

FILED DATE - **SEP 10 2018**

Department of Health

By: *Angela Saunders*
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MASSAGE THERAPY

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2016-28204
DOAH CASE NO.: 18-0898PL
LICENSE NO.: MA 82765

SHUFANG LI,

Respondent.

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DIVISION OF
ADMINISTRATIVE HEARINGS

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FINAL ORDER

THIS CAUSE came before the BOARD OF MASSAGE THERAPY (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on July 26, 2018, in Panama City Beach, 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 Mary Inglehart, Assistant General Counsel. Respondent was present and was represented by Gennaro Cariglio, Esq.

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.

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 SHUFANG 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-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.

RULING ON MOTION TO ASSESS COSTS

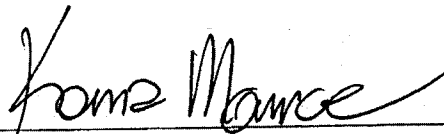
The Board reviewed the Petitioner's Motion to Assess Costs and imposes the costs associated with this case in the amount of

\$8,304.18. Said costs are to be paid within 12 months from 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, 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.

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

DONE AND ORDERED this 5 day of September, 2018.

BOARD OF MASSAGE THERAPY



Kama Monroe
Executive Director
for Robyn Dohn Havard, 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 SHUFANG LI, c/o Gennaro Cariglio, Jr., Esq., Law Office of Gennaro Cariglio, penthouse 701, 8101 Biscayne Boulevard, Miami, FL 33138; 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 **Rachelle Munson**, Assistant Attorney General, Rachelle.Munson@myfloridalegal.com; and by email to John Wilson, Department of Health-PSU, John.Wilson@flhealth.gov this 10th day of September, 2018.

Angel Sanders

Deputy Agency Clerk



Shufang Li
c/o Gennaro Cariglio, Jr., Esq.
Penthouse 701
8101 Biscayne Blvd.
Miami, FL 33138

Certified Article Number

9414 7266 9904 2104 1082 29

SENDER'S RECORD

**STATE OF FLORIDA
BOARD OF MASSAGE THERAPY**

DEPARTMENT OF HEALTH,

Petitioner,

vs.

SHUFANG LI, L.M.T.,

Respondent,
_____ /

**DOAH CASE No.: 18-0898PL
DOH CASE No.: 2016-28204**

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MOTION TO ASSESS COSTS
IN ACCORDANCE WITH SECTION 456.072(4)

The Department of Health, by and through counsel, moves the Board of Massage Therapy ("Board") for entry of a Final Order assessing costs against Respondent for the investigation and prosecution of this case in accordance with section 456.072(4), Florida Statutes (2016). As grounds, the Petitioner states the following:

1. At its next regularly scheduled meeting, the Board will take up for consideration the above-styled disciplinary action and will enter a Final Order.
2. Section 456.072(4), Florida Statutes (2016), states, in pertinent part, as follows:

In addition to any other discipline imposed through final order, or citation, entered on or after July 1, 2001, under

this section or 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....

3. As evidenced in the attached affidavit (Exhibit A), the investigation and prosecution of case number 2015-31658 has resulted in costs in the total amount of \$8,304.18.

, based on the following itemized statement of costs:

a.	Total costs for Complaints	\$17.56
b.	Total costs for Investigations	\$464.05
c.	Total costs for Legal	\$6,857.53
d.	Total costs for Compliance	\$0.00
e.	Total costs for expenses	\$965.04

4. The attached affidavit reflects the Department's costs for attorney time in this case as \$6,857.53 (Exhibit A). The Department's request for attorney's fees has been reviewed by an outside expert on attorney's fees and deemed within or below the reasonable and customary range for attorney time spent on cases of this type. (Exhibit B)

6. Should Respondent file written objections to the assessment of costs, within ten (10) days of the date of this motion, specifying the grounds for the objections and the specific elements of the costs to which objections are made, Petitioner requests that the Board determine the amount of costs to be assessed based upon its consideration of the affidavit attached as Exhibit A and any timely-filed written objections.

7. Petitioner requests that the Board grant this motion and assess costs in the amount of \$8,304.18 as supported by competent, substantial evidence. This assessment of costs is in addition to any other discipline imposed by the Board and is in accordance with section 456.072(4), Florida Statutes (2018).

WHEREFORE, the Department of Health requests that the Board of Massage Therapy enter a Final Order assessing costs against Respondent in the amount of \$8,304.18.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

Respectfully submitted,

/s/ Lealand L. McCharen

Lealand L. McCharen
Assistant General Counsel
Florida Bar No. 400343
DOH Prosecution Services Unit
Department of Health
4052 Bald Cypress Way Bin-C-65
Tallahassee, Florida 32399-3265
(850) 558-9870
(850) 245-4684 Fax
lealand.mccharen@flhealth.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Final Order after Recommended Order has been provided US Certified mail to Gennaro Cariglio Jr., Esquire, 8101 Biscayne Boulevard, Penthouse 701, Miami, Florida 33138 and via electronic mail at sobeachlaw@aol.com on this 24th day of May 2018.

/s/ Lealand L. McCharen

Lealand L. McCharen
Assistant General Counsel

EXHIBIT A

AFFIDAVIT OF FEES AND COSTS EXPENDED

STATE OF FLORIDA
COUNTY OF LEON:

BEFORE ME, the undersigned authority, personally appeared **SHANE WALTERS** who was sworn and states as follows:

- 1) My name is Shane Walters.
- 2) I am over the age of 18, competent to testify, and make this affidavit upon my own personal knowledge and after review of the records at the Florida Department of Health (DOH).
- 3) I am the Senior Management Analyst II (SMAll) for the Consumer Services and Compliance Management Unit for DOH. The Consumer Services Unit is where all complaints against Florida health care licensees (e.g., medical doctors, dentists, nurses, respiratory therapists) are officially filed. I have been in my current job position for more than one year. My business address is 4052 Bald Cypress Way, Bin C-75 Tallahassee, Florida 32399-3275.
- 4) As SMAll of the Consumer Services and Compliance Management Unit, my job duties include reviewing data in the Time Tracking System and verifying that the amounts correspond. The Time Tracking System is a computer program which records and tracks DOH's costs regarding the investigation and prosecution of cases against Florida health care licensees.
- 5) As of today, DOH's total costs for investigating and prosecuting DOH case number(s) **2016-28331** (Department of Health v. **Jorge L. Pruneda, L.M.T.**) are **(\$9,668.20) NINE THOUSAND SIX HUNDRED SIXTY-EIGHT DOLLARS AND TWENTY CENTS.**
- 6) The costs for DOH case number(s) **2016-28331** (Department of Health v **Jorge L. Pruneda, L.M.T.**) are summarized in Exhibit 1A (Cost Summary Report), which is attached to this document.
- 7) The itemized costs and expenses for DOH case number(s) **2016-28331** (Department of Health v **Jorge L. Pruneda, L.M.T.**) are detailed in Exhibit 1B (Itemized Cost Report and Itemized Expense Report and receipts), which is attached to this document.
- 8) The itemized costs as reflected in Exhibit 1B are determined by the following method: DOH employees who work on cases daily are to keep track of their time in six-minute increments (e.g., investigators

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and lawyers). A designated DCF employee in the Consumer Services Unit, Legal Department, and in each area office, inputs the time worked and expenses spent into the Time Tracking System. Time and expenses are charged against a state health care Board (e.g., Florida Board of Medicine, Florida Board of Dentistry, Florida Board of Osteopathic Medicine), and/or a case. If no Board or case can be charged, then the time and expenses are charged as administrative time. The hourly rate of each employee is calculated by formulas established by the Department. (See the Itemized Cost Report)

9) Shane Walters, first being duly sworn, states that he has read the foregoing Affidavit and its attachments and the statements contained therein are true and correct to the best of his knowledge and belief.

FURTHER AFFIANT SAYETH NOT.

Shane Walters

Shane Walters, Affiant

State of Florida
County of Leon

Sworn to and subscribed before me this 8 day of May, 2018,
by Shane Walters, who is personally known to me.

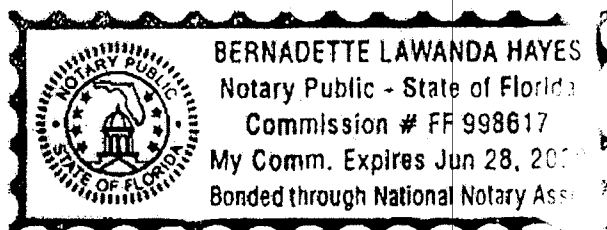
Bernadette Hayes

Notary Signature

Bernadette Hayes

Name of Notary Printed

Stamp Commissioned Name of Notary Public:



**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2016-28204

SHUFANG LI, LMT,

RESPONDENT.

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DIVISION OF
ADMINISTRATIVE HEARINGS

ADMINISTRATIVE COMPLAINT

COMES NOW, Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Massage Therapy against Respondent, Shufang Li, and in support thereof alleges:

1. Petitioner is the state department charged with regulating the practice of massage therapy pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 480, Florida Statutes.

2. At all times material to this complaint, Respondent was a licensed massage therapist within the state of Florida, having been issued license number MA82765 on or about July 22, 2016.

3. Respondent's address of record is 620 East Colonial Drive, Orlando, Florida 32803. The Department also has reason to believe that Respondent may reside at Post Office Box 580, Apartment 504, Princeton Junction, New Jersey 08550.

4. On or about November 16, 2016, the Palm Beach County Sheriff's Office (PBCSO) conducted a prostitution investigation at Empire Day Spa (Empire), located at 2539 North Dixie Highway, Lake Worth, Florida.

5. During the investigation, a PBCSO undercover officer, Detective JA, posing as a customer, entered Empire and was greeted by a woman, later identified as Respondent. JA asked how much an hour massage would be and was told \$70.00. JA then asked Respondent if she perform "full service", which JA knew to be performing either during or after a massage.

6. Respondent did not answer Detective JA at that time. She led him to a massage room, said "hold on" and left the room. She returned and Detective JA asked her "how much."

7. Respondent responded to Detective JA's question by walking over to him and rubbing his thigh while making a gesture and motioning

with her hand to indicate and offer masturbation to Detective JA. Respondent then said to Detective JA "you want?"

8. Detective JA then asked Respondent "how much for a blowjob", meaning oral sex. Respondent answered, "you tell me." Detective JA then said "60" meaning sixty dollars. Respondent shook her head indicating no and said "100", meaning one hundred dollars. Detective JA then confirmed the amount by saying "a hundred" and Respondent said "yah."

9. Detective JA then told Respondent that he needed to go out and leave some items in his truck. He exited Empire without receiving a massage or performing any sexual acts with Respondent.

10. Deputies then entered Empire and placed Respondent into custody. Detective JA positively identified Respondent as the woman with whom he had the prostitution transaction. Respondent was later properly identified through her Florida driver's license as Shufang Li.

11. Respondent was arrested and charged with offering to commit prostitution.

COUNT I

12. Petitioner realleges paragraphs one (1) through eleven (11) as if fully copied herein.

13. Section 480.046(1)(p), Florida Statutes (2016), provides that violating any provision of this chapter or chapter 456, or any rule adopted pursuant thereto, constitutes grounds for disciplinary action by the Board of Massage Therapy.

14. Section 480.0485, Florida Statutes (2016), provides that the massage therapist-client relationship is founded on mutual trust. Sexual misconduct in the practice of massage therapy means violation of the massage therapist-client relationship through which the massage therapist uses that relationship to induce or attempt to induce the patient to engage or to engage or attempt to engage the patient, in sexual activity outside the scope of practice or the scope of generally accepted examination or treatment of the patient. Sexual misconduct in the practice of massage therapy is prohibited.

15. Respondent violated the therapist-client relationship and engaged, or attempted to engage the client in sexual activity when she offered to masturbate Detective JA or to perform oral sex on the officer on November 16, 2016.

16. Based on the foregoing, Respondent violated Section 480.046(1)(p), and 480.0485, Florida Statutes (2016).

COUNT II

17. Petitioner realleges paragraphs one (1) through eleven (11) and thirteen (13) as if fully set copied herein.

18. Section 456.072(1)(v), Florida Statutes (2016) provides that engaging or attempting to engage in sexual misconduct as defined and prohibited in s. 456.063(1) is grounds for disciplinary action.

19. Section 456.063(1), Florida Statutes (2016) provides that sexual misconduct in the practice of a health care profession means violation of the professional relationship through which the health care practitioner uses such relationship to engage or attempt to engage the patient or client, or immediate family member, guardian, or representative of the patient or client in, or to induce or attempt to induce such person to engage in, verbal or physical sexual activity outside the scope of the professional practice of such health care profession and that sexual misconduct is prohibited.

20. Respondent violated the professional relationship with a client and engaged in sexual misconduct when she used that relationship to engage or attempt to engage the patient or client in sexual activity when she offered to masturbate Detective JA or to perform oral sex on the officer on November 16, 2016.

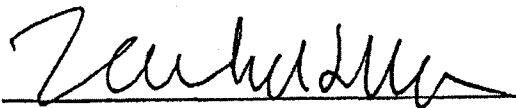
21. Based on the foregoing, Respondent violated Section 480.046(1)(p), 456.072(1)(v), and 456.063(1), Florida Statutes (2016).

WHEREFORE, the Petitioner respectfully requests that the Board of Massage Therapy enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

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SIGNED this 21st day of December, 2017.

Celeste Philip, MD, MPH
Surgeon General and Secretary

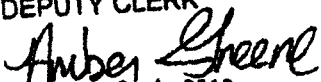


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DEPARTMENT OF HEALTH
DEPUTY CLERK

CLERK.



DATE

JAN 04 2018

PCP: 12.20.17

PCP Members: Havard, Drago

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NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested. A request or petition for an administrative hearing must be in writing and must be received by the Department within 21 days from the day Respondent received the Administrative Complaint, pursuant to Rule 28-106.111(2), Florida Administrative Code. If Respondent fails to request a hearing within 21 days of receipt of this Administrative Complaint, Respondent waives the right to request a hearing on the facts alleged in this Administrative Complaint pursuant to Rule 28-106.111(4), Florida Administrative Code. Any request for an administrative proceeding to challenge or contest the material facts or charges contained in the Administrative Complaint must conform to Rule 28-106.2015(5), Florida Administrative Code.

Please be advised that mediation under Section 120.573, Florida Statutes, is not available for administrative disputes involving this agency action.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.