IN THE MATTER OF	*	**BEFORE THE MARYLAND STATE**
JASMINE M. BETTER	*	**BOARD OF CHIROPRACTIC AND**
Applicant	*	**MASSAGE THERAPY EXAMINERS**
	*	**Case Number: 14-01M**

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FINAL ORDER

On or about March 18, 2014 the Maryland State Board of Chiropractic and Massage Therapy Examiners (the "Board") notified Jasmine M. Better (the "Applicant") of the Board's intent to deny her Application for Registration to practice Massage Therapy pursuant to the Maryland Chiropractic Act (the "Act"), Md. Code Ann., Health Occ. ("H.O.") §§ 3-5A-01 *et seq.* (2009 Repl. Vol. & 2013 Supp.). Specifically, the Board based its action on the Applicant's violation of the following provisions of the Act:

§ 3-5A-06 Qualifications for license and registration.

(b) *Qualification for registration.* – To qualify for registration, an applicant shall be an individual who:

(1) Is of good moral character[.]

§ 3-5A-11 Denials; suspensions; revocations.

(a) *Denial of a license or registration.*—Subject to the hearing provisions of § 3-315 of this title, the Board may deny a...registration to any applicant...if the applicant...

(1) Fraudulently or deceptively obtains or attempts to obtain a...registration for the applicant...; [and]

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

The pertinent provisions of the Board's code of ethics under Md. Code Regs. ("COMAR") 10.43.18 (2013) provide:

.03 Standards of Practice

C. A...registration holder shall:

(2) Engage in professional conduct at all times, with honesty, integrity, self-respect, and fairness[.]

D. A...registration holder may not:

(2) Knowingly engage in or condone behavior that:

(a) Is fraudulent;

(b) Is dishonest; [or]

(c) Is deceitful[.]

On July 17, 2014, a hearing on the merits was held. The following Board members were present, which represented a quorum: Michael Fedorczyk, D.C., Board President; David Cox, LMT, Board Vice-President; Karen Biagiotti, LMT, Board Secretary/Treasurer; Jonathan Nou, D.C.; Gregory Lewis, D.C.; Ernestine Jones Jolivet, Consumer Member; and Gloria Boddie-Epps, Consumer Member. Also present were the following individuals: Grant D. Gerber, Assistant Attorney General, Board Counsel; Michael Kao, Assistant Attorney General, Administrative Prosecutor; James J. Vallone, Executive Director; Michelle Czarnecki, Compliance Manager. The Applicant, Jasmine M. Better, was present without counsel and represented herself throughout all portions of the hearing. The Board issues this Order in accordance with its rulings during the hearing and based upon its consideration of the entire record, including all exhibits, witness testimony and oral arguments. For the reasons set forth below, the Board adopts this final decision and Order.

SUMMARY OF THE EVIDENCE

The following exhibits were entered into evidence upon stipulation from both parties:

State's Exhibits

1	Massage Therapy Application for Jasmine Better, dated 11/15/13
2	Case information printout, Case #5C00349620, District Court for Baltimore County
3	Letter from Applicant, dated 1/8/14
4	Uniform Criminal Citation, dated 11/10/13
5	Report of Investigation

The Administrative Prosecutor, Mr. Michael Kao, AAG, presented the following arguments for the State. The Applicant submitted an application for massage therapy licensure to the Board, dated November 15, 2013. In that application, the Applicant answered "no" to the question in the application that asked whether she had "ever appeared in court, 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?" (Exhibit 1, p. 2). However, a routine criminal background check revealed that Ms. Better received probation before judgment for illegal possession of alcoholic beverage in an open container on January 23, 2011. When the Board's investigator, Christopher Bieling, asked the Applicant about the findings of the background check, the Applicant indicated that she had simply forgotten about the citation. Mr. Bieling then asked the Applicant if there was anything else that she failed to disclose in her application, to which she replied that she was arrested for

possession of marijuana in November of 2013. The Applicant then submitted a written statement to the Board, dated January 8, 2014 in which reiterated that she had forgotten about the open container citation but acknowledged failing to notify the Board of the possession of marijuana and drug paraphernalia charge. In her letter, the Applicant explained that she did not disclose that information in her application because she thought that she had not been charged with those offenses yet.

The Applicant provided argument and testimony on her own behalf. The Applicant explained to the Board that her failure to report her criminal history to the Board in her application was the result of negligence and ignorance on her part and failing to read the application thoroughly. In regards to the open container citation, the Applicant stated to the Board that she had forgotten about it, and that there was no intent to deceive the Board because she had been advised by her massage therapy training school that the Board does a routine criminal background check. In regards to the marijuana possession charge, the Applicant explained that because she hadn't appeared in court for it yet, she did not realize that it needed to be disclosed in her application. The Applicant further explained that her application had been filled out prior to the possession charge, and that she failed to reexamine her application before submitting it to the Board. The Applicant stated that this was negligence on her part, and that while she should have looked through the application again after her possession charge and corrected her answers, her failure to do so was not an attempt to deceive the Board. The Applicant testified that the possession charge was dropped by the district court, and that she has already served her 20 hours of community service that was ordered for the paraphernalia charge. The Applicant stated to the Board that

she has been working hard towards a career in massage therapy, and that this process has been a wake-up call for her to be more attentive and to take this opportunity seriously.

FINDINGS OF FACT

The Board makes the following Findings of Fact based on the full record:

1. The Applicant is not now, and has not previously been, licensed or registered to practice any type of massage therapy in the State of Maryland.

2. By application dated November 15, 2013 (the "Application"), which the Board did not receive until on or about December 30, 2013, the Applicant applied for a registration to practice as a massage practitioner in Maryland.

3. In the Application under Section D, entitled "Disciplinary/Background Information," the Applicant answered "NO" to the following question:

> Have you ever appeared in court, 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?

4. In signing her name to the Application, the Applicant acknowledged and agreed that "[t]he information provided in this application is truthful and correct to the best of my knowledge and belief. I understand that providing false information of any kind or omitting information known to me may result in the voiding of this application."

5. In accordance with the Board's application approval process, the Applicant underwent a routine criminal history check. Pursuant to the criminal history check, the Board discovered that the Applicant received probation before judgment for illegal Possession of Alcoholic Beverage in an Open Container in the District Court of

Maryland for Baltimore County on January 23, 2011, which she failed to disclose in her Application.

6. Following the criminal history check, a Board investigator contacted the Applicant by telephone to conduct further inquiry. During the telephone conversation, the Applicant further disclosed that she was arrested for possession of marijuana in Howard County, Maryland on November 10, 2013.

7. Court records that the Board obtained revealed that the Applicant was charged by Uniform Criminal Citation for: Possession of Controlled Dangerous Substance (marijuana) in the amount of less than 10 grams, in violation of Md. Code Ann., Crim. Law § 5-601; and Possession of Drug Paraphernalia, in violation of Md. Code Ann., Crim. Law § 5-619, in Howard County, Maryland, on or about November 10, 2013, which she failed to disclose in her Application.

8. The Applicant's failure to disclose in her Application: that she was previously arrested and received probation before judgment for illegal possession of alcoholic beverage in an open container in Baltimore County in 2011; and that she was arrested for possession of marijuana and drug paraphernalia in Howard County on or about November 10, 2013, constitutes lacking in good moral character, in violation of H.O. §3 -5A-06(b)(1); fraudulently or deceptively obtains or attempts to obtain a registration for the applicant, in violation of H.O. §3-5A-11(a)(1); and engaging in conduct that violates the professional code of ethics adopted by the Board under COMAR 10.43.18.03C2 and COMAR 10.43.18.03D2(a), (b) and (c). The Applicant's violation of the Act and the Board's code of ethics, as set forth, constitute grounds for denial of her Application.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes that the Applicant violated H.O. §§ 3-5A-06(b)(1) and 3-5A-11(a)(1) and Code Md. Regs. 10.43.18.03D2(a),(b) and (c) by failing to disclose her criminal history as requested in her Application for Massage Therapy Registration. The Board found that the Applicant was remorseful for her failure to disclose her criminal history, and that she did not intend to mislead or deceive the Board. Further, the Board found significant that the Applicant recognized and took responsibility for her negligence, and that she has learned a valuable lesson from this experience. Accordingly, based on the circumstances of the charges at issue, the facts of the investigation, and the testimony provided at the evidentiary hearing, the Board finds that the Applicant has sufficient moral character to qualify for a probationary registration for massage therapy.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 6th day of August, 2014, by the majority of the Board, hereby:

ORDERED that application for massage therapy registration submitted by **Jasmine M. Better** is hereby **GRANTED;** and it is further

ORDERED that the Applicant be placed on **PROBATION** for **THREE (3) YEARS**; and it is further

ORDERED that during the probationary period, the Applicant is to successfully complete a Board-approved Ethics course and examination; and it is further

ORDERED that after the three year probationary period, and upon the Board's receipt of documentation showing successful completion of the probationary terms, the

Applicant may petition the Board in writing to terminate the probationary status of her registration; and it is further

ORDERED that the Applicant shall at all times cooperate with the Board in the monitoring, supervision, and investigation of her compliance with this Order and the probationary terms herein; and it is further

ORDERED that for the purposes of public disclosure and as permitted by Md. Code Ann., State Gov't §10-617(h) (2009 Repl. Vol. & 2013 Supp.), 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. Code Ann., State Gov't §§ 10-601 *et seq.* (2009 Repl. Vol. & 2013 Supp.).

August 6, 2014
Date

J.V. Vallone, JD, Exec. Director for
Michael Fedorczyk, D.C., President
By direction: Board of Chiropractic &
Massage Therapy Examiners

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., Health Occ. § 3-316(b), the Respondent has the right to take a direct judicial appeal. Any appeal shall be filed within 30 days from the receipt of this Final 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.