DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2009 FEB 17 P 12: 10

HEARINGS OFFICE

OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the Citation of LANI JORLANIN, Respondent.	COS 2007-42-C [CONSOLIDATED CASES] HEARINGS OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY JUDGMENT
In the Matter of the Citation of ERICA BROWN, Respondent.	COS-2007-40-C MAS-2007-48-C

HEARINGS OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

On June 6, 2007, Scott T. Strack, Esq., attorney for Lani Jorlanin ("Respondent Jorlanin") and Erica Brown ("Respondent Brown") filed a request for hearing to contest the issuance of three citations by the Department of Commerce and Consumer Affairs, State of Hawaii ("Petitioner") for unlicensed beauty operator and unlicensed massage therapist activities. A hearing was set for July 18, 2007, and a Notice of Pre-hearing Conference and Confirmation of Hearing Date was transmitted to the parties. The hearing was continued to August 29, 2007 and on August 29, 2007; Petitioner's attorney John T. Hassler, Esq. notified the Hearings Officer that the parties

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were jointly requesting a continuance of the hearing date so that their anticipated settlement can be finalized.

By a letter dated July 28, 2008, the Hearings Officer requested that the parties inform her of the status of these matters as no further pleading had been received. By a letter dated July 30, 2008, Mr. Hassler informed the Hearings Officer that the parties had been unable to resolve these matters and that he would be filing a Motion for Summary Judgment ("Motion").

On October 7, 2008, Petitioner filed its Motion. The Motion was set for hearing on December 10, 2008.

On December 10, 2008, a hearing on the Motion was conducted by the undersigned Hearings Officer. Petitioner was represented by John T. Hassler, Esq., and Mr. Strack was present. At the outset, Mr. Strack moved to withdraw as counsel for Respondents as he had no contact with Respondent Jorlanin for one year, and he last spoke to Respondent Brown in August 2008. Mr. Strack's motion was granted and Mr. Strack was instructed to provide the Hearings Officer with Respondents' last known addresses, which Mr. Strack provided to the Hearings Officer on December 12, 2008.

Having reviewed and considered the evidence and argument presented at the hearing, together with the entire record of this proceeding, the Hearings Officer hereby renders the following findings of fact, conclusions of law and final order.

II. FINDINGS OF FACT

1. At no time were Respondents licensed as beauty shops or beauty operators in the State of Hawai'i, as defined by Hawai'i Revised Statutes ("HRS") Chapter 439.

2. At no time were Respondents licensed as massage establishments, massage therapists or massage therapist apprentices in the State of Hawai'i as defined by HRS Chapter 452.

3. On May 29, 2007, an officer from the Honolulu Police Department went to Hula Relaxation at 1020 Keeaumoku Street, #203 and received a shower and a back and shoulder massage from Respondent Brown. Prior to receiving the bath and massage, an older woman collected $50.00 from the officer, which was understood to be the fee for the room, shower and massage.

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4. On May 29, 2007, an investigator employed by Petitioner issued Citation No. 01396 to Respondent Brown for acting as an unlicensed massage therapist in violation of HRS §§ 436B-26.5 and 452-2(a). The citation ordered Respondent to stop all massage therapist activities until the proper license was obtained, and pay a civil fine in the amount of $500.00.

5. On May 29, 2007, an investigator employed by Petitioner issued Citation No. 01393 to Respondent Brown for acting as an unlicensed beauty operator in violation of HRS §§ 436B-26.5 and 439-2(a). The citation ordered Respondent to stop all beauty operator activities until the proper license was obtained and pay a civil penalty in the amount of $500.00.

6. On May 29, 2007, an officer from the Honolulu Police Department went to Hula Relaxation at 1020 Keeaumoku Street, #203 and was given a shower by Respondent Jorlanin. Respondent Jorlanin did not ask for or collect any money for the shower, but later agreed to have sex with the officer for $200.00, which the officer paid.

7. On May 29, 2007, an investigator employed by Petitioner issued Citation No. 01143 to Respondent Jorlanin for acting as an unlicensed beauty operator in violation of HRS §§ 436B-26.5 and 439-2(a). The citation ordered Respondent to stop all beauty operator activities until the proper license was obtained and pay a civil penalty in the amount of $500.00.

III. CONCLUSIONS OF LAW

Petitioner has alleged that Respondent Brown violated the provisions of HRS §§ 452-2(a), 436B-26.5 and 439-2(a). Petitioner has also alleged that Respondent Jorlanin violated the provisions of HRS §§ 436B-26.5 and 439-2(a). These sections provide in part:

> **§ 436B-26.5 Citation for unlicensed activity; civil penalties.** (a) In addition to any other remedy available, the investigator may issue citations to persons acting in the capacity of or engaging in business within the State without having a license previously obtained under and in compliance with this chapter, the licensing laws for the respective profession or vocation, and the rules adopted thereunder.

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. . .

(c) Any person who violates this section shall be assessed a civil penalty of not more than $500 or forty per cent of the total amount of the goods and services provided or to be provided, whichever is greater, for the first violation[.]

. . .

(j) The sanctions and disposition authorized under this section shall be separate from and in addition to all other remedies either civil or criminal provided in any other applicable statutory provision.

§ 452-2 License required. (a) It is unlawful for any person in the State to engage in or attempt to engage in the occupation or practice of massage for compensation without a current massage therapist license issued pursuant to this chapter.

§ 439-2 License required. (a) No person shall for commercial purposes practice as a beauty operator[1]...or announce or advertise as being prepared or qualified to so unless the person is licensed as required by this chapter[.]

Petitioner has the burden of proving by a preponderance of the evidence that the citations were properly issued.

With respect to the charge that Respondent Jorlanin violated HRS § 439-2(a), the Hearings Officer recommends that the charge be dismissed as it was not shown that Respondent Jorlanin received compensation for the shower.

Based on the evidence presented, the Hearings Officer concludes that Respondent Brown violated HRS § 452-2(a) and 439-2(a) by acting as a massage therapist and beauty operator without a license.

Based on the above, the Hearings Officer concludes that Respondent Brown violated HRS § 436B-26.5.

[1] "Beauty operator" means one of the following licensure categories: cosmetologist, hairdresser, cosmetician or manicurist. A "cosmetician" is a person who, with hands, engages for compensation in any

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IV. FINAL ORDER

Based on the above, the Hearings Officer orders Respondent Brown to pay a civil fine in the amount of $500.00 for each of the citations issued. Respondent is ordered to pay the fine within 60 (sixty) days of this order, and if the payment is by check, it should be made payable to the "Compliance Resolution Fund". Payment should be sent to the Office of Administrative Hearings, Department of Commerce and Consumer Affairs, 335 Merchant Street, Honolulu, Hawaii 96813.

The Hearings Officer also orders that Citation No. 00143 issued to Respondent Jorlanin be dismissed.

DATED: Honolulu, Hawaii, FEB 17 2009.

SHERYL LEE A. NAGATA
Administrative Hearings Officer
Department of Commerce and
Consumer Affairs

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one of the following practices: massaging, cleansing, stimulating, manipulating, exercising, beautifying, or doing similar work upon the scalp, the face, neck, arms, bust, or upper part of the body[.]

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