

IN THE MATTER OF

HO SIL YANG

APPLICANT

*

BEFORE THE

*

MARYLAND STATE BOARD OF

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CHIROPRACTIC EXAMINERS

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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

The Applicant's application for renewal of her massage therapy certification was denied, pursuant to Massage Therapy Practice Act, (the "Act"), H.O. § 3-5A-01, *et seq.*

Specifically:

H.O. § 3-5A-09:

(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.
- (11) Has violated any provision of this subtitle.
- (21) Knowingly does an act that has been determined by the Board to be a violation of the Board's regulations;

H.O. § 3-5A-05:

- (b) To qualify for a certificate, an applicant shall be an individual who:
 - (1) Is of good moral character;

An additional basis for denial was a violation of Md. Admin. Code (COMAR) Tit.

10 § 43.17.05:

(3) Provide evidence that the applicant is:

(a) Of good moral character.

The final basis for denial was that the Respondent violated the Board's Code of Ethics, Md. Admin. Code (COMAR) tit. 10, § 43.18.

.04 Standards of Practice

(A) A certificate holder or registration holder shall:

(4) Shall 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-General Article, Title 4, Subtitle 3, Annotated Code of Maryland.

.05 Professional Boundaries.

(A) A certificate 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. n

(B) A certificate holder may not:

- (1) Exploit a relationship with a client for the certificate 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.

Ms. Yang was employed at Rainbow Spa over a period of time during which the Board's investigator, Paul Murphy, made inspections. On one occasion he observed Ms. Yang giving a customer a table shower.¹ At the time of each visit, Mr. Murphy found that Ms. Yang maintained no treatment records.

A hearing on the merits was held on April 10, 2003. Present were the following Board members, which constituted a quorum: Dr. Jack Murray, Jr., President of the Board, who presided at the hearing, Dr. Marc Gamerman, Ivy Harris, Issie Jenkins, Dr. Margaret Renzetti and Dr. Brian Ashton. Also present were Roberta Gill, Assistant Attorney General/Administrative Prosecutor, Vincent Guida, Esquire, Ho Sil Yang, Applicant, Richard N. Bloom Assistant Attorney General/ Board Counsel, James J. Vallone, J.D., Board Executive Director, Gwen Wheatley, Deputy Director, and Maria Ware, Board Staff.

EXHIBITS

The following exhibits were introduced at the hearing:

STATE'S EXHIBITS

No. 1	Computer Printout
2	Investigative Report
3	Renewal Application
4A	Letter dated 1/7/03
B	Notice of Initial Denial
C	Request for Hearing
D	Letter dated 1/16/03
E	Letter dated 3/13/03
5A	Board Subpoena
B	Howard County Licensing Records
6	County report on Rainbow Spa

¹ Table shower is a euphemism for illicit sexual activity.

SYNOPSIS OF CASE

Mr. Guida proffered, and Ms. Gill accepted, that Ms. Yang no longer works for Rainbow Spa, that she gives no table showers at her new place of employment and that she is now maintaining records. The parties stipulated that at the time of Mr. Murphy's inspections of Rainbow Spa, Ms. Yang maintained no treatment records and that on one of those occasions, she was giving a naked customer a table shower. It was further agreed that the Board may rely on its knowledge, garnered from previous hearings, that Rainbow Spa is a place where illicit sexual activity takes place.

FINDINGS OF FACT

The Board makes the following Findings of Fact:

1. That Ho Yang has been certified as a massage therapist in Maryland since September 14 2000.
2. That Ho Yang has been employed at Rainbow Spay, a place where illicit sexual activity takes place.
3. That while employed at Rainbow Spa, Ms. Yang gave a table shower to a naked customer and she maintained no patient records.

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 Rainbow Spa. The Maryland General Assembly did not contemplate massage therapists providing table showers 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).

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Opinion, the Board concludes, as a matter of law, that Ho Sil Yang violated H.O. § 3-5A-09(a)(2), (11), and (21) and H.O. § 3-5A-05(b)(1) as well as COMAR 10.43.18.04(A)(4) and (5).

ORDER

Based on the foregoing Findings of Fact, Opinion and Conclusions of Law, it is, this 15th day of May, 2003 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 Applicant will serve a period of three months **PROBATION** commencing from the date of this Order; and be it further

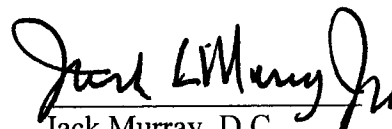
ORDERED that the Applicant shall, during the first sixty days of probation, take and pass the Board's massage therapy jurisprudence examination; and be it further

ORDERED that the Applicant shall, prior to the expiration of probation, 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).

5/15/03
Date


Jack Murray, 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, 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.