

IN THE MATTER OF
IRENA CULOTTA
APPLICANT

* BEFORE THE
* MARYLAND STATE BOARD OF
* CHIROPRACTIC EXAMINERS

* * * * *

FINDINGS OF FACT, CONCLUSIONS OF LAW DECISION AND ORDER

Pursuant to the Maryland Chiropractors Act, Md. Code Ann., Health Occ. (H.O.) (the "Act") §3-315(f), and Maryland Code of Regulations (COMAR) 10.43.02.07, The Maryland State Board of Chiropractic Examiners (the "Board") hereby renders the following final decision and order:

BACKGROUND

On or about February 20, 2000, pursuant to § 3-5A-07 of the Act, Irena Culotta, (the "Applicant") applied to the Board for certification as a massage therapist. A review of the application revealed that the applicant answered "no" to question "d" of the application. The Board's investigator determined that the answer to this question was not truthful. On June 12, 2000 and as revised on September 8, 2000,¹ the Board, pursuant to the Act, notified the Applicant of the Board's intent to initially deny the Applicant's application for massage therapy certification for violation of the following provisions:

§ 3-5A-09 Denials; suspensions; revocations.

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

¹On September 8, 2000, the Board amended the Notice of Initial Denial to include § 3-5A-05(b) of the Act and Code of Maryland Regulations (COMAR) 10.43.17.05(4)(a) each of which stipulate that an applicant must be of good moral character.

- (1) Fraudulently or deceptively obtains or attempts to obtain a certificate for the applicant or for another;
- (11) Has violated any provision of this subtitle;
- (21) Knowingly does an act that has been determined by the Board to be a violation of the Board's regulations.

3-5A-05 Requirements for certification and registration.

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

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

The Board promulgated General Regulations for Massage Therapy, under the COMAR 10.43.17:

.05 Application of Certification.

- (4) Provide evidence that the applicant is:

- (a) Of good moral character[;].

The Applicant, pursuant to § 3-315 of the Act and the Administrative Procedures Act, Md. Code Ann., State Gov't §§ 10-201 et seq., requested a hearing, which was scheduled for and conducted on October 5, 2000. Present at the hearing were the following Board members, which constituted a quorum: Paul Goszkowski, D.C., President of the Board, who presided at the hearing; Jack Murray, D.C.; Brian Ashton, D.C.; and Ivy Logan Harris, Consumer Representative. Also present were Richard Bloom, Assistant Attorney General, Board Counsel, James Vallone, Executive Director of the Board; and David Ford, Board Investigator. Representing the State was Roberta Gill, Assistant Attorney General, Administrative Prosecutor; and Sheryl McDonald, Legal Assistant and the Applicant, Irena Culotta, and her attorney, James Lupinek.

Mr. Lupinek shared with the Board that the Applicant is the mother of two children and that she has attended and completed various types of schools and certifications. That although she appears to have a good command of the English language, she does sometimes get confused and was confused by the application for massage therapy certification. Because of the language barrier, she was confused by different pleas and court procedure.

SYNOPSIS OF CASE AND EXHIBITS

The following exhibits were introduced at the hearing:

STATE'S EXHIBITS

States's Exhibits ²	No.	1-Application for certification to practice massage therapy
	No.	2-Investigative reports
	No.	3-Notice of Initial Denial of Massage Therapy Certificate
	No.	4-Denial of Massage Therapy Certificate
	No.	5-Motion to Amend by Interlineation
	No.	6-Revised Notice of Initial Denial of Massage Therapy Certificate
	No.	7-Revised Denial of Massage Therapy Certificate
	No.	8-Hearing Notice
	No.	9-CJIS Printout

APPLICANT'S EXHIBITS

² The State's exhibits were admitted into evidence without exception.

- Applicant's Exhibits³
- No. 1-Howard County Massage Establishment License
 - No. 2-Correspondence Howard County
 - No. 3-Correspondence Sudbrook Middle School
 - No. 4-Correspondence William. Barrett, DDS
 - No. 5-National Certification Certificate

SYNOPSIS OF TESTIMONY

The State's sole witness, the Board's investigator, David Ford, testified that upon investigation, he learned that the Applicant had not been truthful when she answered "no" to question "d" on the massage therapy certification application.⁴ That on February 19, 1997, in the Circuit Court For Baltimore City, the Applicant pled guilty to and was convicted of arson. He went on to say that the Board denied the applicant's application for certification based on his investigation.

On direct examination the Applicant testified that she emigrated to the United States from Russian in 1978 and that, for the past 20 years, she has been a licensed cosmetologist and that she has been involved in the business of natural health, massage therapy, and facial and body rub.

The Applicant further testified that she did not finish all of question "d". That she did not read past "have you pled guilty" because she did not plead guilty to the arson charge but rather

³ The Applicant's exhibits were admitted into evidence without exception.

⁴ Question "d" asks the applicant whether or not he or she has pled guilty, nolo contendere, or has been convicted of or received probation before judgment of any criminal act (excluding traffic violations).

entered an Alford Plea.⁵ She stated that she was confused by the question, that she did not mean to lie. Transcript ("T") 37-22. The Applicant answered "no" when asked whether or not she had ever been arrested for any other matter other than the arson matter.

In the course of her testimony, the Applicant stressed the fact that in 1998, notwithstanding the arson conviction, she was issued a license to operate a massage establishment in Howard County. She further testified that her attorney has filed, in Baltimore City Circuit Court, a motion for modification of the arson conviction which is scheduled for a hearing in January of 2001. The Applicant testified that she lectured her daughters class on Russian history and that she has acted as a Russian translator for various of her dentist's patients.

On cross examination the Applicant was asked about her arrest on January 20, 1999 on a disorderly house charge.⁶ The Applicant answered that she did not think that this was an arrest since the matter was dismissed. T 38-15. She later acknowledged that she was fingerprinted and that, "now that I think about it , it was an arrest." T 55-16.

FINDINGS OF FACT

The Board makes the following Findings of Fact:

1. That on or about February 20, 2000, pursuant to § 3-5A-07, the Applicant submitted an application for certification as a massage therapist.
2. In said application for certification, the Applicant indicated that she had not been convicted of any criminal act.

⁵ In asserting an Alford Plea, the defendant does not admit guilt.

⁶ Mr. Lupinek objected to the admission of State's exhibit No. 9, the CJIS printout of the Applicant's 1999 arrest on the ground that the document is not certified. Ms. Gill responded that hearsay is acceptable in administrative procedures if probative and that for the purpose of impeachment, the document is probative.

3. On February 19, 1997, in the Circuit Court of Maryland for Baltimore City, the Applicant, was convicted of arson.

4. That Maryland Law requires that an applicant for licensure must, amongst other things, be of good moral character and not be in violation of the Board's disciplinary statute.

5. The Applicant testified that, except for the arson arrest, she has had no other arrests.

6. On January 20, 1999 the Applicant was arrested.

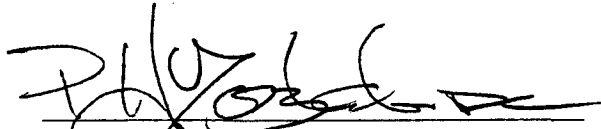
CONCLUSIONS OF LAW

The Board concludes, as a matter of law, that the applicant violated § 3-5A-09(1) (fraudulently or deceptively obtains or attempts to obtain a certificate...); (11) (...violated any provision of this subtitle); and (21) knowingly does an act that has been determined ... to be a violation of the Board's regulations), and § 3-5A-05(b)(1) (is of good moral character).

Specifically, the Applicant lied about whether or not she had been convicted of a crime. This is in and of itself sufficient to deny her application for massage therapy certification. Her testimony that she was confused about the application is simply not credible. This is reinforced by the fact that, in the course of her testimony, she lied about having been arrested for any other matter.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is, this 19th day of December, 2000 by a majority of the quorum of the Board hereby **ORDERED** that:
the Applicant's application for massage therapy certification be **DENIED**; and it is further,
ORDERED, that this document is a **PUBLIC RECORD**, pursuant to the St. Gov't
Article, Md. Ann. Code, § 10-617(h).



Paul H. Goszkowski, D.C., on behalf the
State Board of Chiropractic Examiners

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