

IN THE MATTER OF
SUN O. HOLSTON
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 or about December 11, 2003, the Board charged Sun Holston ("Respondent") with violations of certain provisions of the Massage Therapy Practice Act, (the "Act"), H.O. § 3-5A-01, *et seq.* Specifically, Ms. Holston 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) 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 (COMAR). Specifically:

.04 Standards of Practice.

A. A Certificate holder or registration holder shall:

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

A hearing on the merits was held on March 11, 2004. Present were the following Board members, which constituted a quorum: Dr. Brian Ashton, who presided at the hearing, Issie Jenkins, Dr. Paula Lawrence, Ivy Harris, Dr. Margaret Renzetti and Dr. Jack Murray, Jr. Also present were Roberta Gill, Assistant Attorney General/Administrative Prosecutor, Richard Bloom, Assistant Attorney General/Board Counsel, Michael May, Esquire, representing the Respondent, the Respondent, Sun Holston, and a court approved interpreter Kei Kim.

EXHIBITS

The following exhibits were introduced at the hearing:

STATE'S EXHIBITS

No. 1	Computer Printout
2A	Frederick Police Department Incident Report
2B	Frederick County Incident Report
2C	District Court History
3A	Murphy Investigative Report
3C	Velez final Order
3D	Moore Criminal Event History
4A	Letter of Procedure
4B	Charges
4C	Summons

SYNOPSIS OF CASE

Corporal Gregory Stocksdale of the Frederick County Police Department's special operation division's vice investigations testified that an investigation into complaints of illegal activities taking place at New Connies Spa (the "Spa") was initiated in January of 2002. At one point Mr. May noted a continuing objection to the hearsay nature of the testimony offered by the witness.

An arrest for prostitution was made at the Spa in July 2002. At that time the witness learned that the Respondent owned the business. On May 15, 2003 while conducting surveillance of the Spa the witness interviewed a male as he exited the establishment. The individual told him that he paid a woman, he later identified as the Respondent, \$80.00 for a one-hour massage. She led him to a room where she instructed him to get undressed at which point she turned him over to another woman, Ms. Moore, who gave him a table shower as he lay naked on the table.¹ During the ensuing massage the Ms. Moore massaged his genitals. At the conclusion of the massage he gave her a \$40.00 tip. The Respondent and Ms. Moore were arrested and charged with prostitution.

The Respondent chose not to testify.

FINDINGS OF FACT

The Board makes the following Findings of Fact:

1. That Sun Holston is a registered massage practitioner in Maryland.
2. That Ms. Holston is the owner of New Connies Spa in Frederick, Maryland.

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

3. That Connies Spa had been under investigation by the Frederick Police Department beginning in January 2002.
4. That in July of 2002, an arrest for prostitution was made at New Connies Spa.
5. That on May 13, 2003 Ms. Holston was arrested and charged with prostitution after taking \$80.00 from a customer who in turn received illegal sexual services.

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 take place in places like New Connies Spa. The legislature did not contemplate massage therapists providing table showers and massaging genitals as being within the scope of practice of massage therapy.² It follows that use of a registered massage practitioners license in conjunction with a massage parlor is outside of the scope of practice contemplated by the legislature as well. 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).

Regarding hearsay, testimony, Md. Code Ann., State Gov’t § 10-213 (c)

Provides for the admission of hearsay evidence in administrative hearings. The Court in *Travers v. Baltimore City Police Department*, 115 Md. App. 395 (1997) noted that in an

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

administrative hearing, hearsay evidence that is credible and probative is admissible. The Board views the testimony of the State's witness as having met this standard. The Board may draw an adverse inference from the Respondent's choice not to testify on her own behalf. *Whitaker v. Prince Georges County*, 307 Md. 368 (1986).

Ms. Holston's use of her license to promote 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 Sun O. Holston violated H.O. § 3-5A-09(a)(2), (8) and (21).

ORDER

Based on the foregoing Findings of Fact, Opinion and Conclusions of Law, it is, this 15th day of June, 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, the Respondent's massage therapy certification is hereby **SUSPENDED** for a period of **THREE (3) MONTHS**; and be it further

ORDERED that prior to the expiration of the period of suspension the Respondent must apply for, in writing, and take and pass a written jurisprudence examination to be administered by the Board, no more than twice, at a cost of \$100.00 for each administration; 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 prior to the expiration of the period of suspension the Respondent must apply for, in writing, and take and pass a written practical proficiency examination to be administered by the Board, no more than twice, at a cost of \$100.00 for each administration; and be it further

ORDERED that prior to the expiration of the period of suspension, the Respondent must reimburse the Board its hearing costs totaling \$269.50; and be it further

ORDERED that upon expiration of the period of suspension, Respondent must apply for reinstatement in writing, and be it further

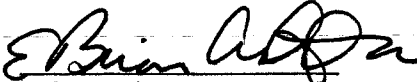
ORDERED that upon reinstatement the Respondent must serve **SIX (6)** MONTHS probation; and be it further

ORDERED that Respondent must **immediately** return to the Board both the wall and wallet size certificate number R00032; and be it further

ORDERED that following reinstatement, and during the probationary period, should the Respondent violate the Massage Therapy Practice Act or 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 shall be on the Respondent to demonstrate compliance; and be it further

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

JUN 15 2004
Date


Brian Ashton, P.T., 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.