

IN THE MATTER OF * **BEFORE THE**
HEATHER NAULTY * **STATE BOARD OF**
REGISTERED MASSAGE THERAPY * **CHIROPRACTIC AND MASSAGE**
APPLICANT * **THERAPY EXAMINERS**
* **Case No. 10-39M**

* * * * *
ORDER

On or about June 22, 2010, the State Board of Chiropractic and Massage Therapy Examiners (the "Board"), received information that Heather Naulty ("the Applicant" or "Ms. Naulty"), answered "yes" to question D. of the application which asks: "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?" Ms. Naulty supplied information that her crimes involved theft and prostitution.

Accordingly, on September 9, 2010, the Board, by a majority of its fully authorized membership, voted to initially deny Ms. Naulty's application for a Massage Therapy registration. The Board denied Ms. Naulty'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 § 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:

- (3) Is disciplined by a licensing, certifying, or disciplinary authority of any other state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under this section;
- (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;
- (11) Has violated any provision of this subtitle;

§ 3-5A-06. Qualification for license and registration.

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

- (1) Is of good moral character;

The Board held a hearing in this matter on January 13, 2011. The Board issues this Final Decision and Order based upon its consideration of the entire record, including the exhibits, witness testimony and oral arguments. Ms. Naulty 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 THE EVIDENCE

The prosecution introduced exhibits 1a, 1b, 2, 3a, 3b, 3c, 4, 5a, 5b, 5c, and 5d 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 Ms. Naulty's application. Ms. Naulty's initial application indicated that she had a criminal

background. Mr. Ware searched Maryland's Judiciary Case Search to look up Naulty's background. Ms. Naulty had been convicted of theft and prostitution.

Ms. Naulty testified on her own behalf. She explained that the theft conviction was a youthful indiscretion and a mistake. She stole money orders from the bank where she worked to buy items for her baby. Ms. Naulty explained that the prostitution arrest and conviction was a mistake. She placed an advertisement on Craigslist and the first person who called was an undercover policeman. Ms. Naulty did not advertise massage services in conjunction with this solicitation. Ms. Naulty took full responsibility for her actions and assured the Board that she would never make these same mistakes again.

FINDINGS OF FACT

The Board makes the following findings of fact:

1. By application dated June 22, 2011, the Applicant submitted an application to the Board to become a registered massage therapist.
2. The Applicant answered "yes" to question D. of the application which asks: "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?" The Applicant further responded that the charge(s) which she had pled to was "theft, prostitution"; the Court: "Balt. County: Date on Which Convicted: "11/24/08"; Sentence: "Prob before Judge."
3. The application called for documentation and information pertaining to the "arrest, conviction, probation and parole, detailed statement of education, social and rehabilitative activities since conviction, detailed list of all work activities and supervision

since conviction, and all residences since conviction.”

- A. The Applicant listed two residences, one in Parkville and one in Joppa.
- B. The Applicant attached a letter, dated May 28, 2010, and with signature typed, not signed
- C. The letter was addressed to "To Whom It May Concern" and stated, *inter alia*, that: (1) After researching, she decided to go to school for Massage Therapy; (2) she had two involvements with the police and presented the information to the program director at the start of the program and was ensured not to worry; (3) the first incident occurred November 2004 while working for a bank and had come into some financial problems and choose (sic) to steal; (4) repaid all monies and apologized to the company and was given a 15 year suspended sentence and probation before judgment; (5) the second incident was in August 2008, it also involved a financial crisis; (6) An undercover officer made a proposition and I accepted; (7) I was then arrested for prostitution; (8) I was kept overnight; (9) I lost my job, and in court I received 1 day of probation and a fine; (10) I have since walked away from that life; (11) My children and I have moved back home with my mother and father; (12) I am continuing my education in pursuit of a degree in Business Management, full-time at Harford Community College.

- 4. After receiving the application, the Board began an investigation which

confirmed the following:

- A. The Applicant had, in fact, been charged with Theft-Scheme, \$500 plus in Baltimore County on February 28, 2006.
- B. On February 1, 2007, the Applicant was found guilty and fined \$207.50; a 15 year prison sentence was imposed, but was suspended and she was placed on unsupervised probation and given a PBJ.
- C. The matter involved the Applicant's stealing 19 American Express Travelers Cheques, valued at \$100 each, (\$1900), from Bank of America where she was employed.
- D. The Applicant had to repay Bank of America in full.
- E. The other matter involved a Baltimore County Detective of the Vice and Narcotics Section looking into a known internet website used by individuals advertising prostitution.
- F. The Applicant's ad was titled "Is it true what they say about redheads?"--\$100/30 minutes \$200/1 hour".
- G. The Applicant provided the cell phone number in the ad that was the same telephone number that she provided on her application for registration.
- H. When the detective called the number, he spoke to a female who identified herself as "Heather" who arranged to meet him at the Red Roof Inn in Timonium.
- I. When the Applicant entered the room, she offered the Detective a

"hand job" or "oral" for \$80.

- J. The Detective handed the Applicant \$80 and then gave a pre-determined signal, which alerted the members of the Baltimore County Police Department's Vice Section to enter the room and arrest the Applicant.
- K. On September 9, 2008, the Applicant was charged with prostitution, and, on November 24, 2008, she pled guilty and was fined \$155.50, and two days of incarceration was imposed on her with two days suspended, one day of unsupervised probation, and was given a PBJ.

CONCLUSIONS OF LAW

Based upon the foregoing, the Board believes that it could conclude as a matter of law that the Ms. Naulty 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 could further conclude as a matter of law that the Ms. Naulty'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.

The Board was impressed by Ms. Naulty's testimony. Specifically, Ms. Naulty's criminal conduct was not related to the practice of any healthcare occupation. In accordance with the Board's prior rulings, theft and prostitution are crimes of moral

turpitude. According, the Board could find that based the record that Ms. Naulty did not possesses the requisite character to be licensed to practice massage in Maryland. However, the Board believes that Ms. Naulty has learned from her mistakes. It has been three years since her last conviction. The Board placed a great amount of weight on the fact that Ms. Naulty did not advertise for massage, as part of her solicitation. For these reasons, the Board is willing to issue a probationary license to Ms. Naulty.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this

2nd day of MAY 2011 that the majority of the Board hereby:


ORDERED that the application of **Healthier Naulty**, to practice massage therapy is hereby **GRANTED**; and it is further

ORDERED that the license be issued and that **Healthier Naulty** be placed on probation for twenty four months; 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.).

5-2-2011
Date


J. J. Vallone, JD, CFE Exec. Director for
Kay B. O'Hara D.C., President
Board of Chiropractic & Massage
Therapy Examiners

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.

5-2-2011

Date



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