

FILED DATE **MAR 25 2019**

By *Angel Sanders*
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.

FINAL ORDER

THIS CAUSE came before the BOARD OF MASSAGE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, at the properly noticed meeting on January 28 and 29, 2019, in Orlando, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order (RO), (a copy of which is attached hereto as Exhibit A) in the above-styled cause. Petitioner was represented by John Wilson, Assistant General Counsel. Respondent, an interpreter, and Counsel for Respondent, Gennaro Cariglio, were present at the meeting.

PROCEDURAL HISTORY

1. In December 2017, the Department of Health (DOH) filed an Administrative Complaint against Respondent, Shufang Li.
2. The case was referred to the Division of Administrative Hearing (DOAH) and a hearing on was held on April 16, 2018.
3. Administrative Law Judge, F. Scott Boyd, issued a Recommended Order on May 18, 2018.

DIVISION OF ADMINISTRATIVE HEARING

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4. Respondent was represented by Gennaro Cariglio, and the Department was represented by Lealand McCharen.

5. The 15-day allowed for filing Exceptions expired at the end of business June 4, 2018.

6. Respondent's Exceptions were e-mailed to Mr. McCharen on June 4, 2018.

7. Respondent's Exceptions were e-mailed to the Executive Director of the Board and DOH, General Counsel, Nicole Geary on June 7, 2018.

8. Mr. McCharen retired from DOH shortly thereafter.

9. The matter was considered by the Board on July 26, 2018, and a Final Order issued on September 10, 2018. The Board did not consider the Exceptions at the July 26 meeting.

10. The Final Order was Vacated by Order filed September 25, 2018.

11. The Board reconsidered the Recommended Order; Respondent's pleadings, "Defendant's Motion for Reconsideration of Agency Action and Consideration of Exceptions to the Recommended Order Prior to the Entry of the Final Written Order in this Matter;" "Respondent's Exceptions to the Recommended Order;" Petitioner's pleading, "Petitioner's Response to Respondent's Exceptions to 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:

EXCEPTIONS

12. Respondent's exception numbered 1 improperly asks the Board to re-weigh the credibility of the witness' testimony. It is the role of the ALJ, not the Board to weigh the credibility of the witnesses. Hiefetz, 475 So. 2d at 1281. The Board REJECTS Respondent's exception number 1.

13. Respondent's exception numbered 2 improperly asks the Board to re-weigh the credibility of the witness' testimony. It is the role of the ALJ, not the Board to weigh the credibility of the witnesses. Id. The Board REJECTS Respondent's exception number 2.

14. Respondent's exception numbered 3 improperly asks the Board to re-weigh the credibility of the witness' testimony. It is the role of the ALJ, not the Board to weigh the credibility of the witnesses. Id. The Board REJECTS Respondent's exception number 3.

15. Respondent's exception numbered 4 improperly asks the Board to re-weigh the credibility of the witness' testimony. It is the role of the ALJ, not the Board to weigh the credibility of the witnesses. Id. The Board REJECTS Respondent's exception number 4.

16. Respondent's exception numbered 5 improperly asks the Board to re-weigh the credibility of the witness' testimony. It is the role of the ALJ, not the Board to weigh the credibility of the witnesses. Id. The Board REJECTS Respondent's exception number 5.

17. Respondent's exception numbered 6 improperly asks the Board to re-weigh the credibility of the witness' testimony. It is

the role of the ALJ, not the Board to weigh the credibility of the witnesses. Id. The Board REJECTS Respondent's exception number 6.

18. Respondent's exception numbered 7 improperly asks the Board to re-weigh the credibility of the witness' testimony. It is the role of the ALJ, not the Board to weigh the credibility of the witnesses. Id. The Board REJECTS Respondent's exception number 7.

19. Respondent's exception number 8 asks that the Board change a finding of law. The Board does not have jurisdiction to re-weigh evidence, including the credibility of witness testimony. Id. Additionally, Respondent's proposed conclusion of law is not as or more reasonable than the conclusion that is being challenged. The Board REJECTS Respondent's exception number 8.

20. Respondent's exception number 9 asks that the Board change a finding of law. The Board does not have jurisdiction to re-weigh evidence, including the credibility of witness testimony. Id. Additionally, Respondent's proposed conclusion of law is not as or more reasonable than the conclusion that is being challenged. The Board REJECTS Respondent's exception number 9.

21. Respondent's exception number 10 asks that the Board change a finding of law. The Board does not have jurisdiction to re-weigh evidence, including the credibility of witness testimony. Id. Additionally, Respondent's proposed conclusion of law is not as or more reasonable than the conclusion that is being challenged. The Board REJECTS Respondent's exception number 10.

22. Respondent's exception number 11 asks that the Board change a finding of law. The Board does not have jurisdiction to re-weigh evidence, including the credibility of witness testimony. Id. Additionally, Respondent's proposed conclusion of law is not as or more reasonable than the conclusion that is being challenged. The Board REJECTS Respondent's exception number 11.

23. Respondent's exception number 12 requests that the Board reduce the penalty imposed by the Recommended Order. The Board may not reduce or increase the penalty without citing to the record justifying the action. The penalty imposed is within the guidelines and does not merit deviation. The Board REJECTS Respondent's exception number 12.

24. Respondent's exception number 13 is actually a request for exception to a finding of law. Section 456.072(4), Florida Statutes, requires the imposition of costs related to the investigation and prosecution of administrative cases. Florida statutes require the imposition of costs related to the investigation and prosecution of cases here there is competent, substantial evidence to support a violation. The Board REJECTS Respondent's exception number 13.

FINDINGS OF FACT

25. The Respondent's Exceptions were timely filed.

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

27. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

CONCLUSIONS OF LAW

28. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 464, Florida Statutes.

29. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

PENALTY

30. Upon a complete review of the record in this case, the Board determines that the recommendation of the Administrative Law Judge is ACCEPTED.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

31. The license of Shufang Li is REVOKED. Within 30 days the licensee shall return the license to DOH-Compliance Unit, 4052 Bald Cypress Way, Bin C-76, Tallahassee, FL 32399, Attention: Massage Therapy Compliance Officer. The licensee's employer shall immediately be informed of the revocation in writing from the licensee with a copy to the Board office.

32. The licensee must pay an administrative fine of \$2,500 and investigative costs and attorney fees of \$8,304.18, to be paid at the rate of \$2,000 per year, with the first payment due 1 year from the date of filing of this Final Order. Payment shall be made to the Board


of Massage Therapy and mailed to, DOH-Compliance Management Unit, 4052 Bald Cypress Way, Tallahassee, Florida 32399, Attention: Massage Therapy Compliance Officer. Payment must be made by cashier's check or money order ONLY. Personal checks will not be accepted.

IN ADDITION, Respondent's motion for stay of penalty is **DENIED**.

This Final Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 25 day of March, 2019.

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, 620 East Colonial Drive, Orlando, FL 32803; and C/O Gennaro Cariglio, 8101 Biscayne Boulevard, Suite PH 701, Miami, FL 33138; and by U.S. Mail to: F. Scott Boyd, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by e-mail to: Chad Dunn, Assistant General Counsel, at chad.dunn@flhealth.gov; and Diane L. Guillemette, Assistant Attorney General, at diane.guillemette@myfloridalegal.com, this 25th day of March, 2019.

Brygel Sanders

Deputy Agency Clerk

Shufang Li
620 East Colonial Dr
Orlando, FL 32803

Certified Article Number

9414 7266 9904 2140 1129 21

SENDER'S RECORD

Shufang Li
c/o Gennaro Cariglio
8101 Biscayne Blvd.
Suite PH 701
Miami, FL 33138

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Certified Article Number

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SENDER'S RECORD