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| <p>IN THE MATTER OF</p> <p>CHONG OK ELLSWORTH</p> <p>RESPONDENT</p> | <p>*</p> <p>*</p> <p>*</p> | <p>BEFORE THE</p> <p>MARYLAND STATE BOARD OF</p> <p>CHIROPRACTIC EXAMINERS</p> |
| <p>* * * * *</p> | | |

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 July 10, 2003 the Board charged Chong Ok Ellsworth, Respondent, a certified massage therapist, with violations of certain provisions of the Massage Therapy Practice Act, (the "Act"), H.O. § 3-5A-01, *et seq.* Specifically, she 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 violation of its Code of Ethics, Code of Maryland Regulations (COMAR) 10.43.18. as follows:

.04 Standards of Practice.

A. A Certificate holder or registration holder shall:

- (3) Maintain legible, organized written records of treatment of nay clients under the care of he certificate holder or registration holder for at least 5 years after termination of treatment and as provided by applicable provisions of Health-General Article, Title 4, Subtitle 3, Annotated Code of Maryland;

.05 Professional Boundaries, thereof:

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.

These charges stemmed from a January 15, 2003 inspection of the Respondent's place of employment, Harmony Spa in Rockville, Maryland. It was alleged that on that date the respondent had massaged a nude customer. In addition, it was discovered that the Respondent could produce no treatment notes for any of her customers.

Subsequently, on or about January 27, 2004, the administrative charges were amended to include like charges resulting from the Respondent's arrest for prostitution, for activities taking place on November 5, 2003 at VIP Spa.¹

A hearing, before the Board, was held on the merits on February 12, 2004. Present were the following Board members, which constituted a quorum: Dr. Brian Ashton, Board President, who presided at the hearing; Dr. Marc Gamerman; Ivy Harris; Issie Jenkins; Dr. Paula Lawrence and Dr. Jack Murray, Jr. Also present were Roberta Gill, Assistant Attorney General/Administrative Prosecutor, Paul Ballard, Assistant Attorney General/Board Counsel, Barry Helfand, Respondent's Counsel and the Respondent, Chong Ok Elsworth.

EXHIBITS

The following State's Exhibits were admitted into evidence:

STATE'S EXHIBITS

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|-------|------------------------|
| No. 1 | Computer Printout |
| 2A | Stack to Murphy e-mail |
| 3A | Letter of Procedure |
| B | Charges |
| C | Summons |
| 4A | Return Receipt |
| B | Amended Charges |
| C | Murphy Report |
| 6 | Police Report |

RESPONDENT'S EXHIBITS

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|-------|--|
| No. 1 | Letter of Representation, 2/2/04 |
| 2 | Letter from Vallone, 2/4/04 |
| 3 | Letter Requesting Subpoenas, 2/5/04 |
| 4 | Change of Address Letter from Respondent |
| 5 | State's Entire Exhibit Book |

¹ Formerly known as Harmony Spa

SYNOPSIS OF CASE

Mr. Helfand 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 during an inspection of VIP/Harmony Spa (the "Spa") on January 15, 2003, he interviewed Steven Van Grack who told the Detective that, while naked, he received a massage from the Respondent. He stated that he sought no, nor did he receive sexual favors. On a subsequent visit the witness encountered the Respondent, who acknowledged being the manager of the Spa.

Upon cross-examination the witness recollected that Mr. Van Grack was dressed when he encountered him in the massage room. The witness' notes do not reflect that Mr. Van Grack was naked during the massage.

Detective Thomas Stack of the Montgomery County Police Department's Vice and Intelligence Section testified that on November 5, 2003 he was conducting an investigation at the Spa when he interviewed Michael Baron, who stated that he had gone to the Spa for a massage and a hand release,² which he Respondent provided. He viewed photographs of all of the Spa's female employees and identified the Respondent as the woman who gave him the hand release. She was later arrested and charged with prostitution.

Paul Murphy, the Board's investigator accompanied the Detectives on the January 15, 2003 and November 5, 2003 inspections of the Spa. Mr. Murphy indicates

that the Respondent told Detective Colferai that on January 15, 2003 Mr. Van Grack had on his underwear during the massage session. Mr. Murphy recalled Detective Colferai telling him that Mr. Van Grack was completely nude and undraped during the massage session. (T. 74 1-7). The witness testified further that the Respondent told him she kept no treatment notes. She seemed to be unaware of the requirement to maintain treatment records. (T. 74 8-21).

Mr. Helfand called Steven Van Grack, the Respondent's attorney and former Mayor of Rockville. The witness testified that in the course of discussing business with the Respondent she gave him a "legit, straight, massage." (T. 97 1-2). He was draped with a towel during the massage and nothing immoral took place. (T. 93 11-16).

The Respondent did not testify on her own behalf.

FINDINGS OF FACT

The Board makes the following Findings of Fact:

1. That Chong Ok Ellsworth is certified as a massage therapist in Maryland.
2. That Ms. Ellsworth was arrested and charged with prostitution resulting from an investigation of VIP Spa on November 5, 2003, which revealed the Respondent gave a client a hand release.
3. Inspections of Harmony/VIP Spa on January 15, 2003 and November 5, 2003 revealed that Ms. Ellsworth failed to maintain required treatment records.

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

² A hand release is the manual stimulation of the penis.

credible and probative is admissible. The Board presumes an adverse inference to the Respondent's refusal to testify on her own behalf. The Board views the testimony offered by the State's witnesses as probative and credible.

An impetus for the enactment of the Massage Therapy Practice Act, 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 Harmony/VIP Spa. 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).

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Opinion, the Board concludes, as a matter of law, that Chong Ok Ellsworth 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 her practice of massage therapy; (20) engages in conduct that violates the professional code of ethics; (21) knowingly does an act that has been determined by the Board to be a violation of the Board's regulations.

The Board further concludes, as a matter of law, that Ms. Ellsworth violated its Code of Ethics, COMAR 10.43.18.04A(3) a certificate holder shall maintain legible, organized

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

written records of treatment of any client under the care of the certificate holder and COMAR 10.43.18.05A 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 29th day of March, 2004, 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, Chong Ok Ellsworth's massage therapy certificate is hereby **SUSPENDED** for a period of six months; and be it further

ORDERED that Ms. Ellsworth immediately return to the Board both the wall and wallet size certificate numbered M01623; 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 the Respondent must apply for reinstatement in writing; and be it further

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

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

ORDERED that the Respondent, no later than the expiration of the period of suspension, reimburse the Board its hearing costs of \$571.50; and be it further

ORDERED that the Respondent take a pass a Board approved record keeping course; and be it further

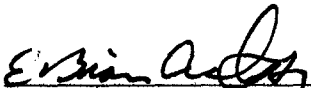
ORDERED that should the Board receive, in good faith, information that the Respondent has substantially violated the Act or if the Respondent violates any conditions of this Order or of Probation, after providing the Respondent with notice and an opportunity for a hearing, the Board may take further 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).

MAR 29 2004

Date


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.