

IN THE MATTER OF

*

BEFORE THE

DI ZHANG, C.M.T.

*

MARYLAND STATE BOARD OF

RESPONDENT

*

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 12, 2004 the Board voted to charge Ms. Di Zhang, Respondent, for violations of certain provisions of the Md. Health Occ. Code Ann. § 3-5A-01, *et. seq.*, (“the Massage Therapists Act”) after having received information from both the Anne Arundel County Police Department and the Baltimore County Police Department that she had been charged with prostitution and that she was the manager of a massage parlor. Additionally, Ms. Di Zhang was charged for failure to disclose details of her initial arrest on her application to be licensed as a Certified Massage Therapist (“CMT”).

On or about April 5, 2004, the Board charged Ms. Zhang with violations of certain provisions of the Massage Therapy Practice Act, (the “Act”), H.O. § 3-5A-01, *et seq.* Ms. Zhang was served with these charges on or about April 8, 2004. Specifically, the Board charged the Respondent with violation of the following provisions of § 3-5A-09:

(a) Subject to the hearing provisions of § 3-315¹ of this title, the Board may deny a certificate or registration to any applicant, reprimand any certificate holder or registration holder, place any certificate holder or registration holder 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;
- (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;
- (11) Has violated any provision of this subtitle;
- (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 also charged the Respondent with violation of the following provisions of § 3-5A-05 (2000 Repl. Vol. and 2003 Supp.):

(a) Persons permitted to practice massage therapy.

- (1) Except as otherwise provided in this subtitle, an individual shall be:
 - (i) Certified by the Board before the individual may practice massage therapy in this State; or
 - (ii) Registered by the Board before the individual may practice non-therapeutic massage in this State.

The Board further charges that the Respondent violated the following provision of its Act, Code Md. Regs. tit. 10, § 43.17 (August 18, 2003):

¹ (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.

.03 Certification or Registration Required; Exceptions.

An individual shall be certified by the Board in order to practice massage therapy, and shall be registered by the Board in order to practice non-therapeutic massage

The Board also charged that the Respondent violated the following provision of its Act, Code Md. Regs. tit. 10, § 43.17 (August 18, 2003):

.04 Application for Certification or Registration.

A. An applicant for certification to practice massage therapy shall:

(4) Provide evidence that the applicant is:

(a) Of good moral character [, and].

The Board further charges the Respondent with violating the following subsections of its Code of Ethics, Code Md. Regs. tit. 10, § 43.18 (October 16, 2000):

.03 Standards of Practice.

A. The certificate holder or registration holder shall be concerned primarily with the welfare of the client.

and

.05 Professional Boundaries, thereof:

A. A certificate holder or registration 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.

B. A certificate holder or registration holder may not:

(1) Exploit a relationship with a client for the certificate holder's or registration 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.

A hearing on the merits was held on September 12, 2004. Present were the following Board members, which constituted a quorum: Dr. Brian Ashton, President of the Board, who presided at the hearing; Dr. Marc Gammerman; Dr. Margaret Renzetti; Dr. Duane Sadula; Dr. Kay O'Hara; and Mary Anne Frizzera-Hucek. Also present were Eric Wilson, Massage Therapy Advisory Committee ("MTAC") Member; Roberta Gill, Assistant Attorney General/Administrative Prosecutor; Richard Bloom, Board Counsel; Gary Maslan, Respondent's Counsel, Di Zhang, Respondent; and James J. Vallone, Board Executive Director.

EXHIBITS

The following exhibits were introduced at the hearing:

STATE'S EXHIBITS

- | | |
|-------|---|
| No. 1 | Application, dated 1/10/03 – 2/10/03 |
| 2 | Computer Printout of Info |
| 3B | Criminal Event History (1/16/03 incident) |
| 4A | A.A. County Vice Investigative Report |
| 4B | A.A. County Event History Report (9/25/03 incident) |
| 4C | A.A. County Event History Report (12/16/03 incident) |
| 6C | Summons |
| 7A | Maslan Postponement Request |
| 7B | State's Response |

BOARD'S EXHIBITS

No. 6B

Charges

SYNOPSIS OF CASE

The prosecutor advised that her case will focus on Ms. Zhang's errors on her application and her arrests for prostitution and massage violations. (T. 12 9-20).

Mr. Maslan advised that all of the criminal charges against Ms. Zhang were dropped. (T. 5 9-25, 6 1-10). Mr. Maslan will be offering testimony and argument in support of mitigation.

Ms. Gill's first witness was Mr. James Vallone. Mr. Vallone advised that Ms. Zhang's application was received by the Board on February 12, 2003. (T. 20 14-16). Ms. Zhang dated her signature January 10, 2003. (T. 19 14-15). The application was notarized on February 10, 2003. (T. 20 5 – 7). On Ms. Zhang's application for Certification/Registration, she checked the box marked "no", in response to the question: "Have you ever been arrested, pled guilty, no contest, nolo contendere or been convicted of a crime, received probation before judgment (other than a minor traffic violation)?" (T. 18 1 – 14). In fact, Ms. Zhang had been arrested on January 16, 2003. (T. 36 12-14).

Ms. Gill called detective Douglas Patrick of the Baltimore County Police Department's Sex Crimes Unit. Detective Patrick testified that on January 16, 2003, he went to Jade Heart Health Center and requested a massage. (T. 31 7 – 21). At this point Mr. Maslan objected to the hearsay nature of various aspects of the testimony of the State's witnesses and to the admissibility of various documents. His objections were

overruled. Mr. Patrick was greeted by Ms. Zhang at the door of Jade Heart Health Center ("Jade"). (T. 31 7 – 21). She arranged for Detective Patrick to get a massage from a woman named "Coco". (T. 32 4-5). Mr. Patrick was led to a back room at a Jade and given a massage. (T. 33 6-7). Then, the Baltimore County Sex Crimes Unit raided Jade Heart Health Center and executed a search warrant. (T. 33 8-10, 33 13-21, 36 8-12). It was discovered that "CoCo" was not licensed to practice massage therapy in Maryland. (T. 34 3-6). Coco's real name is Pei Yu Lu. (T. 32 4-8). Later that day, Ms. Zhang and Ms. Yu were arrested and charged with massage violations. (T. 36 10-12).

Next, Ms. Gill called detective Gary White of the Anne Arundel County Police formerly of the Vice and Narcotics Unit. In September, 2003, Mr. White investigated an advertisement for TCM Health and Wellness Center ("TCM"), located at 305 Crain Highway, in Glen Burnie, Maryland. (T. 49 2-7, 52 14-15). Again, Mr. Maslan objected to the hearsay nature of various aspects of the testimony of the State's witnesses and to the admissibility of various documents. His objections were overruled. In the course of surveillance during September, 2003, men were observed entering and exiting TCM at half hour intervals. Another detective went to TCM and received a massaged. During this massage, the woman began to massage the detective's genitals and masturbate him. (T. 52 4-12). The detective got up and left before his full service massage was completed.

Detective White testified that the BGE service for TCM Health and Wellness Center was registered to Ms. Zhang. (T. 50 17-20). Ms. Zhang's car was regularly parked in front of TCM. (T. 50 20-21). The address on Ms. Zhang's registration with the Maryland MVA was the same as Jade Health Heart Center. (T. 52 14-19).

Detective White testified that a sting operation was conducted at a hotel in Glen Burnie. According to Detective White, Detective LeCompte called Jade and requested an hour long full-service massage at his hotel room. (T. 53 1-7). Ms. Zhang showed up at the hotel room to give the detective a full service massage.² Detective LeCompte solicited her for sex, and she agreed. (T. 53 4-7). On September 25, 2003, Ms. Zhang was arrested and charged with prostitution. (T. 54 1-2).

Detective White testified that surveillance continued at TCM through December 2003. (T. 54 6-7). In December, Detective White went undercover to TCM to get a massage. During the course of this massage, a woman identified as, "Michelle", licked his ear and massaged his genitals. (T. 55 4-12). After this encounter, Detective White obtained a search warrant for the premises of TCM.

On the day the warrant was executed, Detective LeCompte went to TCM and requested a massage. Detective LeCompte was greeted at the door by Ms. Zhang and charged \$50.00 for a half hour massage. (T. 55 17 – 21). Mr. Maslan noted his continuing objection to this hearsay testimony. Mr. Maslan's objections were overruled by the board. (T. 56 8 – 13). Ms. Zhang led Detective LeCompte to a room where he was given a massage by a Ms. Bin Lin Lin. (T. 56 17 – 21, 57 1 – 3). While Detective LeCompte was receiving his massage, he gave Detective White a signal through the wireless microphone he was wearing, to execute the search warrant. *Id.* Ms. Zhang and two other women working at TCM at the time of the raid were arrested and charged with prostitution. (T. 57 9 -10). The two other employees present at TCM at the time of the raid, were not licensed with MTAC. As a result, they were charged with massage violations, in addition to prostitution. (T. 57 11-17).

² A full service massage is slang or code for a massage that includes sexual servicing.

Ms. Gill called Detective Aulton of the Anne Arundel County Police

Department's Vice and Narcotics Unit. Detective Aulton testified that Ms. Zhang's September arrest led to these charges being placed on the Stet docket. (T. 69 1-4). The witness testified that Ms. Zhang's December arrest was N.P. or Nolle Prosequi by the State's Attorney's office. (T. 69 8 – 15).

Ms. Gill's last witness was Mr. Paul Murphy, Investigator for MTAC. Mr. Murphy testified that he advised the Baltimore County Police Department that Ms. Zhang was not licensed by MTAC at the time of her arrest on January 16, 2003. (T. 72 4 -5). Mr. Murphy testified that he advised both the Baltimore County Police Department and the Anne Arundel County Police Department of the licensing status of all the women arrested in their raids and stings covered in testimony at the hearing. (T. 72 8 – 21, 73 1 – 12). Mr. Maslan's continuing objection to hearsay testimony was once again overruled.

Mr. Murphy testified that on December 9, 2003, he went to Jade. Mr. Murphy requested a massage and asked for Ms. Zhang. (T. 74 1-4). There were two unlicensed massage therapists at Jade that day. Ms. Zhang was advised by Mr. Murphy that all employees needed to be licensed by MTAC. (T. 75 8-10).

Mr. Maslan called Ms. Zhang to testify. Ms. Zhang admitted that she had failed to correct her application for certification to reflect the fact that she had been arrested. (T. 95 15-16). She termed it an "oversight". *Id.*

Ms. Zhang refuted Detective White's version of the events of November 9, 2003. She stated that she to the hotel and gave Detective LeCompte a massage for an hour. (T. 97 13). Ms. Zhang admitted that she did not bring her massage table with her to the

hotel. She planned to perform the massage on the bed. (T. 122 9-15). She denies agreeing to have sex with LeCompte for money. (T. 98 14-21).

Ms. Zhang admitted that she lived at the same address as Jade Heart Health Center. (T. 107 20-21, 108 1-4). Ms. Zhang denies that she manages Jade and TCM and insists that she is merely the receptionist at Jade. (T. 107 15). Ms. Zhang stated that she believed the unlicensed women at Jade and TCM were entitled to a grace period to practice in Maryland for a period of time before they were licensed. (T. 110 8-14). Additionally, she contradicts Mr. Murphy's statements that two unlicensed women were working as Massage Therapists at Jade on December 9, 2003. Ms. Zhang states that they were not working (and could not work), because they did not speak English. (T. 112 12-14).

FINDINGS OF FACT

The Board makes the following Findings of Fact:

1. That Di Zhang is a certified as a massage therapist in Maryland.
2. That Ms. Zhang knowingly submitted her application for certification as a Massage Therapist with false information.
3. That Ms. Zhang was the manager of Jade Heart Health Spa and TCM Health and Wellness Center, massage parlors where illicit sexual activity was taking place.
4. That an unlicensed employee, Ms. Yu, and Ms. Zhang were arrested and charged with prostitution and massage violations for acts taking place at Jade Heart Health Spa on January 16, 2003.

5. On September 25, 2003, the Respondent, was arrested and charged with prostitution for soliciting illicit sexual acts under the guise of massage therapy through the Jade Heart Health Spa.
6. That an unlicensed employee Ms. Lin, and Ms. Zhang were arrested and charged with prostitution for acts taking place at Jade Heart Health Spa on December 16, 2003.

OPINION

The results in the criminal matter are not dispositive in the administrative proceeding. This is essentially so because of the differing elements and standards of proof. *One Lot Emerald Cut Stones and One Ring v. United States*, 409 U.S. 232 (1972).

Md. Code Ann., State Gov't, § 10-213(c) provides for the admission of hearsay evidence in administrative hearings. The Court in *Cade v. Charles H. Hickey School*, 80 Md. App. 721 (1989) noted that in an administrative hearing hearsay evidence that is credible and probative is admissible. The Board views the testimony offered by the State's witness as having met this standard.

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 Jade Heart Health Spa and TCM Health and Wellness Center. The legislature did not contemplate massage therapists providing massage of genitals for sexual pleasure and sex for hire. 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).

Ms. Zhang's admission that she committed an oversight when she submitted an application signed under oath, with false information (T. 95 15-16) is in and of itself sufficient for the board to conclude that she violated the Massage Therapy Practice Act for which there must be consequences. The arrests on January 16, 2003, September 25, 2003 and December 16, 2003 were not isolated incidents. Ms. Zhang was a willing participant in all of the illicit sexual activities taking place at Jade Heart Health Spa and TCM Health and Wellness Center over a period of time. She was the manager, she took money in exchange for sex, and she used her massage therapy certification to lend legitimacy to prostitution.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Opinion, the Board concludes, as a matter of law, that Ms. Zhang violated H.O. § 3-5A-09(a) (1) Fraudulently or deceptively obtains or attempts to obtain a certificate or registration for the applicant or for another; (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; (11) Has violated any provision of this subtitle; (20) Engages in conduct that violates the professional code of ethics; and (21) Knowingly does an act that has been determined by the Board to be a violation of the Board's regulations.

ORDER

Based on the foregoing Findings of Fact, Opinion and Conclusions of Law, it is, this 18 day of Nov, 2004, by the Maryland State Board of Chiropractic Examiners hereby

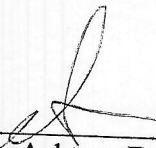
ORDERED that, pursuant to the authority vested in the Board of Chiropractic Examiners by Md. Code Ann., Health Occ. Article, § 3-5A-09, the Respondent's massage therapy certification is hereby **REVOKED**; and be it further

ORDERED that Respondent must immediately return to the Board both the wall and wallet size certificate numbered **M02665**; and be it further

ORDERED that the Respondent, 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).

18 Nov 04'
Date



Brian Ashton, 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.