

FILED DATE - APR 15 2019

Department of Health

By: Amy L. Carraway
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MASSAGE THERAPY

DEPARTMENT OF HEALTH,

Petitioner,

vs.

YANLING WANG,

Respondent.

DOH CASE NO.: 2016-16953
DOAH CASE NO.: 2018-2662PL
LICENSE NO.: MA 80935

FILED
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DIVISION OF
ADMINISTRATIVE HEARINGS

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), Respondent's Exceptions to Recommended Order, and Petitioner's Response to Exceptions to Recommended Order. In addition, Petitioner's Motion to Assess costs was considered by the Board. Petitioner was represented by John Wilson, Assistant General Counsel. Respond was present at the meeting and appeared Pro Se.

PROCEDURAL HISTORY

1. On or about March 14, 2018, the Department of Health (DOH) filed an Administrative Complaint against Respondent, Yanling Wang.
2. Respondent filed an Election of Rights form.

3. The case was referred to the Division of Administrative Hearing (DOAH) and a hearing on was held on September 13, 2018.

4. Administrative Law Judge, F. Scott Boyd (ALJ) issued a Recommended Order (RO) on October 24, 2018.

5. Respondent's Exceptions to the Recommended Order were filed November 7, 2018.

6. Petitioner's Response to Respondent's Exceptions to the Recommended Order were filed November 19, 2018.

EXCEPTIONS TO FINDINGS OF FACT

7. Respondent's first exception to finding of fact, found at paragraph 4 of Respondent's Exceptions to Recommended Order, is to Paragraph 6 of the RO.

Respondent's exception improperly asks the Board to re-weigh the credibility of witness testimony. It is the role of the ALJ to weigh the credibility of the witnesses. Heifez v. Dep't of Bus. Reg., 475 So. 2d 1277, at 1281 (Fla 1st DCA 1985).

The Board REJECTS Respondent's second exception to findings of fact number 6 of the RO.

8. Respondent's second exception to finding of fact, found at paragraph 4 [sic] of Respondent's Exceptions to Recommended Order, is to Paragraph 8 of the RO.

Respondent's exception improperly asks the Board to re-weigh the credibility of witness testimony. It is the role of the ALJ to weigh the credibility of the witnesses. Heifez, 475 So. 2d at 1281.

The Board REJECTS Respondent's first exception to findings of fact number 8 of the RO.

9. Respondent's third exception to finding of fact, found at paragraph 5 of Respondent's Exceptions to Recommended Order, is to Paragraph 9 of the RO.

Respondent argues that because Respondent's Response to Petitioner's First Request for Admissions and Respondent's Response to First Set of Interrogatories were offered as joint exhibits, its content is being offered as undisputed facts by both parties.

Respondent misinterprets the function and purpose of joint exhibits. Joint exhibits are exhibits in which the parties have no objection as to their admissibility, not their content. Bram D.E. Canter, Practice Pointers for Administrative Hearings: Use of Exhibits, Fla.B.J., July/August 2012, at 32.

Respondent's exception improperly asks the Board to re-weigh the credibility of witness testimony. It is the role of the ALJ to weigh the credibility of the witnesses. Heifez, 475 So. 2d at 1281.

The Board REJECTS Respondent's third exception to findings of fact number 9 of the RO.

10. Respondent's fourth exception to finding of fact, found at paragraph 6 of Respondent's Exceptions to Recommended Order, is to Paragraphs 10 and 11 of the RO.

The Board REJECTS Respondent's fourth exception to findings of fact numbers 10 and 11. See Paragraph 9 of this Final Order.

11. Respondent's fifth exception to finding of fact, found at paragraph 7 of Respondent's Exceptions to Recommended Order, is to Paragraph 12 of the RO.

Respondent's exception improperly asks the Board to re-weigh the credibility of witness testimony. It is the role of the ALJ to weigh the credibility of the witnesses. Heifez, 475 So. 2d at 1281.

The Board REJECTS Respondent's fifth exception to findings of fact number in paragraph number 12 of the RO.

12. Respondent's sixth exception to finding of fact, found at paragraph 8 of Respondent's Exceptions to Recommended Order, is to Paragraph 13 of the RO.

Respondent's exception improperly asks the Board to re-weigh the credibility of witness testimony. It is the role of the ALJ to weigh the credibility of the witnesses. Heifez, 475 So. 2d at 1281.

The Board REJECTS Respondent's sixth exception to findings of fact number in paragraph number 13 of the RO.

13. Respondent's seventh exception to finding of fact, found at paragraph 9 of Respondent's Exceptions to Recommended Order, is to Paragraph 14 of the RO.

Respondent's exception improperly asks the Board to re-weigh the credibility of witness testimony. It is the role of the ALJ to weigh the credibility of the witnesses. Heifez, 475 So. 2d at 1281.

The Board REJECTS Respondent's seventh exception to findings of fact number in paragraph number 14 of the RO.

14. Respondent's eighth exception to finding of fact, found at paragraph 10 of Respondent's Exceptions to Recommended Order, is to Paragraph 15 of the RO.

The Board REJECTS Respondent's eighth exception to findings of fact in paragraph number 15 of the RO. See Paragraph 9 of this Final Order.

EXCEPTIONS TO CONCLUSIONS OF LAW

15. Respondent's ninth exception, as presented in paragraph 11 of the Respondent's Exceptions to Recommended Order, is directed to conclusion of law found at paragraph 23 of the RO.

The ALJ relied on competent, substantial evidence found throughout the record to support this conclusion of law. (Tr. p.20-22; RO, para. 23).

Respondent's conclusion that no sexual misconduct took place is less reasonable than the ALJ's conclusion.

The Board REJECTS Respondent's ninth exception to conclusion of law in paragraph number 23 of the RO.

16. Respondent's tenth exception, as presented in paragraph 12 of the Respondent's Exceptions to Recommended Order, is directed to conclusion of law found at paragraph 24 of the RO.

The ALJ relied on competent, substantial evidence found throughout the record to support this conclusion of law. (Tr. p.20-22)

The Board REJECTS Respondent's tenth exception to conclusion of law in paragraph number 24 of the RO.

17. Respondent's eleventh exception, as presented in paragraph 13 of the Respondent's Exceptions to Recommended Order, is directed to conclusion of law found at paragraph 26 of the RO.

The ALJ relied on competent, substantial evidence found throughout the record to support this conclusion of law. (Tr. p.20-22)

The Board REJECTS Respondent's eleventh exception to conclusion of law in paragraph number 26 of the RO.

18. Respondent's twelfth exception, as presented in paragraph 14 of the Respondent's Exceptions to Recommended Order, is directed to conclusion of law found at paragraph 27 of the RO.

The ALJ relied on competent, substantial evidence found throughout the record to support this conclusion of law. (Tr. p.20-22)

The Board REJECTS Respondent's twelfth exception to conclusion of law in paragraph number 27 of the RO.

19. Respondent's thirteenth exception, as presented in paragraph 15 of the Respondent's Exceptions to Recommended Order, is directed to conclusion of law found at paragraph 34 and 35 or the RO.

The ALJ relied on competent, substantial evidence found throughout the record to support this conclusion of law. (Tr. p.20-22)

The Board REJECTS Respondent's thirteenth exception to conclusion of law in paragraphs number 34 and 35 of the RO.

FINDINGS OF FACT

22. There is competent substantial evidence to support the findings of fact as presented in the RO.

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

CONCLUSIONS OF LAW

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

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

26. Respondent violated Section 480.046(1)(p) by 480.0485, and 456.072(1)(v), Florida Statutes.

PENALTY

27. The penalty set forth in the Recommended Order is approved, adopted, and incorporated herein by reference.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

28. The license of Yanling Wang is **REVOKED**.

29. The licensee must pay an administrative fine of \$2,500 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.

30. **IN ADDITION**, The Board reserves ruling on Petitioner's Motion to Assess Costs. That matter is bifurcated to be considered at a later meeting.

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

DONE AND ORDERED this 12 day of April, 2019.

BOARD OF MASSAGE THERAPY

Kama Monroe

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: Yanling Wang, 5621 Kimberton Way, Lake Worth, FL 33463; and 2679 N Glenside Street, Orange, CA 92865; 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 15th day of April, 2019.

Certified Article Number

9414 7266 9904 2135 6231 80

SENDER'S RECORD

|||||
Yanling Wang
5621 Kimberton Way
Lake Worth, FL 33463

Amy L. Carraway
Deputy Agency Clerk

Certified Article Number

9414 7266 9904 2135 6231 97

SENDER'S RECORD

|||||
Yanling Wang
2679 N. Glenside Street
Orange, CA 92865