

IN THE MATTER OF

AL-TIN WIN, RMP

Registration Number: R00537

Respondent

*** BEFORE THE STATE**

*** BOARD OF CHIROPRACTIC AND**

*** MASSAGE THERAPY**

*** EXAMINERS**

*** CASE NUMBER: 09-60m**

*** * * * ***

FINAL DECISION AND ORDER

On March 3, 2010, the Maryland State Board of Chiropractic and Massage Therapy Examiners (the "Board") issued Charges against Al-Tin Win, R.M.P. (the "Respondent" or "Mr. Win"), registration number R00537, pursuant to its authority under the Maryland Chiropractic and Massage Therapy Practice Act (the "Act"), Maryland Health Occ. Code Ann., ("H.O.") §§ 3-101 – 3-602.

The Board held a hearing on August 12, 2010. The Board issues this Final Decision and Order based upon its consideration of the entire record, including the exhibits, witness testimony and oral arguments. Mr. Win did not attend the hearing, but was represented by counsel. The hearing was conducted in accordance with the APA, the Board's practice act and regulations. A full quorum of the Board was present during the entire hearing and deliberations. The Board unanimously agreed to the findings of fact and conclusions of law in this order. For the reasons set forth below, the Board approves and adopts this Final Decision and Order.

SUMMARY OF EVIDENCE

The prosecution introduced 1, 2, 3, 4A, 4B, 5A, 5B, 6, 7, 8A, 8B, 8C, 9A, 9B exhibits in to evidence. Marc Ware, Board Investigator, was called to testify by the prosecution. Mr. Win did not testify or call any witnesses on his behalf.

FINDINGS OF FACT

The Board makes the following findings of fact:

1. At all times relevant hereto, the Respondent was a registered massage therapist. The Respondent was first registered on August 10, 2006. The Respondent's registration expires on October 31, 2010.
2. At all times hereto, the Respondent practiced registered massage therapy at "The Next Level Athletic Performance Center" in Bethesda, Maryland.
3. On September 25, 2009, the Board received a complaint from Patient A¹ (Complainant), a recent graduate from a massage therapy school in Virginia who was referred to the Respondent for tutorial help in passing the National Examination, furthering her knowledge of massage therapy techniques, and networking in hopes of receiving job placement assistance in Maryland. On September 9, 2009, the Complainant related the following:
 - A. The Complainant met the Respondent at his place of employment, where he provided her with test preparation materials and CDs, after which the Respondent proposed a massage exchange during which the Respondent was to demonstrate and explain various bona fide massage

therapy techniques;

- B. In preparation for the massage, the Respondent left the room while the Complainant disrobed. When the Respondent returned, the Complainant was positioned on the massage table lying on her back and draped;
- C. The Respondent began the session by massaging the Complainant's scalp, face, upper neck and shoulder region, during which time he asked whether she had a boyfriend, to which she replied "no;"
- D. While massaging the Complainant's upper chest region, the Respondent began conversing about breast cancer and lymph nodes, after which he undraped and massaged one of her breasts without consent;
- E. After completing the breast massage, the Respondent began massaging the Complainant's right thigh and proceeded to perform active stretching of her right leg, while explaining the various techniques. During the active stretching demonstration/explanation, the Respondent touched the Complainant's vagina several times. The Complainant, who was unsure whether or not the inappropriate touching was intentional, brought it to the Respondent's attention. However, despite this, the Respondent began stretching the Complainant's left leg and moved her underwear to the side and touched her clitoris, after which he quickly completed the active stretching demonstration;
- F. At the request of the Respondent, the Complainant turned over onto her stomach and he proceeded to massage her lower back. While so doing,

¹The patient/complainant's name is confidential and is maintained by the Board in its file.

- G. the Respondent advised the Complainant that her coccyx was tilted forward and pushing on her rectum and internal organs, after which he asked her "do you want me to fix it?" After the Complainant responded "sure," the Respondent, without warning, placed a glove on his hand and inserted one of his fingers into her anus. The Complainant asked the Respondent what he was doing, and, with his finger still inserted in her anus, he stated that he was going to "fix" her coccyx by pushing upward and that he would need a few more sessions, after which the session ended;
- H. Thereafter, the Respondent requested that the Complainant give him a massage, which the Complainant did for about 15 minutes, in the area of the Respondent's neck and some active stretching exercises;
- I. After the massage, the Complainant left, confused about the various techniques that had been performed on her;
- J. On September 10, 2009, at approximately 8:30 AM, the Complainant received a telephone call from the Respondent but refused to answer when she noticed his number on the Caller ID. Approximately 10 days later, the Complainant called the Respondent and attempted to schedule a time to return his CDs. When the Complainant met the Respondent on September 25, 2009, she presented him with the NCBTMB Handbook and referenced page 46, entitled "Standard Prevention of Sexual Misconduct," and asked the Respondent if he was familiar with that

section. She also asked him if he was familiar with the section regarding breast massage that required informed and written consent. The Respondent later apologized to the Complainant.

4. On November 5, 2009, the Respondent was arrested by the Montgomery County Police Department and charged with a Fourth Degree Sex Offense.
5. During an interview under oath, the Respondent admitted that he "accidentally" exposed the Complainant's breast while massaging her arms. He also admitted to accidentally touching the Complainant's pubic area approximately four times while massaging her adductors and hip flexors, but denied touching her vagina or clitoris.² The Respondent also admitted to inserting his finger in the Complainant's anus for the purpose of adjusting her coccyx.³ Performing adjustments is outside the scope of massage therapy.

CONCLUSIONS OF LAW

The Board concludes that Mr. Win with violated of the following provisions of § 3-5A-

11:

- (a) *Denial of license or registration.*- Subject to the hearing provisions of § 3-315 of this title, the Board may deny a license or registration to any applicant, reprimand any licensee or registration holder, place any licensee or registration holder on probation, or suspend or revoke the license of a licensee or the registration of a registration holder if the applicant, licensee, or registration holder:

²Adductor muscle: any of three powerful triangular muscles that contribute to the adduction of the human thigh; flexor muscle: A muscle that when contracted acts to bend a joint or limb in the body.

³Manual therapy or Chiropractic adjustment is an alternative non-surgical treatment for tailbone pain, coccygodynia or coccydynia.

- (6) Knowingly does any act that has been determined by the Board, in its regulations, to exceed the scope of practice authorized to the individual under this subtitle;
- (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 finds that the Respondent violated its Code of Ethics, COMAR 10.43.18. Specifically the Board concludes that the Applicant violated the following subsections:

.05 Professional Boundaries, thereof:

A. A certificate holder or registration holder shall:

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:

- (3) Engage in sexual misconduct that includes, but is not limited to:

- (a) Therapeutic deception,

- (b) Non bona fide treatment⁴ [.]

(5) "Therapeutic deception" means when a certificate holder or registration holder misrepresents sexual conduct as a legitimate form of treatment.

The Board finds that Mr. Win's actions violated all these provisions of its practice

⁴ Under COMAR 10.43.18.02(B) (2), "Non bona fide treatment" means when a certificate holder or registration holder treats or examines a client in a way that involves sexual contact, but there is no

act. Mr. Win exploited his therapeutic relationship with Patient A. The exchange of massage therapy services with Patient A falls within the purview of the Board's jurisdiction. Further, the exchange of massage services comports with the Board's understanding of what constitutes the practice of massage therapy. Mr. Win argues that because he did not receive monetary compensation for his massage services performed on Patient A, then his treatment of Patient A could not be considered massage therapy. The Board does not agree with this interpretation of its practice act.

After receiving a massage and coccyx adjustment from Mr. Win, Patient A felt obligated to give Mr. Win a massage. The massage from Patient A was a form of compensation within the Board's interpretation of the definition of the practice of massage therapy. The Board concludes that Mr. Win was practicing massage therapy on Patient A.

Mr. Win's treatment of Patient A went beyond the scope permitted by the Board's practice act. A coccyx adjustment is not within the scope of practice for massage therapists in Maryland. Mr. Win knew that a coccyx adjustment was not within the scope of practice for a massage therapist. There was no therapeutic justification for Mr. Win to place his gloved finger inside of Patient A's anus.

The Board concludes that Mr. Win's relationship with Patient A violated several provisions of the Board's practice act and code of ethics. In sum, the Board finds that Mr. Win violated its practice act and regulations by his inappropriate touching and treatment of Patient A during a massage.

therapeutic reason for the procedure, or the procedure falls outside of reasonable massage therapy or non-therapeutic massage practices.

SANCTION

Respondent is an experienced massage therapist. Respondent's lack of knowledge of the Board's statute and regulations is troubling to the Board. The Board finds that Mr. Win practiced beyond his scope and exploited his relationship with a patient. This conduct is unacceptable. Respondent's behavior does not meet the standards that the public is entitled to expect from a licensed professional.

In light of the Respondent's misconduct, the Board shall revoke Mr. Win's license to practice massage therapy. Additionally, the Board fines Mr. Win \$5,000.00; 1,250.00 for each statutory violation. As the Board's sanctions act as a "catharsis for the profession and a prophylactic for the public," (McDonnell v. Comm'n on Medical Discipline, 301 Md. 426, 436 (1984)), it is imperative that massage therapists understand that serious misconduct has serious ramifications.

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 10th day of Sept., 2010, by a majority of the Board then serving,

ORDERED that, pursuant to the authority vested in the Board of Chiropractic Examiners by Md. Code Ann., Health Occ. Article, § 3-5A-011, the Respondent's massage therapy certification is hereby **REVOKED**;

ORDERED that Mr. Win, is not permitted to apply for reinstatement for **FIVE YEARS**; and be it further

ORDERED that Mr. Win pay a fine of \$5,000.00; and be it further;


ORDERED that Mr. Win reimburse the Board its reasonable hearing costs; and be it further;

ORDERED that Mr. win forthwith surrender his Board massage Registration and wallet card to the Board Executive Director, Mr. J. J. Vallone, J.D., Suite 301, 4201 Patterson Ave., Baltimore, MD 21215-2299.

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

SEP 10 2010

Date



J. J. Vallone, J.D., Exec Director
for/by direction of
Kay O'Hara, D.C., President
Board of Chiropractic and Massage
Therapy Examiners

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, Conclusions 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.