

IN THE MATTER OF
HAE WON TURLEY
RESPONDENT

* 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 February 14, 2002 the Board voted to summarily suspend the Massage Therapy Certificate of Hae Won Turley, Respondent, after having received information from the Montgomery County Police Department that she had been managing Classic Therapy, an establishment where illicit sexual activity had been taking place.¹

Ms. Turley 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. Ms. Turley failed to appear for a Show Cause hearing which was held on March 4, 2002. The hearing proceeded without her and the Board voted to continue the Summary Suspension.

On or about March 19, 2002, the Board charged Ms. Turley with violations of certain provisions of the Massage Therapy Practice Act, (the “Act”), H.O. § 3-5A-01, *et seq.* Specifically, Ms. Turley was charged with violations of the following provisions of § 3-5A-09 of the Act:

¹ It is the Respondent’s position that she was simply the receptionist and house keeper at classic therapy.

- (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, Elizabeth Case, Esquire and Vincent Guida, Esquire, attorneys for Ms. Turley and Hae Won Turley, Respondent, 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. 1	Summary Suspension Order
2A	Letter of Procedure
2B	Charges Order For Summary Suspension
2C	Summons
2D	Return Receipt
3	Order For Continuation of Summary Suspension
4	Computer Printout
5	Letter from Stack to Murphy

SYNOPSIS OF CASE

Detective Steven Colferai of the Montgomery County Police Department testified that on December 7, 2001 he and Detective Thomas Stack were conducting surveillance and inspection of Classic Therapy. Ms. Turley, who was in the office, greeted the detectives upon their entry to the establishment. They gained entry to a locked room where they found a massage parlor employee, Ms. Akana, and an individual, Carlos Rivera, who was naked and lying face down on a table with a small hand towel draped over his buttocks.

Ms. Case objected to any testimony regarding what others may have been doing at Classic Therapy when the detectives arrived as being irrelevant and to the hearsay nature of certain aspects of the State's witnesses' testimony. Ms. Gill argued that the basis for the Ms. Turley's Summary Suspension were the very activities taking place at Classic Therapy that the witness was about to testify to. (T. 11 21-25, 12 1-20)

Detective Thomas Stack testified that he believed Ms. Turley to be the manager of Classic Therapy because on a number of occasions he had observed her opening the door, greeting customers, and taking money. In his experience, these are the duties of a massage parlor manager in Montgomery County. Detective Stack acknowledged that he has never found Ms. Turley to be giving massages. (T. 24 17-25, T. 25 1-7). He also knew her when she worked at Ultima Therapy where she performed duties similar to those at Classic Therapy. (T. 21-1-2).

Detective Stack interviewed Mr. Rivera who said that Ms. Turley answered the door when he arrived and that he paid her sixty dollars at which point she led him to Ms.

Akana's room. Ms. Akana gave him a table shower² and later, as he lay on the massage table, she grabbed his genitals. (T. 20 1-12).

Ms. Turley testified that as of December 7, 2001, she had been working at Classic therapy for one week. Her duties there were to cook food, clean, launder towels, open the door for customers when the door was locked, on occasion, take money from customers which was later turned over to the owner and, on occasion, she would show a customer to a massage room. She acknowledged that table showers were not part of the curriculum at her school. (T. 43 9-13). Since graduating from Bergen Healing Arts Center in July of 2001, Ms. Turley has not worked as a massage therapist. In response to a question, Ms. Turley responded that her massage therapy certificate was hanging on the wall at Classic Therapy when the detectives arrived.

At the conclusion of the State's case, Ms. Case moved for a judgment in favor of her client. She argued, among other things, that there had been no testimony defining massage therapy standards of practice. Therefore, according to Ms. Case, the Board has no basis by which to measure Ms. Turley's behavior. Ms. Gill countered that the Board sets the standards and therefore, does not need to hear testimony on the subject.

Ms. Cases' motion was denied.

² The term "table shower" is used as a euphemism for illegal sexual activities, which includes washing of the genitals.

FINDINGS OF FACT

The Board makes the following Findings of Fact:

1. That Hae W. Turley is a certified as a massage therapist in Maryland.
2. That on December 7, 2001, Ms. Turley was employed as a manager of Classic Therapy, an establishment where illicit sexual activity takes place.
3. That Ms. Turley accepts money from customers and directs them to a room where illicit sexual activity takes place.
4. That prior to her employment at Classic Therapy, Ms. Turley had worked in a similar capacity at Ultima Therapy.

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 witnesses as having met this standard. 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).

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 Classic Therapy. The legislature did not contemplate table showers as being within the scope of practice of massage therapy.³

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,

Although Ms. Turley was not charged with performing illegal sexual acts, displaying her license in an establishment where illicit sexual activity was taking place lends legitimacy to the establishment. In addition, she accepted payments from customers in exchange for sexual acts and directed them to the person who performed these acts. It appears to the Board that she was holding herself out as the manager of Classic Therapy.

In discussing sanctions, in the course of her closing argument, Ms. Case incorrectly summarized the sanctions the Board imposed in the matter of *Regan v. Board of Chiropractic Examiners*, 120 Md. App. 494, 707 A2d. 891 (1998). (T. 59 3-25, 60 1-8). In that case, the Court vacated the sanctions portion of a Board Order dated August 10, 1995 ("1995 Order") and remanded the case to the Board requesting that the issue of sanctions be revisited. Subsequently, on November 15, 1999, the Board amended the 1995 Order and imposed, among other things, a suspension of one year followed by one year of probation.⁴

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.

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 on improving circulation, enhancing muscle relaxation, relieving muscular pain, reducing stress, or promoting health and well-being."

⁴ The 1995 Order, among other things, suspended Regan for 2 years followed by 3 years of probation. The Order was stayed. By the time this matter reached the Court of Special Appeals, he had been practicing, for approximately 21/2 years under the eye of a mentor approved by the Board whose reports were favorable. The Court concluded that this was equivalent to having served a period of probation and suggested that the Board review the circumstances and determine whether or not the original sanctions should be modified.

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 beginning March 7, 2002 and conclude as of the date of this Order; and be it further

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

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 upon, reinstatement, the Respondent must serve probation for a period of four months; and be it further

ORDERED that during the probationary period, should the Board receive a report that the Respondent's practice is a threat to the public health, welfare or safety, the Board may take immediate action against the Respondent, including suspension or revocation, provided that an opportunity to be heard is provided to the Respondent in a reasonable time thereafter. Should the Board receive, in good faith, information that the

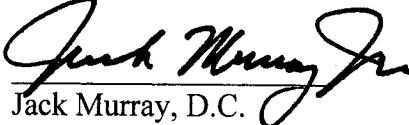
Respondent has substantially violated the Act or if the respondent violates any conditions of this Order or of Probation, after providing the Respondent with notice and an opportunity for a hearing, the Board may take further disciplinary action against the Respondent, including suspension or revocation.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