

IN THE MATTER OF

* BEFORE THE

KYONG CHUNG

* 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 March 14, 2002 the Board voted to summarily suspend the Massage Therapy Certificate of Kyong Chung, Respondent, after having received information from the Montgomery County Police Department that she had been charged with prostitution and that she was the manager of a massage parlor.

Ms. Chung 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. On April 11, 2002 Ms. Chung appeared with Counsel at a Show Cause hearing, at which time the Board voted to continue the Summary Suspension.

On or about March 19, 2002, the Board charged Ms. Chung with violations of certain provisions of the Massage Therapy Practice Act, (the "Act"), H.O. § 3-5A-01, *et seq.* Specifically, Ms. Chung 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, Respondent's Counsel, Respondent, Kyong Chung, and James J. Vallone, Board Executive Director.

EXHIBITS

The following exhibits were introduced at the hearing:

STATE'S EXHIBITS

No. 1A	Letter of Summary Suspension
1B	Summary Suspension Order
2A	Letter of Procedure
2B	Charges
2C	Summons
2D	Return Receipt
3	Order For Continuation of Summary Suspension
4	Computer Printout
5A	Letter from Stack to Murphy
5B	Letter from Stack to Murphy
5C	Letter from Stack to Murphy
6	Murphy's Investigative Report
7	Montgomery County Police Report

SYNOPSIS OF CASE

Mr. Helfand advised that criminal charges against Ms. Chung were dropped when it was agreed that Mi Sun Therapy would be closed down. (T. 5 9-25, 6 1-10).

Mr. Helfand will be offering testimony and argument in support of mitigation. (T 6 11-25, 7 1-17, 31 9-21, 34 15-25, 35 1-23).

Ms. Gill called detective Thomas Stack of the Montgomery County Police Department's Vice and Intelligence Section. Detective Stack testified that on November 9, 2001, while conducting surveillance at Mi Sun Therapy, he interviewed a black male, Mr. Nichols, who he had observed exiting the establishment. At this point Mr. Helfand 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.

Ms. Gill moved forward with Detective Stack's testimony. Mr. Nichols told Detective Stack that upon paying \$60.00 to a girl in the establishment he undressed and she gave him a table shower which included washing his genitals¹ followed by massage and a hand release.²

Detective Stack continued that immediately following the interview, he entered the establishment where he found three women. He described the gentleman and asked which of them had just given him a massage. The woman identifying herself as Kyong Kim acknowledged that it was she and she also identified herself as being a certified massage therapist. Another of the women was the Respondent, Ms. Chung, whom he knew from Ultima Therapy where she had previously worked. Detective Stack obtained an arrest warrant charging Ms. Kim with prostitution.

¹ The term "table shower" is used as a euphemism for illegal sexual activities, which includes the washing of the genitals.

On November 27, 2001 Detective Stack again conducted surveillance at Mi Sun Therapy. He interviewed a Mr. D'Costa as he exited the establishment who told him that he paid \$80.00 to one of the girls, Chungmei Miller, who gave him a table shower while he was naked and later, while on the massage table she exposed her breasts and gave him a hand release. Ms Miller told the Detective that she had an application for massage therapy certification pending with the Board.³ Ms. Miller was arrested and charged with prostitution.

On April 3, 2002 Detective Stack, along with another detective, conducted an inspection of Mi Sun Therapy. On this occasion, the other detective, posing as a customer, knocked on the door, which was answered by the aforementioned Ms. Miller. The Detectives entered a room where they found a naked customer lying on his back with the Respondent, Ms. Chung, leaning over his midsection wiping his genital area. The male customer told the Detectives that he paid \$60.00 and received a naked table shower from Ms. Chung and that later she gave him a hand release. Ms. Chung told the Detectives that she gives a "hand job" (see footnote 2) as part of the massage so that the customers will return in the future. (T 18 11-24).

FINDINGS OF FACT

The Board makes the following Findings of Fact:

1. That Kyong Chung is a certified as a massage therapist in Maryland.
2. That Ms. Chung was the manager of Mi Sun Therapy, a massage parlor where illicit sexual activity was taking place.

² A hand release is the manual stimulation of the penis.

³ Code of Maryland Regulations (COMAR) 10.43.17.03C provides an applicant with the ability to practice for up to 90 days while waiting to take the required examination or while waiting for the results of an examination.

3. That an employee Ms. Kim, a certified massage therapist, was arrested and charged with prostitution for acts taking place at Mi Sun Therapy on November 9, 2001.
4. That on November 27, 2001, at Mi Sun Therapy, Ms. Miller, whose application for massage therapy certification pending with the Board, was arrested and charged with prostitution.
5. On April 3, 2002, the Respondent, was arrested and charged with prostitution for performing illicit sexual acts at Mi Sun Therapy.

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 Mi Sun Therapy. The legislature did not contemplate massage therapists providing table showers and hand releases as being within the scope of practice of massage therapy.⁴ Further, the Board may use its "experience, technical competence,

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,

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. Chung’s admission that she gave the customer and “hand job” (T 18 11-24) 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 events of April 3, 2002, were not isolated. Ms. Chung was a willing participant in all of the illicit sexual activities taking place at Mi Sun therapy 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. Chung 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 her practice of massage therapy.

ORDER

Based on the foregoing Findings of Fact, Opinion and Conclusions of Law, it is, this 28th 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 **REVOKED**; and be it further

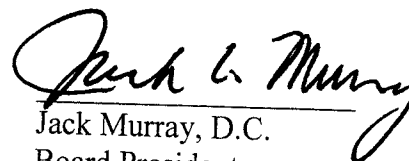
vibration, friction, with or without the aid of heat limited to hot packs and heating pads, cold water, or nonlegend topical applications, for the purpose of improving circulation, enhancing muscle relaxation,

ORDERED that Respondent must immediately return to the Board both the wall and wallet size certificate numbered M01598; 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).

8/28/02
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, 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.

relieving muscular pain, reducing stress, or promoting health and well-being.”