

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

**GEORGIA BOARD OF MASSAGE  
THERAPY,**

**Petitioner,**

v.

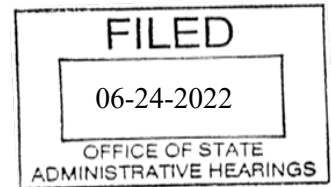
**HONGMIAO DONG,**

**Respondent.**

**Docket No.: 2203846**

**2203846-OSAH-PLBD-MT-67-Barnes**

**Agency Reference No.: MT010558**



**INITIAL DECISION**

**I. Introduction**

Petitioner, the Georgia Board of Massage Therapy (“Board”) brought this action seeking the imposition of sanctions against Respondent’s license to practice as a massage therapist in Georgia. The Board also requested the imposition of costs it incurred through the investigation and administrative action. The evidentiary hearing took place on May 20, 2022, before the undersigned administrative law judge. The Board was represented by Elizabeth Simpson, Esq., Assistant Attorney General. Respondent was represented by Justin Spizman, Esq. After careful consideration of the evidence and the arguments of the parties, and for the reasons stated below, the Board’s decision is **AFFIRMED and MODIFIED.**

**II. Findings of Fact**

*The following facts were stipulated by the parties and adopted by the Court.*

1.

The Respondent, Hongmiao Dong, is licensed to practice as a massage therapist in the state of Georgia, License No. MT010558, and was so licensed since June 10, 2015.

2.

Respondent was the registered agent for Jiawen, LLC D/B/A Cozy Massage, a massage

therapy business located at 4840 Golden Parkway, Buford, GA 30542 at all times relevant to the Matters Asserted by Petitioner.

3.

On or about November 26, 2019, the Hall County Sheriff's Office conducted an undercover operation at Cozy Massage.

4.

During the operation, an undercover officer received a massage from an individual, Ning Escobar, who was determined have been employed by Cozy Massage without being duly licensed as a massage therapist.

5.

During the massage, Ning Escobar offered the officer sexual services in exchange for additional compensation.

6.

On or about November 26, 2019, Ning Escobar was arrested and charged with Masturbation for Hire (O.C.G.A. §16-6-16).

7.

On or about September 17, 2022, Ning Escobar's charges were resolved with a plea of nolo contendere to Giving of Massages in a Place Used for Lewdness and Unlawful (unlicensed) Massage Therapy Services.

8.

Respondent has since implemented certain remedial measures at Cozy Massage with respect to employee qualifications and appropriate workplace standards.

9.

While Respondent stipulates that she hired an unlicensed massage therapist, she denies having any knowledge or participation of any alleged acts of sexual misconduct on any clients of Cozy Massage.

### **III. Conclusions of Law**

1.

The Board bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07. The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

When a contested case is referred to the Office of State Administrative Hearings for a hearing, the administrative law judge assigned to the case has “all the powers of the ultimate decision maker in the [referring] agency. . .” O.C.G.A. § 50-13-41(b). The hearing is *de novo*, and the administrative law judge “shall make an independent determination on the basis of the competent evidence presented at the hearing.” Ga. Comp. R. & Regs. 616-1-2-.21(1).

3.

The Board seeks to impose disciplinary action against Respondent’s license pursuant to O.C.G.A. §§ 43-1-1 et seq.; The Massage Therapy Practice Act, O.C.G.A. § 43-24A-1; the rules of the Georgia Board of Massage Therapy Practice Act, and the general statutory provisions related to professional licensing boards. See Ga. Comp. R. & Regs. Chapter 345 and O.C.G.A. §§ 43-1-1 et seq.

4.

The General Assembly acknowledges that the practice of massage therapy is a therapeutic health care service delivered by health care professionals that affects the public health, safety, and welfare of Georgians. Massage therapists must have a knowledge of anatomy and physiology and an understanding of the relationship between the structure and function of the tissue 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 in the interest of the public to set standards of qualifications, education, training, and experience for those who seek to practice massage therapy; to promote high standards of professional performance for those licensed to practice massage therapy; and to protect the public from unprofessional conduct by persons and entities licensed to practice or teach massage therapy.

O.C.G.A. § 43-24A-2.

5.

O.C.G.A. § 43-24A-3 provides, in part:

(3) "Board" means the Georgia Board of Massage Therapy established by this chapter.[...]

(6) "License" means a valid and current certificate of registration issued by the board pursuant to this chapter to practice massage therapy.

(7) "Licensee" means any person holding a license.

(8) "Massage therapist" means a person licensed under this chapter as a massage therapist who administers or teaches massage or massage therapy for compensation.

(9) "Massage therapy" or "massage" means the application of a system of structured touch, pressure, movement, and holding to the soft tissue of the body in which the primary intent is to enhance or restore health and well-being. Such term includes complementary methods, including without limitation cupping therapy, taping techniques, the external application of water, superficial heat, superficial cold, lubricants, salt scrubs, or other topical preparations and the use of commercially available electromechanical devices which do not require the use of transcutaneous electrodes and which mimic or enhance the actions possible by the hands; the term also includes determining whether massage therapy is appropriate or contraindicated, or whether referral to another health care provider is appropriate. Such term shall not include the use of ultrasound, fluidotherapy, laser, and other methods of deep thermal modalities.

6.

The Board is empowered to:

(1) Examine and determine the qualifications and fitness of applicants for licenses to practice massage therapy in this state;

(2) Issue, renew, refuse to renew, deny, suspend, or revoke licenses to practice

massage therapy in this state or otherwise discipline licensed massage therapists;

(3) Conduct investigations for the purpose of discovering violations of this chapter or grounds for disciplining persons or entities acting in violation of this chapter;

(4) Upon reasonable notice, request on-site inspections of the facility, equipment, policies, and practices of a massage therapy business or board recognized massage therapy educational program by appropriate inspectors in the Office of the Secretary of State for the purpose of determining compliance with the standards established pursuant to this chapter;

(5) Hold hearings on all matters properly brought before the board and, in conjunction therewith, to administer oaths, receive evidence, make the necessary determinations, and enter orders consistent with the findings. The board may designate one or more of its members as its hearing officer; [...]

(14) Bring proceedings to the courts for the enforcement of this chapter or any rules and regulations promulgated pursuant to this chapter. (c) In addition to the enumerated powers in subsection (b) of this Code section, the board has the authority to conduct its business pursuant to the provisions of Code Section 43-1-19 which is incorporated herein and made a part of this chapter by specific reference.

O.C.G.A. § 43-24A-7(b).

7.

O.C.G.A. § 43-1-19(a) provides that a professional licensing board shall have the authority to refuse to grant a license to an applicant therefore or to revoke the license of a person licensed by that board or to discipline a person licensed by that board, upon a finding by a majority of the entire board that the licensee or applicant has:

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of a business or profession licensed under this title or on any document connected therewith; practiced fraud or deceit or intentionally made any false statement in obtaining a license to practice the licensed business or profession; or made a false statement or deceptive registration with the board;

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice a business or profession licensed under this title, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or

be directly related to the practice of the licensed business or profession but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal reasonable standards of acceptable and prevailing practice of the business or profession licensed under this title; [...]

(7) Knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or any licensee whose license has been suspended or revoked by a professional licensing board to practice a business or profession licensed under this title or to practice outside the scope of any disciplinary limitation placed upon the licensee by the board;

(8) Violated a statute, law, or any rule or regulation of this state, any other state, the professional licensing board regulating the business or profession licensed under this title, the United States, or any other lawful authority without regard to whether the violation is criminally punishable when such statute, law, or rule or regulation relates to or in part regulates the practice of a business or profession licensed under this title and when the licensee or applicant knows or should know that such action violates such statute, law, or rule; or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement; ....

8.

O.C.G.A. § 43-1-19(d) provides that when a professional licensing board finds that any person should be disciplined pursuant to subsection (a) of this Code section or the laws, rules, or regulations relating to the business or profession licensed by the board, the board may take any one or more of the following actions:

(5) Revoke any license;

(8) Impose on a licensee or applicant fees or charges in an amount necessary to reimburse the professional licensing board for the administrative and legal costs incurred by the board in conducting an investigative or disciplinary proceeding.

9.

O.C.G.A. § 43-24A-17(a) provides, in part, that the board may take any one or more of the following actions against a person or entity found by the board to have committed a violation

of this chapter:

- (1) Reprimand or place the licensee on probation;
- (2) Revoke or suspend the license or deny the issuance or renewal of a license;
- (3) Impose an administrative fine not to exceed \$500.00 for each violation;
- (4) Assess costs against the violator for expenses relating to the investigation and administrative action.

10.

“Georgia Licensed Massage Therapists shall . . . [c]omply with recognized professional standards for the practice of massage therapy and client quality of care [..].” Ga. Comp. R. & Regs. 345-6-.01(1). “Unprofessional conduct shall also include, but not be limited to, the following: (e) Violation of, or noncompliance with, any of the following: 1. The Georgia Massage Therapy Practice Act; 2. Any statutes, ordinances, or rules pertaining to the practice of massage therapy; 3. Rules promulgated by the Georgia Board of Massage Therapy [..].” Ga. Comp. R. & Regs. 345-6-.01(2)(e).

11.

“Upon finding that a violation has occurred . . . the Board has the authority to refuse to grant a license to a person, revoke the license of a person licensed by the Board, discipline or sanction a person licensed by the Board, or refuse to renew a license.” Ga. Comp. R. & Regs. 345-10-.01(1). “In addition, the Board may impose any or all, but not limited to . . . [a]ny other action the Board may deem appropriate, up to and including possible suspension and/or revocation of the professional license.” *Id.* at § 345-10-.02(2)(f).

12.


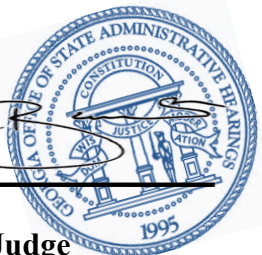
After considering all of the admissible evidence and the arguments of the parties, the Board has established by a preponderance of the evidence that Respondent employed Ning Escobar as a massage therapist although Ms. Escobar was not duly licensed. At the time, Respondent did not

take steps to ensure that only licensed massage therapists were employed at Cozy Massage. Further, at the time, Ms. Escobar not trained on proper conduct, or alternatively, was not corrected when conduct was improper. However, since the time of the November 26, 2019 arrest of Ms. Escobar, Cozy Massage has instituted several mitigative measures that demonstrate an understanding of the importance of adherence to rules and regulations. The mitigative measures are tailored to prevent an incident such as the one occurring in November 2019. The Court is aware that the COVID-19 pandemic, which impacted the country beginning in early 2020, affected the timing of the Board's investigation into this matter. It also impacted the massage therapy industry, which relies on human contact, causing Respondent to close Cozy Massage's doors for approximately one year. The Court finds that a sanction is appropriate in this case. Based on the circumstances described herein, the Court finds that Respondent shall: a) receive a written reprimand from the Board; b) pay a fine of \$500 to the Board for the violation; and c) pay to the Board the costs of the investigation and administrative action.

#### IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Board's decision to sanction Petitioner's massage therapist license is **AFFIRMED in part and MODIFIED** to a written reprimand, a \$500 fine, and payment of the costs of the investigation and administrative action.

**SO ORDERED**, this 24<sup>th</sup> day of June, 2022.

  
  
**Shakara M. Barnes**  
**Administrative Law Judge**