

IN THE MATTER OF
CHRISTOPHER COLE
APPLICANT

* BEFORE THE MARYLAND BOARD OF
* CHIROPRACTIC & MASSAGE
* THERAPY EXAMINERS
* CASE NO.: 10-30M

* * * * *

**FINAL ORDER AND NOTICE OF DENIAL OF
OF MASSAGE THERAPY REGISTRATION**

INTRODUCTION

On or about May 3, 2010, the State Board of Chiropractic and Massage Therapy Examiners (the "Board"), received an application for registration as a Registered Massage Therapist from, **CHRISTOPHER COLE ("the Applicant") (DOB: 10/26/1979)**. On that application Mr. Cole 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. Cole was not truthful about his arrests/convictions. Accordingly, the Board, by a majority of its full authorized membership, voted to initially deny Mr. Cole's application for a registration.

The Board denied Mr. Cole's application, pursuant to the Maryland Chiropractic and Massage Therapy Examiners Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") § 3-5A-01, *et seq.* The pertinent provisions of the Act state:

§ 3-5A-06

(a) *Qualifications for certification.* - To qualify for a license, an applicant shall be an individual who:

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

§ 3-5A-11. Denials; suspensions; revocations.

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

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

(2) Is convicted 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.

The Board held a hearing in this matter on December 2, 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. Cole attended the hearing, but was not represented by counsel. The hearing was conducted in accordance with the Administrative Procedure Act, 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, 6, 7, 8, 9, and 10 into evidence. Marc Ware, Board Investigator, was called to testify by the prosecution. Mr. Ware investigated this matter for the Board. Mr. Ware stated that he reviewed Mr. Cole's application. Mr. Cole's initial application merely indicated that he had received probation before judgment for an unnamed offense. Mr. Ware searched Maryland's Judiciary Case Search to look up Mr. Cole's background. The records showed that Mr. Cole had

been charged with several different offenses. Mr. Ware's investigation revealed Mr. Cole's criminal record to be as follows:

- a. A 1999 conviction for Possession of Marijuana;
- b. A 1999 conviction of Driving while Intoxicated;
- c. A 2008 conviction for Indecent Exposure;
- d. A 2010 conviction for Violation of Probation, resulting in a sentence of two (2) months of incarceration.

After receiving this information, Mr. Ware subpoenaed information on these cases from the courts.

Mr. Ware obtained the statement of charges for Mr. Cole's conviction for indecent exposure. Mr. Ware testified that, according to the statement of charges, on April 5, 2008, Mr. Cole was shirtless in his car, on the campus of Mount Saint Mary's. Three day earlier, on April 2, 2008, while parked, Mr. Cole called two female runners over to his car to get a picture with him. The two female runners noticed that Mr. Cole was naked. The female runners were students at the college. After the incident, the students called the campus police. Eventually, Mr. Cole was charged with indecent exposure for his actions. Mr. Cole entered a guilty plea and received probation before judgment for this offense.

Mr. Ware investigated Mr. Cole's conviction for violating his probation in 2010. Mr. Ware found that Mr. Cole failed to report on numerous occasions. Mr. Cole's probation officer noted that Mr. Cole had an extremely bad attitude. Mr. Cole failed to pay his fine and obtain employment. Mr. Cole did not promptly attend the court ordered the sex offender education class. Finally, Mr. Cole was terminated from his court

ordered counseling center. For all these reasons and more, Mr. Cole was charged and convicted for violating his probation. On April 22, 2010, Mr. Cole's probation was revoked and he was ordered to serve two months in jail. At the same time, Mr. Cole's probation before judgment for indecent exposure was stricken and a verdict of guilty was entered for this offense.

Mr. Cole's May 3, 2010 application did not contain any information on these convictions. At the time of his application, Mr. Cole no longer had a probation before judgment on his record. In fact, Mr. Cole had been found guilty of many different criminal offenses.

Mr. Cole did testify on his own behalf. The Board found many inconsistencies in Mr. Cole's testimony. Notably, Mr. Cole denied that he had any other arrests or charges pending, when in fact he was arrested and charged with possession of controlled dangerous substances (marijuana and cocaine) and possession of drug paraphernalia on October 20, 2010. Initially, Mr. Cole did not admit to these charges. Mr. Cole's failure to disclose and account for this most recent arrest is consistent with his previous behavior. Again, Mr. Cole demonstrated that he was able to take responsibility for his actions.

The Board did not give any weight to Mr. Cole's explanation of why he exposed himself. During his testimony, Mr. Cole appeared uncomfortable and repeatedly turned his head to the left and right apparently trying to release the tension in his neck. Mr. Cole's explanation was that he was sneaking in and trespassing on the campus in order to use the gym. After Mr. Cole finished working out, he took off all his clothes and sat in

his car. Mr. Cole could not explain why he called the women over to his car while he was naked. Nor could Mr. Cole explain why he was arrested on the campus of Mt. St. Mary's without a shirt three days after exposing himself on-campus. Mr. Cole explained that his state of undress on both occasions was due to the heat. The average daylight temperature on the days in question was around 48 degrees Fahrenheit on April 2, 2008 and 55 degrees Fahrenheit on April 5, 2008. Tr. 98-101.

Mr. Cole introduced one letter from a teacher on his behalf. The letter could not be authenticated and was not given under oath. This letter was admitted into evidence as Respondent's Exhibit 1. However, the Board gave the letter very little weight.

Mr. Cole blamed his violations of the terms of his probation on his probation officer. Mr. Cole testified that his probation officer was rude. Mr. Cole stated that his probation officer was "mixed up" and fired from the police force. Additionally, Mr. Cole stated that his brother was visiting from Australia and this caused him to skip court ordered counseling sessions. According to Mr. Cole, all of these factors were beyond his control and caused him to violate the terms of his probation.

With regard to his application, Mr. Cole stated that he tried to disclose his complete background to the Board. Essentially, Mr. Cole alleged that his failure to disclose was an oversight. This explanation does not square with the fact that Mr. Cole did not provide the Board with any of the details of his complete criminal background.

Mr. Cole's vague answers to the Board's background questions seemed to be an intentional attempt to minimize and obfuscate his past.

Mr. Cole called one witness on his behalf, Ms. Chana Colley. Ms. Colley had exchanged massage therapy with Mr. Cole. Ms. Collie testified that he is an excellent massage therapist. Ms. Collie is a licensed massage therapist. Ms. Collie stated that she was aware of his criminal background and would recommend him for licensure. She has exchanged massage with him for about two years with no consideration or remuneration passed between them.

The Board gave little weight to Mr. Cole, his exhibit or his witness. Mr. Cole's testimony was inconsistent and implausible. The Board found its own investigator and the state's exhibit to be quite credible.

FINDINGS OF FACT

The Board makes the following findings of fact:

1. On or about May 3, 2010, the Board received the Applicant's Application for Licensure/Registration in Massage Therapy ("Application").

2. In Section C of his Application for licensure, the Applicant answered "YES" to the following question:

C. Have you ever had a license, certificate or registration revoked, suspended, canceled or investigated?

3. In Section D of his Application for licensure, the Applicant answered "YES" to the following question:

D. Have you ever been arrested, or entered a plea of guilty, no contest, *nolo contendere* or been convicted of a crime or received probation before judgment in any jurisdiction for a crime other than a minor traffic violation?

4. The Applicant failed to complete the remainder of Section D¹, other than to disclose that the Court granted him "Probation before Judgment." He attached no documentation and conspicuously left blank the questions pertaining to the Charge(s), the date(s) of conviction(s) or the applicable sentence(s).

5. Upon request by the Board, the Applicant submitted a written explanation that was received by the Board on May 14, 1010. In that explanation, the Applicant disclosed that he had been involved in "several small convictions," which included:

- a. A 1999 conviction for Possession of Marijuana;
- b. A 1999 conviction of Driving while Intoxicated;
- c. A 2008 conviction for Indecent Exposure;
- d. A 2010 conviction for Violation of Probation, resulting in a sentence of two (2) months of incarceration.

6. The Board's Investigation revealed an extensive criminal history that the Applicant failed to disclose in both his Application and the subsequent letter of explanation.

7. On May 27, 2000, the Applicant was charged in the Maryland District Court for Frederick County, with one (1) count, Possession of an Open Alcoholic Container. On August 1, 2000, the State entered a *nolle prosequi* in that case.

8. On May 28, 2000, the Applicant was charged in the Maryland District Court for Frederick County, with one (1) count Possession of Marijuana, one (1) count, Possession of CDS paraphernalia, and one (1) count, making a False Statement to a Peace Officer. On August 1, 2000, the State entered a *nolle proesequi* as to all three

¹ Section D of the Application is a five (5) part question, requesting specific details and documentation pertaining to any criminal history including but not limited to: (a) charges; (b) convictions or pleas; (c) presiding courts (d) dates and sentences imposed (e) supporting documentation of convictions, probation, work status, rehabilitation, residences, and parole.

counts.

9. On August 13, 2004, The Applicant was charged, in the Circuit Court for Frederick County, Maryland, with one (1) count, Driving or Attempting to Drive a Vehicle while Impaired by Alcohol. On February 14, 2005, the Applicant was convicted and sentenced to one hundred eighty days (180) incarceration, with one hundred seventy-six (176) days suspended; four (4) days served; a two (2) year period of supervised probation and a fine of five hundred (\$500) dollars.

10. On April 4, 2008, the Applicant was charged in the Maryland District Court for Frederick County, with one (1) count, Indecent Exposure. The Applicant implied in his explanation that this charge was based upon a misunderstanding wherein he was changing his clothes in the car, following a "jog", when a passerby reported him to the Mount Saint Mary's Security Personnel. The Statement of Charges alleged that he drove his car alongside two women who were jogging and asked if he could take a photograph with him. When one of the women approached his vehicle, she discovered that he was naked, exposing his penis and genitals. She and the other woman reported the Applicant to a Mount Saint Mary's Security Officer. The Applicant was subsequently charged with Indecent Exposure after the women positively identified him as the man who had approached them.

11. On August 14, 2008, the Applicant received probation before Judgment and was placed on twelve (12) months of supervised probation. The conditions of his probation required him to submit to a mental status evaluation and attend psychiatric counseling sessions. He was also ordered to have no contact with the victims, nor was he allowed to enter Mount Saint Mary's Campus. Lastly, he was required to perform

sixty four (64) hours of community service by November 30, 2008.

12. On October 29, 2008, a senior agent from the Maryland Division of Parole and Probation, submitted a Supervision Summary, requesting that a warrant be issued for the Applicant's arrest, for violating his probationary conditions. The basis for the request included a failure to report on ten (10) separate occasions, failure to submit to a mental status evaluation, failure to complete the requisite community service, failure to secure employment; failure to pay any fines, costs and fees mandated by his sentence, and most notably, an "extremely bad attitude." The senior agent described the Applicant as "not suitable for standard supervision and therefore, as a sex offender, pose[d] a significant threat to the community at large."

13. On April 22, 2010, the Applicant was convicted of one (1) count of Violation of Probation and sentenced to two (2) months incarceration and a fine of one thousand, fifty seven dollars and fifty cents (\$1,057.50). The Applicant filed an Appeal, which is now pending in the Circuit Court for Frederick County.

14. The Applicant was misleading in his description of the circumstances surrounding the Indecent Exposure charge and conviction. He also misrepresented the extent to which he failed to comply with his probationary conditions, claiming that he "accidentally forgot [ten] to call in on several occasions and had also missed a few counseling classes." To the contrary, his probation officer described a consistent pattern of violations, with no meaningful attempts to comply with any of the probationary conditions ordered by the presiding Court.

15. In addition, the Applicant's cursory references to his criminal history are in stark contrast to the extensive criminal record revealed through the Board's

investigation. This includes several drug charges, numerous alcohol related charges, a false statement charge, an Indecent Exposure conviction and the recent Violation of Probation.

16. The Applicant's actions, as described above, demonstrate, in whole or in part, a lack of good moral character and as such, constitute grounds for denial of the Applicant's Application for Certification/Registration to practice massage therapy pursuant to H.O. § 3-5A-06 (a)(1).

17. The Applicant's failure to fully disclose the extent and nature of his criminal history, constitutes grounds for denial of the Applicant's Application for Certification/Registration to practice massage therapy pursuant to H.O. § 3-5A-11 (a)(1).

18. The Applicant's conviction of a crime of moral turpitude, constitutes grounds for denial of the Applicant's Application for Certification/Registration to practice massage therapy pursuant to H.O. § 3-5A-11 (a) (2).

CONCLUSIONS OF LAW

Based upon the foregoing, the Board concludes as a matter of law that the Applicant lacks good moral character and, therefore, fails to meet the qualifications for registration under Md. Health Occ. Code Ann § 3-5A-06 (a)(1). The Board further concludes as a matter of law that the Applicant's Application may be denied for violation of H.O. § 3-5A-11(a)(1) Fraudulently or deceptively obtains or attempts to obtain license or registration for the applicant or for another, and (2) Is convicted 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.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this **21st day of January 2011** that the majority of the Board hereby:

ORDERED that the application of **CHRISTOPHER COLE**, to practice massage therapy is hereby **DENIED**; and it is further

ORDERED that for purposes of public disclosure and as permitted by Md. State Govt. Code Ann. § 10-617(h) (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.).

JAN 21 2011

Date



J. J. Vallone, JD, CFE
Executive Director for
Kay B. O'Hara D.C., President
By direction of the Board

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Health Occ. Code Ann. §3-316 (2009 Repl. Vol.), you have a right to take a direct judicial appeal. A Petition for Judicial Review must be filed within thirty (30) days of your receipt of this Order and shall be made as provided for judicial review of a final decision in the Md. State Govt. Code Ann. §§ 10-201 *et seq.* (2009 Repl. Vol.), and Title 7, Chapter 200 of the Maryland Rules.