

IN THE MATTER OF	*	BEFORE THE
KYONG H. SMITH, C.M.T.	*	STATE BOARD OF
CERTIFICATE NUMBER: M01744	*	CHIROPRACTIC EXAMINERS
RESPONDENT	*	CASE NUMBER: 06-056M
* * * * *	*	* * * * *

**FINAL ORDER TO REVOKE RESPONDENT'S
MESSAGE THERAPIST CERTIFICATE**

Pursuant to Md. State Govt. Code Ann. § 10-201, *et seq.*, (2004 Repl. Vol. and 2006 Supp.) the Administrative Procedure Act (APA), and the Maryland Massage Therapists Act, codified at Md. Health Occ. Code Ann. § 3-5A-01, *et seq.*, ("the Act") (2005 Repl. Vol. and 2006 Supp.), the State Board of Chiropractic Examiners ("the Board") sent a Notice of Intent to Revoke Respondent's Massage Therapist Certificate for **KYONG H. SMITH**, ("Respondent"), certificate number M01744, on APRIL 5th, 2007.

The Notice instructed the Respondent to request a hearing in writing within thirty (30) days of the Notice. More than 30 days has passed and the Respondent has failed to request a hearing. Therefore, the State Board of Chiropractic Examiners hereby **REVOKES** the massage therapist certificate renewal of **KYONG H. SMITH**.

**FACTS THAT WARRANT REVOCATION OF THE RESPONDENT'S
MESSAGE THERAPIST CERTIFICATE
BACKGROUND**

1. At all times relevant hereto, the Applicant was certified to practice massage therapy in Maryland. The Applicant was first certified on December 29, 2001. The Applicant's certificate expired on October 31, 2006.

2. At all times relevant herein, the Respondent was employed at White Plains Therapy, in Charles County, Maryland.

3. On May 2, 2006, the Charles County Sheriff's Department, Vice/Narcotics Enforcement Section (the "Section"), received information from a confidential source stating that a new massage parlor opened and it was possibly an illegal prostitution operation, inasmuch as a female employee inside the establishment was dressed very scantily and provocatively. As a result, an investigation was started on White Plains.

4. On May 22, 2006, Officer Haven Smith, Jr., of the Section, made the following observations of the business: the entire front of the business had windows that were blocked; one had to enter an outer door and then ring a buzzer next to a locked inner door; and, there is an active surveillance system at the front and rear doors of this business.

5. The Section then sent in an undercover Section Officer to pose as a customer. The Officer entered the front door and rang the door bell on the second floor. He was let into the business by Duk Ye Coker, a non-certificate-holder, and led to a small room with a mattress on the floor where the Officer was told to take off all his clothes, after which Ms. Coker left the room.

6. Ms. Coker returned a few minutes later to ask the Officer if he wanted a half-hour massage or a full hour one, the latter of which would be \$70. The Officer paid Ms. Coker \$80, from bills from which the serial numbers had already been recorded prior to their use in the operation. Ms. Coker gave the Officer \$10 in return and left the room.

7. Thereafter, the Respondent led the Officer to a table shower room and removed his towel. She then gave the Officer a table shower, during which she touched his scrotum and penis several times. The Respondent then dried the Officer, touching his penis again. She then led the Officer back to the initial massage room he had been in and began a massage during which she again touched his penis several times.

8. The other Officers from the Section were then given a signal by the Officer and they knocked on the front door of the business, which knock was answered by Ms. Coker, at which time Officer Smith could see the Respondent exit the massage room and start walking towards the front door. Officer Smith took Ms. Coker to the office area, where the images from the surveillance cameras were displayed. Ms. Coker then handed him the business money pouch and he recovered the money from the undercover officer. Subsequently, both Ms. Coker and the Respondent were arrested and charged with prostitution.

9. On December 1, 2006, the Respondent pled guilty to the charge of prostitution and was given an unsupervised Probation Before Judgment (PBJ), was fined \$100, and, had to pay \$22.50 court cost \$35.00 Criminal Injury Court Fund (CICF). The Respondent was also placed on Probation until June 1, 2008.

10. As set forth above, the Applicant lacks the moral character to qualify for renewed licensure in Maryland and her license should be revoked.

11. As set forth above, the Applicant violated the Act and regulations thereunder, and her license should be revoked.

CONCLUSION OF LAW

The pertinent provisions of the APA state:

§ 10-226 (C)

(1) Except as provided in paragraph (2) of this subsection, a unit may not revoke or suspend a license unless the unit first gives the licensee:

- (i) written notice of the facts that warrant suspension revocation: and
- (ii) an opportunity to be heard.

Specifically, the Board revokes the Respondent's certificate to practice massage therapy based upon the following provisions of § 3-5A-09:

(a) Subject to the hearing provisions of § 3-315 of this title, the Board may deny a certificate or registration to any applicant, reprimand any certificate holder or registration holder, place any certificate holder or registration holder on probation, or suspend or revoke the certificate of a certificate holder or the registration of a registration holder if the applicant, certificate holder, or registration holder:

- (2) Fraudulently or deceptively uses a certificate or registration;
- (3) Is disciplined by a licensing, certifying, or disciplinary authority of any other state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under this section;
- (4) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;
- (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 also bases its revocation of the Respondent's massage therapist certificate for violation of § 3-5A-05. Requirements for certification and registration.

(b) To qualify for a certificate, an applicant shall be an individual who:

(1) Is of good moral character[;].

The Board further revokes the Respondent's massage therapist certificate for violation of its Code of Ethics, Code Md. Regs. tit. 10, 43.18:

.03 Standards of Practice.

D. A certificate holder or registration holder may not:

(2) Knowingly engage in or condone behavior that:

(d) Involves moral turpitude[;].

.05 Professional Boundaries.

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.

.08 Ethical, Legal, and Professional Responsibilities.

A certificate holder or 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.

ORDER

Based on the foregoing Facts that Warrant Revocation of the Respondent's Massage Therapist Certificate and Conclusion of Law, by a majority vote of a quorum of the Board present, it is hereby

ORDERED on this 15th day of MAY 2007, that the Respondent's certificate to practice massage therapy in the State of Maryland be and is hereby **REVOKED**; and be it further

ORDERED that this is a final Order of the Maryland Board, and as such is a public document pursuant to the Maryland Public Information Act, codified at Md. State Govt. Code Ann. § 10-611, et seq.

MAY 15 2007

Date



Marc M. Gamerman, D.C., President
Board of Chiropractic Examiners

NOTICE OF RIGHT TO APPEAL

Pursuant to H.O. § 3-316, you have a right to take a direct judicial appeal. A Petition for Judicial Review must be filed within thirty days of your receipt of this executed Order, and shall be made as provided for judicial review of a final decision in the APA, codified at State Govt. Code Ann. § 10-201, et seq.