

IN THE MATTER OF

ANJANETTE McALPIN

Certificate Number M01664

APPLICANT

BEFORE THE

STATE BOARD OF

CHIROPRACTIC EXAMINERS

FINAL ORDER OF DENIAL OF RENEWAL OF MASSAGE THERAPY CERTIFICATE

BACKGROUND

On October 12, 2002, the State Board of Chiropractic Examiners (the "Board"), received a report from its investigator that, on November 14, 2001, Anjanette McAlpin, applicant for massage therapy certification, (the "Applicant") gave the Board's investigator, acting in an undercover capacity, a table shower and, later, performed a massage on him while she was completely nude. At that time, the Applicant touched the investigator in his genital area. Accordingly, on _____, 2002, the Board sent the Applicant the Initial Notice of Denial of Massage Therapy Certification, indicating that the Board would sign same if the Applicant failed to request a hearing in writing within 30 days of the date of the notice. More than 30 days have passed since the notice was sent. Therefore, the Board takes the following action.

FINDINGS OF FACT

The Board bases its decision to initially deny the certificate renewal on the foregoing reasons which the Board has reason to believe are true:

1. At all times relevant hereto, the Applicant worked for Atlantic Health Spa in Waldorf, Maryland.

2. By application dated August 27, 2001, the Applicant applied for certification as a massage therapist. The Applicant listed as personal references two individuals who purportedly could attest to her massage therapy skills, professional standards of practice and supervised clinical work. However, neither had actually observed her work.¹

3. By a letter from the Board, dated October 2, 2001, the Board informed the Applicant that her application could not be accepted in that two of her references did not meet the above criteria. It further informed her that she would need to submit two additional references who could comply with the Board's requirements. The Board further informed the Applicant that without acceptable references, she would be unable to take the Board's examination on October 23, 2001.²

4. The Board sent a reminder letter on October 12, 2001, enclosing the application fee that the Applicant had submitted.

5. On December 13, 2001, the Applicant sent the names of two new references in to the Board.

6. While the application was pending, the Board's investigator, acting on a covert operation, requested a massage. The manager of that location informed him that a half-hour session would cost \$60. The manager offered the investigator two women from whom to select to provide his massage. The investigator chose the Applicant, who took him to a small room and requested that he disrobe, which he did.

1 One individual, Kathryn Blake, M.T., was subsequently disciplined by the Board for allowing her name to be used as a personal reference for the Applicant and others.

2 Without having acceptable references and passing the State's examination, the Applicant would not be able to be grandfathered in and would have to meet the certification requirements that went into effect on January 1, 2002.

7. The Applicant then took the investigator to another room and conducted a table shower, a practice that is outside the scope of massage therapy practice. Thereafter, the Applicant took the investigator back to the room and had him lay on his stomach, after which she provided a minimal pressure massage. The Applicant then asked the investigator to turn over, which he did. At that point, the Applicant was completely nude. During the continuation of the "massage," the Applicant touched the investigator's genital area, but stopped when it was apparent that he was uncomfortable with this.

8. Giving a customer a table shower is outside the scope of massage therapy practice. Giving a customer a massage, while the customer is not properly draped, is not within the standards of practice. Giving a customer a massage while the therapist is nude is not within the scope of massage therapy practice. Touching a customer's genital area is not within the scope of practice.

9. By letter dated December 19, 2001, the Board informed the Applicant that her application was pending and that a review of same has been requested by the "States (sic) Attorney Office" to determine whether she has complied with the requirements for certification. The Applicant was advised to immediately cease and desist any massage therapy practice for compensation. The Applicant was further informed that as soon as the status of her application was determined, she would be notified.

10. By letter dated March 21, 2002, the Board informed the Applicant that her application had been administratively denied because she did not qualify for certification

based upon the fact that she lacked the requisite number of approved massage training and was ineligible to take the National or State examinations. The Board further informed her that her file would be closed.

11. By letter dated September 23, 2002, an attorney for the Applicant requested that the Board failed to advise the Applicant whether the substitute references submitted by her were acceptable. The Applicant's attorney contended that this failure to advise deprived the Applicant "due process to qualify under the waiver provision like other similarly situated employees/agents of AHS." The Applicant's attorney requested that either the Board grant the Applicant a waiver retroactively or that she be granted an opportunity to take the National or State examination.

12. By letter dated October 2, 2002, the Board notified the Applicant's attorney that it would consider the Applicant's application at its meeting on October 10, 2002.

13. Based upon the events of November 14, 2001, the Board, at its meeting held on October 10, 2002, voted to initially deny the application.

14. By giving a customer a table shower, by failing to properly drape the customer, by giving a customer a massage while she was nude, and by touching a customer's genital area, the Applicant violated the Board's Act and regulations.

15. As set forth above, the Applicant lacks the good moral character to qualify as a massage therapist in Maryland.

CONCLUSIONS

Based on the foregoing Findings of Fact, the Board concludes as a matter of law, that, engaging in the aforesaid activities, violated the Maryland Chiropractors Act (the

"Act"), Title 3, Md. Health Occ. Code Ann. ("H.O.") § 3-5A-01 (2000 Repl. Vol.), et seq., § 3-5A-09 Denials; suspensions; revocations: (a) (Subject to the hearing provisions of § 3-315³ of this subtitle, the Board may deny a certificate or registration to any applicant or registration holder, reprimand any certificate holder or registration holder, place any licensee 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:) (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); (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 the Applicant massage therapy certification on the basis that the Applicant violated § 3-5-A-05: (a) (To qualify for a certificate, an applicant shall be an individual who: (1) (Is of good moral character [:]). The Board further denies the Applicant massage therapy certification for violation of the following regulation, Code Md. Regs. tit. 10 § 43.17 (1999): .05 Application of Certification. (3) Provide evidence that the applicant is: (a) (Of good moral character [:]).

3 § 3-5A-09 (b) If, after a hearing under § 3-315 of this title, the Board finds that there are grounds under subsection (a) of this section to suspend or revoke a certificate to practice massage therapy or registration to practice non-therapeutic massage, to reprimand a certificate holder or registration holder, or place a certificate holder or registration holder on probation, the Board may impose a penalty not exceeding \$5,000 in lieu of or in addition to suspending or revoking the certificate or registration, reprimanding the certificate holder or registration holder, or placing the certificate holder or registration holder on probation.

ORDER


Based upon the foregoing Findings of Fact and Conclusions of Law, it is this day of _____, 2002, hereby **ORDERED** that the application for certification as a massage therapist of Anjanette McAlpin is hereby **DENIED**.

It is further **ORDERED** that this Final Order shall be a public document, pursuant to Md. State Govt. Code Ann. § 10-617(h) (2000 Repl. Vol.).

NOTICE OF RIGHT OF APPEAL

In accordance with Md. Health Occ. Code Ann. § 3-316 (2000 Repl. Vol.) and the Administrative Procedure Act, Md. State Govt. Code Ann. § 10-201, *et seq.*, (2000 Repl. Vol.) you have a right to a direct judicial appeal of this decision. A petition for appeal of the Final Board Order shall be filed within thirty days from your receipt of this Final Order and shall be made in accordance with the forecited authority.

JAN 02 2002
Date



Jack Murray, D.C., President
Board of Chiropractic Examiners