

IN THE MATTER OF \* BEFORE THE MARYLAND  
 NICOLE A. SMITH, RMP \* STATE BOARD OF  
 Respondent \* MASSAGE THERAPY EXAMINERS  
 License Number: R00612 \* Case Number: 18-53M

\* \* \* \* \*

**FINAL ORDER DENYING**  
**REINSTATEMENT OF MASSAGE THERAPY LICENSE**

On the 16th day of July, 2019, the Maryland State Board of Massage Therapy Examiners (the “Board”) notified **NICOLE A. SMITH, RMP** (Registered Massage Practitioner). (the “Respondent”), License Number **R00612**, of its intent to deny her application to reinstate her license to practice massage therapy pursuant to the Maryland Massage Therapy Act (the “Act”), Md. Code Ann., Health Occ. §§ 6-101 *et seq.* (2014 Repl. Vol. and 2018 Supp.).

The Board based its action on the Respondent’s violation of the following provisions of the Act and Md. Code Regs.:

**Health Occ. § 6-308. License or registration denial, suspension, or revocation.**

(a) *In general; grounds.* -- Subject to the hearing provision of § 6-309 of this subtitle, the Board may deny a license or registration to an applicant, reprimand a 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;

...  
(18) Is addicted to, or habitually abuses, any narcotic or controlled substance as defined in §5-101 of the Criminal Law Article;

...

(20) Engages in conduct that violates the professional code of ethics; [and]

The violations of professional code of ethics and Board regulations include:

**Md. Code Regs. 10.65.03.03. Standards of Practice**

B. A license holder or registration holder who suffers from a physical, mental, or emotional impairment, including chemical abuse, which impacts the license holder's or registration holder's ability to practice massage therapy, shall proactively seek professional treatment and shall refrain from the practice of massage therapy until such time as the impairment no longer exists or reasonable accommodations can be made.

D. A license holder or registration holder may not:

(2) Knowingly engage in or condone behavior that:

- (a) Is fraudulent;
- (b) Is dishonest;
- (c) Is deceitful; or
- (d) Involves moral turpitude;

In its Notice, the Board informed the Respondent that she had the opportunity to request a hearing before the Board by submitting a request in writing to the Board's Executive Director within thirty days of service of the Notice. More than thirty days have elapsed since the service of the Notice on the Respondent, and the Respondent has not requested a hearing.

**FINDINGS OF FACT**

The Board makes the following findings of fact:

1. The Respondent was initially licensed as an RMP in Maryland on January 18, 2007, under License Number R00612. The Respondent's RMP license expired on October 31, 2016.

2. On or about November 2, 2018, the Board received the Respondent's "Reinstatement Application 2016-2018" ("Reinstatement Application").

3. On her Reinstatement Application, the Respondent answered "Yes" to the following questions:

1. **Since your last active status**, have you been addicted to, or is currently dependent on alcohol, any drug (prescription or non-prescription), or any controlled substance?

2. Has **ANY** state licensing, certification, registration or disciplinary Board or comparable body in any federal, state, or municipal Agency or Organization or Armed Forces Branch ever taken any action or investigation against any license, certification, or registration that had been issued to you by any of those jurisdictions, including this Board?

3. **Since your last active status**, have there been any outstanding complaints, investigations, charges, or allegations pending against you by any of the aforementioned bodies?

...

5. **Since your last active status**, have you had any court proceedings, pled **guilty**, **nolo contendere**, **no contest**, or been **convicted** or received **probation before judgment** of any criminal act, including DWI or DUI of alcohol or controlled substances?

4. The Respondent provided the following explanations in response to the questions:

1. Since my last active status I have been addicted to prescription pain medications. My addiction to opioids started two and a half years ago...it started as treatment for chronic back pain and then spiraled into using to cope with unaddressed emotional and personal issues...In May of this year I started treatment at...an outpatient substance abuse treatment program.

2. On October 21, 2018 I voluntarily surrendered my LPN license with

the Maryland Board of Nursing. This was a decision I made in order to be able to continue working on my sobriety.

3. Since my last active status there were complaints filed against my nursing license related to my substance use disorder. These complaints have been closed as I have voluntarily surrendered my LPN license.

5. ...The first court proceeding was on January 30, 2018 and I received one-year unsupervised probation for CDS-possession. This was related to charged filed against me in November 2017 for diversion of narcotics while working at an Assisted Living Facility...I would take advantage of narcotic pain medications which were prescribed for resident. This was done in the manner of myself and another nurse "destroying" unused/discontinued narcotic pain medication and in turn keeping them for our own personal use...I obtained employment at a...Long Term Care facility...In February 2018 I was put on administrative leave for a discrepancy with the narcotic log. I was let go from my employer for narcotic diversion. I have an upcoming court case (case #5C00457203) on November 8, 2018 for the charges brought against me by my former employer.

5. Based on the information provided on the Reinstatement Application, the Board initiated an investigation of the Respondent.

#### I. BOARD INVESTIGATION

##### Discipline by the Maryland Board of Nursing

6. On October 25, 2018, the Maryland Board of Nursing ("Board of Nursing") accepted the *Voluntary Surrender of Licensed Practical Nurse License and Certified Nursing Assistant Certificate* ("Voluntary Surrender") from the Respondent. In accordance with the Voluntary Surrender, the Respondent agreed that she may not apply for reinstatement of her Maryland nursing license or nursing assistant certificate for a period of five (5) years.

7. The Voluntary Surrender contains the following statements indicating how the Respondent's practice was brought to the attention of the Board of Nursing:

On December 5, 2017, the Board [of Nursing] received a complaint (“First Complaint”) from an assisted living facility (“ALF”) that I conspired with a co-worker and diverted controlled dangerous substances (“CDS”) from the ALF. I admitted to the Board’s Investigator that I forwarded falsified prescriptions for CDS to the ALF’s pharmacy. I signed for delivery of the CDS and then altered ALF records so that medications would not be counted by the ALF. I also conspired with the Co-Worker to divert medications that had been documented as destroyed. During a search of my house, the police found a variety of tablets, patches and pills that I had diverted from the ALF. I admitted to the Board’s Investigator that I have a substance use disorder and my preferred drugs are oxycodone and Percocet.

On February 22, 2018, the Board received a complaint (“Second Complaint”) from a long-term care facility (“LTC”) that I had diverted CDS. My administration of PRN (as needed) pain medications to patients was unusually high compared to other nurses. The patients told the Director of Nursing that they did not receive the PRN pain medications that I had documented as administered. I admitted in an interview with Baltimore County Police on February 7, 2018, that I would take one or two pills of oxycodone from the patients per shift to satisfy my addiction and pocket more for later use.

### **Criminal Conviction**

8. On or about November 30, 2017, in the District Court of Maryland for Baltimore County, Case Number 2C00455387, the Respondent was charged with seven counts of CDS: Possession-Not Marijuana arising out the events related to her diversion from the Assisted Living Facility. On January 30, 2018, the Respondent pleaded not guilty to Count 5, CDS: Possession- Not Marijuana and received a disposition of unsupervised Probation Before Judgment for one year. A disposition of Nolle Prosequi was entered on the remaining charges.

9. On or about July 11, 2018, in the Circuit Court for Baltimore County, Maryland, Case Number 03K18002951, the Respondent was charged with seven counts of Theft-

Scheme: Less \$100 and twenty counts of CDS Possession-Not Marijuana related to events that occurred at the long-term care facility where she was employed. On November 8, 2018, the Respondent plead guilty to one count, Count 8, CDS: Possession-Not Marijuana. A disposition of Nolle Prosequi was entered on the remaining charges. The Respondent was sentenced to six months incarceration, of which, all but time served was suspended. The Respondent was placed on eighteen (18) months of supervised probation.

### CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent's actions constitute:

- 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 disciplinary action under this section, in violation of Health Occ. § 6-308(a)(3);
- being convicted of ... a crime involving moral turpitude that would be grounds for disciplinary action under this section, in violation of Health Occ. § 6-308(a)(4);
- violating any provision of this title, in violation of Health Occ. § 6-308(a)(11); to wit: § 6-306.1 Conspicuous display of license or registration;
- being addicted to, or habitually abusing, any narcotic or controlled substance as defined in §5-101 of the Criminal Law Article; in violation of Health Occ. § 6-308(a)(18);
- engaging in conduct that violates the professional code of ethics, , i.e. Md. Code Regs. 10.65.03.03 and Md. Code Regs. 10.65.03.05, in violation of Health Occ. § 6-308(a)(20); and,
- knowingly doing an act that has been determined by the Board to be a violation of the Board's regulations, *i.e.* Md. Code Regs. 10.65.03.03.B and 10.65.03.03.D.2

### ORDER


Based on the foregoing Findings of Fact and Conclusions of Law, it is, by the affirmative vote of a majority of the Board considering this case:

**ORDERED** that the application of Respondent, **NICOLE A. SMITH**, requesting reinstatement of her license to work as a Registered Massage Practitioner, License Number **R00612**, in the State of Maryland, is hereby **DENIED**; and it is further

**ORDERED** that the Respondent is prohibited from practicing massage therapy in the State of Maryland; and it is further

**ORDERED** that this Order is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Prov. §§ 4-101 *et seq.* (2014).

11/27/2019  
Date

  
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Paula Jilanis, LMT  
Chair, Maryland State Board  
of Massage Therapy Examiners

### **NOTICE OF RIGHT TO APPEAL**

Pursuant to Md. Code Ann., Health Occ. § 6-310(b) (2014 Repl. Vol. and 2018 Supp.), you have a right to take a direct judicial appeal. A Petition for Judicial Review must be filed within thirty (30) days of service of this Order and shall be made as provided for judicial review of a final decision in the Md. Code Ann., State Gov't §§ 10-201 *et seq.* (2014 Repl. Vol. and 2018 Supp.) and Title 7, Chapter 200 of the Maryland Rules.