



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.med.ohio.gov

June 14, 2006

Ms. Dawn Elizabeth Fox
1250 Locust Grove Road
Bremen, OH 43107

Dear Ms. Fox:

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 June 14, 2006.

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,

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. 7003 0500 0002 4329 8920
RETURN RECEIPT REQUESTED

Mailed 6-15-06

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 June 14, 2006, constitutes a true and complete copy of the Findings, Order and Journal Entry in the Matter of Dawn Elizabeth Fox 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)

June 14, 2006

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :
:
DAWN ELIZABETH FOX :

FINDINGS, ORDER AND JOURNAL ENTRY

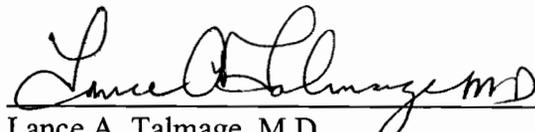
This matter came on for consideration before the State Medical Board of Ohio on June 14, 2006, pursuant to a Notice of Opportunity for Hearing issued to Dawn Elizabeth Fox on February 8, 2006. No request for hearing having been received within the statutorily mandated time period, Hearing Examiner Patricia A. Davidson, 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. Davidson's Proposed Findings and Proposed Order, which is attached hereto and incorporated herein, the Board hereby finds that there is reliable, probative and substantial evidence to support the allegations as set forth in the February 8, 2006, Notice of Opportunity for Hearing.

It is hereby ORDERED that:

The application of Dawn Elizabeth Fox to practice massage therapy in the State of Ohio shall be **DENIED**.

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


Lance A. Talmage, M.D.
Secretary

(SEAL)

June 14, 2006
Date

2006 MAY 25 P 2: 27

**PROPOSED FINDINGS AND PROPOSED ORDER
IN THE MATTER OF DAWN ELIZABETH FOX**

The Matter of Dawn Elizabeth Fox was reviewed by Patricia A. Davidson, Hearing Examiner for the State Medical Board of Ohio.

INTRODUCTION

Basis for the Review

- A. By letter dated February 8, 2006, the State Medical Board of Ohio [Board] notified Dawn Elizabeth Fox that it had proposed to deny her application for a certificate to practice massage therapy in Ohio or to take other disciplinary action. The Board's proposed action was based on allegations regarding a criminal conviction and lack of complete truthfulness on the application. (Exhibit 2)

The Board alleged that Ms. Fox's guilty plea and/or the judicial finding of guilt constitutes 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, the Board alleged that Ms. Fox's conduct constitutes "[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 that clause is used in Section 4731.22(B)(5), Ohio Revised Code." (Exhibit 2)

Accordingly, the Board notified Ms. Fox that she was entitled to a hearing if she requested one in writing within thirty days of the notice's mailing. (Exhibit 2)

- B. The notice of opportunity for hearing was mailed to Ms. Fox at her most recent address of record, via certified mail on February 9, 2006, return receipt requested. A signed receipt shows delivery to Ms. Fox on February 11, 2006. (Exhibits 2, 5-6)
- C. In an affidavit signed March 16, 2006, Barbara A. Jacobs, Public Services Administrator for the Board, averred that the Board had not received a hearing request from Ms. Fox. (Exhibit 6)

EVIDENCE EXAMINED

- A. Exhibit 1: Memorandum from Barbara A. Jacobs dated March 16, 2006.
- B. Exhibit 2: Certified copy of the Notice of Opportunity for Hearing mailed February 9, 2006, with mail delivery documentation.

- C. Exhibit 3: Affidavit of Douglas L. Edwards, Investigative Supervisor for the Board.
- D. Exhibit 4: Affidavit of David P. Katko, Enforcement Attorney for the Board.
- E. Exhibit 5: Affidavit of Kay L. Rieve, Administrative Officer for the Board.
- F. Exhibit 6: Affidavit of Barbara A. Jacobs, Public Services Administrator

SUMMARY OF THE EVIDENCE

All exhibits, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Proposed Findings and Proposed Order.

1. On August 18, 2005, Dawn Elizabeth Fox¹ submitted an application for a certificate to practice massage therapy in Ohio, seeking to take the December 2005 examination. By signing the application, she certified that the information she had provided was true. The application is currently pending. (Exhibit [Ex.] 5)

On the application, Ms. Fox indicated that she was born in 1968. She stated that she had returned to the work force in 1998 after being a full-time mother. Ms. Fox set forth the following job history on her application: working as an office coordinator for American Conveyor and Equipment, Inc., in Reynoldsburg, Ohio, from August 1998 to February 2001; working as a co-director of Victoria's Secret at the Eastland Mall in Columbus, Ohio, from February 2001 to May 2002; and working as a district operations coordinator for Siemens Fire Safety in Worthington, Ohio, from May 2002 to June 2004. (Ex. 5)

According to the application, Ms. Fox worked at a variety of jobs in the Columbus area after leaving her employment at Siemens, including employment as a receptionist, restaurant server, and customer service representative. (Ex. 5)

2. The instructions in the application under "Additional Information" included the following:

If you answer "YES" to any of the following questions, you are required to furnish complete details, including date, place, reason and disposition of the matter. All affirmative answers must be thoroughly explained on a separate sheet of paper. Please note that some questions require very specific and detailed information. Make sure all responses are complete.

(Ex. 5) (Emphasis in original)

¹The evidence does not include documentation that Ms. Fox has completed an approved course of study in massage therapy, and, therefore, the letters "M.T." do not appear following her name in this report.

3. Ms. Fox answered “Yes” to Question 11, which asked, in pertinent part:

Have you ever been convicted or found guilty of a violation of any law, regardless of the legal jurisdiction in which the act was committed, other than a minor traffic violation?

- (Ex. 5) Ms. Fox also answered “Yes” to Question 12, which asked, in pertinent part:

Have you ever forfeited collateral, bail, or bond for breach or violation of any law, police regulation, or ordinance other than for a minor traffic violation; **been summoned into court as a defendant** or had any lawsuit filed against you (other than a malpractice suit)?

- (Ex. 5) (Emphasis added)

4. Ms. Fox provided the following letter with her application:

I would like to take this opportunity to explain the circumstances that led to my conviction.

In August of 1998, I returned to the work force after spending time at home with my children. My job as an office coordinator encompassed all aspects of setting up and then maintaining a new construction business.

I was responsible for all accounts payable and accounts receivable, also payroll and fixed assets. My immediate supervisor spent most of his time on job sites and managed the business via telephone and e-mail. My instructions for all computer input and financial reports came from my supervisor.

I tendered my resignation in February 2001, unaware of the inappropriate actions I had taken under my supervisor’s instruction.

The company decided to pursue legal action against my supervisor and myself. We were named as co-defendants and charged with theft. I agreed to testify against my supervisor and pled guilty to theft.

I am extremely remorseful for my actions and I am trying to make a better life for self and my children.

In closing, I would like to thank you for your kind consideration of this matter. If you have any other questions, please feel free to contact me.

- (Ex. 5)

5. The application materials include Ms. Fox's Application for Preliminary Education, which she submitted on January 3, 2005. In connection with that application, Michelle Clark, the Admissions Coordinator at the American Institute of Alternative Medicine in Columbus, Ohio, certified that Ms. Fox was scheduled to begin classes in January 2005. (Ex. 5)
6. The evidence includes certified copies of documents from the Franklin County Court of Common Pleas in *State v. Dawn Fox*, Case No. 03CR-6069, including the following: Indictment (filed Sept. 5, 2003), Entry of Guilty Plea (filed Jan. 9, 2004), and Judgment Entry (filed May 23, 2005). (Ex. 4)

The Entry of Guilty Plea shows that Ms. Fox pleaded guilty on January 7, 2004, to one count of theft. According to the indictment, the count of theft was based on her conduct in depriving American Conveyer & Equipment, Inc., of "property, to wit: cash." (Ex. 4)

The Judgment Entry shows that the trial court accepted Ms. Fox's guilty plea and found her guilty of one count of theft.² The court sentenced Ms. Fox to community control for five years, ordering her to serve three months in a work-release program, to maintain employment, to cooperate in the prosecution of the remaining defendant, and to pay restitution of \$65,000.00. (Ex. 4)

7. On November 3, 2005, Douglas L. Edwards, an Investigative Supervisor for the Board, interviewed Ms. Fox regarding her criminal history, according to his affidavit executed on March 16, 2006. In his affidavit, Mr. Edwards described Ms. Fox's statements during the interview. (Ex. 3)

According to Mr. Edwards, Ms. Fox explained that, in her job as office manager for the construction company, she had been responsible for accounts payable, receivable, payroll, and other matters. She stated that her supervisor had called her from construction sites to request reimbursements for purchases. Ms. Fox said that she had later learned that these claims for reimbursement were fraudulent. (Ex. 3)

In addition, Mr. Edwards reported that "Ms. Fox advised that she realized what was going on and subsequently resigned from her position with the construction company in February 2001." However, Ms. Fox stated that she had become "romantically involved with her supervisor while still employed at the company and that he moved in with Ms. Fox in November 2003," according to the affidavit. (Ex. 3)

² The common pleas court stated in its Judgment Entry that Ms. Fox had pleaded guilty to one count of "Theft, a violation of Section 2913.02 of the Ohio Revised Code, a Felony of the fifth degree." However, the plea entry and indictment had indicated that the theft was a felony of the fourth degree.

Last, Mr. Edwards stated in his affidavit that Ms. Fox had told him that, while she was employed by the construction company, she had purchased personal items for herself with a company credit card.³ (Ex. 3)

PROPOSED FINDINGS

1. On January 7, 2004, Dawn Elizabeth Fox entered a guilty plea in *State v. Dawn Fox*, Case No. 03CR-6069 in the Franklin County Court of Common Pleas. She pleaded guilty to one felony count of theft in violation of Section 2913.02 of the Ohio Revised Code.
2. In a Judgment Entry dated May 23, 2005, the court found Ms. Fox guilty of one count of theft in violation of Section 2913.02, pursuant to her guilty plea. The court's sentence included community control for five years, three months in the Franklin County Work Release Program, and restitution in the amount of \$65,000.00.
3. On August 18, 2005, Ms. Fox submitted an application to the Board for a certificate to practice massage therapy in Ohio. By signing the application, she certified that the information she had provided was true.

4. The instructions in the application under "Additional Information" stated as follows:

If you answer "YES" to any of the following questions, you are required to furnish complete details, including date, place, reason and disposition of the matter. All affirmative answers must be thoroughly explained on a separate sheet of paper. Please note that some questions require very specific and detailed information. Make sure all responses are complete.

5. Under "Additional Information," Ms. Fox answered "Yes" to Question 11, which asked, in pertinent part:

Have you ever been convicted or found guilty of a violation of any law, regardless of the legal jurisdiction in which the act was committed, other than a minor traffic violation?

³ The Notice of Opportunity for Hearing does not include any allegation that Ms. Fox had been charged with misuse of a credit card or that she had been summoned into court as a defendant regarding misuse of a credit card. The Notice includes no allegation that Ms. Fox had been found guilty of any violation of law relating to a credit card or that she had engaged in conduct with a credit card that would constitute a misdemeanor or felony.

Moreover, according to the documents from the Franklin County Common Pleas Court, Ms. Fox did not plead guilty to, nor was she found guilty of, misuse of a credit card. Although the indictment had included a count of misuse of a credit card in violation of R.C. 2913.21, that count was dismissed pursuant to an entry of *nolle prosequi*.

6. Ms. Fox also answered “Yes” to Question 12:

Have you ever forfeited collateral, bail, or bond for breach or violation of any law, police regulation, or ordinance other than for a minor traffic violation; been summoned into court as a defendant or had any lawsuit filed against you (other than a malpractice suit)?

7. As part of her application, Ms. Fox provided an explanatory letter, which included the following statements:

I would like to take this opportunity to explain the circumstances that led to my conviction.

* * *

I tendered my resignation in February 2001, unaware of the inappropriate actions I had taken under my supervisor’s instruction.

8. On November 3, 2005, during an interview with a Board investigator, Ms. Fox stated that she had realized that reimbursement claims she had processed at the construction company were fraudulent and that she had resigned from the company in February 2001.
9. Ms. Fox disclosed to the Board’s investigator that she had used a company credit card to purchase personal items. In contrast, Ms. Fox’s letter accompanying her application did not include a statement regarding her use of a company credit card to purchase personal items.
10. Ms. Fox’s guilty plea and the court’s finding of guilt, as set forth above in Proposed Findings 1 and 2, constitute a “plea of guilty to” a felony and a “judicial finding of guilt of” a felony as those terms are used in Section 4731.22(B)(9), Ohio Revised Code.
11. Ms. Fox’s statement in her letter to the Board, as set forth above in Proposed Finding 7, and/or her statement to the Board’s investigator as set forth above in Proposed Finding 8, constituted “[m]aking a false * * * deceptive, or misleading statement in * * * attempting to secure any certificate to practice or certificate of registration issued by the board,” as that clause is used in Ohio Revised Code Section 4731.22(B)(5).

The two statements are inconsistent. Ms. Fox stated in her letter that she was unaware, at the time she left her job at the construction company, that she had taken inappropriate actions regarding her supervisor’s requests for reimbursements. In contrast, she told the Board’s investigator that she had realized what was going on with regard to fraudulent reimbursements at the company and had resigned. At least one of the statements must be false.

Under the circumstances, which involve an application for licensure by an individual with a recent criminal history, the Board may reasonably infer that the false statement was intended by Ms. Fox to portray herself more favorably by misrepresenting a fact surrounding her conviction for theft.

12. The evidence before the Board is insufficient to support a finding that Ms. Fox violated Ohio Revised Code Section 4731.22(B)(5) based on the lack of disclosure on her application of the credit-card use that she later disclosed to the Board's investigator, as described in Proposed Finding 9.

In order for the Board to find a violation of Section 4731.22(B)(5) based on this nondisclosure on the application, several facts must be alleged and proved: (1) that Ms. Fox had been indicted for credit card misuse or summoned into court as a defendant with regard to credit card misuse or had otherwise engaged in conduct with a credit card that gave rise to a duty to disclose on the application; (2) that the licensure application had required disclosure of the indictment, summons, or criminal conduct, regardless of the outcome of any legal action; and (3) that Ms. Fox had failed to make the required disclosure when submitting her application.

Here, the record does not establish that all these facts were alleged in the Notice of Opportunity for Hearing. Specifically, the Notice does not make an allegation of the first element listed above. There is no allegation that Ms. Fox had been indicted for credit card misuse or summoned into court as a defendant with regard to credit card misuse, which would have given rise to an obligation to describe the matter in her written explanation, nor does the Notice allege some other basis for mandatory disclosure in the written explanation. In the absence of the requisite allegation in the Notice, the Board cannot find a violation of Section 4731.22(B)(5) based on Proposed Finding 9.

* * * * *

Several facts stand out in this case. First, Ms. Fox honestly answered "Yes" to the two questions on the application regarding her criminal history. Second, she included a letter explaining that she had pleaded guilty to theft and been convicted, and she expressed remorse for her conduct. Third, when the Board's investigator interviewed her, she openly disclosed a self-incriminating fact. Fourth, following her guilty plea in January 2004, Ms. Fox enrolled in a program to become a massage therapist, thus making active efforts to move her life in a positive direction.

Nevertheless, it is true that Ms. Fox was not candid in her narrative explanation to the Board regarding her felony conviction. She tried to downplay her involvement in a theft. Thus, the evidence establishes that, although she told the truth in large part, she tried to mislead the Board to some extent.

Overall, the recent felony conviction and the misrepresentation justify a denial of Ms. Fox's application for a certificate to practice massage therapy in Ohio. However, a permanent denial does not appear to be warranted under the circumstances presented here.

PROPOSED ORDER

It is hereby ORDERED that:

The application of Dawn Elizabeth Fox to practice massage therapy in the State of Ohio shall be **DENIED**.

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

A handwritten signature in black ink, appearing to read "P. A. Davidson", written in a cursive style.

P. A. Davidson
Hearing Examiner



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.med.ohio.gov

February 8, 2006

Ms. Dawn Elizabeth Fox
1250 Locust Grove Road
Bremen, OH 43107

Dear Ms. Fox:

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 August 18, 2005, you caused to be submitted to the Board an Application for Certificate to Practice a Limited Branch Massage Therapy [Application]. By signing the Application, you certified that the information provided therein was true. The Application is currently pending.
- (2) On or about January 7, 2004, in the Court of Common Pleas for Franklin County, Ohio, you pled guilty to and were found guilty of one felony count of theft in violation of Section 2913.02, Ohio Revised Code. You were sentenced to three months in the Franklin County Work Release Program, five years of Basic Community Control and ordered to pay restitution of \$65,000.
- (3) The "Additional Information" section of your Application includes the instruction that, should you answer "YES" to any question, "you are required to furnish complete details, including date, place, reason and disposition of the matter. All affirmative answers must be thoroughly explained on a separate sheet of paper." In that "Additional Information" section of your Application you answered "YES" to questions numbered 11 and 12, which ask respectively, in part, the following:

Have you ever been convicted or found guilty of a violation of any law, regardless of the legal jurisdiction in which the act was committed, other than a minor traffic violation?

Have you ever forfeited collateral, bail, or bond for breach or violation of any law, police regulation, or ordinance other than a

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minor traffic violation; been summoned into court as a defendant or had any lawsuit filed against you (other than a malpractice suit)?

You stated in response to questions numbered 11 and 12 that your conviction was related to acts performed in your employment, and that, at the time you resigned from your employment in February 2001, you were “unaware of the inappropriate actions [you] had taken under [your] supervisor’s instruction.”

On or about November 3, 2005, during an interview with a Board Investigative Supervisor, you stated that you realized that invoices which you processed were false and that you resigned from your employment in February 2001. You also stated that you had used the company credit card for the purchase of personal items. However, you failed to advise the Board of that fact in your Application.

Your plea of guilty or the judicial finding of guilt as alleged in paragraph (2) 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 paragraphs (1) and (3) 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.

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.

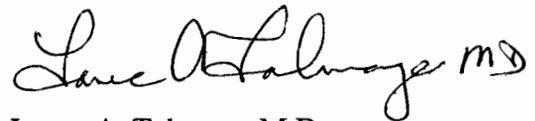
Ms. Dawn Elizabeth Fox

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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 that reads "Lance A. Talmage M.D." with a stylized flourish at the end.

Lance A. Talmage, M.D.
Secretary

LAT/blt
Enclosures

CERTIFIED MAIL # 7003 0500 0002 4330 3860
RETURN RECEIPT REQUESTED