

IN THE MATTER OF

HYE SOOK YUN

APPLICANT

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BEFORE THE

STATE BOARD OF

CHIROPRACTIC EXAMINERS

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FINAL ORDER OF DENIAL OF MASSAGE THERAPY CERTIFICATE

BACKGROUND

By application dated August 14, 2001, which was received by the Board of Chiropractic Examiners (the "Board") on August 23, 2001, Hye Sook Yun (the "Applicant") applied for certification as a massage therapist in Maryland under the "grandfather" provision of the Maryland Massage Therapists Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") § 3-5A-01 et seq. (2000 Repl. Vol.).¹ The Applicant listed Mia Park as a reference.

Along with the application, the Applicant submitted a statement indicating that she had worked with Ms. Park from March 1997 to February 1999 at "2415 Ennalls Avenue, (sic) Maryland." Ms. Park also submitted a statement in which she "certif[ied]" that the Applicant had worked for her at the above address in Wheaton, Maryland from March 1997 to February 1999. On August 27, 2001, the Board notified the Applicant that she had failed to submit the requisite verification of paid massage therapy sessions.

Subsequently, the Applicant submitted a statement, received by the Board on September 17, 2001, that she had been a practicing massage therapist since March 1997,

¹ Under that provision, which was in effect until December 31, 2001, an applicant had to, *inter alia*, graduate from an approved school, provide verification of 300 hours of paid massage sessions over a two year period from 1994 to 1999, including dates of treatment, types of treatment, names of clients and total costs of treatment, and take and pass the Board examination for massage therapy.

was employed by Classic Spa in Wheaton, Maryland, and had performed in excess of 700 paid massages, consisting of one hour sessions at which she was paid \$60 per session. The Board also received on that same date a similar statement from Mia Park, the owner of Classic Spa in Wheaton.

Because the Board had charged Ms. Park with violating the Act by owning and operating a massage establishment where table showers were given to male customers while they were nude and completely undraped, during which the "therapists" touched the customers' genitals, and where "therapists" provided "hand releases" to male customers during the course of a massage, the Board, on October 1, 2001, notified the Applicant that it could not accept Ms. Park as a personal reference or as a work reference. The Applicant was advised to submit another personal/work reference², along with a copy of client records to document that she performed the 300 hours of paid massage between October 1994 and October 1999.

On or about October 6, 2001, the Board received from the applicant another list of references, wherein Chong Nielsen's name was substituted for Mia Park's. By a statement dated October 4, 2001, Ms. Nielsen indicated that she was the owner of VIP Spa, that from March 1997 to February 1999, the Applicant performed in excess of 700 hours of paid massages while employed by Ms. Nielsen as a massage therapist, and that each session was a one hour session for which the Applicant was paid \$60 per session.

² In addition to using her certificate to own and operate an establishment where illegal activities took place, Ms. Park was charged with obtaining a certificate by fraud, in that she answered that she had no criminal record, but, in fact, had a substantial one in New York for prostitution-related offenses. On July 11, 2002, the Board revoked Ms. Park's massage therapy certificate.

Because the information supplied by Ms. Nielsen covered the exact same time period that the Applicant stated that she worked at Classic Therapy for Ms. Park, and which Ms. Park had reiterated that information, the Board began an investigation into the Applicant's application. In addition, the Board was coincidentally investigating VIP Spa and Ms. Nielsen for illegal activities carried on there.³ By letter dated January 25, 2002, the Board notified the Applicant that having Ms. Nielsen submit a statement that the Applicant had worked for her for two years providing over 300 hours of paid massage was insufficient documentation that the Applicant had actually done so. In addition, the Board advised the Applicant that, because Ms. Nielsen was also under investigation, she would not be an acceptable personal or professional reference. The Board ordered the Applicant to cease and desist from practicing massage therapy immediately.

By letter dated March 20, 2002, the Board advised the Applicant that she did not qualify for certification because she failed to submit acceptable verification for 300 hours of paid massage sessions between October 1994 and October 1999 and did not take and pass the National Certification Board Massage Bodywork examination. The Applicant was again advised that she could not practice massage therapy in Maryland. The Board informed the Applicant that it was "closing" her application and that if she chose to re-apply, she would have to submit another application including the application fee. In response, Vincent Guida, the Applicant's attorney, wrote the Board indicating that he represented the Applicant and that the Board could not "close" an application, but had to grant it or deny it.

³ Subsequently, as a result of those illegal activities, on August 26, 2002, the Board suspended Ms. Nielsen's certificate for six months.

On July 23, 2002, the Board informed Mr. Guida that the details of the Applicant's application would be discussed at the Board's August 8, 2002, meeting and a formal notification granting or denying the application would follow.

Subsequently, during the course of the Board's investigation, the Board subpoenaed Ms. Nielsen, asking her to bring with her documentation of the Applicant's 300 hours of paid massage therapy sessions. Ms. Nielsen informed the Board that the Applicant had only worked at VIP Spa for approximately 80 hours and that Ms. Nielsen did not have any employment records because the Applicant was an independent contractor.

On _____, 2003, the Board sent the Applicant Notice of Initial Denial, informing her that unless she requested a hearing in writing within 30 days, the Board would sign the final Order. More than 30 days have passed and the Applicant failed to request a hearing in writing. Therefore the Board issues this Final Order.

FINDINGS OF FACT

1. By application dated August 14, 2001, which was received by the Board on August 23, 2001, the Applicant applied for certification as a massage therapist in Maryland under the "grandfather" provision of the Act.

2. The Applicant listed Mia Park as a reference. Along with the application, the Applicant submitted a statement indicating that she had worked with Ms. Park from March 1997 to February 1999 at "2415 Ennalls Avenue, (sic) Maryland." Ms. Park also submitted a statement in which she "certif[i]ed" that the Applicant had worked for her at the above address in Wheaton, Maryland from the March 1997 to February 1999. On August 27,

2001, the Board notified the Applicant that she had failed to submit the requisite verification of paid massage therapy sessions.

3. Subsequently, the Applicant submitted a statement, received by the Board on September 17, 2001, that she had been a practicing massage therapist since March 1997, was employed by Classic Spa in Wheaton, Maryland, and had performed in excess of 700 paid massages, consisting of one hour sessions at which she was paid \$60 per session.

4. The Board also received on that same date a similar statement from Mia Park, the owner of Classic Spa in Wheaton. Because the Board had charged Ms. Park with violating the Act by owning and operating a massage establishment where table showers were given to male customers while they were nude and completely undraped, during which the "therapists" touched the customers' genitals, and where "therapists" provided "hand releases" to male customers during the course of a massage, the Board, on October 1, 2001, notified the Applicant that it could not accept Ms. Park as a personal reference or as a work reference. The Applicant was advised to submit another personal/work reference, along with a copy of client records to document that she performed the 300 hours of paid massage between October 1994 and October 1999.

5. On or about October 6, 2001, the Board received from the applicant another list of references, wherein Chong Nielsen's name was substituted for Mia Park's. By a statement dated October 4, 2001, Ms. Nielsen indicated that she was the owner of VIP Spa, that from March 1997 to February 1999, the Applicant performed in excess of 700 hours of paid massages while employed by Ms. Nielsen as a massage therapist, and that each session was a one hour session for which the Applicant was paid \$60 per session.

6. Because the information supplied by Ms. Nielsen covered the exact same time period that the Applicant stated that she worked at Classic Therapy for Ms. Park, and which Ms. Park had reiterated that information, the Board began an investigation into the Applicant's application. In addition, the Board was coincidentally investigating VIP Spa and Ms. Nielsen for illegal activities carried on there. By letter dated January 25, 2002, the Board notified the Applicant that having Ms. Nielsen submit a statement that the Applicant had worked for her for two years providing over 300 hours of paid massage was insufficient documentation that the Applicant had actually done so. In addition, the Board advised the Applicant that, because Ms. Nielsen was also under investigation, she would not be an acceptable personal or professional reference. The Board ordered the Applicant to cease and desist from practicing massage therapy immediately.

7. By letter dated March 20, 2002, the Board advised the Applicant that she did not qualify for certification because she failed to submit acceptable verification for 300 hours of paid massage sessions between October 1994 and October 1999 and did not take and pass the National Certification Board Massage Bodywork examination. The Applicant was again advised that she could not practice massage therapy in Maryland. The Board informed the Applicant that it was "closing" her application and that if she chose to re-apply, she would have to submit another application including the application fee. In response, Vincent Guida, the Applicant's attorney, wrote the Board indicating that he represented the Applicant and that the Board could not "close" an application, but had to grant it or deny it. On July 23, 2002, the Board informed Mr. Guida that the details of the

Applicant's application would be discussed at the Board's August 8, 2002, meeting and a formal notification granting or denying the application would follow.

8. Subsequently, during the course of the Board's investigation, the Board subpoenaed Ms. Nielsen, asking her to bring with her documentation of the Applicant's 700 hours of paid massage therapy sessions. Ms. Nielsen informed the Board that the Applicant had only worked at VIP Spa for approximately 80 hours and that Ms. Nielsen did not have any employment records because the Applicant was an independent contractor.

9. As set forth above, the Applicant lacks the good moral character to qualify for certification as a massage therapist in Maryland.

10. As set forth above, the Applicant violated the Act and regulations thereunder.

11. As set forth above, the Applicant failed to meet the requirements for certification in that the Applicant failed to document 300 hours of paid massage therapy sessions between October 1994 and October 1999.

CONCLUSIONS

Based on the foregoing Findings of Fact, the Board concludes as a matter of law, that, engaging in the aforesaid activities, violated the Maryland Massage Therapy Act of the following provisions:

§ 3-5A-09 Denials; suspensions; revocations. (a) Subject to the hearing provisions of § 3-315⁴ 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:

- (1) Fraudulently or deceptively obtains or attempts to obtain a certificate or registration for the applicant or for another;
- (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 [;].

The Board further denies the Applicant a 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 denies the Applicant a 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 denies the Applicant a massage therapy application for violating

⁴ § 3-5A-09 (b) If, after a hearing under § 3-315 of this title, the Board finds that there are grounds under subsection (a) of this section to suspend or revoke a certificate to practice massage therapy or registration to practice non-therapeutic massage, to reprimand a certificate holder or registration holder, or place a certificate holder or registration holder on probation, the Board may impose a penalty not exceeding \$5,000 in lieu of or in addition to suspending or revoking the certificate or registration, reprimanding the certificate holder or registration holder, or placing the certificate holder or registration holder on probation.

§ 3-5A-09:

(d) *Waiver- In General.*- (1) Subject to the provisions of paragraph (2) of this subsection, the Board may waive any other he qualifications required for a certificate under this subtitle for an applicant who:

- (i) Pays the application fee set by the Board;
- (ii) Provides evidence acceptable to the Board that the applicant has practiced massage therapy for at least a total of 2 years after October 1, 1994 and before October 1, 1999 and had performed at least 300 paid massage therapy sessions; and
 - a. 1. Completes a Board approved program in the study of massage therapy; or
 - i. Passes an examination approved by the Board

(2) The authority of the Board to grant a waiver under this subsection shall terminate on January 1, 2002.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this day of _____, 2003, hereby **ORDERED** that the application for massage therapy certification for Hye Sook Yun is hereby **DENIED**.

It is further **ORDERED** that this Final Order shall be a public document, pursuant to Md. State Govt. Code Ann. § 10-617(h) (2000 Repl. Vol.).

NOTICE OF RIGHT OF APPEAL

In accordance with Md. Health Occ. Code Ann. § 3-316 (2000 Repl. Vol.) and the Administrative Procedure Act, Md. State Govt. Code Ann. § 10-201, *et seq.*, (2000 Repl. Vol.) you have a right to a direct judicial appeal of this decision. A petition for appeal of the

Final Board Order shall be filed within thirty days from your receipt of this Final Order and shall be made in accordance with the forecited authority.

Date

Brian Ashton, D.C., President
Board of Chiropractic Examiners