

**IN THE MATTER OF
ROBERT JAY TRAMELL, II
REGISTERED MASSAGE
APPLICANT**

*** BEFORE THE
* STATE BOARD OF
* CHIROPRACTIC AND
* THERAPY EXAMINERS
* Case No. 10-50M**

* * * * *

ORDER

On or about August 4, 2010, the Maryland Board of Chiropractic and Massage Therapy Examiners (the "Board"), received information about Robert Jay Trammel, II's ("the Applicant" or "Mr. Trammel"), criminal background. Mr. Trammel answered "yes" to Question D on his application for licensure as a registered massage therapist Question D 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?" Mr. Trammel stated that he had been charged with assault with intent to commit robbery, burglary, malicious destruction of property, trespassing on private property, disorderly conduct, and theft less than \$100.00.

After receiving Mr. Trammell's Application for Licensure, the Board conducted a routine criminal background check on the Applicant. This background check revealed that the Applicant failed to fully disclose the information required by Question D.

Accordingly, on March 2, 2011, the Board, by a majority of its fully authorized membership, voted to initially deny Mr. Trammel's application for

Massage Therapy registration. The Board denied Mr. Trammel's application, pursuant to the Maryland Chiropractic and Massage Therapy Examiners Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") § 3-5A-01, *et seq.* The pertinent provisions state:

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

(a) Qualification for license. - To qualify for a license, an applicant shall be an individual who:

(1) Is of good moral character;

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

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

(1) Fraudulently or deceptively obtains or attempts to obtain a license or registration for the application or for another;

(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 please set aside.

The Board held a hearing in this matter on May 12, 2011. The Board issues this Final Decision and Order based upon its consideration of the entire record, including the exhibits, witness testimony and oral arguments. Mr. Trammel attended the hearing, but was not represented by counsel. The hearing was conducted in accordance with the APA, the Board's practice act and regulations. A full quorum of the Board was present during the entire hearing and deliberations. The Board unanimously agreed to the Findings of Fact and

Conclusions of Law in this order. For the reasons set forth below, the Board approves and adopts this Final Decision and Order.

SUMMARY OF THE EVIDENCE

The prosecution introduced exhibits A, B, and C into evidence. Mr. Trammel testified on his own behalf. Mr. Trammel explained that in regard to his past convictions, he takes full responsibility for his actions but believes he has changed. Mr. Trammel explained that has taken measures to deal with his addiction and maintain his sobriety. Mr. Trammel also explained that he did not intend to deceive the Board of his criminal history in his application for licensure, and that while he is ashamed of his offenses, he did not understand the seriousness of the application process and thought that after expounding on a few of his charges, the rest of his criminal history would be discovered by the Board during the criminal background check.

FINDINGS OF FACT

The Board makes the following findings of fact:

1. By application dated August 4, 2010, the Applicant submitted an application to the Board to become a registered massage therapist.
2. The Applicant answered "yes" to Question D of the application 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?" The Applicant further responded to the details requested on the charges: "See attached."
3. The application called for documentation and information pertaining

to the "arrest, conviction, probation and parole, detailed statement of education, social and rehabilitative activities since conviction, detailed list of all work activities and supervision since conviction, and all residences since conviction."

The Applicant provided the following information about his criminal charges in the attachment:

- A. On 3/05/94, in Harford County Maryland, for Assault with Intent to Commit Robbery, Burglary, Malicious Destruction of Property and Assault.
- B. On 11/20/98, in Harford County Maryland, for Trespassing on Private Property, for which he was found guilty and sentenced for a ninety day jail term all of which were suspended, and Applicant was placed on probation which ended 01/07/02.
- C. On 5/10/06, in Harford County Maryland, for Disorderly Conduct, to which the Applicant was found guilty and fined \$157.70 and sentenced to sixty days incarceration.
- D. On 6/13/07, in Harford County Maryland, for Theft Less than \$100.00. The Applicant was found guilty and fined \$100.00.

4. After receiving the application, the Board began an investigation which discovered that the Applicant failed to reveal the following criminal charges:

- A. On 5/6/93, in Harford County Maryland, the Applicant was charged with Possession of Marijuana and CDS: Possession of Paraphernalia, both of which were rendered Nolle Prosequi on 10/06/93.

- B. On 10/25/93, in Harford County Maryland, the Applicant was charged with Day Time Burglary with the Intent to Steal and Theft of \$300.00 Plus Value. These charges were forwarded to the Circuit Court of Harford County Maryland, where the Applicant was found guilty and sentenced to ten years in jail with eight years of the sentence suspended. Upon release the Applicant was sentenced to two years parole and probation, with special conditions of drug and alcohol counseling and abstinence from drugs and alcohol set forth for the Applicant.
- C. On 11/24/93, in Harford County Maryland, a warrant was issued for the Applicant who was charged with Theft: \$300.00 Plus Value. On 12/17/98 the Applicant was found guilty and sentenced to two years in jail with one year and six months suspended and a restitution amount of \$6000.00. The Applicant's probation was to end on 11/29/01.
- D. On 2/16/94, in Harford County Maryland, the Applicant was charged with Battery and Mace/Chemical Device Intent/Injure. On 8/10/94 the Applicant was found guilty of Battery, with the Mace/Chemical Device charge rendered Nolle Prosequi. The Applicant was sentenced to one year in jail.
- E. On 1/17/98, in Harford County Maryland, the Applicant was charged with Knowingly Furnishing Alcohol to a Minor. On 8/5/98 the Applicant was found guilty and received a fine of \$540.00.

CONCLUSIONS OF LAW

Based on the foregoing, the Board believes that it could conclude as a matter of law that the Mr. Trammel lacks good moral character and, therefore, fails to meet the qualifications for registration under Md. Health Occ. Code Ann § 3-5A-06 (a)(1). Under the Board's Practice Act, Mr. Trammel's criminal background is evidence of his lack of moral character. Mr. Trammel's testimony gave the Board the impression that he had been rehabilitated and learned from his past mistakes. The Board chose not to deny Mr. Trammel's license on these grounds.

The Board could further conclude as a matter of law that Mr. Trammel's application may be denied for violation of H.O. § 3-5A-11(a)(1) Fraudulently or deceptively obtains or attempts to obtain license or registration for the applicant or for another, and (2) Is convicted 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. Again, the Board could have denied the license at issue based on Mr. Trammel's lengthy and serious criminal record. The Board chose not to do so.

The Board was impressed by Mr. Trammel's testimony. Additionally, the Board notes that his criminal conduct was not related to the practice of any healthcare occupation. In accordance with the Board's prior rulings, theft and assault can be considered crimes of moral turpitude. However, the Board believes that Mr. Trammel presented credible testimony with regard to his rehabilitation. Further, Mr. Trammel stated that he takes responsibility for his

actions and has learned from his mistakes. The Board noted that it has been four years since Mr. Trammel's last conviction. The Board placed substantial weight on the fact that Mr. Trammel is taking measures to deal with his efforts to overcome his issues with substance abuse. Mr. Trammel stated that he had a strong interest to become a professional massage therapist to serve as an example for his children and provide a better life. For these reasons, the Board is willing to issue a probationary license to Mr. Trammel.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 13th day of June 2011 that the majority of the Board hereby:

ORDERED that the application of **Robert Jay Trammel, II**, to practice massage therapy is hereby **GRANTED**; and it is further

ORDERED that the registration be issued and that **Robert Jay Trammel, II** be placed on probation for twelve months; and it is further

ORDERED that during the probationary period, the Respondent:

(1) Shall successfully complete at least ten hours of Board-approved courses in ethics, anger management and patient relations-management (these courses will not count towards any continuing education requirements);

(2) Shall continue participating in his current substance abuse program or another similar program approved by the Board and be compliant with program requirements and recommendations and shall insure that his program submits quarterly progress reports to the Board;

(4) Shall promptly notify the Board about any changes to his substance abuse treatment;

(5) Shall submit to random Board-ordered urinalysis as directed;

ORDERED that all urine screens under this Order shall be:

(1) Submitted by Mr. Trammel within 24 hours of the Board staff instructing him to submit a urine sample;

(2) Submitted at a CLIA-certified laboratory;

(3) Observed; and

(3) Negative for any controlled dangerous substance, narcotics, cocaine, or other mood-altering substance, except as provided below; and be it further,

ORDERED that Mr. Trammel shall abstain from the ingestion of controlled dangerous substances, narcotics, cocaine, or other mood-altering substances, except that Mr. Trammel may only ingest prescribed controlled dangerous substances for legitimate medical reasons under the following conditions:

(1) Mr. Trammel must be a bona fide patient of a licensed Maryland prescriber who is aware of this Order;

(2) The medication must be lawfully prescribed by Mr. Trammel's physician or other authorized medical practitioner;

(3) Mr. Trammel must provide the Board, in writing, within seventy-two (72) hours of receiving the medication: (a) the name and address of the prescriber; (b) the illness or medical condition diagnosed; (c) the type, strength, amount and dosage of the medication; (d) and a signed

statement consenting to the release of all medical information about Mr. Trammel from the prescriber to the Board; and be it further,

ORDERED that Mr. Trammel shall at all times cooperate with the Board in the monitoring, supervision, and investigation of Mr. Trammel's compliance with the terms and conditions of this Order; and be it further,

ORDERED that Mr. Trammel's failure to fully cooperate with the Board shall be deemed a violation of the probationary terms and a violation of this Order; and be it further,

ORDERED that in the event the Board finds for any good faith reason that Mr. Trammel has violated any of the conditions of probation herein, or in the event that the Board finds for any good faith reason that Mr. Trammel has committed a violation of Title 3 of the Health Occupations Article or regulations adopted thereunder, the Board may immediately summarily suspend Mr. Trammel's license prior to a hearing, provided that Mr. Trammel is given the opportunity for a show cause hearing within a reasonable time of such action; and be it further,

ORDERED that Mr. Trammel shall bear the expenses associated with this Order including all courses, drug testing and processing; and be it further,

ORDERED that for purposes of public disclosure and as permitted by Md. State Govt. Code Ann. § 10-617(h) (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.).

6-13-2011

Date



J. G. Vallone, JD, CFE, Exec. Director
For Kay B. O'Hara D.C., President
Board of Chiropractic & Massage
Therapy Examiners