

**IN THE MATTER OF
HENRY PLUMMER
Massage Therapy Applicant**

*** BEFORE THE
* STATE BOARD
* OF CHIROPRACTIC AND MASSAGE
* THERAPY EXAMINERS
* Case Number: 10-43M**

* * * * *

FINAL ORDER

By a document dated July 12, 2010, Henry Plummer ("Mr. Plummer" or the "Applicant"), submitted an application to the Board of Chiropractic and Massage Therapy Examiners (the "Board") to become a registered Massage Therapist. The Applicant answered "No" to Section 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?" Based upon the Board's investigation, that answer was false.

Consequently on September 9, 2010, the Board unanimously voted to initially deny the Applicant's application to become a registered Massage Therapist.

Pursuant to the Administrative Procedure Act (the "APA"), Md. State Govt. Code Ann. § 10-226(c)(1) (2009 Repl. Vol.) and the Maryland Chiropractic and Massage Therapy Act, codified at Md. Health Occ. Code Ann. § 3-101, *et seq.* (the "Act") (2009 Repl. Vol.), the Board hereby notified Mr. Plummer of its intent to deny his Massage Therapist registration.

The Board denied Mr. Plummer'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:
 - (1) Fraudulently or deceptively obtains or attempts to obtain a license or registration for the applicant or for another;
 - (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 February 17, 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. Mr. Plummer 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 1, 2, 3, 4, 5, 6, 7a, 7b, and 7c 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. Plummer's application. Mr. Plummer's initial application indicated that he had no criminal background. Mr. Ware searched Maryland's Judiciary Case Search to look up Mr. Plummer's background. Mr. Plummer had been charged with four different offenses and received probation before judgment ("PBJ").

Mr. Plummer testified on his own behalf. He stated that he did not understand what the Board's application meant. He did not understand the difference between arrested and convicted.

FINDINGS OF FACT

The Board makes the following findings of fact:

1. By a document dated July 12, 2010, the Applicant submitted an application to the Board to become a registered Massage Therapist. The Applicant answered "No" to Section 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?"

2. However, based upon the Board's independent investigation of the Applicant's background, the Board discovered that that answer was false. Specifically, the Board discovered the following:

- A. On June 3, 2005, in the District Court for Baltimore County: Charges of 1st degree burglary/theft over \$500 were dismissed;
- B. On November 9, 2005 in the District Court for Baltimore County: Charges of possession of marijuana; the Applicant pled and was found guilty;
- C. On November 10, 2005, in the Circuit Court for Baltimore County: Charges of theft over \$500 resulted in *Nolle Prosequi*;
- D. On February 21, 2007, in the District Court for Baltimore County: the Applicant was found not guilty of the charge of second degree assault.

3. As set forth above, the Applicant lacks the good moral character to qualify for a Massage Therapist in Maryland.

4. As set forth above, the Applicant violated the Act and regulations thereunder.

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 27th day of April 2011 that the majority of the Board hereby:

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

ORDERED that the license be issued and that **HENRY PLUMMER** be placed on probation for twenty four months; and shall formally petition the Board in writing at the conclusion of the 24 month period to have the probation status lifted; 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.).

Date

4-27-2011




J. J. Vallone, JD, CFE , Exec. Director
for/by direction of
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.

4-27-2011
Date



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