

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF
MASSAGE THERAPY,

Petitioner,

vs.

Case No. 17-5473

BBK FLORIDA, LLC,

Respondent.

_____ /

RECOMMENDED ORDER

The final hearing in this matter was conducted before J. Bruce Culpepper, Administrative Law Judge of the Division of Administrative Hearings, pursuant to sections 120.569 and 120.57(1), Florida Statutes (2016),^{1/} on December 20, 2017, by video teleconference with sites in Tallahassee and Orlando, Florida.

APPEARANCES

For Petitioner: Lealand L. McCharen, Esquire
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For Respondent: Baya W. Harrison, Esquire
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STATEMENT OF THE ISSUES

The issues to be determined in this matter are whether Respondent, BBK Florida, LLC, a licensed massage business,

allowed an unlicensed person to practice massage therapy; and, if so, what disciplinary action is appropriate.

PRELIMINARY STATEMENT

On June 19, 2017, Petitioner, Department of Health (the "Department"), issued an Administrative Complaint, charging Respondent, BBK Florida, LLC ("BBK"), a licensed massage business, with allowing an unlicensed person to practice massage therapy.

BBK denied the Department's allegations of wrongful conduct and timely requested an administrative hearing to dispute the Administrative Complaint. On October 3, 2017, the Department referred this matter to the Division of Administrative Hearings ("DOAH"). The undersigned Administrative Law Judge was assigned to conduct a chapter 120 evidentiary hearing.

The final hearing was held on December 20, 2017. At the final hearing, the Department presented the testimony of Amy Harmon. Department Exhibit 1 was admitted into evidence. BBK presented the testimony of Min Zhang and Juan Feng.^{2/} BBK Exhibit 1 was admitted into evidence.

A one-volume Transcript of the final hearing was filed at DOAH on January 16, 2018. At the close of the hearing, the parties were advised of a ten-day timeframe after receipt of the hearing transcript to file post-hearing submittals. Both parties

filed Proposed Recommended Orders which were duly considered in preparing this Recommended Order.^{3/}

FINDINGS OF FACT

1. The Department is the state agency charged with regulating the practice of massage therapy in Florida. See § 20.43(3)(g)21., and ch. 456 and 480, Fla. Stat.

2. BBK is a licensed massage business in the state of Florida. BBK operates under the name "BBK Massage Spa" and is located in Ocoee, Florida.

3. The Department brings this action alleging that BBK allowed an unlicensed person to practice massage at its establishment. The Department charges BBK with violating section 480.046(1)(f) and (p), Florida Statutes. Section 480.046(1)(f) prohibits the "[a]iding, assisting, procuring, or advising any unlicensed person to practice massage contrary to the provisions of this chapter or to a rule of the department or the board."

4. The Department's allegations focus on the activities of Xiaohui Lu at BBK on January 17, 2017. Ms. Lu is not, nor has she ever been, licensed to practice massage in the state of Florida.

5. At the final hearing, the Department presented the testimony of Amy Harmon, a Department Investigation Specialist. Ms. Harmon has served as an Investigation Specialist since 2010. She conducts approximately 700 to 1,000 investigations a year.

Ms. Harmon inspects several different types of businesses including massage facilities, optical establishments, and pain management institutions. Her goal is to inspect each business for which she is responsible at least once a year.

6. Ms. Harmon explained that the primary reason for inspecting massage establishments is to safeguard the public against health risks. As stated in section 480.033(3), "massage" involves:

[T]he manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.

Consequently, the Florida Legislature has specifically determined that:

[T]he practice of massage is potentially dangerous to the public in that massage therapists must have a knowledge of anatomy and physiology and an understanding of the relationship between the structure and the function of the tissues being treated and the total function of the body. Massage is therapeutic, and regulations are necessary to protect the public from unqualified practitioners. It is therefore deemed necessary in the interest of public health, safety, and welfare to regulate the practice of massage in this state.

§ 480.032, Fla. Stat.

7. In light of this legislative directive, Ms. Harmon explained that when she inspects a massage business, her goal is

to ensure that customers are not touched or treated in an inappropriate manner. Ms. Harmon remarked that licensed massage therapists receive extensive training in anatomy and physiology. They are specifically taught how to manipulate soft tissue without damaging a person's muscles, neck, or spine. Therefore, she ensures that all persons who provide massages are properly licensed in Florida, and that their licenses are appropriately displayed in the business. She also examines the massage facility's sanitary conditions.

8. On the morning of January 17, 2017, Ms. Harmon conducted a routine inspection of BBK. Ms. Harmon relayed that BBK is located in a strip mall. When she entered the store, she walked into a large lobby area with a reception desk and several chairs. A single hallway led straight back from the lobby and ended in a kitchen space. Several doorways lined the hallway. At least three of these rooms are used for massage services. Curtains partition the massage rooms from the hallway.

9. Ms. Harmon did not find anyone present in the lobby. Therefore, she headed toward the hallway. As she reached the hallway, she saw a woman walk out of one of the massage rooms. Ms. Harmon observed that the woman (later identified as Ms. Lu) was holding her hands out in front of her with her palms up. Her hands were covered in oil.

10. Ms. Harmon announced to Ms. Lu that she was an inspector with the Department. Ms. Harmon then asked Ms. Lu if she had a message therapy license. Ms. Lu responded that she did not have a massage license, but she was not performing a massage. Instead, Ms. Lu produced a body wrapper license issued by the Florida Department of Business and Professional Regulation, as well as a New York drivers license.

11. Ms. Harmon then walked into the massage room that Ms. Lu had just vacated. There, she found a man lying on a massage table draped in a sheet. Ms. Harmon did not observe any body wrapping materials or supplies in the room. (Neither did Ms. Harmon subsequently find any body wrapping advertisements on the premises.) Ms. Harmon deduced that the oil on Ms. Lu's hands was used for massages, not body wrapping treatments. Consequently, Ms. Harmon concluded that the customer was prepared to receive a massage, and that Ms. Lu was going to provide it.

12. Ms. Harmon did not ask Ms. Lu if she was, in fact, giving a massage to the man on the table. Neither did she actually see Ms. Lu physically touch the customer. However, based on her observations, she firmly believed that when she walked into BBK, Ms. Lu was in the process of providing a massage to the man lying on the table in the massage room.

13. At that point, another woman, who identified herself as Min Zhang, emerged from the last room down the corridor (the

kitchen). Ms. Zhang produced a Florida massage therapy license for Ms. Harmon, as well as a Florida drivers license. Ms. Zhang then entered the massage room to attend to the customer.

14. Ms. Harmon further recounted that, in another room, she found a suitcase belonging to Ms. Lu by a bed. Ms. Harmon learned from the two women that Ms. Lu had only arrived at BBK that morning.

15. In response to the Department's allegations, BBK flatly denied that Ms. Lu was practicing massage when Ms. Harmon inspected its business on January 17, 2017. Instead, BBK asserted that Ms. Zhang, who is properly licensed, was the individual massaging the client at the time Ms. Harmon entered the establishment.

16. Ms. Zhang testified at the final hearing. Ms. Zhang was the store manager on the date of the inspection. Ms. Zhang holds a valid massage therapy license with the State of Florida.

17. Ms. Zhang declared that January 17, 2017, was Ms. Lu's first day at BBK. She had never met or spoken to Ms. Lu before that morning. Consequently, Ms. Zhang claimed that she was unaware that Ms. Lu did not have a massage therapy license when Ms. Harmon arrived at the business. Ms. Zhang understood that BBK hired Ms. Lu through the internet. She did not participate in BBK's decision to allow Ms. Lu to work at its facility.

18. Ms. Zhang relayed that on the morning of the inspection, she was the first employee to arrive at BBK. Ms. Lu appeared shortly thereafter. Ms. Zhang introduced herself, then showed Ms. Lu around the store.

19. Before long, the client showed up. Ms. Zhang testified that she led the client back to massage room 3 for an hour-long massage.

20. According to Ms. Zhang, she, not Ms. Lu, was massaging the customer when Ms. Harmon entered BBK. Ms. Zhang stated that she heard Ms. Harmon walk in the front door. She then left the massage room and met Ms. Harmon in the lobby. Ms. Zhang testified that Ms. Lu was not in a massage room or the hallway. Instead, she was located back in the kitchen. After Ms. Zhang exited massage room 3, she saw Ms. Lu walking to the lobby to meet Ms. Harmon. Thereafter, both Ms. Zhang and Ms. Lu produced their licenses and identifications for Ms. Harmon. Ms. Zhang expressed that it was at this time that she learned that Ms. Lu was not a licensed massage therapist.

21. Ms. Zhang readily acknowledged that a person is not allowed to practice massage therapy without a license. Ms. Zhang professed that she was well aware that Ms. Lu could not have massaged any BBK clients unless she held a license in Florida. Ms. Zhang emphasized that neither she, nor BBK, would allow

anyone to provide massages without a license. Ms. Zhang maintained that Ms. Lu never touched the client.

22. BBK also presented the testimony of Juan Feng. Ms. Feng identified herself as the main manager of BBK. Ms. Feng runs the business, while Ms. Zhang manages the day-to-day operations. Ms. Feng was not present at BBK during Ms. Harmon's inspection on January 17, 2017.

23. According to Ms. Feng, BBK first communicated with Ms. Lu after it posted a job opening for a massage therapist over the internet. Ms. Feng conveyed that BBK's advertisement specifically stated that a Florida massage license was required for the position. Ms. Lu, who was living in New York, called BBK about the job. Ms. Feng testified that Ms. Lu represented that she was licensed in both New York and Florida.

24. Because Ms. Lu appeared qualified for the massage therapist job, BBK invited her to come to Florida for a trial employment period. Ms. Lu travelled by bus. She arrived in Florida on the afternoon of Monday, January 16, 2017. She showed up at BBK for the first time on Tuesday morning, January 17, 2017 (the date of Ms. Harmon's inspection). Ms. Feng remarked that, while she had spoken with Ms. Lu approximately three times over the phone, she never met her in person before the Department's inspection.

25. Ms. Feng learned about the inspection from Ms. Zhang, who called her just after Ms. Harmon left. Ms. Feng repeated that the first time she, or anyone else at BBK, was aware that Ms. Lu did not have a Florida massage therapy license was during Ms. Harmon's inspection. Ms. Feng pronounced that she would never have hired Ms. Lu if she had known that Ms. Lu did not have a valid Florida license.

26. Ms. Feng expressed that after the inspection, she explained to Ms. Lu that she would not be allowed to work at BBK without the required massage license. Ms. Feng represented that Ms. Lu never returned to BBK following Ms. Harmon's inspection. Ms. Feng understood that Ms. Lu went back to New York. (Neither party called Ms. Lu to testify at the final hearing.)

27. Although Ms. Feng was not present at BBK during the inspection, she testified that she has seen the store's security video recording of Ms. Harmon's visit. According to Ms. Feng, BBK has four video cameras mounted inside the facility. Two cameras survey the lobby, and two cameras are positioned at either end of the hallway.

28. However, Ms. Feng disclosed that the video recording from January 17, 2017, no longer exists. The video footage is automatically recorded over after seven days. Therefore, while she claimed to have watched the video shortly after Ms. Harmon

departed the store, BBK could not produce the video for the Department or at the final hearing.

29. At the final hearing, Ms. Feng described what she watched on the video. Ms. Feng relayed that she saw Ms. Zhang and Ms. Lu arrive in the morning. But, when the client appeared, it was Ms. Zhang who escorted him back to massage room 3. Later, after Ms. Harmon entered the lobby, Ms. Feng testified that Ms. Zhang, not Ms. Lu, exited massage room 3. Ms. Zhang walked across the hall to the bathroom, then went to meet Ms. Harmon in the lobby. At that point, Ms. Feng saw Ms. Lu emerge from the kitchen and approach the front of the store. Ms. Zhang and Ms. Lu met Ms. Harmon in the lobby. Ms. Harmon then sat down in the lobby, wrote her report, and left the store.^{4/}

30. Ms. Feng declared that contents of the video establish that Ms. Lu never went into massage room 3. Based on her review, Ms. Feng opined that when Ms. Harmon saw Ms. Zhang advancing up the hallway, she mistakenly determined that it was Ms. Lu coming out of the massage room.

31. Based on the competent substantial evidence provided at the final hearing, the clear and convincing evidence in the record establishes that BBK aided, assisted, or advised an unlicensed person (Ms. Lu) to practice massage in violation of section 480.046(1)(f) and (p). Accordingly, the Department met its

burden of proving that BBK should subject to an administrative sanction.

CONCLUSIONS OF LAW

32. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to section 120.569 and 120.57(1). See also § 480.046(4), Fla. Stat.

33. The Department brings this disciplinary action to sanction BBK for its actions on January 17, 2017. The Department alleges that BBK allowed an unlicensed person to practice massage in violation of sections 480.046(1)(f) and (p).

34. Persons desiring to practice massage in Florida must obtain the appropriate professional license from the state. See §§ 480.041 and 480.033(4) and (8), Fla. Stat.

35. Section 480.033 defines "massage therapist" as "a person licensed as required by this act, who administers massage for compensation."

36. Section 480.033(3) defines "massage" as:

[T]he manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.

37. Section 480.046(1)(f) states the following acts are grounds for disciplinary action:

[A]iding, assisting, procuring, or advising any unlicensed person to practice massage contrary to the provisions of this chapter or to a rule of the department or the board.

38. Section 480.046(1)(p) states that disciplinary action may also be imposed for “[v]iolating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.”

39. The Department’s action to impose an administrative sanction on BBK is penal in nature. Accordingly, the Department bears the burden of proving the grounds for disciplinary action by clear and convincing evidence. Dep’t of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co., 670 So. 2d 932, 935 (Fla. 1996); see also Fla. Dep’t of Child. & Fams. v. Davis Fam. Day Care Home, 160 So. 3d 854, 856 (Fla. 2015).

40. Clear and convincing evidence is a heightened standard that “requires more proof than a ‘preponderance of the evidence’ but less than ‘beyond and to the exclusion of a reasonable doubt.’” Clear and convincing evidence is defined as an intermediate burden of proof that:

[R]equires 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 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.

S. Fla. Water Mgmt. v. RLI Live Oak, LLC, 139 So. 3d 869, 872-73 (Fla. 2014) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)). “Although this standard of proof may be met where the evidence is in conflict . . . it seems to preclude evidence that is ambiguous.” Westinghouse Elec. Corp. v. Shuler Bros., 590 So. 2d 986, 988 (Fla. 1991).

41. Based on the competent substantial evidence in the record, the Department proved, by clear and convincing evidence, that BBK, on January 17, 2017, allowed Ms. Lu to practice massage in its establishment. The testimony from the Department witness (Ms. Harmon) was explicit, precise, and lacked in confusion. Ms. Harmon remembered significant and substantial details supporting her narrative. She comprehensibly described her activities upon entering BBK. Ms. Harmon credibly identified the woman she observed by the massage room doorway (Ms. Lu). Ms. Harmon’s recollection of Ms. Lu’s conduct was definite and unambiguous (emerging from the room with oil on her hands). Ms. Harmon’s believability is bolstered by the discrete facts she relayed (the store layout; the client covered by a sheet; no body wrapping supplies). While testifying, Ms. Harmon was not challenged or questioned in a manner that caused the undersigned to doubt her veracity.

42. Although Ms. Harmon did not actually see Ms. Lu physically touch the customer, Ms. Harmon gathered enough

information to support her conclusion that Ms. Lu was providing "massage" services to a BBK client as defined in section 480.033. Ms. Lu was walking out of a massage room. A client was lying in the room on a massage table. The client was situated as if in the middle of a massage (covered in a sheet). Finally, Ms. Lu's hands were covered in oil which she would only have used to provide a massage. Based on this testimony, the circumstantial evidence Ms. Harmon relayed at the final hearing is sufficiently persuasive to support her account of what transpired in that massage room.^{5/} Accordingly, the clear and convincing evidence establishes that when Ms. Harmon entered BBK on January 17, 2017, she interrupted Ms. Lu in the act of massaging a client.

43. Conversely, while BBK steadfastly denied that Ms. Lu touched the client in any capacity, the testimony from BBK's witnesses did not create enough "hesitancy" to reasonably preclude a finding that Ms. Lu practiced massage. The accounts from Ms. Zhang and Ms. Feng did not cause the undersigned to doubt the credibility or reliability of Ms. Harmon's description of the activities she observed during her inspection.

44. Consequently, the testimony and evidence presented at the final hearing establishes, by clear and convincing evidence, that BBK allowed Ms. Lu to practice massage therapy in its establishment on January 17, 2017. Therefore, the Department met its burden of proving that BBK violated section 480.046(1)(f)

and (p) in that it "[a]id[ed], assist[ed], procur[ed], or advis[ed] any unlicensed person to practice massage contrary to the provisions of this chapter or to a rule of the department or the board."

45. Under section 480.046(2), the Florida Board of Massage Therapy is authorized to impose "any of the penalties in s. 456.072(2) against any . . . licensee who is found guilty of violating any provision of [section 480.046(1)]."

46. Section 456.072(2) sets forth the following penalties:

(a) Refusal to certify, or to certify with restrictions, an application for a license.

(b) Suspension or permanent revocation of a license.

(c) Restriction of practice or license, including, but not limited to, restricting the licensee from practicing in certain settings, restricting the licensee to work only under designated conditions or in certain settings, restricting the licensee from performing or providing designated clinical and administrative services, restricting the licensee from practicing more than a designated number of hours, or any other restriction found to be necessary for the protection of the public health, safety, and welfare.

(d) Imposition of an administrative fine not to exceed \$10,000 for each count or separate offense. If the violation is for fraud or making a false or fraudulent representation, the board, or the department if there is no board, must impose a fine of \$10,000 per count or offense.

(e) Issuance of a reprimand or letter of concern.

(f) Placement of the licensee on probation for a period of time and subject to such conditions as the board, or the department when there is no board, may specify. Those conditions may include, but are not limited to, requiring the licensee to undergo treatment, attend continuing education courses, submit to be reexamined, work under the supervision of another licensee, or satisfy any terms which are reasonably tailored to the violations found.

(g) Corrective action.

(h) Imposition of an administrative fine in accordance with s. 381.0261 for violations regarding patient rights.

(i) Refund of fees billed and collected from the patient or a third party on behalf of the patient.

(j) Requirement that the practitioner undergo remedial education.

47. Regarding the specific penalty to impose, section 456.072(2) provides the following guidance:

In determining what action is appropriate, the board, or department when there is no board, must first consider what sanctions are necessary to protect the public or to compensate the patient. Only after those sanctions have been imposed may the disciplining authority consider and include in the order requirements designed to rehabilitate the practitioner.

48. Further, pursuant to the rulemaking authority in section 480.035(7), the Board of Massage Therapy has adopted disciplinary guidelines in Florida Administrative Code Rule 64B7-30.002. Rule 64B7-30.002 provides:

(1) When the Board finds that . . . [a] licensee whom it regulates under Chapter 480, F.S., has committed any of the acts set forth in Sections . . . 480.046, . . . it shall issue a final order imposing appropriate penalties within the ranges recommended in the following disciplinary guidelines after consideration of the aggravating and mitigating factors set forth in subsection (4), of this rule. Discipline may include any of the following: letter of concern, reprimand, license with conditions, probation, suspension, revocation and/or fines.

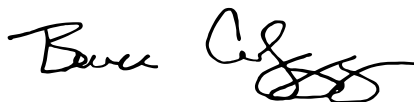
Under rule 64B7-30.002(3)(f), the Penalty Range for a first violation of section 480.046(1)(f) is a \$1,000 fine and reprimand.

49. Based on the facts in the record, the undersigned concludes that the appropriate administrative sanction to impose on BBK is a \$1,000 fine and reprimand. This penalty will suitably meet the Legislature's dual goals of protecting the public health, safety, and welfare, as well as rehabilitating the practitioner.^{6/}

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Health enter a final order: finding that BBK Florida, LLC, violated section 480.046(1)(f) and (p); and imposing an administrative fine in the amount of \$1,000, as well as a reprimand.

DONE AND ENTERED this 13th day of March, 2018, in
Tallahassee, Leon County, Florida.



J. BRUCE CULPEPPER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of March, 2018.

ENDNOTES

^{1/} Unless otherwise stated, all statutory references are to the 2016 codification of the Florida Statutes.

^{2/} At the final hearing, BBK's witnesses testified through the use of an interpreter who translated between Mandarin Chinese and English. The interpreter was duly sworn to truthfully interpret the questions and answers pursuant to section 90.606, Florida Statutes.

^{3/} The Department's Motion to Strike BBK's Proposed Recommended Order as untimely is denied. The Department correctly notes that a document must be received by DOAH before 5:00 p.m. in order to be filed as of that day. Any document received after 5:00 p.m. is considered filed on the next business day. Fla. Admin. Code R. 28-106.104(3). However, the undersigned determines that the Department is not prejudiced or otherwise disadvantaged by BBK's post-hearing submittal.

^{4/} The undersigned did not make any findings of fact based on Ms. Feng's testimony concerning the content of the surveillance recording. BBK correctly argues that admission of Ms. Feng's testimony does not violate the "best evidence rule" under section 90.952, Florida Statutes. BBK presented an acceptable exception recognized under section 90.954(1) for the non-

production of the original video recording, i.e., the video was destroyed when it was automatically recorded over after seven days. See, e.g., T.D.W. v. State, 137 So. 3d 574 (Fla. 4th DCA 2014).

However, to be admissible in a chapter 120 hearing, evidence must be "commonly relied upon by reasonably prudent persons." § 120.569(2)(g), Fla. Stat. The undersigned determines that Ms. Feng's representation of what she claims she saw on the video recording is simply not reliable enough to be admissible in this proceeding. Not only is Ms. Feng inherently partial, but her description conflicts, in part, with the testimony of an eye witness (Ms. Zhang). Consequently, Ms. Feng's testimony regarding the contents of the video failed to demonstrate sufficient indicia of reliability upon which to reasonably base a finding of fact.

^{5/} See, e.g., T.M. v. Dep't of Child. & Fams., 971 So. 2d 274 (Fla. 4th DCA 2008) (strong circumstantial evidence, even without an eyewitness to the act, may support a finding of fact based on clear and convincing evidence).

^{6/} In addition to the penalty recommended in rule 64B7-30.002(3)(f), the Department seeks to revoke BBK's license as a massage establishment. However, based on the evidence presented at the final hearing, the facts do not establish that BBK's misconduct on January 17, 2017, presents a "clear danger" to the public. The undersigned further concludes that the sanction delineated in the Penalty Range is consistent with the factors set forth in rule 64B7-30.002(4), in particular:

- a. This incident was BBK's first offense. The Department did not present evidence of any prior misconduct by BBK;
- b. No evidence indicates that BBK's actions actually harmed a member of the public;
- c. This offense involved only one customer;
- d. The unlicensed practice lasted for approximately 30 minutes. And, the massage the customer received was completed by a licensed massage therapist;
- e. During the inspection, BBK promptly complied with the investigator's requests for information. No evidence suggests that BBK failed to cooperate with the investigator;

- f. Upon the investigator's request, BBK promptly corrected and stopped the unlicensed activity;
- g. No evidence indicates that the unlicensed practice is ongoing or continued beyond the morning of January 17, 2017.
- h. Following the Department's inspection, BBK terminated any work relationship with the unlicensed individual. She has not returned or worked for BBK since January 17, 2017;
- i. No evidence shows that public faces any further danger or risks from BBK's misconduct.

The Department also requests the undersigned recommend that BBK be required to remunerate the Department its litigation costs. Section 456.072(4) instructs that:

In addition to any other discipline imposed through final order, or citation, entered on or after July 1, 2001, . . . for a violation of any practice act, the board, or the department when there is no board, shall assess costs related to the investigation and prosecution of the case. The costs related to the investigation and prosecution include, but are not limited to, salaries and benefits of personnel, costs related to the time spent by the attorney and other personnel working on the case, and any other expenses incurred by the department for the case. The board, or the department when there is no board, shall determine the amount of costs to be assessed after its consideration of an affidavit of itemized costs and any written objections thereto.

The Department did not present any argument or evidence regarding its costs related to the investigation and prosecution of this matter at the final hearing. Therefore, the undersigned makes no factual findings or recommendations regarding costs, except to note that section 456.072(4) authorizes the Board of Massage Therapy (or the Department) to impose litigation costs on BBK. See also Fla. Admin. Code R. 64B7-30.002(8).

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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.