

**IN THE MATTER OF** \* **BEFORE THE MARYLAND**  
**MYONG FITZGERALD, R.M.P.** \* **STATE BOARD OF**  
**Respondent** \* **MESSAGE THERAPY EXAMINERS**

**Registration Number: R00266** \* **Case Number: 14-74M**

\* \* \* \* \*

**FINAL ORDER**

On April 7, 2015, the Maryland State Board of Chiropractic and Massage Therapy Examiners (the "Board") charged **MYONG FITZGERALD, Registered Massage Practitioner ("R.M.P.")** (the "Respondent"), Registration Number R00266, under the Maryland Chiropractic Act (the "Act"), Md. Code Ann., Health Occ. I ("Health Occ. I") §§ 3-5A-01 *et seq.* (2014 Repl. Vol.)<sup>1</sup> and Md. Code Regs. ("COMAR") 10.43.01.18 *et seq.*

The Board charged the Respondent with violating the following provisions of the Act under Health Occ. I § 3-5A-10:

- (a) *Denial of license or registration.* -- Subject to the hearing provisions of § 3-315 of this title, the Board may . . . reprimand any . . . registration holder, place any . . . registration holder on probation, or suspend or revoke the . . . registration of a registration holder if the . . . registration holder:
  - (2) Fraudulently or deceptively uses a . . . 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; [and/or]

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<sup>1</sup> Health Occ. I §§ 3-5A-01 *et seq.* (2014 Repl. Vol.) has since been recodified. For the purpose of consistency with the charges and hearing, the old references are used in this order.

- (21) Knowingly does an act that has been determined by the Board to be a violation of the Board's regulations[.]

In addition, the Board charges the Respondent with violating violated the following COMAR regulations:

**COMAR 10.43.18 MASSAGE THERAPY CODE OF ETHICS**

**.02 Definitions.**

**B. Terms Defined.**

- (2) "Non bona fide treatment" means when a certificate holder or registration holder treats or examines a client in a way that involves sexual contact, but there is no therapeutic reason for the procedure, or the procedure falls outside of reasonable massage therapy or non-therapeutic massage practices.

**.03 Standards of Practice.**

**C. A . . . registration holder shall:**

- (2) Engage in professional conduct at all times, with honesty, integrity, self-respect, and fairness;
- (3) Remain free from conflict of interest while fulfilling the objectives and maintaining the integrity of the massage therapy profession;
- (6) Practice massage therapy or non-therapeutic massage only as defined in the scope of practice set out in Health Occupations Article, § 3-5A-01, Annotated Code of Maryland; [and]
- (7) Cooperate with a lawful investigation conducted by the Board of Chiropractic Examiners, including:
  - (a) Furnishing information requested,
  - (b) Complying with a subpoena,
  - (c) Responding to a complaint at the request of the Board, and
  - (d) Providing meaningful and timely access to relevant client records.

**D. A . . . registration holder may not:**

- (2) Knowingly engage in or condone behavior that:
  - (a) Is fraudulent,
  - (b) Is dishonest,
  - (c) Is deceitful, or
  - (d) Involves moral turpitude.
- (6) Aid or abet any individual violating or attempting to violate any provision of law or regulation.

**.05 Professional Boundaries.**

- A. . . . registration holder shall:
  - (1) Maintain professional boundaries, even when the client, staff member, or student initiates crossing professional boundaries of the professional relationship[.]
- B. . . . registration holder may not:
  - (2) Engage in a sexually intimate act with a client; or
  - (3) Engage in sexual misconduct that includes, but is not limited to:
    - (b) Non bona fide treatment, or
    - (c) A sexually exploitative relationship.

**.08 Ethical, Legal, and Professional Responsibilities of Massage Therapist and Practitioners.**

A . . . registration holder may not construe a failure to specify a particular ethical, legal, or professional duty in this chapter as a denial of the existence of other ethical, legal, or professional duties or responsibilities that are equally as important and as generally recognized in the profession.

A multi-day hearing was held before a quorum of the Board of Chiropractic and Massage Therapy Examiners. On October 1, 2016, the Chiropractic Examiners and Massage Therapy Examiners were split into two separate boards. Accordingly, the matter was transferred to the

Board of Massage Therapy Examiners (the "Board") for a ruling. This order is issued by the Board after a full review of the record.

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### **SUMMARY OF THE EVIDENCE**

The cases for Ms. Myong Fitzgerald and Ms. Ok Cha Oh were combined. The same attorney represented both of the respondents. Ms. Oh and Ms. Fitzgerald both worked at the spa at issue during the time period at issue. The following exhibits were admitted into evidence during the hearing:

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

State's Exhibits 1-8 were admitted as a packet.

#### **RESPONDENT'S EXHIBITS**

##### **Day 1**

1 Sealed Exhibit

##### **Day 2**

Respondent's Exhibits 1 and 2 were admitted.

#### **State's Case and Argument**

Mr. Robert Gilbert, Assistant Attorney General, Administrative Prosecutor, made the following arguments on behalf of the State. This case came about through information provided by Detective Joshua Mouton, a Howard County vice detective. In June of 2014, Detective Mouton conducted a raid on the spa where Ms. Fitzgerald worked. Detective Mouton observed Ms. Fitzgerald putting on a dress. She was not dressed prior to his entry into the business. Detective Mouton interview an individual who was in the spa prior to his entry. The individual informed Dectective Mouton that Ms. Fitzgerald had performed a sex act on him immediately

prior to his entry into the spa.<sup>2</sup> Detective Mouton had observed advertisements for the spa at issue that mentioned that sex acts were available at the spa. Prior to the raid at issue, Detective Mouton had observed the spa on several occasions. He observed that it had a mostly male clientele.

The Board found Detective Mouton to be a quite credible witness. He maintained a calm demeanor throughout his testimony. His answers were direct and to the point.

This information caused the Board to conduct its own investigation through Board Investigator Christopher Bieling. Investigator Bieling issued a subpoena to compel Respondent to produce her massage therapy records. The records were not properly organized or maintained. Accordingly, the State alleges that Respondent provided or managed a business which provided non bona fide treatment, and thus that she fraudulently or deceptively used a license and engaged in conduct that violated the professional code of ethics. Further, the State alleged that Respondent failed to maintain massage therapy documentation and that she acted in a manner inconsistent with generally accepted professional standards. Based on these violations, the State recommends revocation of Respondent's license to practice massage therapy.

The State called Board Investigator Christopher Bieling as a witness, who testified to the following under oath. Investigator Bieling has worked with the Board since 2011, where he investigates all massage-related complaints. Previous to working for the Board, Investigator Bieling worked as a Baltimore City Policy Officer from 1979 to 2010, following by 16 to 18 months with the Lottery Commission. Investigator Bieling was assigned to investigate the

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<sup>2</sup> To ensure confidentiality, the names of all individuals, other than the Respondents and Complainant, will not be disclosed in this document.

Respondent's case. During the course of his investigation, Investigator Bieling confirmed that the Respondent was a licensed massage therapist with the Board.

The Board also found Investigator Bieling to be a credible witness. Investigator Bieling had trouble identifying Ms. Oh and Ms. Fitzgerald. He confused one for the other during his testimony. Most of his testimony did not hinge on his identification of either individual.

### **Respondent's Case and Argument**

Mr. Clark Ahlers, attorney for Ms. Fitzgerald and Ms. Oh, made the following arguments on behalf of the Respondents. Mr. Ahlers contended that the State had not met its burden. He argued that the police had destroyed the records during a raid. He also argued that there was no direct proof of any sex acts at the spa. There was no photographic evidence of sex or direct testimony from the individual who had allegedly paid Ms. Fitzgerald for a sex act that she then performed on him.

Ms. Oh and Ms. Fitzgerald both testified on their own behalf. Both Ms. Oh and Fitzgerald described the raid on the spa at issue. Both Ms. Oh and Ms. Fitzgerald denied advertising sex acts at the spa. Both denied performing sex acts at the spa. Both individuals were evasive with their answers. Neither could provide a good answer or accounting of the records for the spa. The Board did not find that either had a particularly credible demeanor.

### **Evaluation of the Evidence**

The Board found Detective Mouton's testimony and evidence submitted to be sufficient to prove the State's case. The Board found his testimony more credible than Ms. Fitzgerald and Ms. Oh.

## **FINDINGS OF FACT**

After review and deliberation of the entire record, the Board bases its order on the following facts that the Board has reason to believe are true:

### **I. Background/Licensing Information**

1. At all times relevant to these charges, the Respondent was and is registered as an RMP in the State of Maryland. The Respondent was initially registered as an RMP in Maryland on February 7, 2005, under registration number R00266. The Respondent's RMP registration is active through October 31, 2016.

2. At all times relevant to these charges, the Respondent worked at the Kyoto Spa (the "Spa"), located at 8950 Old Annapolis Road, Columbia, Maryland 21045.

### **II. The Complaint**

3. On or about June 18, 2014, Detective Mouton, a detective from the Howard County Police Department (the "Department") contacted the Board and reported the results of a vice investigation he had conducted involving the Spa.

4. In or around April 2014, Detective Mouton began surveillance of the Spa pursuant to his investigation. On several dates in April and May 2014, Detective Mouton observed adult males entering the Spa. Detective Mouton interviewed these men after they departed the Spa. Several of the men who were interviewed stated that they received sexual services at the Spa in return for money.

5. Detective Mouton also reviewed Internet sites that list places where prostitution/sexual services can be procured. One or more of these sites listed the Spa as a place where such services could be procured.

6. Detective Mouton reported that he and other members of the Department entered the Spa pursuant to a search and seizure warrant on June 16, 2014. The Spa's entrance consisted of two doors, which required anyone attempting to enter to ring the inner door in order to be granted entrance.

7. After entering the Spa, Detective Mouton went to the rear of the Spa and observed the Respondent run out of a room while attempting to put on a dress. Detective Mouton entered the room and observed an adult male (the "Client") who stood up and was attempting to put on a pair of shorts.

8. Detective Mouton interviewed the Client, who stated that he visited the Spa because he received information that he could obtain sexual services there. The Client further stated that he paid \$60.00 in cash to a woman at the front desk, and was led into a room where he undressed. The Client stated that the Respondent entered the room and started massaging his upper body, after which she asked him if he wanted any "special services." When the Client replied in the affirmative, the Respondent manually stimulated his genitals until he ejaculated, after which the Client paid the Respondent an additional \$100.00.

9. After obtaining this information, Detective Mouton brought the Respondent back into the room. The Client identified the Respondent as the woman who provided the sexual services to him.

10. Detective Mouton then interviewed the Respondent, who stated that she paid the Spa operator \$30.00 per day for food and \$30.00 per day to work there, and that she could keep her tips.

#### **CONCLUSIONS OF LAW**

Ms. Fitzgerald's actions, as set forth above, constitute, in whole or in part, a violation of one or more of the following provisions of the Act: Health Occ. I § 3-5A-11(a)(2), Fraudulently or deceptively uses a . . . registration; Health Occ. I § 3-5A-11(a)(8), Does an act that is inconsistent with generally accepted professional standards in the practice of massage therapy; Health Occ. I § 3-5A-11(a) (20), Engages in conduct that violates the professional code of ethics; and/or Health Occ. I § 3-5A-11(a)(21), Knowingly does an act that has been determined by the Board to be a violation of the Board's regulations.

Ms. Fitzgerald's actions, as set forth above, constitute, in whole or in part, a violation of one or more of the provisions of COMAR 10.43.18 *et seq.* The Board finds that Ms. Fitzgerald violated the following provisions of its regulations.

#### **COMAR 10.43.18 MASSAGE THERAPY CODE OF ETHICS**

##### **.02 Definitions.**

C. Terms Defined.

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(9) Cooperate with a lawful investigation conducted by the Board of Chiropractic Examiners, including:

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Ms. Fitzgerald used her license to massage as a means for prostitution. She did not maintain appropriate records. She did not maintain appropriate boundaries. She did perform a sex act for money under the guise of the practice of massage therapy. This conduct violates the Board's practice act and regulations as outline above.

**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 3<sup>rd</sup> day of July, 2018 by the majority of the Board, hereby:

**ORDERED** that the Respondent's registration to practice massage therapy in the State of Maryland, under registration number R0266, is hereby **REVOKED for five years**; and be it further

**ORDERED** that the Respondent shall pay a fine of \$1,000.00; and be it further

**ORDERED** that the Respondent must immediately return to the Board both the wall and wallet size certificate number R0266; and it is further

**ORDERED** that the foregoing document constitutes and Order of the Board and is therefore a **PUBLIC** document for purposes of public disclosure, as required by Md. Code Ann., Gen. Prov. §4-333 *et seq.* (2014 Repl. Vol.).



Laurie Sheffield-James  
Executive Director  
MD State Board of Chiropractic &  
Massage Therapy Examiners

#### **NOTICE OF THE RIGHT TO APPEAL**

Pursuant to Md. Code Ann., Health Occ. § 6-310, you have a right to take a direct judicial appeal. A petition for appeal shall be filed within thirty (30) days from mailing of this Final Decision 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 §§ 10-201 *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.