

IN THE MATTER OF
KAYLYN BARNES, C.A.
Registration No.: RC1153
Respondent

* BEFORE THE
* STATE BOARD
* OF
* CHIROPRACTIC AND
* MASSAGE THERAPY EXAMINERS
* Case No. 09-46C

* * * * *

**FINAL ORDER OF REVOCATION
OF THE RESPONDENT'S CHIROPRACTIC ASSISTANT REGISTRATION**

On September 28, 2010, the Board of Chiropractic and Massage Therapy Examiners (the "Board") summarily suspended the registration to practice as a Chiropractic Assistant (CA) of Kaylyn Barnes, the Respondent, due to receiving information that the Respondent tested positive for cocaine on September 1, 2010 from a sample taken on August 31, 2010, a work day.

On OCTOBER 21, 2010, the Board notified the Respondent of its Intent to Revoke her registration. The Notice also informed the Respondent that, unless she requested a hearing in writing within 30 days of receipt of said Notice, the Board would sign the Final Order herein, which was enclosed. More than 30 days has elapsed and the

Chiropractic and Massage Therapy Examiners Act, codified at Md. Health Occ. Code Ann. § 3-101, et seq., ("the Act") (2009 Repl. Vol.).

The pertinent provision of § 10-226(c)(1) of the APA states:

Revocation of suspension. (sic)—(1) Except as provided in paragraph (2) of this subsection, a unit may not revoke or suspend a license unless the unit first gives the licensee:

- (i) written notice of the facts that warrant suspension or revocation; and,
- (ii) an opportunity to be heard.

The pertinent provisions of § 3-313 provide:

Subject to the hearing provisions of § 3-315 of this subtitle, the Board may deny a license to any applicant, reprimand any licensee, place any licensee on probation, with or without conditions, or suspend or revoke a license, or any combination thereof, if the applicant or licensee:

FACTS THAT WARRANT THE REVOCATION OF THE RESPONDENT'S LICENSE

1. At all times relevant hereto, the Respondent was registered to practice as a Chiropractic Assistant (CA) in Maryland. The Respondent was first registered on May 17, 2007. The Respondent's registration expires on March 31, 2011.

2. By document filed on or about August 29, 2008, the Respondent's employer, a chiropractor, indicated that he had heard rumors that the Respondent was using heroin, and, that when he confronted her, she admitted that she was using up to three 50 milligram injections per day while engaging in CA duties in May/June 2008.

While she claimed that she never injected at work, she admitted that she brought the "works" to work one day and they fell out of her purse onto the bathroom floor.

3. The Respondent stated that she entered treatment in July 2008; however, the treatment center was directed to provide updates and a formal certification regarding her sobriety and ability to practice, in October 2009, but failed to do so.

4. On June 7, 2010, the Board summarily suspended the Respondent's registration. At the Show Cause hearing July 22, 2010 on the above, the Respondent attended, along with her attorney, Ronald Kurland, as well as the Administrative Prosecutor, Roberta Gill, Assistant Attorney General. A quorum of the Board was present. Documentation was submitted showing that the Respondent: was attending another treatment center and was compliant with that program. The program recommended that, as long as she was compliant, she could safely practice as a CA; her employer endorsed her return to work as a CA.

5. As a result of the hearing, the Board and the Respondent entered into a Consent Order on August 4, 2010. The Consent contained the following provisions, *inter alia*:

A. The Summary Suspension on the Respondent's license to practice as Chiropractic Assistant is hereby Lifted and the Respondent is immediately placed on **PROBATION**, for three years subject to the following conditions:

(1) Respondent will be required to comply with all the terms set forth by Eastern Avenue Health Solutions, the Respondent's current treatment program, including:

- (a) Submitting to random urinalysis testing;
- (b) Abstaining from the use of illicit drugs;

(c) Complying with the prescribed dose of maintenance medications; and

(d) Attending weekly counseling sessions.

(2) The treatment center must submit monthly progress reports addressed to the Board and immediately notify the Board of any non-compliance and/or any positive urinalysis results.

B. **ORDERED** that, should the Board receive a report that the Respondent has violated the Act or if the Respondent violates any conditions of this Order or of Probation, after providing the Respondent with notice and an opportunity for a hearing, the Board may take further disciplinary action against the Respondent, including revocation. The burden of proof for any action brought against the Respondent as a result of a breach of the conditions of the Order or of Probation shall be on the Respondent to demonstrate compliance with the Order or conditions; and be it

6. On September 28, 2010, the Board received notice from the Respondent's counselor at the treatment program that the Respondent had tested positive for cocaine on September 1, 2010 for a sample taken on August 21, 2010, both of which were work days for the Respondent.

7. As a result thereof, on September 28, 2010, the Board issued a Summary Suspension to the Respondent for endangering the public health, welfare or safety, and, in doing so, violating the terms of the Consent Order and the conditions of Probation.

8. As set forth above, by failing to maintain compliance with her treatment protocols and thereby endangering the public health, welfare or safety, and violating the Consent Order and the terms of Probation thereunder, the Respondent's registration should be revoked.

CONCLUSIONS OF LAW


Based upon the foregoing Facts, the Board concludes that the Respondent violated its Act and that the revocation is warranted, pursuant to § 3-313 and §10-226 (c) (1) of the APA.

NOTICE OF RIGHT OF APPEAL

In accordance with Md. Health Occ. Code Ann. § 3-316 (2009 Repl. Vol.) and the Administrative Procedure Act, Md. State Govt. Code Ann. § 10-201, *et seq.*, (2009 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 aforesaid authority.

NOV 23 2010

Date



James Vallone, J.D., Executive Director
For Kay B. O'Hara, D.C., President
Board of Chiropractic and Massage Therapy
Examiners