

LOUISIANA BOARD OF MASSAGE THERAPY

IN THE MATTER OF THE LICENSURE APPLICATION OF LA MASSAGE SPA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Special Counsel for the Louisiana Board of Massage Therapy (“LBMT”) presents the following Findings of Fact and Conclusions of Law for the LBMT’s consideration relative to the application of licensure of LA Massage Spa (“LA Massage”) which took place on June 12, 2023.

I. APPEARANCES

The following Board Members of the LBMT were present at the administrative hearing: Kathryn Lea Love, Donna M. Green, Karla Swacker, Rosemary H. Wilkinson, Memry Hodum, and Amie Dudzinski.

Also present were James Raines, special counsel for the LBMT, and Sheri Morris, general counsel to the LBMT.

II. JURISDICTION

Jurisdiction for this ruling is vested in the LBMT pursuant to La. R.S. 49:977.3, La. R.S. 37:3555, and LAC 46:XLIV §1701 and §5501.

III. FINDINGS OF FACT

1. On or about April 17, 2023, Yong Li submitted a Louisiana Application for Establishment License as owner of LA Massage.
2. Upon receipt of LA Massage’s application, the LBMT began its review of the application, which included searching websites where businesses offering illicit services and/or illegal prostitution regularly advertise.
3. The LBMT searches these websites to compare the names, addresses, and phone numbers included in applications submitted for licensure.

4. The phone number provided in LA Massage's application – (504) 533-9186 – was used in advertisements for illicit services on "BackPageGirls," "MyEscortNetwork," "AdultGirlsMap," "SkiptheGames," and "BodyRubMassage."
5. The advertisements included scantily-clad Asian women described as "Sexy Beautiful Girls."
6. Services offered included "We Provide 100% VIP Services" and "Know how to pamper you and make you feel like heaven."
7. By email correspondence and certified mail dated May 11, 2023, Huang was notified that the LBMT intended to deny the application for LA Massage ("Notice of Intent to Deny Application").
8. The Notice of Intent to Deny Application was sent to Li via email at liyong7138@gmail.com
9. The Notice of Intent to Deny Application was sent to Li by certified mail to 506 Terry Parkway, Suite B1, Terrytown, Louisiana 70056. The Notice of Intent to Deny Application has not yet been delivered by mail.
10. The Notice of Intent to Deny Application notified Li of LA Massage's entitlement to a hearing to address the decision of the LBMT and requested that LA Massage, within ten (10) days, notify the LBMT of whether it wanted a formal hearing regarding the denial of the license.
11. The Notice of Intent to Deny Application advised that if LA Massage did not request a formal hearing, the denial of the licensure would be confirmed by the LBMT and would become final at the LBMT's meeting on June 12, 2023.
12. On May 16, 2023, Yong Li sent an email to Aubry Leiva, and stated as follows: "I read the denial letter thoroughly and understand board's decision. Even though I did not personally posted any of the advertisements; I can see the problems will raise from them. I will close or sell the establishment. Hopefully, the next owner will run it better."
13. LA Massage did not request a formal hearing within ten days of delivery of the Notice of Intent to Deny Application. Additionally, as of June 12, 2023, LA Massage did not request a formal hearing.
14. At the LBMT meeting on June 12, 2023, Mr. Raines presented the facts and evidence to the LBMT regarding the application of LA Massage.

IV. CONCLUSIONS OF LAW

1. La. R.S. 57:3558. Massage establishments.

A. Massage establishments shall be required to be licensed as follows:

(1) Each person engaging in the practice of massage therapy at a massage establishment shall be the holder of a Licensed Massage Therapist Identification Card (LMT-ID Card), which shall identify the therapist as being properly licensed and shall authorize the therapist to provide off-site massage services.

(2) All locations where one or more persons are regularly engaged in the practice of massage therapy shall register with the board as a massage establishment. Additionally, all locations where more than one person is regularly engaged in the practice of massage therapy shall pay the establishment license fee.

(3) Obtaining a massage establishment license shall be the responsibility of the entity which controls the physical location where the services are provided, which entity may be a sole proprietor, lessee, owner, partnership, corporation, cooperative, association, or other legal entity.

B. A massage establishment shall employ or contract only licensed massage therapists to perform massage therapy.

C. For purposes of this Chapter, "sexually oriented business" means a sex parlor, massage parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult motel, or other commercial enterprise which has as its primary business the offering of a service or the sale, rent, or exhibit of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.

D. A sexually oriented business shall be ineligible for registration as a massage establishment and shall not operate as a massage establishment.

2. La. R.S. 57:3563. Grounds for discipline.

A. The board may suspend, revoke, or refuse to issue or renew a license after notice and opportunity for hearing pursuant to the Administrative Procedure Act, upon proof of any of the following:

(6) Violating or aiding and abetting in the violation of any provisions of this Chapter or the rules and regulations promulgated hereunder.

3. La. R.S. 57:3564. Regulation of advertising.

A. A person or an entity that does not hold a license as a massage therapist, physical therapist, or chiropractor, a certificate to practice athletic training, or a license as a massage establishment shall not use the words "massage", "body work", or any derivative or variation of the word "massage", including specific bodywork or massage modalities, on any sign or other form of advertising. Any

advertisement by a massage therapist or a massage establishment shall contain the license number of such therapist or establishment. Building signs with promotional material shall also include the professional or establishment number.

- B. No sexually oriented business, as defined in R.S. 37:3558(C), shall use the word "massage", "body work", or any derivative or variation of the word "massage", including specific bodywork or massage modalities, on any sign or other form of advertising.
- C. In all pictorial representations for any advertisement representing massage therapy, including such representations through video, all persons representing massage therapists shall be attired and posed in a manner as to avoid appealing to the prurient interest. Persons representing clients shall be appropriately draped and posed.

4. LAC 46:XLIV §3101. Prohibition of Sexual Activity.

- A. All sexual activity by any person or persons in any massage establishment is absolutely prohibited.
- B. No massage establishment owner or operator shall engage in, or permit any person or persons to engage in, sexual activity in a massage establishment or to use that establishment to make arrangements to engage in sexual activity in any other place.
- C. No massage therapist shall engage in sexual activity with a current client of the therapist.
- D. No massage therapist shall engage in sexual activity with a former client of the therapist within three months after cessation of professional services.
- E. As used in this Rule and §5301 of this Part:
 - a. sexual activity—includes:
 - i. coital sexual intercourse;
 - ii. anal sexual intercourse;
 - iii. fellatio, cunnilingus;
 - iv. masturbation;
 - v. passionate kissing and acts of sadomasochistic abuse;
 - vi. flagellation; or
 - vii. torture in the context of sexual conduct;
 - b. the purposeful touching of the genitals of another person and the purposeful erotic stimulation of the anus, the male or female nipple, or

the female breast, whether through draping or clothing, whether resulting in penetration or orgasm or not, and whether by instrumental manipulation, touching with the hands, or other bodily contact;

- c. any sexual offenses proscribed by the criminal laws of Louisiana including, but not limited to, R.S. 14:83.3 and 83.4.

F. For purposes of this rule, the term client means and includes any person receiving massage therapy services provided for compensation (regardless of the source, recipient or nature of the compensation), and any person receiving massage therapy services that are not provided for compensation either because of indigence or because the massage therapy services were provided within the context of a community outreach or other public service program. A massage therapist's own spouse is excluded from the term client under this rule.

5. LAC 46:XLIV §5301. Unprofessional Conduct

- A. The following acts shall constitute misconduct in the practice of massage therapy or incorrect practice of massage for which disciplinary penalties may be imposed:

- 4. engaging in or attempting or offering to engage a client in sexual activity, including any genital contact, as provided under §3101 of this Part;

V. BOARD ORDER

After the presentation of evidence at the hearing on June 12, 2023, upon motion, the LBMT affirmed, by a majority vote of those present at the hearing, the following Order:

IT IS ORDERED, ADJUDGED AND DECREED that pursuant to the evidence presented, LA Massage Spa's Louisiana Application for Establishment License is DENIED.

Date: _____

6/23/2023

Kathryn Lea Love
Board Chair

Kathryn Lea Love, Chair