

IN THE MATTER OF
NICOLE BALL
APPLICANT

* BEFORE THE STATE
* BOARD OF CHIROPRACTI
* AND MASSAGE THERAPY
* EXAMINERS
* CASE NUMBER: 09-27M

* * * * *

**FINAL ORDER OF DENIAL
OF APPLICATION FOR MASSAGE REGISTRATION**

INTRODUCTION

On or about July 27, 2010, the State Board of Chiropractic Examiners and Massage Therapy Examiners ("the Board") notified Nicole Ball ("Ms. Ball" or "the Applicant") of the Board's denial of her application for her license to practice massage therapy because she did not meet the standards for licensure, under the Massage Therapy Practice Act, ("the Act"), Md. Code. Ann., Health Occ. § 3-5A-01, *et seq.* Specifically, the Board denied the Applicant's request for reinstatement based on the fact that she lacks sufficient good moral character. See *id.* § 3-5A-06(a)(1).

PROCEDURAL HISTORY

On or about May 19, 2009, the Board received a complaint that the Applicant, who was never licensed or registered to practice massage therapy in Maryland, was advertising and providing massage therapy services in Maryland. Subsequent investigation confirmed that the Applicant was in fact advertising and providing massage therapy services without having completed the licensure process.

On July 29, 2009, the Applicant filed a "Re-application" with the Board. In Section C, which asked about revocation, suspension, cancellation or investigation, the Applicant explained "Drivers (*sic*) license suspended/revoked due to accumulation of points. On Section D, which

asks about criminal history, the Applicant responded "yes", and stated that she was convicted of "possession of CDS: in Alimance (*sic*) County, NC; on March 5, 2005, "90 day incarceration, probation, sup. in home state of Md 1 yr." The Applicant sent a letter explaining her inability to pay the licensing fees that were previously required. She claimed that the "only means of sustaining [herself] her one dependent child has come by means, though technically unlawful by the standards of the Maryland State Chiropractic Board, admittedly, but not from lack of effort or intention." (*sic*). After further investigation, it was discovered that the Applicant had failed to fully disclose the information required by Section O. The following represents the criminal information on the Applicant, in addition to that which she provided to the Board on her application/re-application:

Accordingly, on July 27, 2010, the Board denied Ms. Ball's application for Massage Therapy Registration. Upon presentation to the Board of Ms. Ball's request, a hearing regarding the reconsideration of the denial of Ms. Ball's reinstatement of her Massage Therapy Certificate was scheduled for December 2, 2010. Upon Ms. Ball's request, the Board approved a continuance of the December 2, 2010 hearing, which was held on June 16, 2011.

SUMMARY OF THE EVIDENCE

A hearing for the reconsideration of the denial for reinstatement of Ms. Ball's Massage Therapy Registration was held on June 16, 2011. Present were the following Board members, which constituted a quorum: Kay B. O'Hara, Chairperson, Stephanie Chaney, Board President, Michael Fedorczyk, Daniel J. Kraus, Jonathan Nou, Duane Sadula, Karen Biagiotti, Gwenda Harrison, and Ernestine Jones Jolivet. Also present were Roberta Gill, Esquire, Assistant Attorney General, Administrative Prosecutor, Grant Gerber, Esquire, Assistant Attorney General, Board Counsel, Gloria Brown, Paralegal for Administrative Prosecution, Charles Conner, Law Clerk, James J. Vallone, J.D., Executive Director, Adrienne Congo, Deputy Director, and Marc Ware, Board Investigator. Both Ms. Ball and her counselor failed to appear for the hearing.

Exhibits

The State offered forty-three (43) exhibits, all of which were admitted into evidence:

No. 1A	Applicant's application 8/5/07
B	Administrative Review
C	Letter from the Board from Jones, 9/17/07
D	Letter form the Board from Marris, 9/17/07
E	Board policy letter, 9/25/07
2A	MTAC Notice, 9/25/07.
B	Letter from the Board, 10/12/07
C	Letter from the Board, 10/19/07
D	Progress notes, 10/19/07
E	Registration, 10/25/07
F	Letter from the Board, 10/24/07
G	Email from Applicant to Jones, 11/5/07
H	Documents from North Carolina, received 11/5/07
I	Email from Board to Applicant, 12/18/07
J	Email from Board to Applicant, 1/18/08
3A	Letter from Board Counsel to Applicant w/ Pre-charge Consent Order, 5/6/08
B	Letter from Board, 6/5/08
C	Letter from Board, 8/22/08
D	Letter from Board, 11/6/08
E	Letter from Board, 12/8/08
4A	Email from Kelter, 4/14/09
B	Data printout of Kingsway
C	Memo from Kelter to Vallone w/ 20 Attachments, dated 5/19/09
D	Printouts from Facebook, 5/21/09
E	Printouts from MySpace, 5/22/09
F	Printout from NCBTMB, 6/9/09
G	Printout from Go Big, 7/2/09
H	Email from Applicant, 7/16/09
I	Re-application with attachments, 7/20/09
J	Administrative Review
K	Verification of Noncertification
L	Investigative Report, 5/26/09
M	Investigative Report, 6/4/09
N	Second Investigative Report, 6/4/09
O	CMB letter, signed 6/4/09
P	Dickey Investigative Report
Q	Letter from Board, 8/4/09
R	Progress Note
S	Ware Investigative Report
T	Criminal Summary and Judicial Reports
5A	Notice of Initial Denial, 7/27/10
B	Request for Hearing
C	Notice of Hearing

Synopsis of Case

The State's Request to Deny Reinstatement

The State presented the following arguments at the June 16, 2011 hearing. Ms. Ball failed to properly complete her application for Massage Therapy Registration because she did not attach the required documents regarding her past criminal charges. (T 21 14-21, 22 1-5). Despite being informed of her failure to provide the required documentation and fees, and that as a result her Application had been administratively closed, Ms. Ball began practicing and advertising Massage Therapy without receiving a license. (T 23 3-20, 34 8-14, 35 2-21, 38 1-21, 39 1-21, 52 1-21). When Ms. Ball filed her re-application in July of 2009, she again failed to fully disclose her criminal record as required by Section D. (T 41 9-21, 42 1-7, 57 1-21, 58 1-21, 59 1-21, 60 1-21). Ms. Ball also failed to provide the additional information required in regards to her activities post-conviction (T 47 1-20). Ms. Ball's failure to disclose her full criminal history and her decision to practice and advertise Massage Therapy without a license shows that she has insufficient moral character to practice Massage Therapy in Maryland. (T 64 9-21, 65 1-5). Even when given the opportunity to obtain her license, Ms. Ball failed to pay the fees required. (T 65 10-18). Accordingly, the Board should issue a final order of denial of Ms. Ball's application for Massage Therapy Registration. (T 66 5-11).

FINDINGS OF FACT

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

1. On August 5, 2007, the Applicant submitted an application to the Board. In Section C, which asked "Have you ever had a license, certificate or registration revoked, suspended, canceled, or investigated?" she responded "Yes". As required, she explained: "My driver's license. Reason for suspension: unpaid tickets. Reason for revocation: accumulation of points." Section O asked: Have you ever been

arrested or pled guilty, no contest, nolo contendere or been convicted of a crime, received probation before judgment (other than a minor traffic violation): the Applicant answered "yes", and provided the following information: charge of which convicted or to which you pled: possession of CDS (non-marijuana); Court that issued conviction or judgment: Alamance County District Court, Graham, NC; Date on which convicted: 02111/05; sentence: 90 days 2 years probation.

2. As a result of the Applicant's responses to Sections C and O, the Board informed her that she needed to submit additional information regarding the reported case from North Carolina: detailed statement of her education, social and rehabilitative activities since conviction; detailed list of all work activities and her supervisors since conviction; and list of all residences since convictions.

3. Accordingly, by an undated letter, the Applicant sent the following response, *inter alia*: She drove from Maryland to North Carolina with three dozen Maryland crabs, three ounces of crack cocaine, a "crack-head" friend of her fiancé, and her child, when she was pulled over by a police officer in North Carolina because she was driving too slow on the main highway and her headlight was out. Since the cocaine was kept under the driver's seat, she was arrested and served time for possession of the cocaine and contributing to the delinquency of a minor.

4. In lieu of denying the application for felony possession of cocaine and contributing to the delinquency of a minor, the Board determined that the Applicant should be issued a Pre-Charge Consent Order, which was effective June 8, 2008. The Order indicated that the Applicant be issued a "license" to practice massage therapy. The Order further ordered that the Applicant should be placed on probation for 12 months, during which time she should be randomly tested for illegal drugs at a time and manor (*sic*) chosen by the Board.

5. On July 17 and August 22, 2008, the Board informed the Applicant that her

application was administratively closed because she had failed to complete the application process. On November 6, 2008, the Board sent a notice that it had made an administrative error in closing her application administratively in July 2008, because the twelve month period had not expired. Accordingly, the Board re-opened the application until December 5, 2008 and requested that she return an enclosed Data Sheet and Public Information Form along with the initial licensing fee of \$200 in the form of a certified check or money order. It reminded her that the terms of the Order remained in effect. By letter dated December 8, 2008, the Board advised the Applicant that her application had been administratively closed as a result of not completing the application process, as noted in the Board's correspondence dated November 6, 2008. That letter, like the others, warned the Applicant that she could not practice massage therapy unless licensed or registered by the Board.

6. On May 19, 2009, the Board discovered that the Applicant, who was not registered or licensed to practice massage therapy in Maryland, was advertising massage therapy services in Maryland. Consequently, on May 22, 2009, a Cease and Desist Order was mailed, via certified mail, to the Applicant, who was given 10 days to respond. The United States Postal Service's online tracking service confirmed that the Applicant received the Order on May 23, 2009. On May 25, 2009, a Board employee, in an undercover capacity, called the Applicant's business, Kingsway Massage, which call was answered by a female whose greeting was "Kingsway Massage:" When the Board's employee asked the female whether she was [Ms. Ball}, the female answered "yes", after which the Board employee asked questions regarding her services, prices and weekend appointment availability. The Applicant stated that she worked at "Dolores" located in Crofton, Maryland and "Body Connection," located in Annapolis, and that both spas charged \$70 for one hour massage sessions. The Applicant also stated that Kingsway Massage, the business the Applicant owns and advertises online,

only provides out-calls and chares \$85 for a one hour session. The Applicant told the Board employee to ask for "Nicole" if she was interested in a massage therapy session at either Delores' or Body Connection.

7. On June 3, 2009, the Applicant left a telephone message for the Board's investigator who questioned him about the Cease and Desist Order. The next day, the investigator returned the Applicant's call and explained that failure to comply with the Order would cause the Board to inform law enforcement, whereupon the Applicant became angry and uttered a host of profanities while attempting to defend her "right" to practice massage therapy without a license, before abruptly terminating the conversation by hanging up.

8. On June 4, 2009, The Investigator called Delores' Hair Works and Spa in Crofton, Maryland to schedule an appointment with "Nicole"; the receptionist advised that "Nicole" would be out of town on June 6, but would be available to provide massage therapy on June 13th. On that same date, the Investigator called Body Connection in Annapolis to set up a massage appointment with "Nicole". The receptionist advised that "Nicole" was available to perform massage therapy on June 8 from 10AM-2PM and on June 9, from 12 noon to 3 PM.

9. On June 10, 2009, the Investigator spoke with Detective Daniel Dickey of the Anne Arundel County Police Department's Vice Unity regarding the Applicant's providing massage therapy while unlicensed. Detective Dickey advised that he would attempt to schedule an appointment with the Applicant and, if she was found to be in violation of the law, he would charge her accordingly.

10. On July 14, 2009, Detective Wojtowycz, a member of Anne Arundel County's Vice Unit, called the Applicant to schedule two massage therapy sessions and was advised by the Applicant to call the Body Connection to make a special request for "Nicole" so that the Detective and her father could receive a massage at the same time.

The Detective told the Applicant that a friend who received services from her at Delores' had recommended her, to which the Applicant replied that she was no longer allowed to work at Delores.' Thereafter, the Detective called the Body Connection and set up the two appointments with Michelle, the owner. On July 16, 2009, the Detective and Sergeant McBee, posing as the Detective's father, both in an undercover capacity, entered the Body Connection where they were escorted to separate rooms. The Sergeant was escorted to a room by the Applicant, where, during his session, the Applicant used the following manual techniques: effleurage (stroking), petrissage (kneading), stretching, compression, and friction. At the conclusion of the Detective's massage session, Detective Dickey entered the Body Connection and identified himself as a police officer. At the conclusion of the Sergeant's session, Detective Dickey interviewed the Applicant who was not able to produce any credentials that would allow her to practice massage therapy in Maryland. The Applicant advised Detective Dickey that her license had expired and that she was working with the Board's investigator to become recertified. Detective Dickey called the Board and verified that the Applicant was not nor had ever been authorized to practice massage therapy in Maryland.

11. On July 27, 2009, the Investigator interviewed the owner of Body Connection who stated that she wrongfully assumed that the Applicant was a licensed massage therapist because of her employment in that capacity at various locations in Maryland, such as Capitol Rehab in Crofton and Delores' Hair Works. In addition, the owner was aware of the Applicant's advertising and running her own business, Kingsway. In addition, the owner stated that the Applicant had been employed at the Body Connection since February 2009 on an as-needed basis and had worked less than 20 times. Whenever she had asked to see the Applicant's license, the Applicant had always told her that the Board was slow in issuing it. The owner advised that, after the July incident, it became evident that the Applicant was unlicensed, and she is no longer

employed at the establishment.

12. On July 29, 2009, the Applicant filed a "Re-application" with the Board. In Section C, which asked about revocation, suspension, cancellation or investigation, the Applicant once again explained "Drivers (*sic*) license suspended/revoked due to accumulation of points. On Section 0, which asks about criminal history, the Applicant responded "yes", and stated that she was convicted of "possession of CDS: in Alimance (*sic*) County, NC; on March 5, 2005, "90 day incarceration, probation, sup. In home state of Md 1 yr." The Applicant sent a letter indicating, in part, that she had been trying to find work for two years, and, after passing the jurisprudence examination, needed money to pay the fee for licensing. She claimed that the "only means of sustaining [herself] her one dependent child has come by means, though technically unlawful by the standards of the Maryland State Chiropractic Board, admittedly, but not from lack of effort or intention." (*sic*).

13. The following represents the criminal information on the Applicant, in addition to that which she provided to the Board on her application/re-application:

- A. On October 9, 2001, the Applicant was arrested by the Maryland State Police in Annapolis and found guilty in the District Court of Anne Arundel County on April 2, 2001 of CDS possession, marijuana; she was given Probation Before Judgment (PBJ) until March 5, 2003;
- B. On December 19, 2001, the Applicant was arrested by the Anne Arundel County Police Department and, on April 24, 2002, in the District Court for Anne Arundel County, was found guilty of possession of marijuana and was given a PBJ until March 12, 2003;
- C. On October 15, 2002, the Applicant was arrested by the Anne Arundel

County Police Department and found guilty on April 21, 2003 of possession of marijuana. She was given a one year jail term, of which all but 11 months were suspended;

D. The Applicant was arrested by the Anne Arundel County Police on August 13, 2009 and charged with practicing without a Massage Therapy license, as a result of the events described above;

E. On March 28, 2010, the Applicant was arrested and charged with possession of marijuana and possession of paraphernalia by the Howard County Police Department;

F. On April 16, 2010, the Applicant was arrested by the Anne Arundel County Police and charged with resisting arrest.

CONCLUSIONS OF LAW

Based upon the foregoing Evidence and Findings of Fact, the Board concludes that Ms. Ball lacks the moral character to qualify for reinstatement as a Massage Therapist in Maryland. See Md. Code Ann., Health Occ. § 3-5A-06(a)(1). Ms. Ball's practice of massage therapy without a license is a serious violation. Additionally, Ms. Ball's failure to disclose all the required information in her re-application regarding her criminal background creates further concern and shows a refusal to cooperate. Applicants must be forthright and honest in all dealings with the Board. The Board appreciates Ms. Ball's explanation of the financial difficulties she has experienced which she claims hindered her ability to complete the application process. However, Ms. Ball's failure to follow-through with the process by providing accurate background information persuades the Board that she is not of sufficient good moral character to be granted the privilege of practicing Massage Therapy in the State of Maryland. Accordingly, the Board voted to deny Ms. Ball's application for Massage Therapy Registration.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is on this day, 11th of Aug of 2011 that the majority of the Board hereby:

ORDERED that the application for Massage Registration of the Applicant, Nicole Ball, is denied is hereby DENIED and the Board will not accept, from the Applicant, any future application for licensure, certification, and/or registration for five years; and it is further

ORDERED that for purposes of public disclosure and as permitted by Md. State Govt. Code Ann. §§ 10-601 *et seq.* (2009 Repl. Vol.), this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law, and Order, and is reportable to any entity to whom the Board is obligated to report; and it is further

ORDERED that this order is final and a public document pursuant to Md. State Govt. Code Ann. §§ 10-601 *et seq.* (2009 Repl. Vol.).

8/12/11 8/11/11
*
Date



Stephanie Chaney, D.C., President
State Board of Chiropractic and
Massage Therapy Examiners

NOTICE OF 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.