

IN THE MATTER OF
YING AI JIN, R.M.P.
Respondent

* BEFORE THE MARYLAND
* STATE BOARD OF
* CHIROPRACTIC AND
* MASSAGE THERAPY EXAMINERS
*
* Registration Number: R01371 * Case Number: 13-84M

* * * * *

FINAL ORDER OF REVOCATION OF MASSAGE THERAPY REGISTRATION

PROCEDURAL BACKGROUND

On or about March 18, 2014, the Maryland Board of Chiropractic and Massage Therapy Examiners (the "Board") notified Ying Ai Jin, R.M.P. (the "Respondent") that she was being charged with violation of certain provisions of the Maryland Chiropractic Act (the "Act"), Md. Code Ann., Health Occ. ("H.O.") §§3-301 *et seq.* (2009 Repl. Vol. and 2013 Supp.) and Code Md. Regs. ("COMAR") 10.43.01.18 *et seq.*

Specifically, the Board charged the Respondent with violating the following provisions of the Act under H.O. § 3-5A-10:

- (a) *Denial of a 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;
 - (19) Fails to cooperate with a lawful investigation conducted by the Board;
 - (20) Engages in conduct that violates the professional code of ethics;
- [and/or]

- (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 alleges that the Respondent violated the following Board of Ethics COMAR regulations:

COMAR 10.43.18. Massage Therapy Code of Ethics.

COMAR 10.43.18.02 Definitions.

B. Terms defined.

- (2) "Non bona fide treatment" means when a license 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.

COMAR 10.43.18.03 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... 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.

COMAR 10.43.18.04 Relationship with Client.

- A. A...registration holder shall:
 - (4) Maintain legible, organized written records of treatment of any client under the care of the license holder or registration holder for at least 5 years after termination of treatment and as provided by applicable provisions of Health-General Article, Title 4, Subtitle 3, Annotated Code of Maryland.

COMAR 10.43.18.05 Professional Boundaries.

- A. 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. A...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.

COMAR 10.43.18.06 Records, Confidentiality, and Informed Consent.

- A... registration holder shall:
 - C. Adequately safeguard confidential client information, including storage and disposal of records.

- G. Comply with applicable provisions of Health-General Article, Title 4, Subtitle 3, Annotated Code of Maryland.

COMAR 10.43.18.08 Ethical, Legal, and Professional Responsibilities of Massage Therapists 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.

On July 24, 2014 a hearing on the merits was held. Present were the following Board members, which constituted a quorum: Michael Fedorczyk, D.C., Board President; David Cox, L.M.T., Board Vice-President; Stephanie Chaney, D.C., Former Board President; Robert Frieman, D.C.; Gwenda Harrison, L.M.T.; Ernestine Jones Jolivet, Consumer Member; and Gloria Boddie-Epps, Consumer Member. Also present were the following individuals: Robert J. Gilbert, Esq., Assistant Attorney General, Administrative Prosecutor; Grant D. Gerber, Esq., Assistant Attorney General, Board Counsel; James J. Vallone, Executive Director; Michelle Verdis, Compliance Manager; Yin Ai Jin, R.M.P., Respondent; Clarke F. Ahlers, Esq., Respondent's Counsel; and David Park, Korean Interpreter. The Respondent was present and represented by counsel throughout the hearing, but declined to provide testimony.

SUMMARY OF THE EVIDENCE

The following exhibits were admitted into evidence during the hearing:

STATE'S EXHIBITS

No.	
1	Respondent's Licensing Profile
2	Report of Investigation

- 3 Subpoena Ad Testificandum
- 4 Transcribed Interview, 1/6/14
- 5 Subpoena Duces Tecum, 1/7/14
- 6 Letter from Mr. Vallone to Respondent,
dated 1/5/14
- 7 Incident Report, 12/4/13
- 8 Incident Report, 12/12/13
- 9 Letter from Mr. Mattingly to Mr. Bieling, 2/18/14
- 10 Charges

RESPONDENT'S EXHIBITS

- 1 Maryland Sales Tax Use License
- 2 Respondent's Massage Therapy License

Summary of Hearing

I. State's Case

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 or around December 2013, Detective Mouton had been investigating "Ten Oaks Spa" (the "Spa"), which was owned by the Respondent. The detective investigated the Spa because he had noted on various websites that there seemed to be illegitimate activities occurring there. The detective visited the Spa several times and determined that Ms. Jin was permitting unregistered individuals to provide massages at the Spa. During one of Detective Mouton's visits to the Spa, he observed a woman performing a massage on a totally nude male. Detective Mouton determined that this individual did not have a valid

Maryland registration to perform massage therapy. When Detective Mouton questioned the Respondent about the unregistered individual, the Respondent responded that the woman was her friend, yet indicated that she did not know her name. This information caused the Board to conduct its own investigation through Board Investigator Christopher Bieling. Investigator Bieling subpoenaed a series of massage therapy records from the Respondent for the Board's review. The Respondent freely admitted that she had destroyed all records that she had in her possession. Accordingly, the State alleges that through employing or otherwise permitting unregistered individuals to provide massages at the Spa, the Respondent used her registration fraudulently or deceptively and that she did an act that is inconsistent with generally accepted professional standards. Further, the State alleged that the Respondent failed to cooperate with a Board investigation when she refused to provide the subpoenaed massage therapy records and that she engaged in conduct that violated the professional code of ethics. Based on these violations, the State recommended revocation of the Respondent's massage therapy registration.

The State called Detective Joshua Mouton as its first witness. Detective Mouton testified to the following under oath. Detective Mouton is currently working for the Howard County Police Department in the vice and narcotics unit, and has worked for the Department for eight years. Previously, Detective Mouton was in the United States Air Force for ten years, five years of which he worked for the National Security Agency. When initially hired by the Howard County Police Department in January of 2007, Detective Mouton worked on patrol for two years in the North Laurel area, followed by a high crime officer position in that same area before being assigned to the vice and

narcotics unit. Detective Mouton testified to having been to numerous trainings for human trafficking, and has been declared as an expert in the fields of vice and/or human trafficking in the Circuit Court of Maryland. Detective Mouton testified that he began investigating the Ten Oaks Spa in December of 2013, at which time he determined that the Respondent was the owner of the establishment. Detective Mouton testified that he began investigating the Ten Oaks Spa after receiving numerous anonymous tips indicating that illicit activities may be occurring there. After receipt of these anonymous tips, Detective Mouton researched several websites that provide reviews on spas that provide sexual services, and found several reviews of the females that work at Ten Oaks Spa. Afterwards, Detective Mouton surveilled the location, during which he observed only males coming and going from the Spa. Detective Mouton testified that this observation was significant in that it is typical of a spa that performs prostitution activities, whereas a spa that does not offer sexual services has mostly female customers. After surveilling the location, Detective Mouton entered the Spa when let in by a female, to whom he indicated that he would like a massage. The female then opened a locked door and took him to the back area of the Spa. At that point, Detective Mouton identified himself as a police officer and asked the female if there was anyone else in the Spa. The female replied that there were two women in the back and pointed to a room. Detective Mouton walked into the room indicated and observed two women inside, who he asked for their identifying information. The women provided their passports and indicated that they were from Flushing, New York. Detective Mouton testified that this information was significant due to the fact that the women found at every Asian massage parlor he has investigated have indicated that they were from

Flushing, New York. Afterwards, Detective Mouton made a call to the Spa to make an appointment, but the female who answered the phone said that they were too busy and to call back the following day. The next day, the detective made an appointment at the Spa for 6:00pm. When he arrived at the Spa, he was let in by a female who had him sit in a waiting area. During that time, Detective Mouton noticed that another massage room had a customer in it. When the detective looked into the room, he saw a fully naked male lying on his stomach, with a female massaging his buttocks. Detective Mouton subsequently identified the female as Yulan Jin, and determined that she was not licensed or registered to practice massage therapy. Afterwards, the detective asked the female at the front desk to call her boss, the Respondent, who came to the location approximately an hour later. Detective Mouton asked the Respondent who the female was that was performing the massage on the nude male. The Respondent told the detective that she was a friend who was visiting, but was unable to provide the female's name to the detective. Detective Mouton then walked around the Spa, and observed a sleeping area, clothing, and a significant amount of food. The detective then told the female employees that the Spa would need to be shut down because of the lack of licensed or registered individuals.

The State called Board Investigator Christopher Bieling as a witness for the State, 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 Respondent's case on December

16, 2013. During the course of his investigation, Investigator Bieling confirmed that the Respondent was a registered massage practitioner with the Board as of April 11, 2011. Investigator Bieling testified that he began his investigation of the Respondent upon receiving information from Detective Josh Mouton of the Howard County Police Department regarding his investigation of Ten Oaks Spa. During the course of his investigation for the Board, Investigator Bieling interviewed the Respondent under oath on January 6, 2014, during which she was represented by previous counsel. During the January 6, 2014 interview, the Respondent indicated that she was the owner of the Ten Oaks Spa and that she had opened the business in October 2013. Investigator Bieling questioned the Respondent about the individual identified as Yulan Jin that was present at Ten Oaks Spa during Detective Mouton's visit, specifically whether she was related to her. The Respondent replied that she was not related to Yulan Jin, and that she was a friend. When Investigator Bieling asked why Yulan Jin was at the Respondent's spa, she responded that she was coming in for an interview. When Investigator Bieling relayed the information provided by Detective Mouton regarding Yulan Jin massaging a naked male's buttocks, the Respondent stated that she was not there at the time and therefore had no knowledge of the incident. Investigator Bieling asked the Respondent what she did at the Spa besides owning it, to which the Respondent replied that she performed massages with approximately two to three clients per day. When asked by Investigator Bieling if the Respondent had S.O.A.P. notes or other records for those massages performed, she indicated in the affirmative. After the interview, Investigator Bieling issued a subpoena to the Respondent on January 7, 2014 for various client records, which required compliance within five business days. Investigator Bieling

testified that the Respondent failed to supply the Board with the subpoenaed documents despite the five day time limit and an additional letter to the Respondent directing her to submit the requested documents. Investigator Bieling testified that the Board received a letter from the Respondent's previous counsel, which indicated that the Respondent had ceased operations at Ten Oaks Spa and did not retain the requested records.

II. Respondent's Case

Mr. Clarke Ahlers, Esq. made the following arguments on behalf of the Respondent. The Respondent is a Korean American who has worked as a massage therapist without any previous complaints. The Respondent opened her own spa during an inopportune time, when the County Executive for Howard County decided to run for governor and assigned vice detectives to be especially assertive and aggressive against Korean massage parlors. The Respondent opened her massage establishment in Dayton, Maryland, located in central Howard County. A police officer took a zealous interest and eventually the Respondent felt harassed by him and decided to close her massage establishment and open a nail salon at great expense. In her frustration of closing her massage parlor, the Respondent threw away certain records, including S.O.A.P. notes. The Respondent recognizes that she is required to keep them for five years, and admits that she did not do so. However, the Respondent felt provoked into this conduct, which is now being used against her as proof that she is unprofessional and ought to have her registration revoked. The Respondent cooperated with the Board to the best of her ability until she felt that she was not going to be listened to, which caused her to close the massage establishment. The Respondent admits to throwing away the S.O.A.P. notes but denies that she allowed or participated in any

unprofessional or unlawful conduct at the Spa. The Respondent's counsel pointed to the Board's ability to require supervision if the Board finds that the Respondent acted improperly. Further, the Respondent's counsel argued that revocation is unnecessary because she is no longer operating a massage parlor. Under advice of counsel, the Respondent opted not to testify during the hearing. The Respondent called no witnesses for testimony.

FINDINGS OF FACT

The Board makes the following Findings of Fact based on the foregoing record:

1. At all times relevant hereto, the Respondent was and is registered as a massage practitioner (RMP) in the State of Maryland. The Respondent was initially registered as an RMP in Maryland on April 11, 2011, under registration number R01371. The Respondent's RMP registration is active through October 31, 2014.
2. At all times relevant hereto, the Respondent owned and operated the Ten Oaks Spa (the "Spa"), located at 3800 Ten Oaks Road, Suite A, Glenelg, Maryland 21737.
3. On or about December 16, 2013, a detective from the Howard County Police Department (the "Complainant") contacted the Board and reported that he was conducting a vice investigation of the Spa.
4. The Complainant reported that during the month of November 2013, he received numerous anonymous complaints that the newly-opened Spa was only letting men into the establishment for massages. The Complainant stated that he reviewed advertising posted on various internet websites, such as Backpage.com, Rubmap.com and other known online destinations, for locating and reviewing illicit massage parlors. The

Complainant conducted surveillance of the Spa on numerous occasions and observed only men coming and going from the Spa.

5. The Complainant reported that he visited the Spa on December 4, 2013, and requested a massage. He was taken back to one of the eight massage rooms by an adult female ("Person A"), reportedly a Spa employee. The Complainant identified himself as a police officer to Person A and asked her if anyone else was in the Spa. Person A acknowledged that there were "other girls" present on the premises and pointed to another room in the Spa. The Complainant stated that he and Person A then went back to the room, which contained living quarters, including a bed and closet containing hanging clothes. The Complainant observed two adult females ("Persons B and C") in the room. The Complainant questioned all three women, who stated that they did not have massage practitioner licenses or registrations. Person A claimed that Persons B and C were visitors from Flushing, New York.

6. The Complainant observed that hanging on the wall of one room were two State of Maryland massage registrations, one for the Respondent and one for another individual ("Person D"). Person A stated that neither the Respondent nor Person D were on the premises at the time. The Complainant then made several unsuccessful attempts to contact the Respondent.

7. On or about December 11, 2014, the Complainant telephoned the Spa and requested an appointment for a massage. He was told by an unidentified female that the Spa was "too busy" and to come back tomorrow for an appointment. The unidentified female gave the Complainant a specific time to come in the next day.

8. On or about December 12, 2013, the Complainant entered the Spa at around 6:00 p.m. Person A unlocked the Spa's door, let him in and asked him to have a seat. The Complainant then walked back to the area of the room and asked Person A who was present on the premises. In response, Person A replied that one other woman was there.

9. The Complainant went to another room that had a closed curtain. The Complainant opened the curtain and observed an adult female ("Person E") massaging a totally nude male ("Person F") who at the time was lying in a prone position on the massage table. The Complainant instructed Person F to put on his clothes and asked Person A to see Person E's massage registration. Person A spoke to Person E in Korean and then informed the Complainant that Person E did not have a massage registration.

10. The Complainant derived further information from interviewing the occupants on the premises that, based on his professional training, knowledge and expertise in vice, led him to conclude that the occupants were involved in an illegitimate enterprise. The Complainant requested that Person A contact the Respondent, who arrived at the Spa after about one hour. The Respondent stated to the Complaint that Person E was her friend and was visiting but stated that she did not know Person E's name.

11. The Complainant also questioned the Respondent if she previously worked at Kyoto Spa, a facility the Complainant previously investigated for prostitution activities. The Respondent acknowledged working at Kyoto Spa.¹

¹ The Complainant recognized that Person D, the other individual whose massage registration was posted at the Spa, also formerly worked at Kyoto Spa.

12. Based on this complaint, the Board initiated an investigation of the Respondent under Board Case Number 13-08C.

13. Pursuant to this investigation, a Board investigator, on or about January 6, 2014, conducted an under oath interview of the Respondent in the presence of her attorney.

14. The Respondent stated, *inter alia*, that she owned the Spa and opened it in or about October 2013. She stated that the Spa was open from 10:00 a.m. to 11:00 p.m., seven days per week, and that she gives three-to-four massages per day. The Respondent stated that she hired another part-time worker, Person D, who gives massages at the Spa.

15. When questioned about Person E, the Respondent stated that she initially spoke to her on the telephone but did not verify whether she had a valid massage registration. The Respondent further stated that she did not have a financial arrangement with Person E and claimed not to know why she was giving a massage to Person F on December 12, 2013.

16. The Board investigator confirmed that Person E did not have a valid Maryland massage practitioner registration at the time she was observed giving a massage to Person F on or about December 12, 2013.

17. The Board issued a *subpoena duces tecum* (the "SDT") to have Respondent, dated January 7, 2014, in which it commanded her to provide intake forms, names and addresses of clients, and all S.O.A.P.² notes for all massages that occurred at the Spa in 2013. The SDT required the Respondent to comply with the SDT within five (5) working days of her receipt of it.

² An acronym standing for treatment notes that contain Subjective and Objective findings, an Assessment and a treatment Plan.

18. The Respondent received the SDT on or about January 13, 2014.
19. The Respondent did not comply with the SDT within the time period set forth in the SDT.
20. The Board subsequently sent a letter to the Respondent on or about February 5, 2014, in which it noted that she had not complied with the SDT and ordered her forthwith to comply with the SDT.
21. By letter to the Board dated February 28, 2014, the Respondent, through legal counsel, submitted an affidavit in which she averred that she "destroyed (sic) all documentation of the...[Spa]...and all film, recording information and S.O.A.P. materials on December 30, 2013."
22. To date, the Respondent has not complied with the SDT, dated January 7, 2014.
23. The Respondent'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: H.O. § 3-5A-10(a)(2), Fraudulently or deceptively uses...a registration; H.O. § 3-5A-10(a)(8), Does an act that is inconsistent with generally accepted professional standards in the practice of massage therapy; H.O. § 3-5a-10(a)(19), Fails to cooperate with a lawful investigation conducted by the Board; H.O. § 3-5A-10(a) (20), Engages in conduct that violates the professional code of ethics; and/or H.O. § 3-5A-10(a)(21), Knowingly does an act that has been determined by the Board to be a violation of the Board's regulations.
24. The Respondent'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.*

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board finds that the Respondent violated the following laws and regulations. The Board found Detective Mouton's testimony regarding his observation of a completely nude male being massaged on the buttocks to be credible and indicative that illicit activities were occurring at the Respondent's Spa. Further, it is indisputable that several of the Respondent's employees were not licensed or registered to practice massage in Maryland. As the owner of the Spa, the Respondent is responsible for the activities and services that occur there. Accordingly, the Board finds that the Respondent violated H.O. § 3-5A-10(a)(2) and (21) as well as COMAR 10.43.18.03D when she knowingly permitted unlicensed individuals to practice massage therapy in her Spa, some of whom appeared to have been providing illegitimate massages of an illicit nature. The Board also finds that the Respondent's admitted act of destroying all S.O.A.P. notes that she claims to have maintained for clients at her Spa is inconsistent with generally accepted professional standards in the practice of massage therapy, and a violation of H.O. § 3-5A-10(a)(8), COMAR 10.43.18.04, and COMAR 10.43.18.06. In addition, the Board finds that the Respondent's failure to submit the subpoenaed documents in a timely manner, whether or not having been destroyed, constitutes a failure to cooperate with a lawful Board investigation, in violation of H.O. § 3-5A-10(a)(19), (20) and (21), and COMAR 10.43.18.03. Based on these findings, and in accordance with its sanctioning guidelines under COMAR 10.43.16 *et seq.*, the Board issues the following Order.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 20th day of APRIL, 2015, 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 R01371, is hereby **REVOKED**; and be it further

ORDERED that the Respondent must immediately return to the Board both the wall and wallet size certificate number R01371; and it is further

ORDERED that the foregoing document constitutes an Order of the Board and is therefore a **PUBLIC** document for purposes of public disclosure, as required by Md. State Govt. Code Ann. §10-617(h) (2009 Repl. Vol.).



Richard Proctor, Interim Executive Director
For Michael Fedorczyk, DC
President
MD State Board of Chiropractic &
Massage Therapy Examiners

NOTICE OF THE RIGHT TO APPEAL

Pursuant to Maryland Health Occ. Code Ann. § 3-316, 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, Maryland State Gov't Code Ann. §§10-201 *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.