

**IN THE MATTER OF
DANA FANG, LMT**

Respondent

License Number: M04423

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BEFORE THE

MARYLAND STATE BOARD

OF CHIROPRACTIC & MASSAGE

THERAPY EXAMINERS

Case Number: 12-01M

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FINAL DECISION AND ORDER

BACKGROUND

On December 11, 2011 the Maryland State Board of Chiropractic and Massage Therapy Examiners (the "Board") received a complaint against Dana Fang (the "Respondent"), Licensed Massage Therapist ("L.M.T.") License Number M04423. The complaint alleged that unlicensed individuals were engaged in the practice of massage in the Healing Hands store located in Annapolis, Maryland, where the Respondent works as a manager and massage therapist. Following the complaint, the Board completed an investigation. Subsequently, the Board issued the charges in accordance with the Maryland Chiropractic Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 3-101 *et seq.* (2009 Repl. Vol.) practice act and regulations. A case resolution conference ("CRC") was scheduled for December 6, 2012 where the matter was not resolved, so a hearing was scheduled and held on June 13, 2013.; Respondent was represented by legal counsel at both the CRC and the hearing.

The pertinent provisions of the Act under H.O. § 3-5A-11 provide the following:

H.O. §3-5A-11 Denials; Suspensions; Revocations

(a) *Denial of license or registration-* Subject to the hearing provisions of § 3–315 of this title, the Board may deny a license or registration to any applicant, reprimand any licensee or registration holder, place any licensee or registration holder on probation, or suspend or revoke the license of a licensee or the registration of a registration holder if the applicant, licensee, or registration holder:

(8) Does an act that is inconsistent with generally accepted professional standards in the practice of massage therapy;

(9) Is negligent in the practice of massage therapy;

(20) Engages in conduct that violates the professional code of ethics; or

(21) Knowingly does an act that has been determined by the Board to be a violation of the Board's regulations.

Code Md. Regs. tit. 10, § 43.17

.06 Licensure.

C. Display of License. A license holder shall display the license and any current renewal license conspicuously in the space where the license holder is engaged in practice, including in any temporary space or in any exhibit location

Code Md. Regs. tit. 10, § 43.18

.03 Standards of Practice.

C. A certificate holder or registration holder shall:

(2) Engage in professional conduct at all times, with honesty, integrity, self-respect, and fairness;

(8) Report to the Board of Chiropractic Examiners, or other appropriate authority, conduct in the practice of massage therapy that indicates a violation of:

(a) This chapter,

(b) Health Occupations Article, Title 3, Subtitle 5A, Annotated Code of Maryland, or

(c) Any other law, including but not limited to aiding or abetting the unauthorized practice of massage therapy or non-therapeutic massage [.]

D. A certificate holder or registration holder may not:

(2) Knowingly engage in or condone behavior that:

- (a) Is fraudulent,
- (b) Is dishonest,
- (c) Is deceitful, or
- (d) Involves moral turpitude [.]

(6) Aid or abet any individual violating or attempting to violate any provision of law or regulation.

.04 Relationship with Client.

A. A license holder or registration holder shall:

(4) Maintain legible, organized written records of treatment of any client under the care of the license holder or registration holder for at least 5 years after termination of treatment and as provided by applicable provisions of Health-General Article, Title 4, Subtitle 3, Annotated Code of Maryland;

The Board issues this order in accordance with its rulings during the hearing. The Board issues this Final Decision and Order based upon its consideration of the entire record, including the exhibits, witness testimony and oral arguments. For the reasons set forth below, the Board approves and adopts this Final Decision and Order.

SUMMARY OF EVIDENCE

The State entered exhibits 1-4 into evidence. Board Investigator, Christopher Bieling, testified on behalf of the State. Ms. Fang was represented by counsel

throughout the proceeding and Ms. Fang testified on her own behalf. Ms. Fang entered exhibits 1 – 4 into evidence.

Board Investigator Christopher Bieling

Christopher Bieling has been an investigator for the Board since November 2, 2011. Prior to becoming a board investigator, Mr. Bieling was with the Baltimore City Police Department for about 30 years. During his tenure with the Baltimore City Police Department, Mr. Bieling worked in several different departments, taking on investigative responsibilities and eventually becoming a detective. He was trained in investigative work, became familiar with undercover operations and learned to be observant and meticulous about details. Following his time with the Baltimore City Police Department, Mr. Bieling worked with the State of Maryland Lottery Commission where he did security investigations relating to fraud and theft. Since becoming a board investigator, Mr. Bieling estimates that he has investigated about 100 cases. Some of those cases have given him the occasion to visit establishments and receive massages.

On April 6, 2012, Mr. Bieling went to Healing Hands Massage located in Annapolis Mall around 11:30am. Upon entering into the store, a woman at the counter asked Mr. Bieling what kind of massage he would want and he responded that he wanted a 10 minute massage that would concentrate on his lower back. He was then escorted to a small room that was sectioned off by curtains. He did not notice a license or certificate in the massage area. The massage consisted of several massage modalities such as effleurage, petrissage, and tapotement on his upper and lower back area. Towards the conclusion of the massage, a topical substance was placed on the

lower part of his back which heated up quickly. A timer signaled the end of the ten minute massage session.

Following the ten minute session, he was escorted to the cash register at the front of the practice. He asked the female who performed the massage what her name was and she responded "May." While paying for the massage, Mr. Bieling scanned the front area for any licensure and again did not see any.

Following the visit to Healing Hands, a subpoena was sent to the Respondent on April 16, 2012. The subpoena requested a list of all licensed massage therapists working at Healing Hands Massage and all S.O.A.P. notes from massage services that were provided on April 6, 2012. On May 3, 2012, Mr. Bieling conducted an interview with the Respondent in which she stated that she knew that there were individuals who were not licensed to practice massage therapy in the state of Maryland working in the Healing Hands Store. She maintained that she was the only licensed massage therapist in the store and that she was the only one providing the massage therapy. She stated that sometimes people from out of state, that were licensed in other states, would come to visit the store to test it out, but they were only hired for acupressure and reflexology while they worked at the store. She also stated that it was her belief of that law that unlicensed individuals practicing reflexology were able to perform the modalities of massage therapy while performing reflexology if they had been licensed in another state. When asked the identify of "May", who performed the massage on Mr. Bieling, the Respondent claimed that she did not know her Chinese name.

The Board found Mr. Bieling to be a credible witness based on his consistent testimony and experience.

Dana Fang

Dana Fang testified on behalf of herself. During her testimony, the Respondent identified "May" as Lulu Zhang, a licensed massage therapist in Virginia and Pennsylvania who was visiting Maryland on a trial basis in April, 2012 for a period of less than 7 days. The Respondent believed Lulu Zhang to currently be in China. The Respondent presented a signed affidavit (Ex. 3) from Lulu Zhang in which she stated that she worked at the Healing Hands Store in April 2012, including April 6, 2012. The affidavit did not say whether she performed reflexology or massage therapy. The affidavit does not include an address or phone number for Ms. Zhang. The affidavit is not notarized and does not include Ms. Zhang's current address or phone number. For these reasons, the Board did not give much to this affidavit.

The Respondent demonstrated sufficient understanding of the laws regulating massage therapy. The Board did not find the Respondent to be a credible witness. Her story was inconsistent and at times, was in direct conflict with testimony from Mr. Bieling. For example, Mr. Bieling claimed that the store did not appear to be under construction at the time of his investigation, but Ms. Fang claimed that it was. In her interview with Mr. Bieling, Ms. Fang couldn't remember what "May's" actual American or Chinese name was, but was able to produce a signed affidavit from Lulu Zhang at the hearing. In addition, the Respondent always maintained that she was the only licensed

massage therapist in the store who was performing any massage therapy. However, there was a S.O.A.P. note written by Lulu Zhang for massage services on April 6, 2012.

The S.O.A.P. notes received did not contain the surnames of the clients, only the first name and the massage therapist that provided the services. This is not in compliance with the recordkeeping requirements under the Board's laws and regulations. There were also no signatures of the client or the massage therapist on the notes provided by the Respondent.

FINDINGS OF FACT

1. The Respondent was and is licensed to practice massage therapy in Maryland. The Respondent first obtained her massage therapy license on or about June 16, 2009. Her current license will expire on October 31, 2014.

2. At all times relevant hereto, the Respondent was and is the manager of Healing Hands Massage ("Healing Hands"), a massage therapy establishment, located in Annapolis, Maryland.¹

3. At all time relevant hereto, approximately four to six individuals were employed at Healing Hands. The Respondent hired and supervised the employees that were employed at Healing Hands.

4. At all times relevant hereto, the Respondent was the only individual employed at Healing Hand, who was either licensed or registered to practice massage therapy in the State of Maryland.

¹ Healing Hands Message is owned by members of the Respondent's family.

5. In or around December 2011, the Board received a complaint that unlicensed individuals were practicing massage therapy at Healing Hands.

6. On or about April 6, 2012, as part of a Board investigation, Board Investigator, Christopher Bieling, went to Healing Hands. Upon entering Head Hands, the Board Investigator was greeted by a female employee who asked the investigator "What kind of massage do you want?".

7. The Board Investigator asked for and received a ten minute back massage.

8. During the ten minute massage, the female employee utilized effleurage (stroking), petrissage (kneading), and tapotement (tapping) techniques, on the Board Investigator's back.

9. While at Healing Hands, the Board Investigator did not see any wall licenses or registrations displayed in the treatment room or at the cash register located at the front of the establishment.

10. On or about April 16, 2012, the Board issued a subpoena for the Respondent requesting that the Respondent submit "S.O.A.P"² notes from massages that were performed on clients on April 6, 2012.

11. In response to the Board's request for "S.O.A.P" notes, the Respondent provided notes that did not contain the name and signature of the person who performed the massage therapy services. The notes also did not contain the full name of the client that received massage therapy services.

² A S.O.A.P. note details the client's subjective complaints, therapists' observations and treatment, assessment of the client's condition, and treatment plan.

12. On or about May 3, 2012, the Respondent was interviewed, under oath, by the Board Investigator.

13. During that interview, the Respondent admitted that she was aware that employees working at Healing Hand were not licensed or registered to practice massage therapy in the State of Maryland.

14. Respondent's conduct as set forth above is a violation of H. O. § 3-5A-11 (a) (8), (9), (20), (21); Code Md. Regs. tit. 10, § 43.17.06C; Code Md. Regs. tit. 10, § 43.18.03 C(2) and (8)(a)-(c) and D(2)(a)-(d) and (6); and Code Md. Regs. tit. 10, § 43.18.04 A (4).

CONCLUSIONS OF LAW

Based on the exhibits and testimony presented and Findings of Fact, the Board concludes that the Respondent violated her professional and legal duties as a Massage Therapist. As a matter of law, the Board finds that the Respondent violated the provisions of the Board's Practice Act and its Code of Ethics. See H.O. §3-5A-11(a)(8),(9),(20) and (21) and COMAR 10.43.18.03 *et seq.*

First, the Board finds that the Respondent violated the Board's Code of Ethics by knowingly permitting an unlicensed massage therapist to practice under her supervision. See H.O. §3-5A-11(a)(20) and Code Md. Regs. 10.43.18.03C(2) and (8); COMAR 10.43.18.03D(2), (6). The State produced evidence showing that the Respondent was aware that employees working at Healing Hands were not licensed in the State of Maryland to practice massage therapy. Further, the Respondent admitted to knowing that an unlicensed individual was practicing massage therapy at Healing

Hands in both her investigative interview and during her testimony at the hearing. The Respondent demonstrated sufficient understanding of the laws regulating massage therapy to cause the Board to believe that she knew unlicensed individuals may not practice massage in Maryland, regardless of whether or not they are licensed in other states. Despite this, the Respondent continued to allow an unlicensed individual to practice massage under her supervision. Accordingly, the Board finds the Respondent in violation of H.O. §3-5A-11(a)(20) and Code Md. Regs. 10.43.18.03C(2) and (8).

Secondly, the Board finds that the Respondent engaged in dishonest and deceitful conduct during the course of the Board's investigation of this matter. See Code Md. Regs. 10.43.18.03D(2)(a)-(d). The Board noted several discrepancies regarding Lulu ("May") Zhang between Ms. Fang's testimony during her taped interview and her testimony during the hearing. During the interview with Mr. Bieling, the Respondent appeared to be unable to identify who "May" was, but was then able to procure a signed affidavit from Lulu ("May") Zhang for the hearing. The Board found this discrepancy to indicate that the Respondent was being evasive and dishonest during the investigative interview with Mr. Bieling. Accordingly, the Board finds the Respondent in violation of H.O. §3-5A-11(a)(20) and Code Md. Regs. 10.43.18.03D(2)(a)-(d).

Finally, the Board finds that the Respondent failed to properly create and maintain written records of treatment for clients in violation of the Board's regulations. See Code Md. Regs. 10.43.18.04A(4). The S.O.A.P. notes that the Respondent submitted to the Board for the date of April 6, 2012 were inadequate and below the Board's regulatory standards. The notes did not contain the surnames of the clients,

leaving the Board wondering how the Respondent would be able to keep track of multiple clients with the same name. The notes also lacked the signature of the client and the therapist performing the massage therapy. In accordance with COMAR 10.43.18.04A(4), all licensees are required to "maintain legible, organized written records of treatment of any client under the care of the certificate holder or registration holder for at least 5 years..." The S.O.A.P. notes that the respondent provided to the Board are not acceptable under this standard. Accordingly, the Board finds the Respondent in violation of H.O. §3-5A-11(a)(8),(9),(20) and (21), and Code Md. Regs. 10.43.18.04(A).

The Respondent is an experienced, licensed massage therapist and is therefore held to certain standards. The Respondent demonstrated a sufficient understanding of the law, but allowed a massage therapist who was not licensed to practice in Maryland perform massage services on clients who presented in her practice. The discrepancies in her testimony in regards to this violation lead the Board to find her to not be a credible witness. Further, the S.O.A.P. notes presented to the Board by the Respondent were below professional and regulatory standards. Massage therapy is a helping profession and clients must be able to trust that the service that they receive will be done by competent massage therapists that have been licensed by the State of Maryland. The Board has a duty to the public to ensure that only qualified massage therapists are licensed and practicing. During her testimony, Ms. Fang expressed remorse for allowing violations of the Board's regulations and statutes, and asserted that she has taken measures at Healing Hands to prevent this from occurring in the future. Ms. Fang acknowledged her responsibility for allowing an unlicensed individual to practice

massage at Healing Hands. Additionally, she indicated that she has learned from her mistakes and has taken measures to correct them. The Board took these mitigating factors into account when determining its sanction. This order is issued in accordance with the Board's sanctioning guidelines, Code Md. Regs. §10.43.16.06. As Ms. Fang was found to have violated the Board's record keeping guidelines and failed to cooperate with the Board's investigator in addition to the other violations, for this reason the following sanction was greater than the minimum in the guidelines for practicing with an unauthorized individual.

ORDER

Based on the forgoing Findings of Fact and Conclusions of Law, it is this 13th day of August, 2013 that the majority of the Board hereby:

ORDERED that the Respondent's license to practice massage therapy is hereby **REPRIMANDED**; and it is further

ORDERED that the Respondent's license to practice massage therapy is hereby **SUSPENDED** for twelve (12) months, with all but **30 DAYS** stayed; and it is further

ORDERED that the Respondent's license to practice massage therapy is placed on **PROBATION** for a period of three (3) years, to commence upon the date of the execution of this order; and it is further

ORDERED that within one (1) year from the date of this Order, Respondent take and successfully complete at least eight hours of board-continuing education in ethics and recordkeeping (these courses cannot be used to fulfill the Respondent's continuing

education requirements) and must be pre-approved by the Executive Director; and it is further

ORDERED that during the time of probation, the Respondent must submit quarterly reports to the Board detailing her current place of employment, names, addresses and identifying information of all employees, positions, and any activities pertaining to massage therapy; and it is further

ORDERED that the Respondent shall practice in accordance with the laws and regulations governing massage therapy in Maryland; and it is further

ORDERED that at the conclusion of the three (3) year probationary period, and only upon the Board's receipt of documentation confirming successful completion of all the probationary terms, the Respondent must petition the Board for termination of probation to have said probation status lifted; and it is further

ORDERED that violation of the probationary period by committing violations of laws or regulations will result in the imposition of the full suspension term as well as possible further charges and sanctions;

ORDERED that for purposes of public disclosure and as permitted by Md. State Govt. Code Ann. §10-617(h) (2009 Repl. Vol.), this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law and Order, and is reportable to any entity to whom the Board is obligated to report; and it is further **ORDERED** that this Order is final and a public document pursuant to Md. State Govt. Code Ann. §§10-601 *et seq.* (2009 Repl. Vol.).

AUG 13 2013

Date

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J J Vallone, JD, CFE, Exec. Dir.

by/for Michael Fedorczyk, DC

Board President

NOTICE OF THE RIGHT TO APPEAL

Pursuant to Maryland Health Occ. Code Ann. § 3-316, you have a right to take a direct judicial appeal. A petition for appeal shall be filed within thirty (30) days from mailing of this Final Decision and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Maryland State Gov't Code Ann. §§10-201 *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.