

FILED DATE **MAY 19 2016**
Department of Health

By: *[Signature]*
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MASSAGE THERAPY

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2013-19708
DOAH CASE NO.: 15-3293PL
LICENSE NO.: MA 71793

NA LI,

Respondent.

FILED
MAY 20 AM 11
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 Kristen Summers, Assistant General Counsel. Respondent was present present and was represented by Patrick Dray, 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, to ¶6 of the RO, is rejected on the grounds that it does not meet the requirements of Rule 28-106.217, Florida Administrative Code, and it requests the Board

to impermissibly re-weigh the credibility of the testimony before the ALJ.

2. Respondent's 2nd exception, to ¶8 of the RO, is rejected on the grounds that it does not meet the requirements of Rule 28-106.217, Florida Administrative Code, and it requests the Board to impermissibly re-weigh the credibility of the testimony before the ALJ.

3. Respondent's 3rd exception, to ¶9 of the RO, is rejected on the grounds that it does not meet the requirements of Rule 28-106.217, Florida Administrative Code, and it requests the Board to impermissibly re-weigh the credibility of the testimony before the ALJ.

4. Respondent's 4th exception, to ¶11 of the RO, is rejected on the grounds that it does not meet the requirements of Rule 28-106.217, Florida Administrative Code, and it requests the Board to impermissibly re-weigh the credibility of the testimony before the ALJ.

5. Respondent's 5th exception, to ¶14 of the RO, is rejected on the grounds that it does not meet the requirements of Rule 28-106.217, Florida Administrative Code, and it requests the Board to impermissibly re-weigh the credibility of the testimony before the ALJ.

6. Respondent's 6th exception, to ¶15 of the RO, is rejected. Respondent argues that his client's testimony cannot be rejected because it was not impeached, discredited, controverted,

contradictory within itself or physically impossible. Respondent overlooks that part of the legal theory he proposes provides that testimony that is controverted does not have to be accepted by the finder of fact. In this case, Respondent's testimony was controverted, and it was the duty of the ALJ to determine which witness presented the more credible evidence. The Board does not have the authority to impermissibly re-weigh the credibility of the testimony before the ALJ.

7. Respondent's 7th exception, to ¶ 16 of the RO, is rejected on the grounds that it does not meet the requirements of Rule 28-106.217, Florida Administrative Code, and it requests the Board to impermissibly re-weigh the credibility of the testimony before the ALJ.

8. Respondent's 8th exception is rejected on the grounds that it does not meet the requirements of Rule 28-106.207, Florida Administrative Code, and the ALJ's Conclusions of Law are consistent with the statutory and rule interpretations of the Board.

9. Respondent's 9th exception, to ¶30 of the RO is rejected on the grounds that ¶30 merely sets forth the provisions of the Board's Rule 64B7-30.002. It is neither a finding of fact nor a application of law to the findings of fact. In addition, the Board does not have jurisdiction to make any finding of fact or law regarding the application of the Florida or US constitutions to the facts of this case or to the statutes or rules applicable.

10. To the extent that Respondent's 10th exception attempts to establish mitigating factors, the exception is rejected. At ¶17, the ALJ took note that no prior action had been taken against Respondent's license. At ¶31, the ALJ found that no circumstances were shown that would warrant deviation from the guideline penalty. Respondent asserts that all the mitigating factors set forth in his exception were proven and uncontested at hearing. Therefore, the ALJ took all those factors into account. Further, Rule 64B7-30.002(4) does not include marital or immigration status as mitigating factors, and Respondent was not charged in the Administrative Complaint with conviction of a crime related to the practice of massage therapy.

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.
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 NA LI is 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-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 moved to bifurcate the assessment of costs. The motion is granted, and the Board retains jurisdiction for a separate hearing to assess investigative costs.

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

DONE AND ORDERED this 16th day of May, 2016.

BOARD OF MASSAGE THERAPY



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 NA LI, 1561 S. Federal Hwy, Ft. Lauderdale FL 33316 & 16801 NE 14th Avenue #106, North Miami Beach FL 33162 and by US mail to S. Patrick Dray, Esquire, 40 NW Third Street, Miami FL 33128; to F. Scott Boyd, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by email to Kristen Summers Department of Health-PSU, Kristen.Summers@flhealth.gov this 19th day of May, 2016.

7014 2120 0003 8707 8813

Na Li
1561 S. Federal Hwy.
Ft. Lauderdale, FL 33316


Deputy Agency Clerk

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Na Li
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North Miami Beach, FL 33162