

**STATE OF WASHINGTON
DEPARTMENT OF HEALTH
ADJUDICATIVE SERVICE UNIT**

In the Matter of:)	
)	Master Case No. M2014-644
XIAOLIN JIN,)	
Application No. MASS.MA.60389571 ,)	PROPOSED FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Applicant.)	AND INITIAL ORDER
_____)	

APPEARANCES:

Applicant, XiaoLin Jin, pro se

Department of Health Massage Program (Program), by
Office of the Attorney General, per
Krystl M. Murphy, Assistant Attorney General

PRESIDING OFFICER: Heather Francks, Health Law Judge

The Presiding Officer held a de novo hearing on January 21, 2015, regarding the Applicant's application for a massage practitioner credential. Application DENIED.

ISSUE

Has the Applicant proved by a preponderance of evidence that she is qualified under RCW 18.108.070(1)?

SUMMARY OF THE PROCEEDINGS

The Applicant testified on her own behalf. Ms. Ginger Wang, a Mandarin interpreter certified by the Office of the Administrator for the Courts, translated the proceedings for the Applicant.

The Program presented the following witnesses: Shaun Atkinson, Department of Health Investigator; and Kris Waidely, Massage Program Manager, Department of Health.

The Presiding Officer admitted the following exhibits:

Exhibit P-1: Department of Health Investigation Report, dated May 30, 2014.

Exhibit P-2: Applicant's Massage Practitioner License Application.

Exhibit P-3: Email from Department of Health HSQA Credentialing Review to Applicant, dated July 17, 2013.

Exhibit P-4: Email from Department of Health HSQA Credentialing Intake to Applicant, dated June 12, 2013.

Exhibit P-5: Webpages of California Massage Therapy Council, printed in February 28, 2014, and National Certification Board for Therapeutic Massage & Bodywork School Compliance List.

Exhibit P-6: Letters from the Department of Health to the Applicant, dated February 18 and 28, 2014, and Applicant's response and translation of response.

Exhibit P-7: Letter from the Department of Health Investigator Shaun Atkinson to Ms. Dunne-Denton, dated March 31, 2014, and Ms. Dunne-Denton's response.

Exhibit P-8: Email exchange between Applicant and Ms. Dunne-Denton, dated August 28, 2012, and the Applicant's school documents.

I. PROCEDURAL HISTORY

1.1 On September 2, 2014, the Department of Health Massage Practitioner Program (Program) issued a Notice of Decision on Application which denied the Applicant's application for a Washington state massage practitioner license. The Program based its decision on RCW 18.130.055(1)(d) which requires a successful candidate to complete an approved training program: the Applicant's out-of-state massage practitioner program of study and training was not approved by the state of Washington.

12 On September 9, 2014, the Applicant filed a Request for Adjudicative Proceeding with the Adjudicative Service Unit.

II. FINDINGS OF FACT

21 On March 14, 2013, the Applicant passed the Federation of State Massage Therapy Boards Massage and Bodywork Licensing Examination (MBLEX). In May 29, 2014, the Applicant applied for a credential to practice as a massage practitioner in the state of Washington. She provided a school transcript from Select Therapy Institute (STI) in Rosemead, California, showing she graduated in 2012. Unbeknownst to the Applicant, STI was placed on the California Massage Therapy Council (CMTCC) "Non-Approved" school list effective on May 21, 2012. The college was also placed on the National Certification Board for Therapeutic Massage and Bodywork (NCMTMB), "Non-Approved" school list, effective November 4, 2009. STI was never approved by the state of Washington. For this reason, none of the Applicant's hours of study at STI can be counted towards the hours necessary to qualify for a massage credential in Washington.

2.2 The Applicant has also completed some hours of study at a school approved by the state of Washington, the Denton Massage School (Denton) in Arlington, Washington. The Board of Massage School Completion form from Denton indicates that the Applicant only attended the school from February 20, 2013 to May 25, 2013, a period of just over 3 months. P-2

2.3 The Applicant attended Denton on Saturdays from approximately 8:00 a.m. to 6:00 p.m. Assuming that she attended every Saturday for 10 hours, for

three months or 12 weeks, the total hours would be 120 hours, far fewer than the 712.50 hours required to complete the Denton course of study.¹

III. CONCLUSIONS OF LAW

3.1 The Secretary of Health (and by delegated authority, the Presiding Officer) has jurisdiction over this matter. Chapter 18.130 RCW.

3.2 RCW 18.130.055 states:

- (1) The disciplining authority may deny an application for licensure or grant a license with conditions if the applicant:
 - (d) Fails to prove that he or she is qualified in accordance with the provisions of this chapter, the chapters identified in RCW 18.130.040(2), or the rules adopted by the disciplining authority; or

...

- (3) The disciplining authority shall give written notice to the applicant of the decision to deny a license or grant a license with conditions in response to an application for a license. The notice must state the grounds and factual basis for the action and be served upon the applicant.
- (4) A license applicant who is aggrieved by the decision to deny the license or grant the license with conditions has the right to an adjudicative proceeding. The application for adjudicative proceeding must be in writing, state the basis for contesting the adverse action, include a copy of the adverse notice, and be served on and received by the department within twenty-eight days of the decision. The license applicant has the burden to establish, by a preponderance of the evidence, that the license applicant is qualified in accordance with the provisions of this chapter, the chapters identified in RCW 18.130.040(2), and the rules adopted by the disciplining authority.

¹ While all massage courses must consist of at least 500 hours, schools are approved for different total hours depending upon the course schedule. WAC 246-830-430(1).

3.3 The Applicant has the burden to establish, by a preponderance of the

evidence, that he or she is qualified for a license. RCW 18.130.055(4). The Program may deny the credential if the applicant fails to show that he or she is qualified under RCW 18.130.055(1)(d).

3.4 In this case, the Applicant did not present evidence to show that she meets the minimum licensing qualifications to practice as a massage practitioner. At the time this application was filed, an applicant seeking a massage practitioner credential was required to complete a course of study at a school approved by the Board of Massage, pass a test, and complete the application form. RCW 18.108.070(1). The evidence shows the Applicant passed the MBLEX test and submitted a Board of Massage School Completion form that indicated the Applicant had completed the course of study at Denton in just over three months.

3.5 However, WAC 246-830-430 requires massage training to be at least 500 hours completed in no less than six months. The Applicant failed to provide evidence that she completed the entire course of study and that the course of study took at least six months. The classes reflected in the transcript from the STI cannot be counted toward Washington State massage practitioner credentialing requirements, because STI was never approved by the state of Washington. WAC 246-830-401(1).

3.6 Because she has not satisfied the Board of Massage requirement of at least 500 hours of approved study over no less than six months, the Applicant is not qualified to practice as a massage practitioner. The Applicant must satisfactorily complete either the entire course of study at Denton or an entire course of study at any

other program approved by the Board of Massage for the state of Washington.
WAC 246-830-430(1).

IV. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is
ORDERED:

The Applicant's application for a credential to practice as a massage practitioner
in the state of Washington is DENIED.

Dated this 9 day of February, 2015.

_____/s/_____
HEATHER FRANCKS, Health Law Judge
Presiding Officer

NOTICE TO PARTIES

When signed by the presiding officer, this order shall be considered an initial order.
RCW 18.130.095(4); Chapter 109, law of 2013 (Sec. 3); WAC 246-10-608.

Any party may file a written petition for administrative review of this initial order
stating the specific grounds upon which exception is taken and the relief requested.

WAC 246-10-701(1). A petition for administrative review must be served upon the
opposing party and filed with the adjudicative clerk office within 21 days of service of the
initial order. WAC 246-10-701(3).

"Filed" means actual receipt of the document by the Adjudicative Clerk Office.
RCW 34.05.010(6). "Served" means the day the document was deposited in the United
States mail. RCW 34.05.010(19). The petition for administrative review must be filed
within twenty-one (21) calendar days of service of the initial order with:

Adjudicative Clerk Office
Adjudicative Service Unit
PO Box 47879
Olympia, WA 98504-7879

and a copy must be sent to the opposing party. If the opposing party is represented by counsel, the copy should be sent to the attorney. If sending a copy to the Assistant Attorney General in this case, the mailing address is:

Agriculture and Health Division
Office of the Attorney General
PO Box 40109
Olympia, WA 98504-0109

Effective date: If administrative review is not timely requested as provided above, this initial order becomes a final order and takes effect, under WAC 246-10-701(5), at 5:00 p.m. on . Failure to petition for administrative review may result in the inability to obtain judicial review due to failure to exhaust administrative remedies. RCW 34.05.534.

Final orders will be reported to the National Practitioner Databank (45 CFR Part 60) and elsewhere as required by law. Final orders will be placed on the Department of Health's website, and otherwise disseminated as required by the Public Records Act (Chap. 42.56 RCW) and the Uniform Disciplinary Act. RCW 18.130.110. All orders are public documents and may be released.

For more information, visit our website at:

<http://www.doh.wa.gov/PublicHealthandHealthcareProviders/HealthcareProfessionsandFacilities/Hearings.aspx>