

**IN THE MATTER OF**

\*

**BEFORE THE**

**HOI K. JUNG**

\*

**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 or about July 10, 2003 the Board charged Hoi Jung, Respondent, a certified massage therapist, with violations of certain provisions of the Massage Therapy Practice Act, (the "Act"), H.O. § 3-5A-01, *et seq.* Specifically, she 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 violation of its Code of Ethics, Code of Maryland Regulations (COMAR) 10.43.18.05 as follows:

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.

These charges stemmed from the Respondent's arrest on March 3, 2003 while employed as a massage therapist at Classic Therapy located in Montgomery County. At that time she was charged with two counts of prostitution.

Subsequently, on or about September 17, 2003, the administrative charges were amended to include like charges resulting from similar conduct which took place on April 24, 2003 at Classic Therapy when she was again arrested and charged with prostitution.

A hearing, before the Board, was held on the merits on February 12, 2004.

Present were the following Board members, which constituted a quorum: Dr. Brian Ashton, Board President, who presided at the hearing; Dr. Marc Gamerman; Ivy Harris; Issie Jenkins; Dr. Paula Lawrence and Dr. Jack Murray, Jr. Also present were Roberta Gill, Assistant Attorney General/Administrative Prosecutor; Paul Ballard, Assistant Attorney General/Board Counsel and William Littleton, Jr. Respondent's Counsel. The hearing commenced without the Respondent who failed to appear.

### **EXHIBITS**

The following State's Exhibits were stipulated to and admitted into evidence:

#### **STATE'S EXHIBITS**

No. 1	Computer Printout
2	Murphy's Investigative Report
3A	Statement of Rhoads
B	Statement of Kanarek
C	Statement of Martin
4A	Event Report for 3/3 Arrest
B	Criminal History Display
5A	Event Report for 4/3 Arrest
B	Criminal History Display
6	Charging Documents
7	Amended and Supplemental Charges

### **SYNOPSIS OF CASE**

The State's exhibits detail incidence of the Respondent's illegal sexual activity performed in the course of purported massage therapy sessions. Sexual services included nude table showers, hand releases, touching customers' genitals and allowing customers to touch her breasts. (State's Exhibits 1-7).

## FINDINGS OF FACT

The Board makes the following Findings of Fact:

1. That Hoi Jung is certified as a massage therapist in Maryland.
2. That on March 3, 2003 and again on April 24, 2003 Ms. Jung was arrested and charged with prostitution in the course of massage therapy sessions.
3. That Ms. Jung provided sexual services to customers.

## OPINION

An impetus for the enactment of the Massage Therapy Practice Act, 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 Classic Therapy. The legislature did not contemplate nude massage therapists providing table showers or touching customers' genitals as being within the scope of practice of massage therapy.<sup>1</sup> 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).

## CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Opinion, the Board concludes, as a matter of law, that Hoi Jung 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; (20) engages in conduct that violates the professional code of ethics; (21) Knowingly does an act that has

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<sup>1</sup> 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

been determined by the Board to be a violation of the Board's regulations. The Board further concludes, as a matter of law, that Ms. Jung violated its Code of Ethics, COMAR 10.43.18.05 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 or certificate holder's or registration holder's personal advantage, including, but not limited to, 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.

### **ORDER**

Based on the foregoing Findings of Fact, Opinion and Conclusions of Law, it is, this 25 day of MARCH, 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, Ms. Jung's ability to practice massage therapy in Maryland is hereby **REVOKED**; and be it further

**ORDERED** that Ms. Jung immediately return to the Board both the wall and wallet size certificate numbered M01784; and be it further

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

