

IN THE MATTER OF
YUMI KIM
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

The Respondent's application for renewal of her massage 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:

(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;

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:

(A) A certificate holder or registration holder shall:

6. During numerous inspections of Oriental, numerous violations were cited, namely, uncertified massage therapists working and performing illegal activities.

7. Because the Respondent's certificate was found on Oriental's wall, on March 9, 2004, a subpoena was issued to the Respondent to be interviewed on April 5, 2004 at the Board's offices in regard to his alleged employment at Oriental, and her application of August 2001, including verification of attendance at Excel. The subpoena was signed for, but the Respondent failed to attend the interview. The Respondent's attorney was also contacted, but failed to respond to numerous Board messages regarding the Respondent.

CONCLUSION OF LAW

The Board finds that the Respondent violated § 3-5A-09 (19) (Fails to cooperate with a lawful investigation conducted by the Board) of the Act.

ORDER

Based on the foregoing Facts that Warrant Revocation of the Respondent's Certification and Conclusion of Law, by a unanimous vote of a quorum of the Board present, it is hereby

ORDERED on this 31 day of May 2005, that the Respondent's certificate as a Certified Massage Therapist in the State of Maryland be and is hereby **REVOKED**; and be it further

ORDERED that this is a final Order of the Maryland Board, and as such is a public document pursuant to the Maryland Public Information Act, codified at State Govt. Code Ann. § 10-611, *et seq.*, (2004 Repl. Vol.).



E. Brian Ashton, D.C., P.T., President
State Board of Chiropractic Examiners

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Health Occ. Code Ann. § 3-316, you have a right to take a direct judicial appeal. A Petition for Judicial Review must be filed within thirty days of your receipt of this executed Order, and shall be made as provided for judicial review of a final decision in the APA, codified at State Govt. Code Ann. § 10-201, *et seq.*, (2004 Repl. Vol.).

(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.

A hearing on the merits was held on February 13, 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. Paula Lawrence, Dr. Marc Gamerman and Ivy Harris, Issie Jenkins, Dr. Margaret Renzetti and Dr. Brian Ashton. Also present were Roberta Gill, Assistant Attorney General/Administrative Prosecutor, Robert J. Kim, Esquire, Yumi Kim, Respondent and Richard N. Bloom Assistant Attorney General/Board Counsel. In addition, James J. Vallone, J.D., Board Executive Director, Gwen Wheatley, Deputy Director, Maria Ware, Board Staff, Sheryl McDonald, Assistant to Ms. Gill and Ms. Gill's mentee, Shaketta Doles a student at Lake Clifton Eastern High School.

EXHIBITS

The following exhibits were introduced at the hearing:

STATE'S EXHIBITS

No. 1	Computer Printout
2	Renewal Form
3	Report of Paul Murphy

RESPONDENT'S EXHIBITS

No. 1	Treatment Record Form
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SYNOPSIS OF CASE

Preliminarily, Mr. Kim questioned the Board's ability to deny a renewal application for failure to maintain patient records when the application is properly filed pursuant to H.O. § 3-5A-08(c). That as long as the renewal form is properly filed and the appropriate fee paid, then certification must be renewed. He further asserts that H.O. § 3-5A-09(a) does not authorize the Board to discipline a certificate holder by denying a renewal of certification. Ms. Gill counters that the key language is H.O. § 3-5A-08(c)(1), which provides that, in addition to properly filing a renewal application and paying the renewal fee, the individual must "otherwise be entitled to be certified." She contends that a violation of H.O. §3-5A-09 would render the Respondent not otherwise entitled to be renewed. Further she argues that the Act treats one seeking to renew certification as an applicant and must be scrutinized as any other applicant. The Board agreed with Ms. Gill and denied Mr. Kim's motion to dismiss.

Ms. Gill called Detective Guy Williams of the Howard County Police Department. His duties include investigation of vice crimes and inspection of massage parlors. He visited Rainbow Spa on June 11, 2002 as part of countywide inspections of massage parlors where there had been reports of criminal activity. In addition to other police officers, accompanying the witness was a representative of the Howard County Fire Department and the Board's investigator, Paul Murphy. Upon inspection it was found that there appeared to be semen stains on the walls, floors and linen and fire code violations were noted as well what appeared to be a used condom on the floor in one of the rooms. The spa was closed until such time as the floors and walls were cleaned and

the fire code violations were corrected. The witness returned on August 29, 2002 and found that the violations had been corrected.

Paul Murphy, Board investigator, testified that on the initial visit to Rainbow Spa he asked the certified massage therapists, including the Respondent, to see their client medical histories and treatment notes. They had none. The witness explained to the Respondent and to the others the requirement that these records must be maintained. Subsequently, on the next visit to Rainbow Spa on August 29, 2002, Mr. Murphy found that records were not being maintained and once again he spoke with the Respondent about this. (T. 44 2-9). During the August 29, 2002 visit Mr. Murphy found a nude male customer receiving a table shower¹ from a female massage therapist.

In the course of her testimony, the Respondent stated that she had worked at Rainbow Spa for nearly three years. She denied that Mr. Murphy spoke to her about record keeping on June 11, 2002. (T. 51 13-25, 52 1-15). Until Mr. Murphy spoke to her on August 29, 2002, the Respondent indicated that she was not aware that a record keeping requirement existed. She acknowledged that she had received and read the regulations pertaining to the practice of massage therapy in Maryland. (T. 61 19-25, 62 1-25, 63 1-25, 64 1-16). Subsequent to the August 29, 2002, during the first week in September, she began to keep client records. She testified that no one told her about apparent seamen stains on the floors and walls. (T 52 21-25, 53 1-10). Mrs. Shin, owner of Rainbow Spa, testified that on June 11, 2002 Mr. Murphy did not advise anyone of record keeping requirements.

FINDINGS OF FACT

The Board makes the following Findings of Fact:

1. That Yumi Kim became a certified massage therapist in Maryland on October 19, 2000.
2. That Yumi Kim received and read Maryland's massage therapy regulations.
3. That Yumi Kim has been employed at Rainbow Spay for nearly three years.
4. That prior to August 29, 2002, Ms. Kim maintained no patient treatment records.
5. That Board investigator, Paul Murphy, on June 11, 2002 and again on August 29, 2002, advised the Respondent of the requirement to maintain patient records.
6. That illicit sexual activity takes place at Rainbow Spa.

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).

Although there is no evidence of illicit sexual conduct on the part of the Respondent, her employment at such a place as Rainbow Spa raises concerns about her

¹ Table shower is a euphemism for illicit sexual activity.

moral character. It belies the imagination that the Respondent would not know of the illicit activities of her co-workers nor that one of the reasons Rainbow Spa was closed as a result of the June 11, 2002 inspection, was because of apparent semen stains on the walls and floors.

The Respondent does not contest that she maintained no treatment records prior to August 29, 2002. The Board ascribes no measure of credibility to the testimony of the Respondent and that of Ms. Shin, in which they contradicted Mr. Murphy's testimony that at the time of the June 11, 2002 inspection, he advised the Respondent, and others, of the record keeping requirements. To feign ignorance of the requirement to maintain treatment records, after having received a copy the Board's regulations further casts the Respondent's credibility in a negative light.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Opinion, the Board concludes, as a matter of law, that Yumi Kim violated H.O. § 3-5A-09(a)(21) when she knowingly did an act that has been determined by the Board to be a violation of the Board's regulations, that pursuant to H.O. § 3-5A-05(b)(1), she lacks good moral character, and that pursuant to COMAR 10.43.18.04(A)(4) she failed to maintain written treatment records.

ORDER

Based on the foregoing Findings of Fact, Opinion and Conclusions of Law, it is, this 1ST day of April, 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 Respondent will serve

a period of three months **PROBATION** commencing from the date of this Order; and be it further

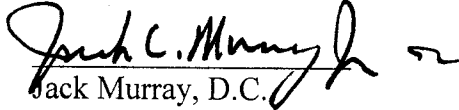
ORDERED that the Respondent shall, during the three months of probation, take and pass a Board approved, treatment record keeping course; and be it further

ORDERED that the Respondent shall, during the three months of probation, take and pass the Board's massage therapy jurisprudence examination; and be it further

ORDERED that the Respondent shall reimburse the Board its hearing costs during the three months of probation; 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 01 2003
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, 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.