

IN THE MATTER OF * BEFORE THE STATE BOARD
MIKHAIL RUBINSHTEYN * OF CHIROPRACTIC
APPLICANT * EXAMINERS
* Case Number: 07-004M

* * * * *
FINAL OPINION AND ORDER

Pursuant to Md. Code Ann., Health Occ. (“H.O.”) § 3-315 (a) 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:

I. INTRODUCTION

Mr. Mikhail Rubinshteyn is an applicant for a license to practice massage therapy.

II. PROCEDURAL HISTORY

On August 13, 2007, the Board served Mr. Rubinshteyn with charges and a notice of intent to deny application to practice massage therapy, for violating certain provisions of the Md. Health Occ. Code Ann. § 3-5A-01, et. seq., (“the Massage Therapists Act”). The Board charged Mr. Rubinshteyn with violating the Maryland Health Occupations Code and its implementing regulations. Specifically, the Board charged Mr. Rubinshteyn with:

- (1) Frauduently or deceptively obtain[ing] or attempt[ing] to obtain a certificate or license for the applicant for another in violation of Md. Code Ann., Health Occ. § 3-5A-09(a)(1);
- (2) [Being] 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 discipline in violation of Md. Code Ann., Health Occ. § 3-5A-09(a)(3);

- (3) [Receiving a] conviction of or enter[ing] a plea[] 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 in violation of Md. Code Ann., Health Occ. § 3-5A-09(a)(4);
- (4) Fail[ing] to cooperate with a lawful investigation conducted by the Board in violation in violation of Md. Code Ann., Health Occ. § 3-5A-09(a)(19).

The Board further charged Mr. Rubinshteyn with violating COMAR 10.43.17.05(3)(a).

A full evidentiary hearing took place before a quorum of the Board on April 10, 2008. Ms. Gill called one witness, Ms. Teresa Thornton, Investigator for the Board. Mr. Rubinshteyn was represented by counsel throughout the proceedings. Mr. Rubinshteyn testified on his own behalf and in addition presented the following witness on his behalf: Mr. Samuel Scott. Ms. Gill introduced exhibits labeled 1 through 5C. Mr. Rubinshteyn introduced exhibit 1, as applicant's exhibits.

III. SUMMARY OF WITNESS TESTIMONY

The State's first and only witness was Ms. Teresa Thornton. Ms. Thornton is an investigator for the Board. She has held this position for two years. Ms. Thornton was calm during her testimony and looked directly at the person whom she was responding to when she answered questions. The Board found that she had a very credible demeanor.

Ms. Thornton's testimony centered on her investigation of Mr. Rubinshteyn's

criminal background. Mr. Rubinshteyn submitted an application to the Board on January 8, 2007. On this application there are several questions regarding the applicant's criminal background. Including one that reads, "Have you ever been arrested or pled guilty, no contest, nolo contendere or been convicted of a crime, received probation before judgment (other than a traffic violation)?" Mr. Rubinshteyn underlined the word arrested on his initial application and stated that he had only been arrested and not convicted.

Ms. Thornton independently checked Mr. Rubinshteyn criminal background and discovered that he had in fact received Probation Before Judgment in 2004. Mr. Rubinshteyn's application was submitted under oath that the contents were correct and that he was truthful. Ms. Thornton followed up with Mr. Rubinshteyn for more information on this arrest. Mr. Rubinshteyn emailed Ms. Thornton and explained that he was found guilty of a misdemeanor possession charge and sentenced to two years unsupervised probation and community service. Ms. Thornton asked Mr. Rubinshteyn for proof that he had completed all the terms of his probation. Mr. Rubinshteyn failed to provide her with proof that he had completed his community service.

Mr. Rubinshteyn's first witness was Mr. Samuel Scott. Mr. Scott did not help Mr. Rubinshteyn prepare his application and was not present at Mr. Rubinshteyn's arrest or court proceedings. Mr. Scott testified that he had been friends with Mr. Rubinshteyn since elementary school. Mr. Scott stated that Mr. Rubinshteyn was a good friend and was of high moral character. Mr. Scott was not aware of any of the details of Mr. Rubinshteyn's arrests for marijuana possession and had never done

drugs with Mr. Rubinshteyn.

Mr. Rubinshteyn testified on his own behalf. The Board did not find Mr. Rubinshteyn to be a credible witness. Mr. Rubinshteyn shifted in his seat and did not always look directly at the Board when he was answering the Board's questions. These physical manifestations and body language detracted from Mr. Rubinshteyn's credibility.

Mr. Rubinshteyn could not adequately explain why he neglected to inform the Board that he had received probation before judgment for possession of CDS. When questioned about the circumstances of his arrest, Mr. Rubinshteyn was evasive and not credible. For example, Mr. Rubinshteyn had an "owe sheet", "digital palm scale" and safe with \$1,245.00 cash inside in his room at the time of his arrest. Mr. Rubinshteyn stated that the scale was for his personal use, so that he wouldn't get cheated. Mr. Rubinshteyn claimed that the money in the safe was from tips he earned delivering pizzas for Pizza Hut. These answers, coupled with his demeanor led the Board to conclude that Mr. Rubinshteyn was not being truthful with them at the hearing and on his application.

Mr. Rubinshteyn stated that he believed that the probation before judgment that he received had been expunged. However, Mr. Rubinshteyn could not point to any communication he had received from his lawyer or the district court that would support this position. Mr. Rubinshteyn may have wished the probation before judgment was not on his record, but that did not make it go away.

IV. FINDINGS OF FACT

After considering the entire record in this case, including the testimony and exhibits entered into evidence at the hearing, and the arguments of counsel, the Board finds the following facts.

1. On or about, November 4, 2004, Mr. Rubinshteyn received a probation before judgment for possession of marijuana.
2. On or about January 8, 2007, Mr. Rubinshteyn submitted an application to the Board.
3. In this initial application, Mr. Rubinshteyn did not inform the Board that he had received probation before judgment for possession of marijuana. On this application, Mr. Rubinshteyn emphasized that he had only been arrested and was never convicted. This answer was not true.
4. Mr. Rubinshteyn's omissions on his application were done with the intent to defraud or deceive the Board.

V. CONCLUSIONS OF LAW

Based on the foregoing, the Board concludes that Mr. Rubinshteyn's application was fraudulent or deceptive. The omissions on Mr. Rubinshteyn's applications were knowing or voluntary. Mr. Rubinshteyn fraudulently or deceptively attempted to obtain a certificate or license for the applicant for another in violation of Md. Code Ann., Health Occ. § 3-5A-09(a)(1). The Board's decision is based on this one violation of its practice act. The Board did not find that Mr. Rubinshteyn violated Md. Code Ann., Health Occ. § 3-5A-09(a)3, § 3-5A-09(a)4 or § 3-5A-09(a)19).

The Board made these determinations based on the testimony of Mr.

Rubinshteyn and Ms. Thornton. The initial application completed by Mr. Rubinshteyn supports the charge that Mr. Rubinshteyn fraudulently and deceptively attempted to get licensed by the Board. The Board believes that his omissions on his application were knowing and intentional. For these reasons, the Board believes that Mr. Rubinshteyn is ineligible to be licensed as a massage therapist in Maryland.

V. ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 4th day of September, 2008, by a majority of the Board then serving,

ORDERED that, pursuant to the authority vested in the Board of Chiropractic Examiners by Md. Code Ann., Health Occ. Article, § 3-5A-09, the Respondent's application for massage therapy certification is hereby **DENIED**;

ORDERED that Mr. Rubinshteyn, is not permitted to reapply for licensure for **TWO (2) YEARS**; and be it further

ORDERED that Mr. Rubinshteyn will reimburse the Board all reasonable hearing costs; and be it further;

ORDERED that this document is a public record, pursuant to Md. Code Ann., State Gov't Article, § 10-617(h).

SEP 04 2008

Date

Duane Sadula for
Executive Director
Duane Sadula, D.C.
Board President
By Direction

NOTICE OF RIGHT OF APPEAL

In accordance with Md. Code Ann., Health Occ. § 3-316, you have a right to take a direct judicial appeal. A petition for appeal shall be filed within thirty days of your receipt of this Findings of Fact, Conclusions of Law and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure. If Mr. Rubinshteyn files an appeal, the Board is a party and should be served with the court's process. The Administrative Prosecutor is not involved in the case at this point and need not be served with or copied on the pleadings.