

IN THE MATTER OF

*

BEFORE THE

OK C. HERDRICH

*

MARYLAND STATE BOARD OF

RESPONDENT

*

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 or about February 20, 2003 and later amended on or about April 7, 2003, the Board charged Ok Herdrich ("Respondent") with violations of certain provisions of the Massage Therapy Practice Act, (the "Act"), H.O. § 3-5A-01, *et seq.* Specifically, Ms. Herdrich 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;
 - (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.

The Board further charged the Respondent with violations of its Code of Ethics, Code of Md. Regs. Tit. 10§ 43.18. Specifically:

.05 Professional Boundaries

A. A Certificate holder or registration holder shall:

- (1) Maintain professional boundaries, even when the client initiates crossing the professional boundaries of the professional relationship; and
- (2) Respect and maintain professional boundaries and respect the client's reasonable expectation of professional conduct.

B. A certificate holder or registration holder may not:

- (1) Exploit a relationship with a client for the certificate holder's or registration holder's personal advantage, including, but not limited to, a personal sexual, romantic, or financial relationship;
- (2) Engage in a sexually intimate act with a client; or
- (3) Engage in sexual misconduct that includes, but is not limited to:
 - (a) Therapeutic deception,
 - (b) Non bona fide treatment, or
 - (c) A sexually exploitative relationship.

A hearing on the merits was held on June 12, 2003. Present were the following Board members, which constituted a quorum: Dr. Brian Ashton, who presided at the hearing, Dr. Margaret Renzetti, Issie Jenkins, Dr. Paula Lawrence, Dr. Marc Gamerman and Ivy Harris. Also present were Roberta Gill, Assistant Attorney General/Administrative Prosecutor, James J. Vallone, Executive Director, Gwen Wheatley, Deputy Director, Richard Bloom, Assistant Attorney General/Board Counsel and Sheryl McDonald. William C. Littleton, Jr. appeared on behalf of the Respondent, who did not appear for the hearing.

EXHIBITS

The following exhibits were introduced at the hearing:

STATE'S EXHIBITS

No. 1	Computer Printout
2A	Letter of Procedure-2/13/03
2B	Charges
2C	Summons
3A	Letter of Procedure-4/8/03
3B	Amended Charges
4	Letter from Stack to Murphy
5	Police Event Report-11/8/02
6A	Written Statement by Shea
6B	Written Statement by Respondent
7	Uniform Civil Citation
8	Murphy Investigative Report
9	District Court Event History
10	Police event report-1/7/03
11	Uniform Civil Citation
12	Citation History

SYNOPSIS OF CASE

Detective Stack of the Montgomery County Police Department's, Vice and Intelligence Section, testified that on or about November 5, 2002, he and other members of the vice and intelligence unit were conducting surveillance at Canpai Massage Parlor where it was suspected illicit sexual activity was taking place. Detective Stack interviewed a gentleman as he exited the establishment who identified the Respondent as the woman to whom he paid eighty dollars (\$80.00). She assisted him with a shower, gave him a massage and a hand release,¹ at the conclusion of which he gave her an additional forty dollars (\$40.00). Upon being interviewed by Detective Stack, the Respondent confirmed this and signed a statement to that effect. (T. 13 14-20) (State's Exhibit 6B). The Respondent was arrested and charged with prostitution.

Or about March 5, 2003, Detective Stack, once again, arrested the Respondent at Classic Therapy where men were paying for sexual services. He along with other members of the Vice and Intelligence Section had been conducting surveillance and interviews at that location.

Mark Moran of the Montgomery County Department of Permitting Services was called to Canpai Massage Parlor and Classic Therapy by the Montgomery County Police. He found both to be in violation of Montgomery County zoning ordinances as a consequence, issued citations. Canpai massage parlor was closed and the use and occupancy permit revoked. Classic Therapy was closed as well.²

FINDINGS OF FACT

The Board makes the following Findings of Fact:

1. That Ok Herdrich is a registered massage therapist in Maryland.
2. That Ms. Herdrich admitted giving a hand release to a male customer at Canpai Massage Parlor.
3. That on November 5, 2002 Ms. Herdrich was arrested and charged with prostitution.
4. That on March 5, 2003 the Respondent was arrested at Classic Therapy.
5. That Classic Therapy is well known to the Board as a place where illicit sexual activity takes place.

OPINION

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 sexual activities that

¹ Manual stimulation of the penis.

² The witness had closed Classic Therapy 5 times over he past 2 years.

take place in places like Canpai Massage Parlor and Classic Therapy. The legislature did not contemplate massage therapists providing hand releases as being within the scope of practice of massage therapy.³ Further, the Board may use its "experience, technical competence, and specialized knowledge in the evaluation of evidence" in determining whether or not the standards of a profession have been breached. Md. Code Ann., State Gov't § 10-213(i).

Ms. Herdrich's illicit sexual conduct under the guise of massage therapy is sufficient for the board to conclude that she violated the Act.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Opinion, the Board concludes, as a matter of law, that Ok Herdrich violated H.O. § 3-5A-09(a)(2), (8), (20) and (21).

ORDER

Based on the foregoing Findings of Fact, Opinion and Conclusions of Law, it is, this 22nd day of July, 2003, 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 **REVOKED**; and be it further

ORDERED that Respondent must **immediately** return to the Board both the wall and wallet size certificate numbered R00018; and be it further

³ 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 nonlegend topical applications, for the purpose of improving circulation, enhancing muscle relaxation, relieving muscular pain, reducing stress, or promoting health and well-being."

ORDERED that the Respondent, within thirty (30) days reimburse the Board its hearing costs of \$300.00; and be it further

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

7/22/03
Date

E. Brian Ashton
Brian Ashton, D.C.
Board President

NOTICE OF RIGHT OF APPEAL

In accordance with Md. Code Ann., Health Occ. Article, § 3-316, you have a right to take a direct judicial appeal. A petition for appeal shall be filed within thirty days of your receipt of this Findings of Fact, Conclusion s of Law and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't Article, §§ 10-201 *et seq.*, and Title 7 Chapter 200 of the Maryland Rules.