

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND  
PROFESSIONAL REGULATION, BOARD  
OF COSMETOLOGY,

Petitioner,

vs.

Case No. 16-0600PL

TANIA JORGE,

Respondent.

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RECOMMENDED ORDER

On May 12, 2016, a duly-noticed hearing was held by video teleconference at locations in Miami and Tallahassee, Florida, before F. Scott Boyd, an Administrative Law Judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ramsey D. Revell, Esquire  
Dillon Jess, Esquire  
Department of Business and  
Professional Regulation  
Capital Commerce Center  
2601 Blair Stone Road  
Tallahassee, Florida 32309

For Respondent: Elizabeth P. Perez, Esquire  
Broad and Cassel  
One Financial Plaza, Suite 2700  
100 Southeast Third Avenue  
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STATEMENT OF THE ISSUES

Whether Respondent violated section 477.029(1)(e), Florida Statutes (2007),<sup>1/</sup> regulating licensure as a cosmetologist by the State of Florida, as alleged in the Amended Administrative Complaint; and, if so, what is the appropriate sanction.

PRELIMINARY STATEMENT

On September 24, 2015, the Department of Business and Professional Regulation (Petitioner or Department), filed an Amended Administrative Complaint against Tania Jorge (Respondent or Ms. Jorge), on behalf of the Board of Cosmetology (Board), alleging that she had violated section 477.029(1)(e) by submitting an application with a false and/or forged Puerto Rican cosmetology license number to obtain licensure as a cosmetologist by endorsement in Florida.

The case was originally set for hearing on April 7, 2016, but a joint motion for continuance was granted and it was heard on May 12, 2016. At hearing, Joint Exhibit J-1, a copy of the cosmetology license application of Ms. Jorge, was admitted. Petitioner's Exhibit P-2, a copy of Ms. Jorge's Florida cosmetology license, was also admitted. Petitioner also offered the testimony of Ms. Yadira Garcia, an investigations specialist, and that of Ms. Julie Roland, a government analyst, both of whom worked for the Department at the relevant time.

Respondent's Exhibits R-2 through R-5 were also admitted. These included the application of a third party (Ms. Kathia Mathelier), as discussed in detail below. Respondent also testified on her own behalf.

The Transcript was filed on June 29, 2016. Petitioner's Proposed Recommended Order was timely filed on July 8, 2016. Respondent untimely filed a Motion for Enlargement of Time. Finding no prejudice to Petitioner, an extension was granted, and Respondent's Proposed Recommended Order was filed on July 15, 2016.

#### FINDINGS OF FACT

1. Petitioner is the state agency charged with regulating the practice of cosmetology pursuant to section 20.165 and chapters 455 and 477, Florida Statutes (2015). The Board is the professional licensing board charged with disciplinary final agency action against cosmetologists pursuant to chapters 455 and 477.

2. Ms. Jorge was issued Florida cosmetology license number CL 1196463 on April 9, 2008. The Florida license was issued based upon the submission of an application for initial cosmetology license by endorsement. Supporting licensure by endorsement, the application submitted to the Board included a certification dated February 15, 2007, purporting to have been issued by the Commonwealth of Puerto Rico. That certification

indicated that Tania Jorge<sup>2/</sup> had completed 1200 hours of study and had been duly licensed as a certified cosmetologist since January 26, 1989. It indicated that her Puerto Rican license number was 71770. Ms. Jorge's application file also contained a transcript purportedly issued by the Academia de Belleza Maruggie in Puerto Rico indicating that her studies began on August 7, 1988, and were completed on May 30, 1989, reflecting the completion of 18 courses totaling 1200 hours of study, and the name, number, and grade received by Ms. Jorge for each course taken.<sup>3/</sup>

3. Puerto Rican cosmetology license number 71770 was never issued to Ms. Jorge.

4. Ms. Jorge came to the United States from Cuba in 1980. She testified at hearing that she had never attended cosmetology school in Puerto Rico, had never lived there, and in fact had only visited there once for a few hours on a cruise.

5. Ms. Jorge testified that she went to Specialized Beauty Center (SBC) in Kissimmee in order to prepare for and complete the Florida cosmetology licensure examination. She testified that she paid SBC for a week-long review course to prepare for the examination and that the following week SBC sent her to a different place to take the examination. She testified that she took the examination on a computer, in Spanish. She could not recall the address.

6. Ms. Jorge testified that prior to the examination, she submitted documentation to SBC at its request showing that she had completed 1200 hours of study and completed a course on HIV. She testified that she thought she had completed all of the coursework necessary to obtain cosmetology licensure by examination. Ms. Jorge testified that she did not know that SBC had submitted an endorsement application and not an examination application.

7. The only document introduced at hearing indicating completion of 1200 hours of study is the transcript from the Puerto Rican beauty school in Ms. Jorge's application file. The only document showing completion of an HIV course in her file is a Certificate of Completion for a four-hour course entitled "HIV/Aids 104" and dated March 17, 2008, indicating by heading and signature that it was issued by SBC. Ms. Jorge admitted that she did take that course at SBC. It was not clear why SBC would have required her to take another HIV course if she had submitted documentation showing that she had already met that requirement.

8. Ms. Julie Roland, government analyst with the Department, credibly testified that the cosmetology exam is given at 22 locations around the state by a vendor company called Pearson VUE. She testified that Pearson VUE specializes in developing and administering various types of examinations, has had the state contract at least since 2002, and always gives the

examinations at their facilities. There was no documentation in Ms. Jorge's application file from Pearson VUE indicating that Ms. Jorge had taken or passed their cosmetology examination. As Ms. Roland testified, endorsement candidates do not take the examination.

9. Ms. Jorge's application file maintained by the Department contains some documents that do not belong there, although they are all marked with her application number. Her file contains duplicate "Attest Statement" pages: one is signed by Ms. Jorge; the other appears to contain the signature of a Katia (with no letter "h") Mathelier. It similarly contains two "Affirmation Statement" pages: one containing the signature of Ms. Jorge; the other containing a signature reading Katia Mathelier. Curiously, the Affirmation Statement page from the cosmetology license application file of Kathia (with an "h") Mathelier and the Mathelier Affirmation Statement page in Ms. Jorge's file are not identical. Not only is the first name spelled differently, the signatures appear to be in different handwriting, and they display different dates. Similarly, the two Mathelier Attest Statement forms are not simply duplicates. The name is spelled and written differently. It is not clear why the Department did not become aware of these anomalies at the time Ms. Jorge's application was submitted, when it did become

aware of them, or what action, if any, was taken when it was discovered.<sup>4/</sup>

10. Licensing information records of the Department indicate that Kathia Mathelier is an Orlando cosmetologist who was initially licensed on April 9, 2008. Her application also contains a certificate from SBC showing completion of the HIV/AIDS 104 course. Her application also contains a certification dated February 15, 2007, purporting to have been issued by the Commonwealth of Puerto Rico indicating that Kathia Mathelier was the holder of a Puerto Rican cosmetology license. Her application also contains a transcript purportedly issued by the Academia de Belleza Maruggie in Puerto Rico showing the completion of the same 18 courses totaling 1200 hours of study, the same beginning and ending dates of enrollment, exactly the same grade received in every course, and the same typographical errors as the transcript in Ms. Jorge's file.

11. Ms. Jorge testified at hearing that she had no knowledge of Ms. Mathelier and that she did not submit any documents to SBC that were not her own. She testified that SBC prepared and organized all of the application paperwork for her and that she just signed where they told her she needed to sign. The remainder of the application was not in her handwriting.

12. Ms. Jorge signed her application everywhere a signature was required prior to its submission to the Board, and she

acknowledged that signing a document places liability on the signee for the contents of that document.

13. There was no deposition or live testimony from Ms. Mathelier at the hearing. There was no testimony from SBC. There was none from the Academia de Belleza Maruggie. No evidence was introduced as to the roles that Academia de Belleza Maruggie or SBC may have played in the fraud, or the relationship between these entities. The inconsistencies and questions about the application are not fully explained on this record, and any complicity on the part of the schools is only a matter of speculation.

14. Ms. Jorge's testimony is not at all credible, however. No evidence in the record supports Ms. Jorge's testimony that she completed 1200 hours of study at a school other than the Puerto Rican school. It is simply not reasonable that SBC discarded school transcripts she provided to it and unilaterally substituted a different forged transcript and a false licensure certification from Puerto Rico without the knowledge or cooperation of Ms. Jorge. The only reasonable inference is that Ms. Jorge paid SBC to submit her licensure application on her behalf, that she was aware that it contained false information, and that she knew she was not licensed as a cosmetologist in any jurisdiction. The evidence is clear and convincing that false documents were submitted to obtain Ms. Jorge's license and that



she personally intended for that false application to be submitted.

15. Ms. Jorge is a single mother of two children, one of whom is in college. Revocation of her license will greatly impact her livelihood. Other than the present action, she has practiced cosmetology without complaint since she was licensed in 2008, and no previous discipline has been imposed.

#### CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this proceeding in accordance with sections 120.569 and 120.57(1), Florida Statutes (2016).

17. Petitioner seeks to take disciplinary action against the cosmetology license of Respondent. A proceeding to impose discipline against a professional license is penal in nature, and Petitioner bears the burden to prove the allegations in the Amended Administrative Complaint by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

18. Clear and convincing evidence has been said to require:

[T]hat 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.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

19. Disciplinary statutes and rules "must always be construed strictly in favor of the one against whom the penalty would be imposed and are never to be extended by construction." Griffis v. Fish & Wildlife Conser. Comm'n, 57 So. 3d 929, 931 (Fla. 1st DCA 2011). Any ambiguities must be construed in favor of the licensee. Lester v. Dep't of Prof'l Reg., 348 So. 2d 923, 925 (Fla. 1st DCA 1977).

20. At the time Respondent's application for licensure was submitted, section 477.029(2) provided that violation of section 477.029 was grounds for disciplinary action by the Board.

21. Section 477.029(1) (e) provided in part:

It is unlawful for any person to . . . [g]ive false or forged evidence to the department in obtaining any license provided for in this chapter.

22. It was clearly shown at hearing that Respondent's application for Florida cosmetology license number CL 1196463, stating that Respondent was licensed in Puerto Rico, contained false evidence. Respondent admitted that she was not licensed as a cosmetologist in Puerto Rico. While Respondent testified she

did not give SBC the certification from the Commonwealth of Puerto Rico, that false document was submitted to the Florida Board of Cosmetology.

23. The evidence also clearly showed that Respondent signed the application prior to its submission to the Department. That document was an application for a cosmetology license by endorsement, and the certification of licensure in Puerto Rico was submitted as part of the application. Thus, SBC, acting as Respondent's agent, submitted a false document to the Board in order to obtain Ms. Jorge's licensure by endorsement as a cosmetologist in Florida. The argument that there is no clear and convincing evidence that Respondent submitted an application to the Board is rejected.

24. Any argument that section 477.029(1)(e) does not contain the word "knowingly" as some similar statutes<sup>5/</sup> do and that, therefore, Petitioner need not prove any intention or misconduct on the part of Respondent is rejected. An honest mistake would not constitute a violation of section 477.029(1)(e). Cf. Pratt v. Bd. of Nursing, Case No. 13-2417 (Fla. DOAH Oct. 22, 2013; Fla. DOH Dec. 19, 2013) (section 464.018(1)(a), Florida Statutes, requires a showing of intent to misrepresent information provided on an application); Const. Ind. Lic. Bd. v. Godwin, Case No. 83-0022 (Fla. DOAH Dec. 22, 1983; Fla. DPR Mar. 15, 1984) (even though section 489.129(1)(j),

Florida Statutes, does not contain the word "knowingly," submission of false documents requires mens rea). In Pic N' Save Central Florida v. Department of Business Regulation, Division of Alcoholic Beverages and Tobacco, 601 So. 2d 245 (Fla. 1st DCA 1992), the court declined to revoke the right to conduct a business based upon conduct of an employee that was unknown to the employer. The court held that "one's license to engage in an occupation is not to be taken away except for misconduct personal to the licensee."

25. The circumstances here differ substantially from those in Pic N' Save, however. It is clear that by signing an application to be submitted for state licensure, an applicant is personally representing the truth of its contents. Respondent's claim that she was completely unaware of what documentation her application contained, or even that it was an endorsement application, is simply not credible under the circumstances.<sup>6/</sup>

26. There is no evidence in the record to corroborate Respondent's testimony that she completed 1200 hours of instruction at some unidentified school and submitted that documentation to SBC, which then, for its own purposes and unbeknownst to her, substituted a forged transcript and false licensure certification from Puerto Rico.<sup>7/</sup>

27. The evidence clearly shows that Respondent did not complete the required coursework in Puerto Rico, that she was

never licensed there, that she signed an application for cosmetology licensure by endorsement supported by false documents, and that she paid SBC to submit that application to the Board on her behalf. The only reasonable inference that may be drawn is that she intended to submit the false evidence. See Walker v. Dep't of Bus. & Prof'l Reg., 705 So. 2d 652, 654 (Fla. 5th DCA 1998) (circumstantial evidence is sufficient to prove appellant's act is intentional).

28. Petitioner proved by clear and convincing evidence that Respondent violated section 477.029(1) (e).

#### Penalties

29. Section 456.079, Florida Statutes, provided that each board shall adopt by rule and periodically review penalty guidelines applicable to each ground for disciplinary action that may be imposed by the board pursuant to its practice act.

30. At the time of the offense, the Board had adopted Florida Administrative Code Rule 61G5-30.001(2) (j), which provided in part that the penalty for obtaining a license by false or forged evidence would normally be a fine of \$500 and revocation of the cosmetology license.

31. Rule 61G5-30.001(4) also provided:

Based upon consideration of the following factors, the Board may impose disciplinary action other than the penalties recommended:

(a) The danger to the public;

- (b) The length of time since date of violation;
- (c) The number of complaints filed against the licensee;
- (d) The length of time licensee or registrant has practiced;
- (e) The actual damage, physical or otherwise, caused by the violation;
- (f) The deterrent effect of the penalty imposed;
- (g) The effect of the penalty upon the licensee's or registrant's livelihood;
- (h) Any efforts for rehabilitation;
- (i) The actual knowledge of the licensee or registrant pertaining to the violation;
- (j) Attempts by licensee or registrant to correct or stop violations or refusal by licensee or registrant to correct or stop violations;
- (k) Related violations against a licensee or registrant in another state including findings of guilt or innocence, penalties imposed, and penalties served;
- (l) Actual negligence of the licensee or registrant pertaining to any violations;
- (m) Penalties imposed for related offenses under subsection (1) above;
- (n) Any other mitigating or aggravating circumstances.

32. Respondent testified that revocation of her license would greatly impact her livelihood. The offense took place over

eight years ago, and other than the present action, she has practiced cosmetology without complaint since that time. There is no reason to conclude that she is a danger to the public.

33. These mitigating circumstances are not so substantial as to warrant deviation from the recommended penalties established by rule 61G5-30.001 for the submission of false or forged evidence.

34. Section 455.227(3)(a), Florida Statutes, provided that costs related to investigation and prosecution of a disciplinary case, excluding costs associated with an attorney's time, may also be assessed.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered by the Department of Business and Professional Regulation finding Tania Jorge in violation of section 477.029(1)(e), Florida Statutes (2007), as charged in the Amended Administrative Complaint; imposing an administrative fine of \$500; and revoking her license to practice as a cosmetologist in the State of Florida.

It is further recommended that should the board establish, by rule, requirements for reapplication by applicants whose licenses have been revoked, that Tania Jorge be permitted to apply for re-licensure upon satisfying then-current requirements for an initial license.

DONE AND ENTERED this 22nd day of July, 2016, in  
Tallahassee, Leon County, Florida.

*F. Scott Boyd*

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F. SCOTT BOYD  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 22nd day of July, 2016.

ENDNOTES

<sup>1/</sup> References to the Florida Statutes are to the to the 2007 codification, except as otherwise indicated.

<sup>2/</sup> The certification from the Department of State of the Commonwealth of Puerto Rico actually indicates that the license was held by Tania Pitaluga; however, it is undisputed that Tania Jorge was formerly known as Tania Pitaluga and that they are one and the same person. The parties assert no issue related to these different names, and so for clarity and ease of reference, Jorge is the only name used here.

<sup>3/</sup> The documents thus improbably assert that Ms. Jorge was licensed some four months before she completed the required coursework.

<sup>4/</sup> Although Ms. Roland credibly testified that endorsement candidates do not take the examination, an application checklist from the Department's files on Ms. Jorge indicates that "Cert of Lic. via other state (if applic)," "Transcripts," "Verification of Schooling Hours," and "Verification of Written Exam" were all marked as complete on April 9, 2008.



<sup>5/</sup> Compare sections 457.116(1)(d) (acupuncturists), 468.223(1)(d) (occupational therapists), 468.531(1)(e) (employee leasing companies), 468.8319(1)(d) (home inspectors), 472.031(1)(d) (surveyors and mappers), 489.127(1)(d) (contractors), and 489.531(1)(f) (electrical contractors), Florida Statutes, all of which contain the phrase "knowingly give false or forged evidence" with sections 373.336(1)(c) (water well contractors), 468.1745(1)(d) (nursing home administrators), 468.629(1)(d) (building code administrators), 471.031(1)(d) (professional engineers), 474.213(1)(d) (veterinarians), 476.204(1)(e) (barbers), 480.047(1)(f) (massage therapists), and 491.012(1)(f) (social workers), Florida Statutes, which omit the word "knowingly."

<sup>6/</sup> Even were that testimony to be credited, it would not absolve Respondent of responsibility. It would, to the contrary, simply confirm that she exhibited reckless disregard for the truth of the factual representations in her application. See Ocean Bank of Miami v. Inv-Uni Inv. Corp., 599 So. 2d 694, 697 (Fla. 3d DCA 1992) (intentional misconduct can be established by showing either actual knowledge or that defendant was reckless as to the truth of the matter asserted); Hale v. State, 838 So. 2d 1185, 1187 (Fla. 5th DCA 2003) (in criminal context, defendant knowingly makes a false statement by signing a document without reading it if he acts "with reckless disregard of whether the statements were true or with a conscious purpose to avoid learning the truth"). Respondent's further argument that she could not read English and so may not be held responsible for the representations in her application is also unavailing. See U.S. v. Santiago-Fraticelli, 730 F.2d 828, 831 (1st Cir. 1984) (even if defendant spoke only Spanish, failure to ask what questions in English meant could be found to demonstrate reckless disregard for the truth).

<sup>7/</sup> This is not to conclude that it is unlikely that either SBC or Academia de Belleza Maruggie, or both, were complicit in Ms. Jorge's action, an issue not relevant here.

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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.