

IN THE MATTER OF
CHONG S. NIELSEN
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

On February 14, 2002 the Board voted to summarily suspend the Massage Therapy Certificate of Chong S. Nielsen, Respondent, after having received information from the Montgomery County Police Department that Ms. Nielsen was the owner/manager of a purported massage therapy establishment where an individual was arrested and charged with prostitution.

Ms. Nielsen was served with an Order For Summary Suspension and was notified of her right to appear before the Board to Show Cause why the Board should not continue the summary suspension. A Show Cause hearing which was held on April 11, 2002. Subsequent to the Show Cause hearing, the Board issued an Order continuing the Summary Suspension.

On or about March 18, 2002, the Board charged Ms. Nielsen with violations of certain provisions of the Massage Therapy Practice Act, (the “Act”), H.O. § 3-5A-01, *et seq.* Specifically, Ms. Nielsen 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;

A hearing on the merits was held on June 20, 2002. Present were the following Board members, which constituted a quorum: Dr. Jack Murray, Jr., President of the Board, who presided at the hearing, Issie Jenkins, Esquire, Dr. Paula Lawrence, and Ivy Harris. Also present were Roberta Gill, Assistant Attorney General/Administrative Prosecutor, Sheryl McDonald, Ms. Gill's assistant, Richard Bloom, Board Counsel, Barry Helfand, Esquire, attorney for Respondent, Hyun Sook Yim, Ms. Yim, James J. Vallone, Board Executive Director and Gwendolyn Wheatley, Board Deputy Director.

EXHIBITS

The following exhibits were introduced at the hearing:

STATE'S EXHIBITS

No. 1A	Letter for Summary Suspension
B	Summary Suspension Order
2A	Letter of Procedure
2B	Charges
2C	Summons
2D	Return Receipt
3	Order For Continuing Summary Suspension
4	Computer Printout
5	Letter from Stack to Murphy
6	Murphy's investigative report

SYNOPSIS OF CASE

Ms. Gill's proffered the testimony of Detectives Stack And Colferai of the Montgomery County Police Department. On January 4, 2002, in the course of surveillance of VIP, Detective Stack interviewed a gentleman as he exited the establishment. He had paid \$100.00 to a Hwa Yi,¹ who gave him a table shower² while he was naked and later gave him a hand release³ for which she was paid an additional \$20.00. The Detectives entered the establishment and interviewed Ms. Nielsen who told them she owned the establishment. Detective Colferai entered a room where Ms .Yi was massaging a naked customer. This individual told the Detective that previously, on December 17, 2001, he visited the establishment and received a hand release from Ms. Yi for which he paid her \$100.00. (T. 7,8,9).

Prior to accepting the proffer Mr. Helfand clarified with Ms. Gill that it was Ms. Yi to whom the money was paid and not Ms. Nielsen and that the Board allows a grace period during which applicants can practice massage therapy. Ms. Gill concurred and Mr. Helfand accepted the proffer and immediately moved to dismiss. (T. 9,10, 11 1-5).

Mr. Helfand argued that the Board can not impute knowledge of what illicit acts may take place in massage rooms to Ms. Nielsen who does not go into these rooms. He also argues that table showers can not be against the law because there are no statutory prohibitions and further, there is no mention in the proffer of illicit touching. (T. 11 6-21, 13-20).

¹ At the time Ms. Yi had an application for massage therapy certification pending with the Board. H.O. § 3-5A-05 provides that an applicant who has not yet taken the required examination may practice massage therapy. COMAR 10.43.17.03C limits the time to 90 days form the date the application is received by the Board.

² The term "table shower" is a euphemism for illicit sexual activities, which includes washing of the genitals.

³ A hand release is the manual stimulation of the penis.

In opposition to the motion to dismiss, Ms. Gill argues that Ms. Nielsen is the acknowledged owner of an establishment where illicit sexual activity takes place. She is fully aware that the employees provide table showers, which involves washing of the genitals. (T. 11 22-25, 12 1-18). Dr. Murray denied Mr. Helfand's motion to dismiss.

On direct examination Ms. Nielsen testified she is the owner of VIP Therapy and that there is no manager there because the girls are self employed and come in any time they wish. She makes it clear to these girls that they are only to do massage and "never touch anything." That is, there are to be no hand releases and they must make sure that the customers genital areas are covered when taking a shower. Ms. Nielsen charges customers \$100.00 of which she takes \$50.00 "for the house" and the girls take \$50.00. Ms. Nielsen is often not at work (T. 15 14-25, 16 1-24).

On cross-examination Ms. Nielsen explained that although she does not work every day, she does talk to the girls many times by telephone and reminds them that "nothing is to happen." "Once in a while I'll go in there and make sure everything is okay myself." (T. 18 4-10). Ms. Nielsen explained how showers were to be used by the girls. She acknowledged that the use of table showers was not taught at her school. (T. 20 21-25, 21, 22 23, 24 1-2). VIP Therapy maintains no patient records. (T. 25 1-18).

FINDINGS OF FACT

The Board makes the following Findings of Fact:

1. That Chong Nielsen is a certified as a massage therapist in Maryland.
2. That Ms. Nielsen is the owner/manager of VIP therapy.

3. That illicit sexual activity takes place at VIP Therapy, including table showers and hand releases.
4. That the girls working at VIP Therapy equally split their \$100.00 fee with Ms. Nielsen
5. That Ms. Nielsen acknowledged she was not taught table showers in school..
6. That no patient records are kept at Ms. Nielsen's establishment.

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 illicit sexual activities that take place in places like VIP Therapy. The legislature did not contemplate table showers or hand releases as being within the scope of practice of massage therapy.⁴

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 the profession have been breached. Md. code Ann., State Gov't § 10-213(i). The Board views the activities taking place at VIP Therapy as being outside the scope of the practice of massage therapy. These include providing table showers, improper draping and providing hand releases. In addition, Ms. Nielsen seems to be unaware of the record keeping requirements as outlined in the Code of Maryland Regulations.⁵

⁴ H.O. § 3-5a-01(g) "Massage Therapy means the use of manual techniques on soft tissues of the human body including effleurage (stroking), petrissage (kneading), tapotement (tapping), stretching, compression, vibration, friction, with or without the aid of heat limited to hot packs and heating pads, cold water, or nonlegend topical applications, for the purpose on improving circulation, enhancing muscle relaxation, relieving muscular pain, reducing stress, or promoting health and well-being."

⁵ COMAR 10.43.18.04(4)

Ms. Nielsen is unwilling to accept responsibility for what went on in her establishment. She would have the Board believe that she was not aware of the things "her girls" were doing in the massage rooms. The evidence before the Board belies this.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Opinion, the Board concludes, as a matter of law, that Ms. Turley violated H.O. § 3-5A-09(a)(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.

ORDER

Based on the foregoing Findings of Fact, Opinion and Conclusions of Law, it is, this 26th day of Aug., 2002, 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's massage therapy certification is hereby **SUSPENDED** for a period six months; and be it further

ORDERED that the Respondent must immediately return to the Board both the wall and wallet size certificates numbered M01745; and be it further

ORDERED that at the conclusion of the suspension period, the Respondent must apply, in writing, for reinstatement; and be it further

ORDERED that upon reinstatement, the Respondent must serve a period of six months of probation; and be it further

ORDERED that prior to reinstatement the Respondent must request in writing and take and pass a jurisprudence examination administered by the Board; and be it further

ORDERED that the Respondent, prior to taking the jurisprudence examination, must pay for the cost of an interpreter, approved by the Board, should she require one; and be it further

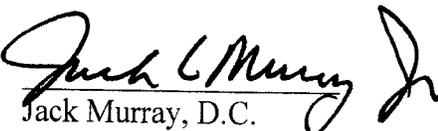
ORDERED that the Respondent shall reimburse the Board its hearing costs; and be it further

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

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

AUG 26 2002

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.