

**IN THE MATTER OF
DAVID ALLEN, MT
APPLICANT**

*** BEFORE THE
* STATE BOARD OF
* CHIROPRACTIC AND MASSAGE
* THERAPY EXAMINERS
* 09-37M**

* * * * *

**NOTICE OF DENIAL OF
OF MASSAGE THERAPY REGISTRATION**

INTRODUCTION

On or about June 9, 2009, the State Board of Chiropractic and Massage Therapy Examiners (the "Board"), received an application for registration as a Registered Massage Therapist from, David Allen. On that application Mr. Allen marked "yes" to Question D, which asks: Have you ever been arrested, or entered a plea of guilty, no contest, nolo contendere or been convicted of crime or received probation before judgment in any jurisdiction for a crime other than a minor traffic violation? Based upon that response, the Board began an investigation, which disclosed that Mr. Allen was not truthful about his arrests/convictions. Accordingly, on September 10, 2009, the Board, by a majority of its full authorized membership, voted to initially deny Mr. Allen's application for a registration.

The Board denied Mr. Allen's application, pursuant to the Maryland Chiropractic and Massage Therapy Examiners Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") § 3-5A-01 (2009 Repl. Vol.), *et seq.*

The Board held a hearing in this matter on September 9, 2010. The Board issues this Final Decision and Order based upon its consideration of the entire record, including

the exhibits, witness testimony and oral arguments. Mr. Allen attended the hearing, but was not represented by counsel. The hearing was conducted in accordance with the APA, the Board's practice act and regulations. A full quorum of the Board was present during the entire hearing and deliberations. The Board unanimously agreed to the findings of fact and conclusions of law in this order. For the reasons set forth below, the Board approves and adopts this Final Decision and Order.

SUMMARY OF EVIDENCE

The prosecution introduced exhibits 1, 2, 3, 4, 5, 6a, 6B, 6C, into evidence. Marc Ware, Board Investigator, was called to testify by the prosecution. Mr. Allen did testify, but did not call any witnesses on his behalf or introduce any exhibits.

FINDINGS OF FACT

The Board bases its decision to deny Mr. Allen's application to be registered to practice massage therapy on the foregoing findings of fact:

1. On June 9, 2009, Mr. Allen filed an application for registration as a massage therapist.
2. On that application, Mr. Allen marked "yes" to Question D, which asks: Have you ever been arrested, or entered a plea of guilty, no contest, nolo contendere or been convicted of crime or received probation before judgment in any jurisdiction for a crime other than a minor traffic violation?
3. Mr. Allen was required to attach documentation and information for a conviction as follows: all documents pertaining to arrest, conviction, probation, parole;

detailed statement of education, social and rehabilitative activities since conviction;
detailed list of all work activities and supervisors since conviction.

4. Mr. Allen's response on his application was as follows: "Charge of which convicted or to which you pled: Burglary in the first degree; Court that issued conviction or judgment: Circuit Court for Montgomery County; Date on which convicted: 4/08; sentence: 4/08. Mr. Allen failed to attach any documents as required.

5. Based upon that affirmative response, the Board began an investigation which disclosed:

A. During a routine criminal background check, it was discovered that Mr. Allen failed to disclose his arrest on June 15, 2006, which resulted in his being charged with 4th degree burglary;

B. Mr. Allen also failed to disclose that he received a criminal citation on November 1, 2006 for possession of CDS paraphernalia in Montgomery County;

C. Accordingly, Mr. Allen was mailed a questionnaire requiring a detailed explanation of his criminal history including the events that took place on November 19, 2007 which led to his arrest for 1st degree burglary;

D. On July 6, 2009, a subpoena was issued to the Clerk for the Circuit Court of Montgomery County for copies of the original record of the proceedings, which revealed the following:

(1) On November 19, 2007, Mr. Allen burglarized a residence in Chevy Chase by forcibly entering the residence through a rear door;

- (2) Assorted items of jewelry were stolen, along with an Apple Ipod and an Apple computer;
- (3) The stolen items were valued at approximately \$57,840;
- (4) Mr. Allen pawned some of the stolen items on that same date;
- (5) On December 3, 2007, the Montgomery County Police Department executed a search warrant and recovered stolen items from Mr. Allen's residence and vehicle, after which an arrest warrant was served on Mr. Allen who admitted to burglarizing the residence from which the items had been stolen;
- (6) On December 26, 2007, the victim of the burglary was transported to the pawn shop where she was able to identify the stolen items of jewelry that had been pawned. Video surveillance footage from the pawn shop was obtained by the police which showed Mr. Allen pawning the stolen items, which were subsequently returned to the owner, including those recovered from Mr. Allen's house and car;
- (7) On January 17, 2008, the Respondent was indicted by the Grand Jury of Montgomery County. On April 7, 2008, Judge Andrew Sonner of the Montgomery County Circuit Court allowed the charge to be amended to 3rd degree burglary. During the trial, Mr. Allen pled guilty and was sentenced to three years incarceration with all three years suspended. Mr. Allen was placed on unsupervised probation until April 2010, with a \$45 monthly monitoring fee payable to the Maryland Board of Parole

and Probation.

E. On July 27, 2007, Mr. Allen provided a typed response to the questionnaire that had been mailed to him. Mr. Allen stated that, prior to his arrest, he was unemployed and addicted to marijuana. He also stated that his parents discontinued supporting him financially and he subsequently decided to burglarize a residence with hopes of generating income to support his drug habit. Following his arrest and prior to the trial, Mr. Allen stated that he entered and successfully completed the Kolmac Clinic substance dependency rehabilitation program.

F. Question #9 of the questionnaire stated: "Please provide a detailed explanation of any additional criminal charges you have received prior to or after your 11/18/07 arrest to include criminal citations" Mr. Allen answered "N/A", which was not a truthful response. When Mr. Allen was made aware of the discrepancy between his answer and the Court records, he provided the following information via email:

(1) Mr. Allen, along with three friends, unlawfully entered the grounds of his Alma Mater, Walter Johnson High School, for the purpose of practicing parkour—an athletic discipline in which practitioners traverse any environment in the most efficient way possible using their physical abilities, which commonly involves running, jumping vaulting, rolling and other similar physical movements;

(2) One of Mr. Allen's friends unlawfully entered the High School through

an unlocked door, triggering the alarm. Mr. Allen, along with his friend, were confronted by a security guard who attempted to detain them until the Police arrived;

(3) Mr. Allen fled, in an attempt to avoid being arrested. However, one of his friends who remained on the scene provided the police with his telephone number;

(4) Mr. Allen returned to the scene following the telephone call, where he was arrested and charged with 4th degree burglary, which was subsequently nolle prossed.

G. During a routine traffic stop in Montgomery County, a police officer discovered that Mr. Allen was in possession of a small amount of marijuana. In lieu of an arrest, the officer decided not to charge Mr. Allen with possession and issued him a citation for possession of CDS paraphernalia. This occurred on 11/1/06. On 12/18/06, in the Montgomery County District Court, Mr. Allen was found guilty of possession of CDS paraphernalia and received a fine of \$207.50.

6. As set forth above, Mr. Allen violated the Act and the regulations thereunder.

7. Mr. Allen admitted that he had performed massage therapy at Massage Envy without being licensed to do so.

8. Mr. Allen admitted that he agreed with the prosecution position that he is not currently ready to be licensed.

9. As set forth above, Mr. Allen lacks the good moral character to qualify to be a

registered massage therapist in Maryland.

CONCLUSIONS OF LAW

The Board concludes that Mr. Allen violated multiple provisions of its practice act.

Specifically, the Board found that Mr. Allen with violated of the following provisions of § 3-5A-11:

(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:

(1) Fraudulently or deceptively obtains or attempts to obtain a certificate or registration for the applicant or for another;

(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;

(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 further denies Mr. Allen a registration for violation of the following regulation, COMAR 10.43.17:

.05 Application of Certification.

(3) Provide evidence that the applicant is:

(a) Of good moral character [;].

Mr. Allen's numerous violations of the Board's act show that he lacks

sufficiently good moral character to be licensed at this time.

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 13th day of September, 2010, by a majority of the Board then serving,

ORDERED that, pursuant to the authority vested in the Board of Chiropractic and Massage Therapy Examiners by Md. Code Ann., Health Occ. Article, § 3-5A-011, Mr. Allen's application to practice massage therapy is hereby **DENIED**;

ORDERED that Mr. Allen reimburse the Board its reasonable hearing costs; and be it further;

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

9-13-2010

Date



J. J. Vallone, J.D., Exec. Director
for/by direction of Kay O'Hara, D.C.,
President
Board of Chiropractic and Massage
Therapy Examiners

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, Conclusion s 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.