

IN THE MATTER OF

KYONG KIM

RESPONDENT

*

BEFORE THE

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MARYLAND STATE BOARD OF

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CHIROPRACTIC EXAMINERS

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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 14, 2002 the Board voted to summarily suspend the Massage Therapy Certificate of Kyong Kim, Respondent, after having received information from the Montgomery County Police Department that she had been charged with prostitution for which she was later arrested. The matter did not come to trial as the State entered a nolle prosequi.¹

Ms. Kim 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 March 4, 2002 Ms. Kim 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, and later amended on or about May 5, 2002, the Board charged Ms. Kim with violations of certain provisions of the Massage Therapy Practice Act, (the "Act"), H.O. § 3-5A-01, *et seq.* Specifically, Ms. Kim was charged with violations of the following provisions of § 3-5A-09 of the Act:

¹ An entry on the record that the prosecutor will not prosecute the case further.

(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;
- (11) Has violated any provisions of this subtitle;;
- (20) Engages in conduct that violates the professional code of ethics [;].

The Board further charged Ms. Kim with violating its Code of Ethics, Code of Maryland Regulations (CO MAR) 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.

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, William Littleton, Respondent's Counsel, Respondent, Kyong Kim,² James J. Vallone, Board Executive Director and Gwendolyn Wheatley, Board Deputy 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
4A	Letter of Procedure
4B	Supplemental and Amended Charges
5	Computer Printout
6	Letter from Stack to Murphy
7	Murphy's Investigative Report
8	Montgomery County Police Report
9	Criminal Court Report

RESPONDENT'S EXHIBIT

1	District Court Trial Summary
2	District Court Arrest Warrant

² Unbeknownst to the Board, during the presentation of the State's case an imposter was in the room posing as Ms. Kim. This woman was wearing a nametag entitled "Kim." Upon the conclusion of the State's case, Mr. Littleton called Ms. Kim into the room.

3	District Court Statement of Charges
5	District Court Summons
6	District Court change of Trial Date
7	Cluster 2 Boards
8	Police Event Report
10	Stack Letter
11	Post Office Receipt

SYNOPSIS OF CASE

Mr. Littleton generally objected to the hearsay nature of various aspects of the testimony of the State's witnesses and to the admissibility of various documents. In addition, he argued that this is a case of mistaken identity and that the Board should take note that the criminal case against Ms. Kim was "thrown out". (T. 77-78).

Mr. Littleton was reprimanded by the Board, and he apologized to the Board, for having an imposter pose behind him as the respondent wearing a false identity tag with the respondent's name printed on it. Mr. Littleton had ordered the respondent to sit in an adjacent room. (T. 51, 52, 59, 60). Through this ruse, Mr. Littleton hoped to impress the Board that the respondent, Ms. Kim could easily have been misidentified by the authorities.

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 who he had observed exiting the establishment.³ This man told the witness that upon paying \$60.00 to a girl in the establishment he undressed and she gave him a table shower which included washing his genitals⁴ followed by massage and a hand release.⁵

³ Identified as Mr. Nichols

⁴ The term "table shower" is used as a euphemism for illegal sexual activities, which includes the washing of the genitals.

Detective Stack continued that immediately following the interview, he entered the establishment where he found three women. He described Mr. Nichols and asked which of them had just given him a massage. The woman identifying herself as Ms. Kim acknowledged that it was she. She produced a massage therapy certificate issued in the name of Kyong Kim. (T. 25-26). Detective Stack applied for an arrest warrant, which was issued. One week later he returned to Mi Sun Therapy with the intention of arresting Ms. Kim, but found that she no longer worked there. In the course of cross-examination Detective Stack acknowledged that he would not be able to, with any degree of certainty, identify Ms. Kim.

On direct examination Mr. Littleton asked Ms. Kim whether she was working at "that" massage parlor on November 9th. She said she "don't work there." (T. 53 25; 26 1-3). On cross-examination she was asked by Ms. Gill, whether she had ever worked at Mi Sun Therapy. She replied that she had worked there for two weeks, November 15 to November 30 and she quit. (T. 54 8-20). She testified that while working at Mi Sun Therapy she only did massage and that there were no table showers there. (T. 55 1-6). She stated that she had never met Detective Stack. (T. 55 10-17).

In response to Dr. Murray, Ms. Kim stated that she worked at Mi Sun Therapy for two weeks from October 15 to October 30th and that she did not work there in November. (T. 61 1-23). She could not explain why someone, other than herself, had her massage therapy certificate in their possession on November 9th since she had taken it with her on the last day that she had worked there. (T. 62 1-25; 63 1-2). Further she stated that she did not give the certificate to anyone. (T. 64 18-23).

⁵ A hand release is the manual stimulation of the penis.

FINDINGS OF FACT

The Board makes the following Findings of Fact:

1. That Kyong Kim is a certified as a massage therapist in Maryland.
2. That on November 9, 2001, Ms. Kim was working at Mi Sun Therapy.
3. That Ms. Kim identified herself to Detective Stack as the person who provided a table shower to Mr. Nichols, which included her washing his genitals and as the individual who gave him a hand release.

OPINION

The results in the criminal matter are not dispositive in the administrative proceeding.⁶ 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 as being within the scope of practice of massage therapy.⁷ Further, the Board may use its "experience, technical competence, and

⁶ The State did not go forward with the case against Ms. Kim because no one appeared on behalf of the State. (T. 11-23).

⁷ 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,

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. Kim’s testimony is contradictory. On the one hand she asserts that she was not at Mi Sun Therapy on November 9, 2001, that she worked there from October 15, 2001 to October 30, 2001. On the other hand she states that she worked there from November 15, 2001 to November 30, 2001. She asserts that she took her certificate with her on her last day there, October 30, 2001, and that she did not loan the certificate to anyone else. Yet she can not explain how her certificate came to be in the hands of some unknown person on November 9, 2001 at Mi Sun Therapy where it was presented to Detective Stack. The Board finds her testimony not to be credible.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Opinion, the Board concludes, as a matter of law, that Ms. Kim 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; (11) has violated any provisions of this subtitle; (20) engages in conduct that violates the professional code of ethics; The Board further concludes, as a matter of law, that Ms. Kim violated its Code of Ethics, Code of Maryland Regulations (COMAR) 10.43.18.05 A. 1. 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

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,

(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 26th 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 **SUSPENDED** for a period of six months; and be it further

ORDERED that at the conclusion of the suspension period, the Respondent must apply for reinstatement in writing; and be it further

ORDERED that upon, reinstatement, the Respondent must serve a period of six months of probation; and be it further

ORDERED that Respondent must immediately return to the Board both the wall and wallet size certificate numbered M01614; and be it further

ORDERED that prior to reinstatement the Respondent must apply for in writing and take and pass a written jurisprudence examination administered by the Board; and be it further

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


ORDERED that the Respondent must arrange for and pay for the cost of an interpreter, approved by the Board, prior to the taking the jurisprudence examination, should one be required; and be it further

ORDERED that the Respondent, no later than the expiration of the period of suspension, reimburse the Board its hearing costs; and be it further

ORDERED that during the probationary period, should the Board receive a report that the Respondent's practice is a threat to the public health, welfare or safety, the Board may take immediate action against the Respondent, including suspension or revocation, providing that an opportunity to be heard is provided to the Respondent in a reasonable time thereafter. Should the Board receive, in good faith, information that the Respondent has substantially violated the Act or if the respondent violates any conditions of this Order or of Probation, after providing the Respondent with notice and an opportunity for a hearing, the Board may take further disciplinary action against the Respondent, including suspension or revocation. The burden of proof for any action brought against the Respondent as a result of a breach of conditions of the Order or of Probation shall be on the Respondent to demonstrate compliance with the Order or conditions, and be it further

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

 AUG 26 2002
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, 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.