

IN THE MATTER OF

\*

BEFORE THE

HUI PERRY, CMT

\*

STATE BOARD OF

Certificate No. M01664

\*

CHIROPRACTIC EXAMINERS

Applicant

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**FINAL CONSENT ORDER**

Based on information received and a subsequent investigation by the State Board of Chiropractic Examiners (the "Board"), and subject to Md. Health Occ. Ann. § 3-5A-01, et seq., (2000 Repl. Vol.) (the "Massage Therapists Act" or the "Act"), the Board voted to initially deny the Applicant, Hui S. Perry, CMT, (the "Applicant"), a renewal of her certificate to practice massage therapy. Specifically, the Board sent the Applicant a Notice of Initial Denial of Renewal Application as a Certified Massage Therapist due to violation of the following provisions of § 3-5A-09:

**Denials; suspensions; revocations.** (a) Subject to the hearing provisions of § 3-315 of this subtitle, the Board may deny a certificate or registration to any applicant or registration holder, reprimand any certificate holder or registration holder, place any licensee on probation, or suspend or revoke the certificate of a certificate holder or the registration of a 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 provision of this subtitle;

- (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 sought to deny the Applicant a renewal of her massage therapy certificate on the basis that the Applicant violated § 3-5-A-05:

(a) To qualify for a certificate, an applicant shall be an individual who:

- (1) Is of good moral character [;].

The Board further sought to deny the Applicant a renewal of her massage therapy certification for violation of the following regulation, Code Md. Regs. tit. 10, § 43.17 (1999):

.05 Application of Certification.

(3) Provide evidence that the applicant is:

- (a) Of good moral character [;].

The Board further sought to deny on the basis that the Applicant violated its Code of Ethics, Code of Md. Regs. tit. 10, § 43.18 (October 16, 2000). Specifically the Board's Notice to Initially Deny the Renewal of Certification was based on the Applicant's violation of subsection .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.

The Applicant was issued the Notice of Initial Denial on October 16, 2002. The Applicant was informed that the Denial would become final unless she requested a hearing in writing. By letter dated November 11, 2002, the Applicant requested a hearing. The hearing was scheduled for January 9, 2003. However, before that date, the Applicant's attorney, Andrew I. Alperstein, and the Administrative Prosecutor, Roberta Gill, Assistant Attorney General, presented to the Board a proposal to resolve the case, which was subsequently accepted by a majority of the Board.

The parties and the Board agreed to resolve the matter by way of settlement. The parties and the Board agreed to the following:

#### **FINDINGS OF FACT**

1. By renewal application dated August 30, 2002, the Applicant re-applied for certification as a massage therapist. The Applicant was first certified on November 20, 2001.

2. At all times relevant hereto, the Applicant worked at S.K. Therapy (S.K.) in Anne Arundel County, Maryland.

3. On May 30, 2002, the Anne Arundel County Police Department conducted an undercover operation at S.K. Sergeant Steve Torbeck entered the location in an undercover capacity and was met by the Applicant. Sergeant Torbeck requested a massage and was taken to a room equipped with a massage table, lotions and oils. The Applicant asked him if he wanted a table shower, to which the Sergeant replied "no." Sergeant Torbeck paid the Applicant sixty dollars (\$60) and the Applicant told him to get undressed, after which she left the massage room.

4. During the massage, the Applicant was wearing a short, black dress and the Sergeant could see that she was not wearing underwear. The Applicant first massaged his back and at one point brushed her hand against his scrotum. The Applicant then requested that he turn over and she massaged the front of his body. At one point, she was kneeling on the table with her buttocks exposed. The Applicant then placed her face near Sergeant Torbeck's chest and began to blow on his nipples. The Applicant sucked on his left nipple and bit it, causing Sergeant Torbeck to tell her that it hurt.

5. At that point, the Applicant told Sergeant Torbeck that the massage was over, whereupon he questioned her if she was done. She asked him, "why, what do you want me to massage?" While she was asking that question, the Applicant cupped her hand and was moving it back and forth in the air around his penis. Sergeant Torbeck knew that this indicated a "hand release". The Applicant then grabbed his penis, saying, "I'll wake him

up." Sergeant Torbeck then initiated a prearranged signal which alerted an arrest team to come into the establishment.

6. The Applicant was charged with prostitution and a fourth degree sex offense.

7. On June 25, 2002, a second covert operation was conducted by the Anne Arundel Police Department. Detective J.S. Golas went to SK and paid the Applicant sixty dollars (\$60) for a massage. The Applicant gave Detective Golas a table shower, while he was completely naked and undraped, brushing against his scrotum with her hand as she washed his stomach and legs with soap and a wash cloth. The Applicant then asked the Detective to stand up and she dried his entire body with a towel. As the Applicant began to dry his legs, she bent down and her face was approximately three inches away from his exposed penis.

8. The Applicant then escorted Detective Golas back to the massage room, which contained a bed and a mirror on the wall at the head of the bed. The Applicant instructed the Detective to lie face down on the bed and she proceeded to massage the entire back side of his body. The Applicant then told the Detective to flip over onto his back and she began to massage his upper chest and arms.

9. Once the Applicant reached the top of Detective Golas' legs, she stopped and told him that the massage was over at which point the Detective said, "you're finished." The Applicant responded, "what else haven't I done?" The Detective told her that she had not done the front of his legs, whereupon the Applicant proceeded to get on the table in between Detective Golas' legs. The Applicant reached the top of his legs, around his groin area and stopped with her hands cupped around his penis.

10. The Applicant then told Detective Golas, "if you want me to touch it, you're going to have to put my hand on it." Detective Golas then placed his hand on top of the Applicant's hand and moved it towards his penis. Subsequently, the Applicant grabbed his penis and began to pull on it. Detective Golas then gave the prearranged signal and Detective LeCompte entered the room. The Applicant said to Detective Golas, "tell them I only touch your back."

11. The Applicant was placed under arrest for prostitution.

12. The Applicant violated the Act and the regulations thereunder by giving a customer a table shower while he was completely nude and undraped; by exposing her buttocks to a customer; by brushing against a customer's scrotum with her hand during the course of a massage; by getting between a customer's legs while he was completely naked and undraped during the course of a massage; by grabbing and jerking on a customer's penis during the course of a massage; by sucking and biting a customer's nipples during the course of a massage; and by getting arrested twice for prostitution for activities provided during the course of a massage.

13. As set forth above, the Applicant lacked the good moral character to qualify for a renewal of her application for certification as a massage therapist in Maryland.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, the Board finds that Applicant violated § 3-5A-09 (2), (8), (11), (20) and (22) of the Act. The Board concludes that the Applicant also violated § 3-5-A-05 (b) (2) of the Act. In addition, the Applicant violated Code Md. Regs. tit.

10, § 43.17.05 (4) (a), and the Code of Ethics, Code of Md. Regs. tit. 10, § 43.18 .05 B. (1) and (2) B. (1), (2), (3) (a), (b), and (c).

**ORDER**

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 6<sup>th</sup> day of March, 2003, by a majority of a quorum of the Board,

**ORDERED** that the Applicant's certificate be denied until the following conditions are completed:

1. The Applicant shall be suspended for three months;
2. After the three month period has expired, the Applicant can be reinstated to the practice of massage therapy, provided that she takes and passes the Board's jurisprudence examination;
3. Upon passage of the examination, which she can take anytime during the three months' suspension, the Applicant will be issued her certificate;
4. Thereafter, she shall be placed on three months' probation.

**ORDERED** that the Consent Order is effective as of the date of its signing by the Board; and be it

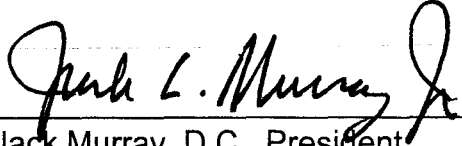
**ORDERED** that should the Board receive a report that the Applicant's practice is a threat to the public health, welfare and safety, the Board may take immediate action against the Applicant, including suspension or revocation, providing notice and an opportunity to be heard are provided to the Applicant in a reasonable time thereafter.

Should the Board receive in good faith information that the Applicant has substantially violated the Act or if the Applicant violates any conditions of this Order or of Probation, after providing the Applicant with notice and an opportunity for a hearing, the Board may take further disciplinary action against the Applicant, including suspension or revocation. The burden of proof for any action brought against the Applicant as a result of a breach of the conditions of the Order or of Probation/Suspension shall be on the Applicant to demonstrate compliance with the Order or conditions; and be it

**ORDERED** that the Applicant shall practice in accordance with the laws and regulations governing the practice of massage therapy in Maryland; and be it further

**ORDERED** that, at the end of the Probationary period, the Applicant may petition the Board to be reinstated without any conditions or restrictions on her license, provided that she can demonstrate compliance with the conditions of this Order. Should the Applicant fail to demonstrate compliance, the Board may impose additional terms and conditions of Probation, as it deems necessary;

**ORDERED** that for purposes of public disclosure, as permitted by Md. State Govt. Code Ann. §10-617(h) (Repl. Vol. 1999), this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law and Order and that the Board may also disclose same to any national reporting data bank that it is mandated to report to.

  
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Jack Murray, D.C., President  
State Board of Chiropractic Examiners

**CONSENT OF HUI S. PERRY, CMT**

I, Hui S. Perry, by affixing my signature hereto, acknowledge that:

1. I am represented by an attorney, Andrew I. Alperstein, and have been advised by him of the legal implication of signing this Consent Order;

2. I am aware that without my consent, my certificate to practice massage therapy in this State cannot be limited except pursuant to the provisions of § 3-5A-09 of the Act and the Administrative Procedure Act (APA) Md. State Govt. Code Ann. §10-201, et seq., (1999 Repl. Vol.)

3. I am aware that I am entitled to a formal evidentiary hearing before the Board

By this Consent Order, I hereby consent and admit to the foregoing Findings of Fact, Conclusions of Law and Order, provided the Board adopts the foregoing Consent Order in its entirety. By doing so, I waive my right to a formal hearing as set forth in §3-315 of the Act and §10-201, et seq., of the APA, and any right to appeal as set forth in §3-316 of the Act and §10-201, et seq., of the APA. I acknowledge that by my failure to abide by the conditions set forth in this Order and following proper procedures, I may suffer disciplinary action, possibly including revocation, against my certificate to practice massage therapy in the State of Maryland.

Feb 12 03.  
Date

Hui S. Perry  
Hui S. Perry, CMT

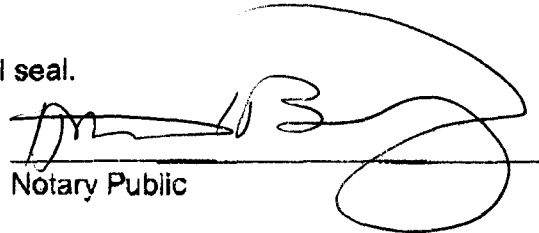
STATE OF MARYLAND

CITY/COUNTY OF MONTGOMERY Co.

I HEREBY CERTIFY that on this 12 day of February, 2003, before me, MITCHELL BERKOWITZ, a Notary Public of the foregoing State and (City/County),  
(Print Name)

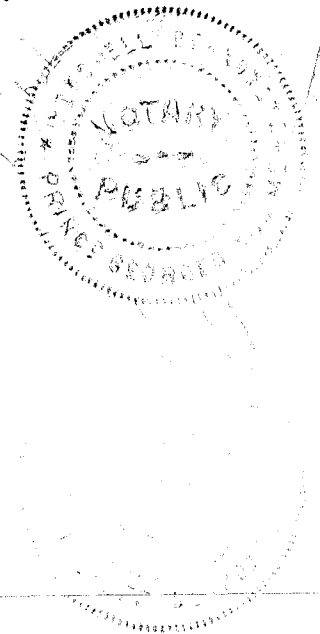
personally appeared Hui S. Perry, Certificate No. M01664, and made oath in due form of law that signing the foregoing Consent Order was her voluntary act and deed, and the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.

  
Notary Public

My Commission Expires: 2-2-05

**MITCHELL BERKOWITZ**  
**NOTARY PUBLIC STATE OF MARYLAND**  
**My Commission Expires February 02, 2005**



My Commission Expires: \_\_\_\_\_ 10 \_\_\_\_\_