

IN THE MATTER OF

*

BEFORE THE

SUN T. AKANA

*

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 February 14, 2002 the Board voted to summarily suspend the Massage Therapy Certificate of Sun T. Akana, Respondent, after having received information from the Montgomery County Police Department that she washed and grabbed a customers genitals.

Ms. Akana 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. On March 4, 2002 Ms. Akana appeared with Counsel at a Show Cause hearing, at which time the Board voted to continue the Summary Suspension.

On or about March 19, 2002, and later amended on or about May 7, 2002, the Board charged Ms. Akana with violations of certain provisions of the Massage Therapy Practice Act, (the “Act”), H.O. § 3-5A-01, *et seq.* Specifically, Ms. Kim 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;
- (11) Has violated any provisions of this subtitle;;
- (20) Engages in conduct that violates the professional code of ethics [;].

The Board further charged Ms. Akana with violating its Code of Ethics, Code of Maryland Regulations (CO MAR) 10.43.18.05 as follows:

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 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, William Littleton, Respondent's Counsel, Respondent, Sun T, Akana, James J. Vallone, Board Executive Director.

EXHIBITS

The following exhibits were introduced at the hearing:

STATE'S EXHIBITS

| | |
|--------|--|
| No. 1A | Letter of Summary Suspension |
| 1B | Summary Suspension Order |
| 2A | Letter of Procedure |
| 2B | Charges |
| 2C | Summons |
| 2D | Return Receipt |
| 3 | Order For Continuation of Summary Suspension |
| 4A | Letter of Procedure |
| 4B | Supplemental and Amended Charges |
| 5 | Computer Printout |
| 6 | Letter from Stack to Murphy |
| 7 | Murphy's Investigative Report |

SYNOPSIS OF CASE

Mr. Littleton generally objected to the hearsay nature of various aspects of the testimony of the State's witnesses and to the admissibility of various documents.

Ms. Gill called detective Steven Colferai of the Montgomery County Police Department's Vice and Intelligence Section. Detective Colferai testified that on

December 7, 2001, he and Detective Stack were conducting surveillance and inspection at Classic Therapy. Upon entering the establishment, Detective Colferai knocked several times on the locked door of a massage room, after announcing himself, Ms. Akana opened the door and identified herself to the witness. Laying face down was a male who was naked but for a towel draped over the lower part of his body.

Detective Stack testified that he interviewed the male who was in the massage room with Ms. Akana after that individual had gotten dressed. The Individual told the Detective that he had paid \$60.00 to the manager, Ms. Turley, who then led him to a massage room where Ms. Akana gave him a table shower¹. Later while on the massage table Ms. Akana grabbed his genitals.

Ms. Akana testified that she only massaged the gentleman's back, that she did not give him a table shower. She does not know how the door could have gotten locked. She does not think that it was locked. (T. 27 15-25).

FINDINGS OF FACT

The Board makes the following Findings of Fact:

1. That Sun T. Akana is a certified as a massage therapist in Maryland.
2. That on December 7, 2001, Ms. Akana was working at Classic Therapy.
3. That Classic Therapy maintains a "shower room."
4. That Table showers are provided to customers .
5. That On December 7, 2001, Ms. Akana gave a customer a table shower and while a customer was lying on a massage table, grabbed his genitals as well.

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

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 sexual activities that take place in places like Mi Sun Therapy. The legislature did not contemplate massage therapists providing table showers or grabbing a customer's genitals as being within the scope of practice of massage therapy.² 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. Akana's testimony is not credible. Table showers have no therapeutic value. The sole purpose for a table shower is for illicit sexual activity. The Board believes the facts to be just as the State's witnesses related them.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Opinion, the Board concludes, as a matter of law, that Ms. Akana 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

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

accepted professional standards in her practice of massage therapy; (11) has violated any provisions of this subtitle; (20) engages in conduct that violates the professional code of ethics; The Board further concludes, as a matter of law, that Ms. Kim violated its Code of Ethics, Code of Maryland Regulations (COMAR) 10.43.18.05 A. 1. 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 or certificate holder's or registration holder's personal advantage, including, but not limited to, 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.

ORDER

Based on the foregoing Findings of Fact, Opinion and Conclusions of Law, it is, this 28th 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 of three months; and be it further

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

ORDERED that upon, reinstatement, the Respondent must serve a period of three months of probation; and be it further

ORDERED that Respondent must immediately return to the Board both the wall and wallet size certificate numbered M01497; and be it further

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

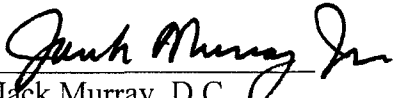
ORDERED that the Respondent must arrange for and pay for the cost of an interpreter, approved by the Board, prior to the taking the jurisprudence examination, should one be required; and be it further

ORDERED that the Respondent, no later than the expiration of the period of suspension, reimburse the Board its hearing costs; and be it further

ORDERED 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).

8/28/02
Date


Jack Murray, 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.