

# State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127



Richard A. Whitehouse, Esq.  
Executive Director

(614) 466-3934  
med.ohio.gov

October 14, 2009

Charles W. Nelson, L.M.T.  
4496 Overlook Drive  
Brooklyn, OH 44144

RE: 09-CRF-043

Dear Mr. Nelson:

Please find enclosed a certified copy of the Findings, Order and Journal Entry approved and confirmed by the State Medical Board meeting in regular session on October 14, 2009.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal must be taken to the Franklin County Court of Common Pleas.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of an original Notice of Appeal with the State Medical Board of Ohio and a copy with the Franklin County Court of Common Pleas. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

Very truly yours,

A handwritten signature in black ink that reads "Lance A. Talmage, M.D." in a cursive style.

Lance A. Talmage, M.D.  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL RECEIPT NO. 91 7108 2133 3934 3487 6666  
RETURN RECEIPT REQUESTED

*Mailed 10-15-09*

CERTIFICATION

I hereby certify that the attached copy of the Findings, Order and Journal Entry approved by the State Medical Board, meeting in regular session on October 14, 2009, constitutes a true and complete copy of the Findings, Order and Journal Entry in the Matter of Charles W. Nelson, L.M.T., Case Number 09-CRF-043, as it appears in the Journal of the State Medical Board of Ohio.

This Certification is made by the authority of the State Medical Board of Ohio in its behalf.



Lance A. Talmage, M.D.  
Secretary

(SEAL)

October 14, 2009

Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF :  
 : Case No. 09-CRF-043  
CHARLES W. NELSON, L.M.T. :

**FINDINGS, ORDER AND JOURNAL ENTRY**

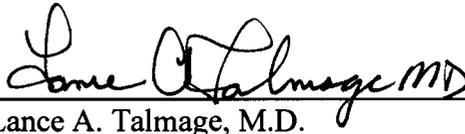
This matter came on for consideration before the State Medical Board of Ohio on October 14, 2009, pursuant to a Notice of Opportunity for Hearing issued to Charles W. Nelson, L.M.T., on April 8, 2009. No request for hearing having been received within the statutorily mandated time period, Hearing Examiner Gretchen L. Petrucci, Esq., on behalf of the Board, reviewed and summarized evidence supporting the Notice, and prepared Proposed Findings and a Proposed Order.

WHEREFORE, having reviewed Ms. Petrucci's Proposed Findings and Proposed Order, which is attached hereto and incorporated herein, the Board hereby adopts the Proposed Findings and Proposed Order.

Accordingly, it is hereby ORDERED that:

The certificate of Charles W. Nelson, L.M.T., to practice massage therapy in the State of Ohio shall be PERMANENTLY REVOKED.

This Order shall become effective immediately upon the mailing of the notification of approval by the Board.



Lance A. Talmage, M.D.  
Secretary

(SEAL)

October 14, 2009  
Date

2009 SEP -8 PM 3: 13

## BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of

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Case No. 09-CRF-043

Charles W. Nelson, L.M.T.,

\*

Hearing Examiner Petrucci

Respondent.

\*

## PROPOSED FINDINGS AND PORPOSED ORDER

Basis for Hearing

*Notice of Opportunity for Hearing [Notice]:* By letter dated April 8, 2009, the State Medical Board of Ohio [Board] notified Charles W. Nelson, L.M.T., that it intended to determine whether to take disciplinary action against his certificate to practice massage therapy in Ohio. First, the Board based its action on an allegation that Mr. Nelson falsely answered a question on his May 2007 application to renew his massage-therapy certificate regarding whether he had been found guilty of a misdemeanor or felony since he had last renewed his certificate. The Board alleged that Mr. Nelson had answered "No," but had been found guilty a few months earlier of Robbery and Attempted Kidnapping, in violation of Sections 2911.02(A)(1), 2923.01, and 2905.01, Ohio Revised Code. The Board further alleged that Mr. Nelson was sentenced to two years of community control, and required to participate in an electronic home monitoring program, to submit to regular drug testing, and to complete an anger management program. (Exhibit 1)

Second, the Board based its action on an allegation that Mr. Nelson had failed to respond to Board interrogatories that were served on February 10, 2009. The Board alleged that Mr. Nelson's acts, conduct, and/or omissions constitute:

- (a) "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of \* \* \* a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as set forth in Section 4731.22(B)(5), Ohio Revised Code.
- (b) "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony," as set forth in Section 4731.22(B)(9), Ohio Revised Code.
- (c) "[f]ailure to cooperate in an investigation conducted by the board under division (F) of [Section 4731.22, Ohio Revised Code], including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board at a deposition or in written interrogatories, except that failure to cooperate with an investigation shall not constitute grounds for discipline under this section if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the

individual to withhold the testimony or evidence in issue,” as set forth in Section 4731.22(B)(34), Ohio Revised Code.

The Board advised Mr. Nelson of his right to a hearing in this matter if requested in writing within 30 days of the Notice’s mailing. (Exhibit 1)

*No Request for Hearing:* The Board mailed its Notice to Mr. Nelson on April 8, 2009, at his most recent address of record, by certified mail, return receipt requested. In May 2009, the Board received the original Notice with a notation from the United States Postal Service that delivery was attempted and the item went unclaimed. On May 19, 2009, the Board sent a copy of the Notice by regular mail again to the most recent address of record, and obtained a certificate of mailing. The envelope was not returned to the Board’s offices. More than 30 days have elapsed since the Notice was served by regular mail. The Board’s Public Services Administrator attested in a sworn affidavit that, as of August 24, 2009, the Board had not received a hearing request from Mr. Nelson. (Exhibit 2)

*Request for Proposed Findings and Proposed Order:* In a memorandum dated August 24, 2009, the Board’s Public Services Administrator requested that a Hearing Examiner review the evidence as provided, and prepare Proposed Finding and a Proposed Order. (Exhibit 5)

Evidence Examined:

Exhibit 1: Certified copy of the April 8, 2009, Notice of Opportunity for Hearing and the May 19, 2009, certificate of mailing.

Exhibit 2: August 24, 2009, affidavit of the Board’s Public Services Administrator regarding the Board’s actions to serve Mr. Nelson with the Notice, and also attesting that, as of that date, the Board had not received a hearing request from Mr. Nelson, with the following two attachments:

Exhibit 2A: Copy of the envelope in which the original Notice was sent to Mr. Nelson and returned as unclaimed.

Exhibit 2B: Copy of the May 19, 2009, certificate of mailing the Notice by regular mail.

Exhibit 3: August 24, 2009, affidavit of the Board’s Continuing Medical Education and Renewal Officer regarding Mr. Nelson’s renewal of his certificate on May 7, 2007, and his last known address of record, with the following two attachments:

Exhibit 3A: Copy of the On-line Renewal Application format.

Exhibit 3B: Copy of Mr. Nelson’s renewal application, as submitted electronically on May 7, 2007. [Redacted in part to obscure a social security number.]

Exhibit 4: August 24, 2009, affidavit of one of the Board's Enforcement Attorneys, regarding the investigation of complaints against Mr. Nelson, with the following attachments:

Exhibit 4A: Certified copies of the Indictment, Bill of Particulars, Motion for Psychiatric Evaluation, and two journal entries in *State of Ohio v. Charles Nelson*, Case No. CR-06-485733-A, Court of Common Pleas of Cuyahoga County.

Exhibit 4B: Board Interrogatories sent by certified mail to Mr. Nelson on December 23, 2008, and the original envelope, returning those interrogatories as unclaimed.

Exhibit 4C: Copy of the Board Interrogatories sent by certified and regular mail to Mr. Nelson on February 5, 2009, and a copy of the notification from the United States Postal Service stating that the certified mail was delivered on February 10, 2009.

In Exhibit 4, the Enforcement Attorney further stated that no response to the February 2009 interrogatories was received by the due date or as of August 24, 2009.

Exhibit 5: Memorandum dated August 24, 2009, from the Board's Public Services Administrator, requesting Proposed Findings and a Proposed Order.

#### **Proposed Findings**

1. On January 16, 2004, the Board issued a certificate to Charles W. Nelson, L.M.T., authorizing him to practice massage therapy in Ohio. (Ohio E-License Center, Sept. 8, 2009, at <<https://license.ohio.gov/lookup/>>)
2. On or about May 7, 2007, Mr. Nelson submitted an application to the Board for renewal of his certificate to practice massage therapy in Ohio. He certified that the information provided in the application was true and correct in every respect. Mr. Nelson answered "No" in response to question 1 in his renewal application, which asked whether, since signing his last application for renewal of his certificate, he had been found guilty of, or pled guilty or no contest to, or received treatment or intervention in lieu of conviction of, a misdemeanor or felony.

*This proposed finding is supported by the following evidence: Exhibits 3, 3B.*

3. In fact, on February 8, 2007, in Case No. CR 485733, in the Court of Common Pleas of Cuyahoga County, Ohio, Mr. Nelson entered a guilty plea to and was found guilty of: (a) Robbery, in violation of Section 2911.02(A)(1), Ohio Revised Code, a felony of the second degree; and (b) Attempted Kidnapping, in violation of Sections 2923.02 and 2905.01, Ohio Revised Code, also a felony of the second degree.

The trial court sentenced Mr. Nelson to two years of community control, under supervision of the Adult Probation Department. Conditions of his community control included, among other

things, that he participate in the electronic home monitoring program, submit to regular drug testing, and participate in and successfully complete an anger management program.

*This proposed finding is supported by the following evidence: Exhibits 4, 4A.*

4. On December 23, 2008, a representative of the Board sent Mr. Nelson a letter and enclosed "The State Medical Board of Ohio's First Set of Interrogatories Directed to Charles W. Nelson, L.M.T.," by certified mail. The response date for the December interrogatories was January 20, 2009. The December interrogatories were returned unclaimed.

*This proposed finding is supported by the following evidence: Exhibits 4, 4B.*

5. Subsequently, on February 5, 2009, a representative of the Board again sent Mr. Nelson a letter and enclosed "The State Medical Board of Ohio's First Set of Interrogatories Directed to Charles W. Nelson, L.M.T.," by certified and regular U.S. mail. On February 10, 2009, the February interrogatories were served. The response date for the February interrogatories was February 23, 2009. Mr. Nelson had not responded to the February interrogatories by the date that the Notice was issued in April 2009. Further, Mr. Nelson had not responded to the interrogatories as of August 24, 2009.

*This proposed finding is supported by the following evidence: Exhibits 4, 4C.*

#### **Comments on the Proposed Order**

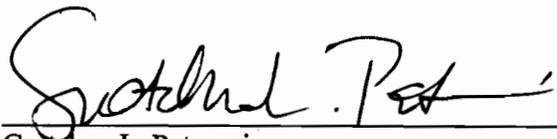
There is nothing in the record to suggest that Mr. Nelson's criminal conduct was related to his practice of massage therapy. However, the record establishes that Mr. Nelson's false answer on his 2007 renewal application occurred only a few months after his guilty plea and the sentencing. Then, Mr. Nelson chose not answer the Board's interrogatories. Taken together, the record demonstrates a lack of desire to keep his massage-therapy certificate. Moreover, this is supported by the fact that he did not request a hearing in this matter. Given the serious nature of the convictions and Mr. Nelson's lack of interest, a permanent revocation is recommended.

#### **PROPOSED ORDER**

It is hereby ORDERED, that:

The certificate of Charles W. Nelson, L.M.T., to practice massage therapy in the State of Ohio shall be PERMANENTLY REVOKED.

This Order shall become effective immediately upon the mailing of the notification of approval by the Board.

  
\_\_\_\_\_  
Gretchen L. Petrucci  
Hearing Examiner

# State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.  
Executive Director



(614) 466-3934  
med.ohio.gov

April 8, 2009

Case number: 09-CRF- 043

Charles W. Nelson, L.M.T  
4496 Outlook Drive  
Brooklyn, OH 44144

Dear Mr. Nelson:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio [Board] intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice massage therapy, or to reprimand you or place you on probation for one or more of the following reasons:

- (1) On or about May 7, 2007, you caused to be submitted to the Board an application for renewal of your certificate to practice massage therapy in Ohio. By signing the renewal application, you certified that the information provided therein was true and correct in every respect.

You answered "No" in response to question number 1 in your renewal applications, which asked:

At any time since signing your last application for renewal of your certificate:

Have you been found guilty of, or pled guilty or no contest to, or received treatment or intervention in lieu of conviction of, a misdemeanor or felony?

In fact, on or about March 8, 2007, in the Court of Common Pleas, Cuyahoga County, Ohio, you entered a guilty plea to and were found guilty of Robbery, in violation of Section 2911.02(A)(1), Ohio Revised Code, a felony of the second degree; and Attempted Kidnapping, in violation of Sections 2923.02 and 2905.01, Ohio Revised Code, also a felony of the second degree. The trial court sentenced

*Mailed 4.9.09*

you to two years of community control, under the supervision of the Adult Probation Department. Conditions of your community control included, *inter alia*, that you participate in the electronic home monitoring program, submit to regular drug testing, and participate and successfully complete an anger management program.

- (2) On or about December 23, 2008, a representative of the Board sent you a letter and enclosed "The State Medical Board of Ohio's First Set of Interrogatories Directed to Charles W. Nelson, L.M.T." [December interrogatories], by certified mail. The response date for the December interrogatories was January 20, 2009. The December interrogatories were returned unclaimed.

Subsequently, on or about February 5, 2009, a representative of the Board again sent a letter and enclosed "The State Medical Board of Ohio's First Set of Interrogatories Directed to Charles W. Nelson, L.M.T." [February interrogatories], to you via certified and regular U.S. mail. On or about February 10, 2009, the February interrogatories were served. The response date for the February interrogatories was February 23, 2009. To date, you have not responded to the February interrogatories.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Further, your plea of guilty or the judicial finding of guilt as alleged in paragraph (1) above, individually and/or collectively, constitute "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute "[f]ailure to cooperate in an investigation conducted by the board under division (F) of this section, including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board at a deposition or in written interrogatories, except that failure to cooperate with an investigation shall not constitute grounds for discipline under this section if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold the testimony or evidence in issue," as that clause is used in Section 4731.22(B)(34), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty days of the time of mailing this notice.

You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice massage therapy or to reprimand you or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lance A. Talmage", with a stylized flourish at the end.

Lance A. Talmage, M.D.  
Secretary

LAT/AMM/flb  
Enclosures

CERTIFIED MAIL #91 7108 2133 3936 3083 5641  
RETURN RECEIPT REQUESTED