

IN THE MATTER OF

*

BEFORE THE STATE

JUDITH M. MANN, C.M.T.

*

BOARD OF CHIROPRACTIC

Respondent

*

EXAMINERS

Certificate Number: M01500

*

Case Number: 06-36M

* * * * *

FINAL CONSENT ORDER

Based on information received and a subsequent investigation by the State Board of Chiropractic Examiners (the "Board"), and subject to Md. Health Occ. Ann. § 3-5A-01, et seq., (the "Massage Therapists Act") (2005 Repl. Vol. and 2006 Supp.), the Board charged Judith M. Mann, C.M.T. (the "Respondent"), with violation of certain provisions of the Act. Specifically, the Board charged the Respondent with violation of the following provisions of § 3-5A-09:

(a) Subject to the hearing provisions of § 3-315 of this title, the Board may deny a certificate or registration to any applicant, reprimand any certificate holder or registration holder, place any certificate holder or registration holder on probation, or suspend or revoke the certificate of a certificate holder or the registration of a registration holder if the applicant, certificate holder, or registration holder:

- (2) Fraudulently or deceptively uses a certificate or registration;
- (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 the following regulation, Code Md. Regs. tit. 10 § 43.18.03 (October 16, 2000):

03 Standards of Practice.

A. The certificate holder or registration holder shall be concerned primarily with the welfare of the client.

B. A certificate holder or registration holder who suffers from a physical, mental, or emotional impairment, including chemical abuse, which impacts the certificate holder's or registration holder's ability to practice massage therapy or non-therapeutic massage, shall proactively seek professional treatment and shall refrain from the practice of massage therapy or non-therapeutic massage until such time as the impairment no longer exists or reasonable accommodations can be made.

C. A certificate holder or registration holder shall:

- (1) Use professional discretion and integrity in relationships with members of the public and health care community;
- (2) Engage in professional conduct at all times, with honesty, integrity, self-respect, and fairness;

D. A certificate holder or registration holder may not:

- (2) Knowingly engage in or condone behavior that:
 - (a) Is fraudulent,
 - (b) Is dishonest,
 - (c) Is deceitful, or
 - (d) Involves moral turpitude [;].

The Respondent was given notice of the issues underlying the Board's charges by letter dated November 9, 2006. Accordingly, a Case Resolution Conference was held on December 14, 2006, and was attended by Brian Ashton, D.C., Board member, and Grant Gerber, Board Counsel, Assistant Attorney General. Also in attendance were the Respondent and her attorney, David Hudgins, and the Administrative Prosecutor, Roberta Gill, Assistant Attorney General.

Following the Case Resolution Conference (CRC), the parties and the Board agreed to resolve the matter by way of settlement. The parties and the Board agreed to the following:

FINDINGS OF FACT

1. At all times relevant hereto, the Respondent was certified to practice massage therapy in Maryland. The Respondent was first certified on June 19, 2001. The Respondent's certification expired on October 31, 2006.¹
2. The Respondent was employed by the Merritt Athletic Club ("Club" or "Merritt") in the Canton area of Baltimore City to provide massage therapy in an area located inside of the club. The Respondent was considered a manager.
3. In July 2005, after the Respondent had been there for two years, Merritt advised the Respondent that it was downsizing, but offered to lease the spa area to the Respondent as an independent contractor. The Respondent agreed to that arrangement. The Respondent paid month-to-month and waited for a contract to come from Merritt's legal department.
4. However, at the end of October, Merritt informed the Respondent that it had found someone, Ms. R², to lease the entire back area, including the spa and the hairdresser's space. Starting at the beginning of November, the Respondent worked for Kim's Day Spa, the new name of the spa. The Respondent was, in effect, a subcontractor in that she kept 60% of any money made from doing massages and she paid Ms. R 40%.

¹ The Respondent indicated at the CRC that she had submitted a renewal application which the Board did not receive. Later, the Respondent's attorney faxed a copy of same to the Board, which will issue the renewal certificate after the conditions of the Order herein are carried out.

² The owner's name is confidential.

No taxes were taken out and the Respondent never filled out any forms from which taxes were taken.

5. The Respondent claimed that, although Ms. R was supposed to open a nail salon, Ms. R took male customers into the spa room and gave them hand-releases or "happy-endings." Although the Respondent was never in the room when Ms. R was allegedly providing massage sessions, the Respondent claimed that she saw a stain in the middle of the sheet on several occasions. When the Respondent asked Ms. R about her massage therapy certificate, Ms. R informed her that she was in the process of getting it transferred from Ohio.

6. The Respondent reported her concerns about Ms. R's alleged unauthorized practice of massage and suspected illegal activities during the massage to the Merritt manager, which caused a strain in the relationship between the Respondent and Ms. R. The Respondent acknowledged that she was angry about losing the spa to Ms. R.

7. The Respondent left the spa at the end of December and, on January 2, 2006, filed a complaint against Ms. R with the Board, containing the above allegations. The Respondent also sent a copy of the same complaint to Merritt's managers.

8. On January 26, 2006, legal counsel for Merritt denied any misconduct on behalf of the Club and indicated that Merritt would not condone any illegal services being offered by Kim's Day Spa.

9. On April 27, 2006, the Board's investigator made an unannounced inspection at Kim's and located the massage room. The investigator picked up a brochure regarding massages and determined that three certificate or registration holders were employed

there and that their certificates were appropriately displayed. She found no violations on that date.

10. When the investigator tried to contact the witnesses given to her by the Respondent, she was able to interview two of them, who denied any actual knowledge of improprieties, and the other two had incorrect addresses.

11. The investigator informed the Respondent on several occasions that Ms. R was not certified as a massage therapist and, if Ms. R was providing sexual services, this should be reported to law enforcement, but the allegations could not be based on hearsay and rumor. The Respondent was requested to provide any names of clients/witnesses to support her allegations against Ms. R.

12. The Respondent wrote a complaint to the Cosmetology Board about Ms. R, but that Board denied that it had jurisdiction over Ms. R. The Respondent also hired a private detective to find out information on Ms. R, but his report was inaccurate and not helpful.

13. The Respondent provided the requested SOAP or Intake forms to the investigator on May 22, 2006, and the investigator tried again in June and July 2006 to contact witnesses provided to her by the Respondent, to no avail.

14. On June 22, 2006, the Respondent left a voice mail message on the investigator's phone, which message she had transcribed. The message was to the effect that the Respondent was going to draft a letter to clients and other individuals that she believed had knowledge of her allegations, which letters would have a return address of the Board/Massage Therapy Advisory Committee (MTAC). The letter would be to urge

those with direct knowledge and/or a witness to the allegations and rumors of Ms. R's business practices to file a complaint.

15. On June 28, 2006, the Board received the first of 36 returned addressed letters that had been created, drafted and mailed by the Respondent without any permission or authorization from the Board or from MTAC. The letter, dated June 21, 2006, appears to be authored by the Board or its representatives. The letterhead appears to be copied from the massage therapy complaint form. The letter informs the reader that the Board was conducting an investigation and requested the addressee to complete and submit a complaint about Ms. R's illegal activities.

16. Upon receipt of the first bogus letter, the Executive Director called the Respondent, who admitted that she had no permission or authorization to write, create, and draft the letter.

17. On June 28th, the President of the Board sent a strongly-worded letter informing the Respondent that she was not given permission, either expressly or implicitly, to use the Board or MTAC's letterhead or return address, and advised her to immediately notify any and all recipients of her fraudulent letter, which neither the Board nor MTAC endorsed. The Board's letter further advised the Respondent to send the Board a list of names and addresses of all recipients of her letter.

18. On that same date, the Board advised the CEO of Merritt of the fraudulent letter sent by the Respondent relating to allegations against Merritt and Kim's Day Spa, reiterating that this letter was not from the Board or MTAC, and that the Respondent did not have permission or authority to use Board letterhead or write and/or mail this letter.

19. On July 5, 2006, the Executive Director sent a copy of the Respondent's June 21st letter to an attorney representing the spa.

20. On July 7, 2006, the Respondent was interviewed under oath, with her counsel present. The Respondent admitted to creating and mailing the letters without permission from any member or agent of the Board, explaining that she created the document by using the Massage Therapy website complaint form to obtain the letterhead, with the intent to find someone who had first-hand knowledge of the hearsay/rumors to support her allegations in the complaint. The Respondent admitted to mailing out approximately 100 letters to individuals she met during her employment at Merritt/Kim's Day Spa.

21. As set forth above, a massage therapist who downloads Board stationery to create the impression that the Board is seeking information based on unsubstantiated rumors against another individual is in violation of the Act and regulations thereunder.

CONCLUSIONS OF LAW

The Board finds that the Respondent is in violation of the following provisions of Md. Health Occ. Code Ann. § 3-5A-09 (a) (2), (20) and (21); and, Code Md. Regs. tit. 10 § 43.18.03 A, B,C (1) and (2) and D (2).

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 26th day of February, 2007, by a majority of a quorum of the Board,

ORDERED that the Respondent's certificate to practice massage therapy is hereby **SUSPENDED** for a period of six months, subject to the condition that she take, pass and submit documentation to the Board of a Board-pre-approved ethics course or tutorial;

Thereafter, the Respondent shall be placed on **PROBATION** for one year.

ORDERED that the Consent Order is effective as of the date of its signing by the Board; and be it

ORDERED that should the Board receive a report that the Respondent has violated the Act or if the Respondent violates any conditions of this Order or of Suspension/Probation, 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 the conditions of the Order or of Probation/Suspension shall be on the Respondent to demonstrate compliance with the Order or conditions; and be it further

ORDERED that the Respondent shall practice in accordance with the laws and regulations governing the practice of massage therapy in Maryland; and be it further

ORDERED that, at the end of the Probationary period, the Respondent may petition the Board to be reinstated without any conditions or restrictions on her certificate, provided that she can demonstrate compliance with the conditions of this Order. Should the Respondent fail to demonstrate compliance, the Board may impose additional terms and conditions of Probation, as it deems necessary; and be it further

ORDERED that for purposes of public disclosure, as permitted by Md. State Gov't. Code Ann. §10-617(h) (2004 Repl. Vol. and 2006 Supp.), this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law and Order and that the Board may also disclose same to any national reporting data bank that it is mandated to report to.

Marc Gamerman

Marc M. Gamerman, D.C., President
State Board of Chiropractic Examiners

FEB 26 2007

CONSENT OF JUDITH M. MANN, C.M.T.

I, Judith M. Mann, by affixing my signature hereto, acknowledge that:

1. I am represented by an attorney, David Hudgins, and have been advised by him of the legal implication of signing this Consent Order.

2. I am aware that without my consent, my certificate to practice massage therapy in this State cannot be limited except pursuant to the provisions of § 3-313 of the Act and the Administrative Procedure Act (APA) Md. State Govt. Code Ann. §10-201, et seq., (2004 Repl. Vol. and 2006 Supp.).

3. I am aware that I am entitled to a formal evidentiary hearing before the Board.

By this Consent Order, I hereby consent and admit to the foregoing Findings of Fact, Conclusions of Law and Order, provided the Board adopts the foregoing Consent Order in its entirety. By doing so, I waive my right to a formal hearing as set forth in § 3-315 of the Act and §10-201, et seq., of the APA, and any right to appeal as set forth in § 3-316 of the Act and §10-201, et seq., of the APA. I acknowledge that my failure to abide by the conditions set forth in this Order and following proper procedures, I may suffer disciplinary action, possibly including revocation, against my certificate to practice massage therapy in the State of Maryland.

2-7-06
Date

Judith M. Mann
Judith M. Mann, C.M.T.

STATE OF Maryland
CITY/COUNTY OF Baltimore City

I HEREBY CERTIFY that on this 7th day of February, 2007, before me, Ebony Rumsey, a Notary Public of the foregoing State and (City/County),
(Print Name)
personally appeared Judith M. Mann, C.M.T., Certificate No. M01500, and made oath in due form of law that signing the foregoing Consent Order was her voluntary act and deed, and the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.

Ebony Lavan Rumsey
Notary Public

EBONY LAVAN RUMSEY
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires March 13, 2010

My Commission Expires: March 13, 2010