

**IN THE MATTER OF
MICHELLE M. WEEMS, L.M.T.**

Respondent

Registration Number: M1604

*** BEFORE THE MARYLAND
* STATE BOARD OF
* CHIROPRACTIC AND
* MASSAGE THERAPY EXAMINERS
* Case Number: 14-68M**

* * * * *

FINAL ORDER OF REVOCATION OF MASSAGE THERAPY LICENSE

PROCEDURAL BACKGROUND

On or about November 12, 2015, the Maryland Board of Chiropractic and Massage Therapy Examiners (the "Board") notified Michelle M. Weems, L.M.T. (the "Respondent") that she was being charged with violation of certain provisions of the Maryland Chiropractic Act (the "Act"), Md. Code Ann., Health Occupations I ("Health Occ. I") §§ 3-5A-01 *et seq.* (2014 Repl. Vol.);¹ and Code Md. Regs. ("COMAR") 10.43.18 *et seq.*² and/or 10.43.21 *et seq.*³ (2015).

Specifically, the Board charged the Respondent with violating the following provisions of the Act under Health Occ. I § 3-5A-10⁴:

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

¹ Health Occ. I §§ 3-5A-01 *et seq.* (2014 Repl. Vol.) has since been recodified as indicated hereafter.

² COMAR 10.43.18 *et seq.* has since been transferred to COMAR 10.65.03 *et seq.*

³ COMAR 10.43.21 *et seq.* has since been transferred to COMAR 10.65.06 *et seq.*

⁴ Health Occ. I § 3-5A-10 has since been recodified as Health Occ. § 6-308.

- (8) Does an act that is inconsistent with generally accepted professional standards in the practice of massage therapy;
- (11) Has violated any provision of this subtitle;
- (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 10.43.18⁵ Massage Therapy Code of Ethics.

COMAR 10.43.18.02⁶ 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 10.43.18.03⁷ Standards of Practice.

C. A license 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;

⁵ COMAR 10.43.18 has since been transferred to COMAR 10.65.03.

⁶ COMAR 10.43.18.02 has since been transferred to COMAR 10.65.03.02.

⁷ COMAR 10.43.18.03 has since been transferred to COMAR 10.65.03.03.

- (6) Practice massage therapy or non-therapeutic massage only as defined in the scope of practice set out in Health Occupations Article, § 3-5A-01⁸, Annotated Code of Maryland; [and]

D. A license 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 10.43.18.05⁹ Professional Boundaries.

A. A license holder...shall:

- (1) Maintain professional boundaries, even when the client, staff member, or student initiates crossing professional boundaries of the professional relationship;

B. A license 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[.]

COMAR 10.43.18.08¹⁰ Ethical, Legal, and Professional Responsibilities of Massage Therapists and Practitioners

A license 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

⁸ Health Occ. § 3-5A-01 has since been recodified to Health Occ. § 6-101.

⁹ COMAR 10.43.18.05 has since been transferred to COMAR 10.65.03.05.

¹⁰ COMAR 10.43.18.08 has since been transferred to COMAR 10.65.03.08.

ethical, legal, or professional duties or responsibilities that are equally as important and as generally recognized in the profession.

COMAR 10.43.21¹¹ Record Keeping.

COMAR 10.43.21.01¹² General Requirements.

- A. The license...holder shall maintain accurate, legible, and organized client records for every client, regardless of the procedure or modality employee.
- B. Sufficient information to be obtained and recorded shall include, at a minimum:
 - (1) Name, address, and other appropriate contact information;
 - (2) Summarized client history;
 - (3) Summarized reason for appointment or referral, including referral documentation, including forwarded reports and correspondence, if applicable;
 - (4) Billing and insurance documentation, if applicable; and
 - (5) Massage session summary in standard SOAP format, or its equivalent, which includes, at a minimum:
 - (a) Initial client assessment, including contraindications noted;
 - (b) Summarized therapy plan; and
 - (c) Progress notes, reflecting: summary of techniques used and response to techniques.

COMAR 10.43.21.02¹³ Maintenance and Release of Records.

- A. The license...holder shall keep all client files secure and confidential in accordance with the provisions of the Health-General Article, Title 4, Subtitle 3, Annotated Code of Maryland.

¹¹ COMAR 10.43.21 has since been transferred to COMAR 10.65.06.

¹² COMAR 10.43.21.01 has since been transferred to COMAR 10.65.06.01.

¹³ COMAR 10.43.21.02 has since been transferred to COMAR 10.65.06.02.

On January 25, 2017, a hearing on the merits was held. Present were the following Board members, which constituted a quorum: David Cox, L.M.T., Chairman; Gwenda Harrison, L.M.T.; Paula Jilanis, L.M.T.; J. Paige Szymanski, L.M.T.; Caitlin Thompson, L.M.T.; Gloria Boddie-Epps, Consumer Member; and Margaret Hayes, 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; Adrienne Congo, Deputy Director; Kimberly Link, Compliance Manager; Michelle M. Weems, L.M.T., Respondent; and Jay S. Yoo, Esq., Respondent's Counsel. The Respondent was present and represented by counsel throughout the hearing.

SUMMARY OF THE EVIDENCE

The following exhibits were admitted into evidence during the hearing:

STATE'S EXHIBITS

No.	
1	Licensing Information
2	Findings of Fact, 4/28/03
3	Memorandum, 11/17/03
4	Findings of Fact, 10/3/04
5	Incident Report, 10/3/14
6	Incident Report, 5/15/15
7	Internet Post
8	Subpoenas ad testificandum
9	Transcribed Interview
10	Subpoenas Duces Tecum

11	Massage Therapy Records
12	Investigative Report
13	Charges, 11/12/15

Summary of the Case

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. On or about October 3, 2014, Detective Mouton and another police officer visited "The Asian Health Spa" (the "Spa"), where Respondent was employed. The inspection began due to a complaint from a local community organization¹⁴ about the Spa. During the October 3 visit, Detective Mouton witnessed four women flee through the Spa's back door as the other police officer entered the Spa's front door. The detective interviewed them and determined that none of them were licensed to practice massage therapy. The detective also interviewed Respondent, who claimed to be the only employee present at that time. Upon the detective's request, Respondent was unable to produce records of her massages. This information caused the Board to conduct its own investigation through Board Investigator Christopher Bieling. Further investigation by Investigator Bieling and Detective Mouton revealed that at least one individual received sexual services from the Spa. In addition, Investigator Bieling issued a subpoena to compel Respondent to produce her massage therapy records, most of which were from days subsequent to Investigator's Bieling's investigation, and none of which were

¹⁴ Per Board Investigator Christopher Bieling's testimony, it was a Homeowners Association.

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 alleges 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 Respondent's case. During the course of his investigation, Investigator Bieling confirmed that the Respondent was a licensed massage therapist with the Board as of September 14, 2001. The State introduced evidence of a 2002 investigation into Respondent's massage therapy business; a 2003 hearing finding that Respondent had violated relevant law and regulations, placing Respondent's license on probation and ordering certain probationary conditions; a 2004 charging document from the Board against Respondent for Respondent's failure to comply with the aforementioned probationary conditions; and a subsequent 2004 hearing ordering Respondent to pay \$1000 and to satisfy the probationary sanctions previously ordered against her. 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 the Asian Health Spa. During the course of his investigation for the Board, Investigator Bieling arranged to meet on May 14, 2015, with Detective Mouton to conduct surveillance of the Spa. Investigator Bieling testified that on May 14, 2015, he observed an adult male, later identified as James L. Grue, enter the Spa. Investigator Bieling further testified that Detective Mouton interviewed Mr. Grue after he exited the Spa some time later. Grue revealed that he received sexual services¹⁵ in exchange for money at the Spa. This information prompted Investigator Bieling and Detective Mouton to approach the Spa. Investigator Bieling testified that he entered the front door posing as a customer, while Detective Mouton situated himself by the rear door of the Spa.¹⁶ A woman welcomed Investigator Bieling to the Spa and requested seventy dollars (\$70) for his massage. The investigator revealed that he wished to see Respondent and that he would pay her directly. The woman took the investigator to the massage room. Investigator Bieling testified that Respondent greeted him while she was soaking wet and wearing nothing but a towel. Investigator Bieling then identified himself as an investigator for the massage board and interviewed her. Investigator Bieling testified that following this incident, Detective Mouton issued a police report. The investigator then issued subpoenas for Respondent to appear for an interview and for Respondent to produce her massage records from the Spa. Respondent appeared on August 11, 2015, and was interviewed by Investigator Bieling. During this time, Respondent revealed that she worked at the Spa, and that she sometimes acts as a manager of the Spa. Further,

¹⁵ Specifically, Mr. Grue received a massage and a handjob, which is slang for bringing the penis to erection and causing it to ejaculate by hand.

¹⁶ Per Investigator Bieling's testimony, Detective Mouton knew from his first visit to the Spa that the back door is often left propped open.

when asked about greeting the investigator while wearing inappropriate attire on May 14, 2015, Respondent responded that she thought she was greeting a familiar customer. Investigator Bieling testified that he did not find this explanation reasonable, as regardless of the circumstances, a licensed massage therapist should not greet a customer in such a fashion. Finally, Investigator Bieling testified that the records produced by Respondent were inadequately maintained, and most postdate Respondent's encounter with the Inspector on May 14, 2015.

II. Respondent's Case

Mr. Jay S. Yoo, Esq. made the following arguments on behalf of the Respondent. The Respondent is merely a worker at the Spa and never claimed to be the manager. Regarding the October 3, 2014, inspection, even if Detective Mouton witnessed four women fleeing the Spa through the back door, such an occurrence does not implicate Respondent. Ellicott City is home to a large Korean community, and many people stop by for social or professional reasons. Similarly, there was no evidence presented that Respondent provided the sexual services Detective Mouton learned of on May 14, 2015. Rather, the police report indicates that a coworker of Respondent's engaged in said sexual misconduct. Because Respondent does not manage the Spa, Respondent has no control over the actions of her coworkers, including the coworker who provided the sexual services. Further, the evidence does not clearly show that Respondent intended to greet a client while wearing a towel on May 14, 2015. Respondent had to pass the massage room to retrieve clothing from her office, and claims that Investigator Bieling called out to Respondent while she was passing the massage room.

Respondent concedes that she has failed to properly maintain her records, and she has been striving to remedy this failure.

Ms. Weems, the Respondent was called as a witness, and testified to the following under oath. She testified that the four women who ran out of the Spa on October 3, 2014, were neighboring business owners and not employees of the Spa. They were visiting the Spa and hoping to buy supplies from the Respondent. Ms. Weems further testified that she is not a manager of the Spa, but is simply a worker there. Respondent also testified that she did not formally greet Investigator Bieling in the massage room, but instead that he stopped Respondent in the hallway while she passed by on her way to the office to get clothing. The Board did not find this testimony to be credible. Ms. Weems was evasive and inconsistent in her statements.

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 licensed as a massage therapist (LMT) in the State of Maryland. The Respondent was initially licensed as an LMT in Maryland on September 14, 2001, under license number M1604. The Respondent's LMT licensure was active through October 31, 2016.
2. At all times relevant hereto, the Respondent worked at the Asian Health Spa (the "Spa"), located at 9065 Frederick Road, Ellicott City, Maryland 21042.
3. In or around December 2002, the Board initiated an investigation of the Respondent after receiving information that she failed to maintain treatment records for massage therapy she allegedly provided and aided the unauthorized practice of

massage therapy. As a result, the Board initially denied the renewal of her massage therapy license when she applied for renewal of her license in 2002.

4. The Respondent requested a hearing on the Board's proposed action, which the Board conducted on March 13, 2003. After the hearing, the Board issued an order entitled, *Findings of Fact, Conclusions of Law and Order*, dated April 28, 2003, in which it found as a matter of law that the Respondent violated the following provisions of the Act: Does an act that is inconsistent with generally accepted professional standards in the practice of massage therapy (a violation of then Health Occupations ("Health Occ.") § 3-5A-09(a)(8));¹⁷ Engages in conduct that violates the professional code of ethics (a violation of then Health Occ. § 3-5A-09(a)(20)); Knowingly does an act that has been determined by the Board to be a violation of the Board's regulations (a violation of then Health Occ. § 3-5A-09(a)(20)); and Does not possess good moral character (a violation of then Health Occ. § 3-5A-05(b)).¹⁸ The Board also found that the Respondent violated several COMAR provisions.

5. The Board placed the Respondent on probation for two years, subject to a series of probationary conditions, including requiring that she: take and pass the Board's massage therapy jurisprudence examination; take and pass a Board-approved treatment recordkeeping course; and reimburse the Board for its hearing costs.

6. On or about January 8, 2004, the Board issued disciplinary charges against the Respondent after determining that she failed to comply with the probationary conditions mandated under her April 28, 2003, Order.

¹⁷ Health Occ. § 3-5A-09 has since been recodified as Health Occ. § 6-308.

¹⁸ Health Occ. § 3-5A-05 has since been recodified as Health Occ. § 6-302.

7. The Respondent requested a hearing, which the Board conducted on April 8, 2004. After the hearing, the Board issued an order entitled, *Findings of Fact, Conclusions of Law and Order*, dated May 4, 2004, finding as a matter of law that the Respondent violated the probationary conditions that were mandated under her April 28, 2003, Order. The Board imposed a monetary penalty of \$1000.00, required her to complete the previously imposed probationary conditions and imposed additional hearing reimbursement costs.

8. On or about October 5, 2014, a detective ("the Detective") from the Howard County Police Department (the "Department") contacted the Board to report the results of an investigation he had conducted involving the Spa. The Detective reported that he visited the Spa for an inspection after receiving a complaint from a local community organization. The Detective stated that on or about October 3, 2014, a member of his inspection group went to the front door of the Spa, where he was greeted by the Respondent. During this time, the Detective stationed himself at the rear exit of the Spa and observed four women run out of the Spa's rear exit. The Detective intercepted and interviewed these individuals. None of them had massage therapy registrations or licenses. The Respondent was also interviewed and identified herself as the manager of the Spa and stated that she was unable to produce any massage therapy records. No further police action was taken at that time.

9. On or about May 14, 2015, a Board investigator (the "Investigator") participated in further investigation of the Spa in conjunction with the Detective. The Investigator observed an adult male enter the Spa and spend a period of time inside. After this individual left the Spa, the Detective interviewed him about his reason for patronizing

the Spa. The individual reported that he went to the Spa and received sexual services there in exchange for money.

10. The Investigator then entered the Spa and was greeted by an adult female who had been the subject of at least one other Board investigation. This woman escorted the Investigator to a massage room. When the Investigator requested to see the Respondent, asking for her by her first name, the woman requested \$70.00 in payment. The Investigator told the woman that he wanted to pay the Respondent personally. Moments later, the Respondent entered the massage room barefoot, wearing a towel, with her hair appearing to be wet. The Investigator provided the Respondent with his professional identification and had a discussion with her. The Respondent stated that she was the manager of the Spa.

11. On or about August 11, 2015, the Investigator interviewed the Respondent under oath at the Board's offices. The Respondent stated that she sometimes works as the manager of the Spa. The Respondent stated that on May 14, 2015, the date of the Board inspection, she was the only massage therapist working at the Spa. The Investigator questioned the Respondent about her encounter with him. She stated that when she got out of the shower, she thought she was meeting a client.

12. The Respondent also provided a series of massage therapy records. The Respondent's massage therapy records were deficient for reasons including but not limited to the following:

- (a) the records are not accurate, legible and organized;
- (b) the records do not contain sufficient information, including name, address, and other appropriate contact information; a summarized client history; a

summarized reason for appointment or referral; or billing and insurance documentation;

- (c) the records do not contain a massage session summary in standard SOAP format, or its equivalent, to include an initial client assessment, including contraindications noted; and
- (d) the records do not contain a summarized therapy plan, and progress notes reflecting a summary of techniques used and response to techniques.

13. The Respondent was the manager of a massage therapy facility where prostitution-related activities occurred/sexual services were provided/occurred. The Respondent approached the Investigator to provide a massage wearing inappropriate attire. The Respondent recorded massage therapy records that fail to contain adequate documentation in accordance with COMAR 10.65.03 *et seq.* and/or 10.65.06 *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 Investigator Bieling's testimony regarding the occurrence of Detective Mouton's interview with the Spa patron who received sexual services in exchange for money to be credible and indicative that illicit activities were occurring at the Respondent's Spa. Further, the Board was persuaded that Respondent did not adequately obtain or maintain massage therapy documentation in accordance with its regulations. As an L.M.T., Respondent is

responsible providing treatment in accordance with professional standards, wearing appropriate attire when meeting with clients, and obtaining and maintaining records of her clients' symptoms, treatments, and outcomes. Accordingly, the Board finds that the Respondent violated Health. Occ. § 6-308(a)(2) and (21) when she deceptively used her license to provide or facilitate the provision of prostitution-related services, and when she greeted the Investigator wearing only a towel. The Board also finds that Respondent violated Health. Occ. § 6-308(a)(8) when she greeted the Investigator wearing only a towel. The Board additionally finds that the Respondent's failure to maintain massage therapy documentation is inconsistent with generally accepted professional standards in the practice of massage therapy, and a violation of Health Occ. § 6-308(a)(8) and COMAR 10.65.03 *et seq.* and/or 10.65.06. *et seq.* Based on these findings, and in accordance with its sanctioning guidelines under COMAR 10.65.09 *et seq.*, the Board issues the following Order.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 5th day of October, 2017, by the majority of the Board, hereby:

ORDERED that the Respondent's license to practice massage therapy in the State of Maryland, under license number M1604, 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 M1604; 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. Code Ann., Gen. Prov. §4-333 *et seq.* (2014 Repl. Vol.).

David Cox /LSJ
David Cox, L.M.T.
Chairman
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.