

NOV 10 2003

**IN THE MATTER OF
HYUN SOON YANG**

* **BEFORE THE**

**MARYLAND STATE BOARD OF
CHIROPRACTIC EXAMINERS**

* **MARYLAND STATE**

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 or about May 22, 2003, the Board charged Hyun Yang ("Respondent") with violations of certain provisions of the Massage Therapy Practice Act, (the "Act"), H.O. § 3-5A-01, *et seq.* Specifically, the Respondent 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;
 - (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 further charged the Respondent with violations of its Code of Ethics, Code of Md. Regs. Tit. 10§ 43.18. Specifically:
.05 Professional Boundaries

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 October 9, 2003. Present were the following Board members, which constituted a quorum: Dr. Marc Gamerman who presided at the hearing, Dr. Paula Lawrence, Ivy Harris and Dr. Jack Murray. Also present were Roberta Gill, Assistant Attorney General/Administrative Prosecutor, James J. Vallone, Executive Director, Gwen Wheatley, Deputy Director, Maria Ware, Board Administrative Specialist and Richard Bloom, Assistant Attorney General/Board Counsel. The Respondent did not appear for the hearing.

EXHIBITS

The following exhibits were introduced at the hearing:

STATE'S EXHIBITS

No. 1	Computer Printout
2A	Letter of Procedure-5/22/03
2B	Charges
2C	Summons
2D	Return Receipt, dated 5/24/03
3	Crime Report
4	Murphy Investigative Report
5	District Court Criminal System Inquiry Event History Display

SYNOPSIS OF CASE

Paul Murphy, Board investigator, testified he was advised by Detective Smith of the Baltimore County Vice Enforcement Unit that the Respondent, a licensed massage therapist, was arrested on 1/21/03 while employed at Baco therapy and charged with prostitution for which she was later found guilty. Detective Smith was conducting an undercover operation at Baco Therapy. Detective Smith paid the naked Respondent \$20.00 for a hand release and another \$100.00 for fellatio. (T 6,7,8, 9 1-11).

According to the Baltimore County Crime Report, upon his arrival at Baco Therapy, Detective Smith paid \$50.00 for a massage to the woman who greeted him at the door. She led him to a room where he was met by the Respondent. Upon being asked, the Respondent indicated her fees for the aforementioned sexual services, which Detective Smith placed on a table. The Respondent in turn removed all of her clothing.
(E 3).

FINDINGS OF FACT

The Board makes the following Findings of Fact:

1. That Hyun Soon is a certified massage therapist in Maryland.
2. That on January 21, 2003, Ms. Soon took money in exchange for sexual acts.
3. That on January 21, 2003, Ms. Soon was arrested and charged with prostitution, for which she was later found guilty.

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 Baco Therapy. The legislature did not contemplate massage therapists providing hand releases and fellatio as being within the scope of practice of massage therapy.¹ 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), demands that the

Based upon Ms. Yang's illicit sexual conduct under the guise of massage therapy and the conviction for prostitution, a crime involving moral turpitude, there are sufficient bases for the Board to conclude that she violated the sections of the Act and Regulations outlined above.

¹ 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

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Opinion, the Board concludes, as a matter of law, that Hyun Yang violated H.O. § 3-5A-09(a)(2), (8), (20) and (21).

ORDER

Based on the foregoing Findings of Fact, Opinion and Conclusions of Law, it is, this 12th day of Nov, 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'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 M00018; and be it further

ORDERED that the Respondent, within thirty (30) days reimburse the Board its hearing costs of \$300.00; and be it further

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

NOV 12 2003

Date



E. Brian Ashton, D.C.
Board President

onlegend topical applications, for the purpose of improving circulation, enhancing muscle relaxation, relieving muscular pain, reducing stress, or promoting health and well-being.”

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.