

IN THE MATTER OF

*

BEFORE THE

KYUNG MOORE

*

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 or about April 22, 2003 and as amended on July 7, 2003, Kyung Moore ("Respondent") a certified massage therapist was notified that the Board intended to deny her application for renewal of her massage therapy certification based upon violations of certain provisions of the Massage Therapy Practice Act, (the "Act"), H.O. § 3-5A-01, *et seq.* Specifically, Ms. Moore 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 violations of its Code of Ethics, Code of Md. Regs. Tit. 10§ 43.18 (COMAR). Specifically:

.03. Standards of Practice.

D. A certificate holder or registration holder may not:

(2) Knowingly engage in or condone behavior that :

(a) is fraudulent,

(b) involves moral turpitude;

(3) Engage in commercial activity that conflicts with the duties of a certified massage therapist or registered massage practitioner.

The Board further charges that the Respondent violated Title 10 § 43.18.05:

.05. Professional Boundaries

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

A hearing on the merits was held on January 8, 2004. Present were the following Board members, which constituted a quorum: Dr. Brian Ashton, who presided at the hearing, Issie Jenkins, Dr. Paula Lawrence, Dr. Marc Gamerman and Ivy Harris. Also present were David Wagner, Assistant Attorney General/Administrative Prosecutor, James J. Vallone, Executive Director, Gwen Wheatley, Deputy Director, and Richard Bloom, Assistant Attorney General/Board Counsel. The Respondent failed to appear and the hearing commenced at 1:15 p.m.

EXHIBITS

The following exhibits were introduced at the hearing:

STATE'S EXHIBITS

1. Frederick County Statement of Charges 5/16/03
2. Anne Arundel County Investigative Report 1/19/01
3. Anne Arundel County Investigative Report 1/17/01
4. Anne Arundel County Investigative Report 1/18/01
5. Photographs
6. Application
7. Computer Printout
8. Renewal

BOARD EXHIBITS

1. Amended and Supplemental Notice of Initial Denial

SYNOPSIS OF CASE

Corporal Stocksdale of the Frederick Police Department testified that on May 15, 2003, while assigned to drug and vice type crimes, he arrested Ms. Moore at New Connie's Spa and charged her with prostitution and practicing massage therapy without a license. The witness interviewed an individual as he was exiting the Spa who told the

Connie's Spa and charged her with prostitution and practicing massage therapy without a license. The witness interviewed an individual as he was exiting the Spa who told the witness that Ms. Moore gave him a table shower at which time she washed his genitals and later during a massage, grabbed his genitals. The customer accompanied the witness back into the Spa where he identified Ms. Moore as the person who had provided the sexual services.(T 7 8 9 10 11 12 13 14 15 16 17).

Officer Vince Butler of the Anne Arundel County Police Department testified that on October 18, 2001, while investigating Brooklyn Barbell and Fitness he entered that establishment, and was met by Ms. Moore to whom he paid \$60.00. She led him to a room where another individual gave him a massage. In the course of the massage this woman, who was topless grabbed his penis. (T 20 21 22 23).

Detective Lecompte of the Anne Arundel County Police Department's vice unit testified that on October 18, 2001 he entered Brooklyn Barbell and Fitness. Ms. Moore washed his body, including his genitals. Ms. Moore was arrested and charged with assault and sex offenses. (T 26 27).

FINDINGS OF FACT

The Board makes the following Findings of Fact:

1. That Kyung Moore is a certified massage therapist in Maryland.
2. On October 18, 2001 and on May 15, 2003, while working as a massage therapist at Brooklyn Barbell and Fitness and Connies Spa, Ms. Moore provided sexual services to male customers.

3. That Ms. Moore was arrested and charged with prostitution and sexual offenses.

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 Connies Spa and Brooklyn Barbell and Fitness. The legislature did not contemplate massage therapists providing sexual services as being within the scope of practice of massage therapy. 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. Moore's illicit sexual conduct under the guise of massage therapy is sufficient for the board to conclude that she violated the Act and to deny her application for renewal of her massage therapy certification.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Opinion, the Board concludes, as a matter of law, that Kyung Moore violated H.O. § 3-5A-09(a)(2), (8), (20), (21).

ORDER

Based on the foregoing Findings of Fact, Opinion and Conclusions of Law, it is, this 8th day of April, 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 Board **DENIES** Respondent's application for renewal of massage therapy certification; and be it further

ORDERED that Respondent must **immediately** return to the Board both the wall and wallet size certificate number M01118; and be it further


ORDERED that the Respondent reimburse the Board its hearing costs; and be it further

ORDERED that this document is a public record, pursuant to Md. Code Ann.,

State Gov't Article, § 10-617(h).

APR 08 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.