

IN THE MATTER OF

HYUN SOOK YIM

RESPONDENT

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BEFORE THE

MARYLAND STATE BOARD OF

CHIROPRACTIC EXAMINERS

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Pursuant to Md. Code Ann., Health Occ. ("H.O.") § 3-315(a), and Maryland Code of Regulations (COMAR) 10.43.02.07, The Maryland State Board of Chiropractic Examiners (the "Board") hereby renders the following final decision and order:

BACKGROUND

On March 14, 2002 the Board voted to summarily suspend the Massage Therapy Certificate of Hyun Sook Yim, Respondent, after having received information from the Montgomery County Police Department that, while working at Ultima Therapy, she had given a male customer a table shower and massage while he was naked.

Ms. Yim was served with an Order For Summary Suspension and was notified of her right to appear before the Board to Show Cause why the Board should not continue the summary suspension. A Show Cause hearing which was held on April 11, 2002. Subsequent to the Show Cause hearing, the Board issued an Order lifting the Summary Suspension.

On or about April 25, 2002, the Board charged Ms. Yim with violations of certain provisions of the Massage Therapy Practice Act, (the "Act"), H.O. § 3-5A-01, *et seq.*

Specifically, Ms. Yim was charged with violations of the following provisions of § 3-5A-09 of the Act:

- (a) Subject to the hearing provisions of H.O. § 3-315 of this title, the Board may deny a certificate or registration to any applicant, reprimand and certificate

holder or registration holder, place any certificate holder or registration holder on probation, or suspend or revoke the certificate holder or the registration holder if the applicant, certificate holder, or registration holder:

- (2) Fraudulently or deceptively uses a certificate or registration;
- (8) Does an act that is inconsistent with generally accepted professional standards in the practice of massage therapy;

A hearing on the merits was held on June 20, 2002. Present were the following Board members, which constituted a quorum: Dr. Jack Murray, Jr., President of the Board, who presided at the hearing, Issie Jenkins, Esquire, Dr. Paula Lawrence, and Ivy Harris. Also present were Roberta Gill, Assistant Attorney General/Administrative Prosecutor, Sheryl McDonald, Ms. Gill's assistant, Richard Bloom, Board Counsel, Barry Helfand, Esquire attorney for Respondent, Hyun Sook Yim, Ms. Yim, James J. Vallone, Board Executive Director and Gwendolyn Wheatley, Board Deputy Director.

EXHIBITS

The following exhibits were introduced at the hearing:

STATE'S EXHIBITS

- | | |
|--------|--------------------------------------|
| No. 1A | Letter for Summary Suspension |
| B | Summary Suspension Order |
| 2A | Letter of Procedure |
| 2B | Charges |
| 2C | Summons |
| 2D | Return Receipt |
| 3 | Order For Lifting Summary Suspension |
| 4 | Computer Printout |

SYNOPSIS OF CASE

Detective Steven Colferai of the Montgomery County Police Department testified that on December 19, 2001 he and other members of the vice and intelligence investigations division were conducting surveillance of Ultima Therapy. At

approximately 9:00 p.m. they entered the establishment. The witness found Ms. Yim in a room with a gentleman, Mark Robert Ryan, who was lying naked face down on a table with a towel draped over his buttocks.

The Detective took a statement from Mr. Ryan. Mr. Helfand objected to the witness testifying to what it was that Mr. Ryan told him. Dr. Murray overruled Mr. Helfand's objection. Mr. Ryan told the Detective that he undressed and that Ms. Yim gave him a table shower.¹ According to him, she washed him down and showered him off and then brought him back to the massage room where he lay face down on the table with only a hand towel draped over his buttocks. It was at this point that the detective entered the room. Ms. Yim was not arrested because she had not committed a criminal act, that is the crime of prostitution.

Ms. Yim does not deny giving Mr. Ryan a table shower. While lying face down she covered his buttocks with a towel and then when he turned over she covered his genital area. At the conclusion of the table shower she dried off his back. Once he was face down on the massage table she covered his buttocks with another towel. (T. 17 10-25, 18 1-5). On cross Ms. Yim acknowledged that her school, the Academy of Massage Therapy, provides no table shower training. (T. 21 11-15). She also agreed that proper draping techniques involve the use of sheets, not hand towels. (T. 22 4-20). In response to a question from Dr. Murray, Ms. Yim indicated that she keeps no records of people she works on. (T. 22 24-25, 23 1-16).

¹ The term "table shower" is as a euphemism for illicit sexual activities, which includes washing of the genitals.

FINDINGS OF FACT

The Board makes the following Findings of Fact:

1. That Hyun Sook Yim is a certified as a massage therapist in Maryland.
2. That on December 19, 2001, Ms. Yim was employed at Ultima Therapy, an establishment where illicit sexual activity takes place.
3. That Ms. Yim provided a table shower to a customer and used improper draping techniques.
4. That Ms. Yim acknowledged that she was not taught table showers in school and that draping does not involve the use of hand towels.
5. That Ms. Yim is not familiar with record keeping requirements.

OPINION

Md. Code Ann., State Gov't, § 10-213(c) provides for the admission of hearsay evidence in administrative hearings. The Court in *Cade v. Charles H. Hickey School*, 80 Md. App. 721 (1989) noted that in an administrative hearing hearsay evidence that is credible and probative is admissible. The Board views the testimony offered by the State's witness as having met this standard.

An impetus for the enactment of Md. Code Ann., Health Occ. ("H.O.") § 3-5A-01 *et seq* was to protect the citizens of Maryland from the kinds of illicit sexual activities that take place in places like Ultima Therapy. The legislature did not contemplate table showers as being within the scope of practice of massage therapy.²

² H.O. § 3-5a-01(g) "Massage Therapy means the use of manual techniques on soft tissues of the human body including effleurage (stroking), petrissage (kneading), tapotement (tapping), stretching, compression, vibration, friction, with or without the aid of heat limited to hot packs and heating pads, cold water, or

Further, the Board may use its "experience, technical competence, and specialized knowledge in the evaluation of evidence." Md. code Ann., State Gov't § 10-213(i). The Board views the actions of Ms. Yim as being outside the scope of the practice of massage therapy. These include providing table showers and improper draping. In addition, Ms. Yim seems to be unaware of the record keeping requirements as outlined in the Code of Maryland Regulations.³

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Opinion, the Board concludes, as a matter of law, that Ms. Turley violated H.O. § 3-5A-09(a)(2) fraudulently or deceptively uses a certificate or registration; (8) does an act that is inconsistent with generally accepted professional standards in the practice of massage therapy.

ORDER

Based on the foregoing Findings of Fact, Opinion and Conclusions of Law, it is, this 21ST day of August, 2002, by the Maryland State Board of Chiropractic Examiners hereby

ORDERED that, pursuant to the authority vested in the Board of Chiropractic Examiners by Md. Code Ann., Health Occ. Article, § 3-5A-09, the Respondent's massage therapy certification is hereby **SUSPENDED** for a period three months; and be it further

ORDERED that one month of suspension is stayed; and be it further

ORDERED that at the conclusion of the suspension period, the Respondent must apply for reinstatement; and be it further

nonlegend topical applications, for the purpose on improving circulation, enhancing muscle relaxation, relieving muscular pain, reducing stress, or promoting health and well-being."

³ COMAR 10.43.18.04(4)

ORDERED that prior to reinstatement the Respondent must take and pass a jurisprudence examination administered by the Board; and be it further

ORDERED that the Respondent, prior to taking the jurisprudence examination, must pay for the cost of an interpreter, should she require one; and be it further

ORDERED that the Respondent shall reimburse the Board the its hearing costs; and be it further

ORDERED that should the Board receive, in good faith, information that the Respondent has substantially violated the Act or if the respondent violates any conditions of this Order, after providing the Respondent with notice and an opportunity for a hearing, the Board may take further disciplinary action against the Respondent, including suspension or revocation. The burden of proof for any action brought against the Respondent as a result of a breach of conditions of the Order shall be on the Respondent to demonstrate compliance with the Order, and be it further

ORDERED that this document is a public record, pursuant to Md. Code Ann., State Gov't Article, § 10-617(h).

AUG 21 2002
Date


Jack Murray, D.C.
Board President