arrested for prostitution does not constitute a mitigating factor.

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference. On Petitioner's ore tenus motion, paragraph 1 of the Findings of Fact in the Recommended Order is corrected to reference Chapter 480, Florida Statutes, rather than Chapter 464, Florida Statutes.

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

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 the Recommended Order are approved and adopted and incorporated herein by reference.

PENALTY

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Administrative Law Judge be ACCEPTED. WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

The license of QUEEN SPA, INC. is REVOKED.

Respondent, QUEEN SPA, INC., must pay an administrative fine of \$4,000.00 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-76 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.

The license of JIANPING LIU is REVOKED.

Respondent JIANPING LIU must pay an administrative fine of \$2,750.00 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-65 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

Petitioner's motion to bifurcate the assessment of costs is granted. The Board shall retain jurisdiction to assess the investigative costs in these cases.

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

DONE AND ORDERED this 18th day of May, 2016.

BOARD OF MASSAGE THERAPY

Claudia Kemp
Claudia Kemp
Interim Executive Director
for Lydia Nixon, 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 certified mail to QUEEN SPA, INC., 9951 Utah Street, Bonita Springs FL 34135 & 51 9th Street, South Naples FL 34102, and to JIANPIN LIU, 9951 Utah Street, Bonita Springs FL 34135 & 7800 Woodman Avenue #79, Van Nuys CA 91402, by US mail to Vana Renejuste, Esquire, 3049 Cleveland Avenue, Suite 140, Ft. Myers FL 33901, and to John D.C. Newton II, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by email to Shoshana Silver Department of Health-PSU, Shoshana.Silver@flhealth.gov this 19th day of May, 2016.

Angel Souders
Deputy Agency Clerk

7014 2120 0003 8707 8776



Queen Spa, Inc.
9951 Utah Street
Bonita Springs, FL 34135

7014 2120 0003 8707 8783



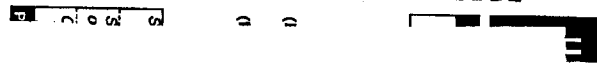
Queen Spa, Inc.
51 9th Street
South Naples, FL 34102

7014 2120 0003 8707 8790



Jianpin Liu
9951 Utah Street
Bonita Springs, FL 34135

7014 2120 0003 8707 8806



Jianpin Liu
7800 Woodman Ave., #79
Van Nuys, CA 91402