

**IN THE MATTER OF
DEOK HAMMEL
APPLICANT**

*** BEFORE THE STATE
* BOARD OF CHIROPRACTIC
* AND MASSAGE THERAPY
* EXAMINERS
* CASE NUMBER: 10-61M**

* * * * *

**FINAL ORDER OF DENIAL
OF APPLICATION FOR MASSAGE REGISTRATION**

INTRODUCTION

On January 27, 2011, The State Board of Chiropractic Examiners and Massage Therapy Examiners (“the Board”) notified Deok Hammel, (“Ms. Hammel” or “the Applicant”), D.O.B. 5/27/1958, Registration Number: M01186, of the Board’s denial of her request to reinstate her license to practice massage therapy because she did not meet the standards for licensure, under the Massage Therapy Practice Act, (“the Act”), Md. Code Ann., Health Occ. §3-5A-01, *et seq.* Specifically, the Board denied Ms. Hammel’s request for reinstatement based on the fact that she lacks sufficient good moral character. *See id.* § 3-5A-06(a)(1).

PROCEDURAL HISTORY

On or about December 19, 2009, the Board received an application for massage therapy registration from Applicant. On that application, Ms. Hammel answered “yes” to Question C. of the application for registration as a massage therapist, which asks: “Have you ever had a license, certificate, or registration

revoked, suspended, canceled, or investigated?" In the area provided for explanation of "Yes" answers to Question C, Ms. Hammel wrote "License was revoked May of 04 by the Board." Ms. Hammel also answered "Yes" to Question D, 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?" In the area provided to explain "Yes" answers to Question D, Ms. Hammel wrote "all (illegible) orders were *nolle prossed* and record expunged." The majority of the answers in the affirmative were based on the fact that on May 24, 2004, the Board previously concluded, as a matter of law, that Ms. Hammel had violated H.O. § 3-5A-11(a) (2), (8), (20) and (21), (using her massage therapy certificate fraudulently and in an unprofessional manner to engage in prostitution). Based on these violations, the Board ordered Ms. Hammel's Massage Therapy Certificate revoked, and further ordered Ms. Hammel to pay the Board a sum of \$170.50 as reimbursement for hearing costs.

Based on the May 24, 2004 revocation of Ms. Hammel's certificate, the Board unanimously voted to deny Ms. Hammel's 2009 subsequent application for a Massage Therapy Registration. Ms. Hammel was informed of the denial by letter dated January 27, 2010, which was attached with the Final Order of the May 24, 2004 revocation. The letter also stated that Ms. Hammel was forbidden to perform massage therapy for compensation in the State of Maryland.

Through counsel, Ms. Hammel wrote to the Board by letter dated February 1, 2010 requesting "that the Board afford her an opportunity to appear before the

Board to argue her case for reinstatement..." By letter dated February 2, 2010, the Board informed Ms. Hammel that her request for reinstatement would be presented to the Board at its executive session to be held February 18, 2010. After the February 18, 2010 meeting, the Board informed Ms. Hammel that her request for reinstatement had been denied. By letter dated May 27, 2010, Ms. Hammel wrote again to the Board regarding the reconsideration of the denial and requested "a hearing before the Board to consider the request for reinstatement."

Upon presentation to the Board of Ms. Hammel's request, a hearing regarding the reconsideration of the denial of Ms. Hammel's reinstatement of her Massage Therapy Certificate was scheduled for March 10, 2011.

SUMMARY OF THE EVIDENCE

A hearing for the reconsideration of the denial for reinstatement of Ms. Hammel's Massage Therapy Registration was held on March 10, 2010. Present were the following Board members, which constituted a quorum: Kay O'Hara, Board President, Stephanie Chaney, Michael Fedorczyk, Daniel J. Kraus, Jonathan Nou, Duane Sadula, Gwenda Harrison, and Ernestine Jones Jolivet. Also present were Roberta Gill, Esquire, Assistant Attorney General, Administrative Prosecutor, Grant Gerber, Esquire, Assistant Attorney General, Board Counsel, Gloria Brown, Paralegal for Administrative Prosecution, Gary R. Maslan, Esquire, Attorney for Ms. Hammel, Deok Hammel, Applicant and James J. Vallone, J.D., Executive Director.

Exhibits

The State offered nine (9) exhibits, all of which were admitted into evidence:

- No. 1 Maslan letter w/attachments, 12/30/09
- 2 Letter from Board to Maslan, 1/27/10
- 3 Letter from Maslan to Board, 2/2/10
- 4 Letter from Board, 2/2/10
- 5 Letter from Maslan, 5/27/10
- 6 Letter to Maslan, 10/27/10
- 7 Cover letter and Order, 5/25/04
- 8 State's letter to Maslan, 12/6/10
- 9 Applicant's letter to Board w/attachments, 12/27/10

Synopsis of Case

Ms. Hammel's Request for Reinstatement

The following is an overview of Ms. Hammel's arguments in favor of reinstating her license to practice massage therapy. Ms. Hammel is currently residing in Virginia. Ms. Hammel claims that having her massage therapy license revoked in Maryland "haunts her," and that Ms. Hammel "just wants an opportunity to reapply for a license in Maryland." (T 8 10-13). Ms. Hammel argued "the evidence presented to the Board at that time of the hearing was not reliable," based on the termination of the initial investigator and the "uncertainty and unreliability of photo identification" in regards to the photo array presented to the client. (T 19 7-11). Ms. Hammel argued that because the underlying charge of prostitution was *nolle prossed* by the State, she has "never in her entire life been found guilty of any crime of any nature." (T 20 1-8). The Applicant claimed that she had only worked at Classic Therapy for ten days before her arrest. (T 29 6-14). Ms. Hammel submitted several letters of reference at the hearing.

Currently, Ms. Hammel is licensed to practice massage therapy in the State of Virginia, and therefore she argued that Virginia recognizes her as "a

credible, decent person deserving of a license in Virginia.” (T 31 1-10). Ms. Hammel further argued that because nearly eight years has passed since Ms. Hammel was charged, sufficient time has passed to permit reconsideration of revocation of Ms. Hammel’s massage therapy license. (T 21 21, 22 1-5). At no time during the hearing did Ms. Hammel admit to any wrongdoing or misconduct under the scope of her Massage Certificate.

The State’s Request to Deny Reinstatement

The State presented the following arguments at the 3/10/²⁰¹¹~~2010~~ hearing. *JW*
The burden of proof is on Ms. Hammel to prove by a preponderance of the evidence. Ms. Hammel must satisfy all of the requirements for an applicant to receive their massage therapy license, including good moral character. (T 16 1-12). At no time did Ms. Hammel accept any responsibility for her misconduct which occurred under the scope of practice of her Massage Certificate. Until Ms. Hammel accepts responsibility for her involvement in prostitution at Classic Therapy, she does not merit a reinstatement of a Massage License or Registration (T 17 12-17).

The State’s initial investigator was terminated from employment for conduct not related to Ms. Hammel’s case; however; but his testimony was still credible. No legal problems existed at the time he testified and he was therefore a credible eyewitness to the activities that took place. (T 35 21, 36 1-8). The State argues that Classic Therapy was an establishment well known to the Board as a place where illegal sexual activity took place, and the fact that the State chose not to prosecute in criminal court is not dispositive that there was no

J. J. Vallone
J.J. VALLONE, J.D.
Executive Director
E. M. ...

evidence or insufficient evidence to support administrative action against Ms. Hammel's Massage Certificate. (T 36 1-21, 37 1-7). Ms. Hammel's failure to take and pass the Jurisprudence Examination further shows that she lacks the qualifications to practice massage therapy in Maryland (T 40 17-21).

FINDINGS OF FACT

The Board makes the following Findings of Facts based on the foregoing record:

1. That Deok Hammel (Ms. Hammel or the "Applicant") was a certified Massage Therapist in Maryland, who was originally issued her certificate on October 11, 2000.
2. That on April 24, 2003, Ms. Hammel was working at Classic Therapy ("Classic"), a massage parlor that is well known to the Board as a place where illegal sexual activity takes place.
3. That on April 24, 2003, Ms. Hammel was arrested and charged with prostitution for providing a hand release to a male customer.
4. On April 8, 2004, an evidentiary hearing was held on the charges against Ms. Hammel's certificate.
5. On May 24, 2004, the Board concluded, as a matter of law, that Ms. Hammel had violated H.O. § 3-5A-11(a) (2), (8), (20) and (21). Based on these violations, the Board ordered Ms. Hammel's massage therapy certificate revoked, and further ordered Ms. Hammel to pay the Board a sum of \$170.50 as reimbursement for hearing costs. The Board's order was not appealed.

6. Based on the May 24, 2004 revocation of Ms. Hammel's certificate, the Board voted to deny Ms. Hammel's December 19, 2009 application for Massage Therapy Registration.

7. On March 10, 2011, upon request of Ms. Hammel a hearing was held before a quorum of the Board regarding the initial denial of her application for Massage Therapy Registration.

CONCLUSIONS OF LAW

Based upon the foregoing Evidence and Findings of Fact, the Board concludes that Ms. Hammel lacks the moral character to qualify for reinstatement as a Massage Therapist in Maryland. See Md. Code Ann., Health Occ. §3-5A-06(a)(1). Misusing one's license to practice Massage Therapy in furtherance of prostitution is one of the most serious violations of the Board's practice act. The Board found unconvincing Ms. Hammel's argument that she had no knowledge of Classic Therapy's well-known involvement with illegal sexual activity because she had only worked at Classic for ten days before her arrest. The Board found Ms. Hammel's fraudulent use of her massage therapy license to engage in prostitution to have an ongoing negative impact on the moral character evaluation in her application for reinstatement of her license. The Board appreciates Ms. Hammel's efforts to rehabilitate herself. Ms. Hammel's refusal to accept responsibility for her past actions demonstrates that she has neither addressed the gravity of her previous conduct nor rehabilitated herself. Further, the Board finds Ms. Hammel's licensure in Virginia to hold no bearing on its decision, as the charges of prostitution occurred in Maryland. Accordingly, Ms.

Hammel failed to meet the qualifications to become reinstated as a Massage Therapist, and therefore the Board voted to deny her application.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is on this 20th day of June, 2011 that the majority of the Board hereby:

ORDERED that the application for reinstatement or issuance of a Massage Registration of the Applicant, Deok Hammel is denied is hereby DENIED and the Board will not accept, from the Applicant, any future application for reinstatement, licensure, certification, and/or registration for five (5) years; and it is further

ORDERED that for purposes of public disclosure and as permitted by Md. State Govt. Code Ann. §§ 10-601 *et seq.* (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

6-20-2011


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

NOTICE OF RIGHT TO APPEAL

Pursuant to Maryland Health Occ. Code Ann. § 3-316, you have a right to take a direct judicial appeal. A petition for appeal shall be filed within thirty (30) days from mailing of this Final Decision and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Maryland State Gov't Code Ann. §§10-201 *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.