

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

December 10, 2008

Erica L. Berry
162 Snyder Avenue
Barberton, OH 44203

RE: Case No. 08-CRF-078

Dear Ms. Berry:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Paul Stehura, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on December 10, 2008, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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 of the Notice of Appeal 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, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

A handwritten signature in black ink, appearing to read "Lance A. Talmage, M.D.", is written over the typed name.

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

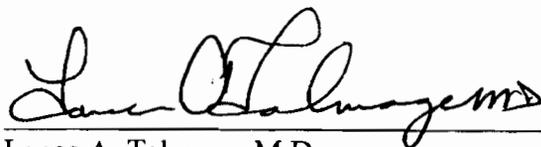
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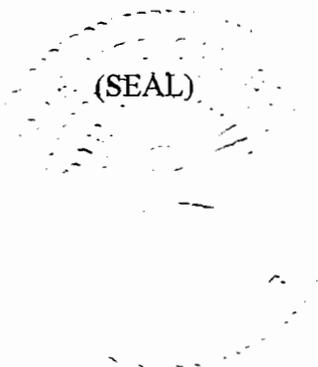
CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Paul Stehura, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on December 10, 2008, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Erica L. Berry, Case No. 08-CRF-078, as it appears in the Journal of the State Medical Board of Ohio.

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



Lance A. Talmage, M.D.
Secretary



December 10, 2008
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

CASE NO. 08-CRF-078

ERICA L. BERRY

*

ENTRY OF ORDER

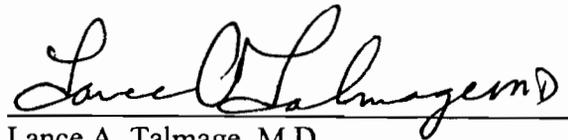
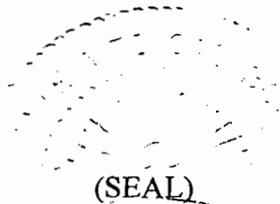
This matter came on for consideration before the State Medical Board of Ohio on December 10, 2008.

Upon the Report and Recommendation of Paul Stehura, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

The application of Erica L. Berry for a certificate to practice massage therapy in Ohio is hereby PERMANENTLY DENIED.

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



Lance A. Talmage, M.D.
Secretary

December 10, 2008
Date

**REPORT AND RECOMMENDATION
IN THE MATTER OF ERICA L. BERRY
Case No. 08-CRF-078**

The Matter of Erica L. Berry was heard by Paul Stehura, Hearing Examiner for the State Medical Board of Ohio, on October 16, 2008, in Columbus, Ohio.

INTRODUCTION

Basis for Hearing

By letter dated June 11, 2008, the State Medical Board of Ohio [Board] notified Erica L. Berry [Respondent] that it proposed to deny Respondent's application for a certificate to practice massage therapy in Ohio or to otherwise reprimand Respondent or impose discipline. The Board's proposed action was based on allegations that: (a) in her August 23, 2007 Application to the Board to Practice Limited Branch Massage Therapy, Respondent failed to disclose or provide documentation of some prior convictions, including several misdemeanor convictions and one felony conviction; (b) Respondent has one or more prior misdemeanor theft convictions which constitute conduct involving moral turpitude; and (3) Respondent further has one felony theft conviction. (State's Exhibit [St. Ex.] 1A)

The Board's notice letter stated that Respondent's acts, conduct, and/or omissions as alleged, individually and collectively, constituted "making a false, fraudulent, deceptive or misleading statement in the solicitation of or advertising for patients; in 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 violation of Ohio Revised Code [R.C.] Sections 4731.22(B)(5)." Further, the notice letter stated that Respondent's individual and collective misdemeanor convictions involved conduct of moral turpitude pursuant to R.C. 4731.22(B)(13) and that her felony theft conviction was in violation of R.C. 4731.22(B)(9).

The Board advised Respondent of her right to request a hearing, and received her written request for hearing on or about June 20, 2008. (St. Ex. 1 at 1 and 7)

Appearances at the Hearing

On behalf of the State of Ohio: Nancy Hardin Rogers, Attorney General, by Karen A. Unver, Assistant Attorney General.

On behalf of Respondent: Respondent appeared at the hearing *pro se*.

EVIDENCE EXAMINED

Testimony Heard

Presented by the State

Erica L. Berry (Respondent), as if on cross examination.
Carol Bruckman, Deputy Clerk, Akron, Ohio Municipal Court.

Presented by Respondent

Twyla Berry, Respondent's daughter.
Erica L. Berry (Respondent)

Exhibits Examined

Presented by the State

State's Exhibit 1: Procedural Exhibits.

State's Exhibit 2: Respondent's Certificate Application.

State's Exhibit 3: Akron, Ohio, Municipal Court [Akron Municipal Court] Records for Case No. 90-31452.

State's Exhibit 4: Akron Municipal Court Records for Case No. 96-01430.

State's Exhibit 5: Akron Municipal Court Records for Case No. 97-13273.

State's Exhibit 6: Akron Municipal Court Records, including police reports, for Case No. 98CRB07127 and 98-19564.

State's Exhibit 7: Akron Municipal Court Records for Case Nos. 00-10830 / 001 and 00-10830 / 004.

State's Exhibit 8: Akron Municipal Court Records for Case No. 00-06554.

State's Exhibit 9: Barberton, Ohio, Municipal Court [Barberton Municipal Court] Records for Citation No. CT 030715.

State's Exhibit 10: Akron Municipal Court Records for Case No. 05-03421.

State's Exhibit 11: Akron Municipal Court Records, including police report, for Case Nos. 92-12431 and 92-8B8f67.

State's Exhibit 12: Summit County Ohio Common Pleas Court Records, including police report, for Case No. 93 07 1689.

B. Presented by the Respondent

Respondent's Exhibit A: Akron Municipal Court Records for Case No. 05-03421.

Respondent's Exhibit B: Academic Record from Stark State College of Technology.

Respondent's Exhibit C: Unofficial Transcript Data - Stark State College of Technology.

Respondent's Exhibit D: Letter from Respondent's aunt.

Respondent's Exhibit E: Summit County Clerk of Courts Final Disposition Report.

Respondent's Exhibit F: Summit County Ohio Common Pleas Court Journal Entry in Case No. 93 07 1689.

Respondent's Exhibit G: Barberton Municipal Court Docket of Case No. TRD0404945.

Respondent's Exhibit H: Letter from Say Yes to Tennis, Inc.

Respondent's Exhibit I: Letter dated September 30, 2008 from Massage Clinic Supervisor, Stark State College of Technology.

Respondent's Exhibit J: Email from instructor at Stark State College of Technology.

Respondent's Exhibit K: Respondent's written submission.

Respondent's Exhibit L: Character reference of Admissions Counselor, Stark State College of Technology.

SUMMARY OF EVIDENCE

All exhibits and the transcript, even if not specifically mentioned herein, were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

Background Information

1. Erica L. Berry is currently a 36 year-old female who graduated from East High School in Akron, Ohio, in 1990. Thereafter, in 1998, Ms. Berry graduated from the Akron Machining Institute and worked as a precision machinist for several years.
2. Ms. Berry began attending Stark State College of Technology in North Canton, Ohio, in 2004. In 2007, Ms. Berry graduated from Stark State with an associate of science degree in massage therapy.
3. Ms. Berry is currently a full-time student at Stark State and works part-time teaching tennis to youths in an after-school enrichment program in Akron, Ohio. (Tr. at 76-77) She is currently pursuing a bachelor's degree in biology, and her ultimate career goal is to become a physical therapist. (Tr. at 84-85)
4. On August 23, 2007, Ms. Berry submitted to the Board an Application for a Certificate to Practice Limited Branch Massage Therapy [Certificate Application]. (St. Ex. 2) She answered "Yes" to Question No. 11, which asked whether she had 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. As part of her Application, Ms. Berry submitted a listing obtained from the Akron, Ohio Municipal Court which set forth some of her various traffic and criminal violations and an explanation page for certain criminal convictions. (St. Ex. 2 at 5-7)
5. Ms. Berry's Certificate Application did not list or contain an explanation of several of her past criminal convictions nor did it contain an explanation for any of her traffic-related convictions which were not minor misdemeanors. (St. Ex. 2)

Convictions Disclosed and Explained on Board Application

6. In mid-1993, Ms. Berry was indicted by a Summit County Grand Jury on four counts of theft for allegedly passing bad checks to various Dillard's department stores in Akron, Ohio. On January 26, 1996, Ms. Berry, being represented by counsel, entered a guilty plea and was convicted and found guilty of one count of theft, a felony of the fourth degree, in the Summit County Ohio Common Pleas Court in Case No. CR 93-07-1689. The other three theft charges were terminated. She was given a one-year suspended prison sentence, ordered to pay restitution and placed on three (3) years probation. The case is closed and Ms. Berry's probation terminated. (St. Ex. 12, St. Ex. 2 at 5) Ms. Berry provided a copy of the sentencing journal entry with her Certificate Application.
7. Other than the 1996 felony theft conviction mentioned above, Ms. provided explanations for other criminal convictions in her Certificate Application which were not cited in the Board's notice; accordingly, these additional convictions are not part of this Hearing Examiner's consideration in this matter. (St. Ex. 2 at 5)

Convictions Disclosed on Board Application But No Explanations Provided

8. On November 14, 1992, Ms. Berry was arrested on the charge of misdemeanor theft of food items from a Marc's Store in Akron, Ohio. On December 8, 1992, Ms. Berry was convicted and found guilty of the charge of theft, a first degree misdemeanor, in the Akron Municipal Court in Case No. 92CR-12431. She was ordered to pay a fine of \$100.00 plus court costs and to stay out of all Marc's Stores. The case is closed. (Tr. at 53-54, St. Ex. 11)
9. On November 21, 1990, Ms. Berry was cited for no driver's license in Akron, Ohio. In or about December 1990, Ms. Berry was convicted and found guilty of the charge of no driver's license, a third degree misdemeanor, in the Akron Municipal Court in Case No. 90-31452. She was ordered to pay a fine of \$10.00 plus court costs, which were paid on December 21, 1990. The case is closed. (Tr. at 52-53, St. Ex. 3)
10. On January 15, 1996, Ms. Berry was cited for no driver's license and a headlight violation in Akron, Ohio. In or about January 1996, Ms. Berry was convicted and found guilty of the charge of no driver's license, a first degree misdemeanor, and the headlight violation in the Akron, Ohio Municipal Court in Case No. 96-01430. She was ordered to pay a fine of \$100.00 plus court costs, which were paid on January 16, 1996, and to further obey all laws for two years. The case is closed. (Tr. at 53-54, St. Ex. 4)

11. On June 2, 1997, Ms. Berry was cited for suspended driver's license in Akron, Ohio. In or about June 1997, Ms. Berry was convicted and found guilty of the charge of suspended driver's license, a first degree misdemeanor, in the Akron Municipal Court in Case No. 97-13273. She was ordered to pay a fine of \$150.00 plus court costs, which were paid on June 12, 1997, not to repeat the offense and to further obey all laws for two years. The case is closed. (Tr. at 56-57, St. Ex. 5)
12. On March 7, 2000, Ms. Berry was cited for suspended driver's license in Akron, Ohio. In or about September 2000, Ms. Berry was convicted and found guilty of the charge of suspended driver's license, a first degree misdemeanor, in the Akron, Ohio Municipal Court in Case No. 00-06554. She was sentenced to 20 days community service for jail time. The case is closed. (Tr. at 61, St. Ex. 8)
13. On February 21, 2005, Ms. Berry was cited for suspended driver's license in Akron, Ohio. In or about April 2005, Ms. Berry was convicted and found guilty of the amended charge of no driver's license, a first degree misdemeanor, in the Akron Municipal Court in Case No. 05-13421. She was ordered to pay a fine of \$150.00 plus court costs, which were paid on April 6, 2005, and to obey all laws for one year. The case is closed. (Tr. at 62, St. Ex. 10)

Convictions Not Disclosed on Board Application and No Explanations Provided

14. On June 18, 1998, Ms. Berry was arrested on the charge of aggravated menacing on a complaint that she and another threatened to kill a third person. In or about June 1998, Ms. Berry was convicted and found guilty of the charge of aggravated menacing, a first degree misdemeanor, in the Akron, Ohio Municipal Court in Case No. 98-19564. She was given a 30 day suspended prison sentence and ordered to pay a fine of \$250.00 plus court costs. The case is closed. (Tr. at 53-54, St. Ex. 6) This conviction was neither disclosed or explained in the Certificate Application.
15. On June 18, 1998, Ms. Berry was cited for suspended driver's license in Akron, Ohio. In or about June 1998, Ms. Berry was convicted and found guilty of the charge of suspended driver's license, a first degree misdemeanor, in the Akron Municipal Court in Case No. 98-15293. She was sentenced to serve 20 days of house arrest, effective June 19, 1998. The case is closed. (Tr. at 58, St. Ex. 6)
16. On July 25, 2004, Ms. Berry was cited for no driver's license and a suspended driver's license in Barberton, Ohio. On or about August 2, 2004, Ms. Berry was convicted and found guilty of the charges of no driver's license and suspended driver's license, first degree misdemeanors, in the Barberton Municipal Court in under Citation No. CT030715. She was ordered to pay a \$50.00 fine plus court costs. The case is closed. (St. Ex. 9)

Additional Testimony from Erica L. Berry

17. Ms. Berry stated that she does not deny that she committed the various criminal acts cited by the State nor that she was convicted by the courts but that she had a misunderstanding about the information she was to submit in her application. Further, she states that since these various convictions she has “made efforts to regain [her] integrity and become a working member of [her] society and community.” (Tr. at 20)
18. Ms. Berry testified that she did read and understand the instructions on the Certificate Application requiring her to furnish complete details, including date, place, reason and disposition of a matter, for each question she answered in the affirmative on the Application, including Question No. 11, which asked whether she had been convicted or found guilty of a violation of any law, regardless of the jurisdiction, other than a minor traffic violation. (Tr. at 24–25, St.’s Ex. 2 at 14–15)
19. Ms. Berry testified that in response to Certificate Application Question No. 11, she went to the Akron Municipal Court and obtained a print-out of what she thought was all of her criminal convictions other than minor traffic violations. (Tr. at 25 - 26) She stated that she submitted as part of her Application all materials received from the court (St. Ex. 2 at 6-10) and an explanation of certain non-traffic convictions. (St. Ex. 2 at 5)
20. Ms. Berry stated that she did not provide explanations of her various traffic violations because she wrongly interpreted violations such as no driver’s license and driving with a suspended license as minor traffic violations which were excluded by the instructions. She stated that she did not realize that these violations were not minor traffic violations until the Board sent her follow-up correspondence indicating that she had not provided written explanations for her several citations for no driver’s license or driving with a suspended driver’s license. She provided Respondent’s Exhibit K at the hearing which provided explanations for her numerous convictions for driving without a license or driving with a suspended license. (Tr. at 27-28, 77-78, 88-89)
21. Upon questioning, Ms. Berry stated that she did not provide an explanation of her 1992 conviction of a theft from a Marc’s Store in Akron because she did not remember this 1992 conviction when completing the Certificate Application and

- likely confused this theft conviction with her 1993 felony theft conviction at a Dillard's Department Store.¹ (Tr. at 29-32)
22. Upon further questioning, Ms. Berry indicated that she did not remember the several criminal convictions she did not disclose or discuss in her Certificate Application because they happened over ten years prior to her application and that she has "grown and matured" since then and that she has tried to "let it go and learn from [her] mistakes and grow as opposed to keep harping on it and recalling these incidents." (Tr. at 38)
23. Ms. Berry stated that the reason for her several convictions of driving while under suspension was that she was her own and her daughter's sole source of income and was trying to "better her life in working in factory jobs which weren't located within [her] city limits" or near public transportation. (Tr. at 45-46, 82)

Testimony of Carol L. Bruckman

24. Carol L. Bruckman testified that she is a deputy clerk for the Akron Municipal Court. She testified that, upon request of the Board, she provided certified copies of all court documents about the arrests and convictions of Respondent, which are set forth in the section of this Report entitled "Criminal Convictions." She explained the specifics of each charge against Respondent and its disposition in the courts. (Tr. at 49-63)

Testimony of Twyla L. Berry

25. Ms. Twyla Berry testified that she resides in Columbus, Ohio, where she has been attending Ohio State University since 2006, and that Erica Berry is her mother. Twyla Berry stated that her mother has been her sole means of support since she was a child. She stated that her father had not provided much financial support to her because he was incarcerated much of her life and died when she was 13 years old. (Tr. at 66-68)
26. Twyla Berry further testified that occasionally through the years she and her mother would discuss her mother's disorderly conduct convictions and her mother always told her that the conduct leading to the convictions were always the result her mother's boyfriend who "wasn't * * * good" and that those "were * * * the hard times." Twyla Berry provided specific testimony about her mother's most

¹ It is noted that Ms. Berry's felony theft conviction occurred in 1996 in Case No. CR 93 07 1689.

- recent boyfriend in the 2004-2006 time period. She stated that her mother and this boyfriend “had a lot of problems” and that he pushed her down the stairs and broke her ankle. Twyla Berry stated that after her mother’s ankle was broken, her mother started realizing that she needed to change her ways and become a better role model for her. Twyla Berry stated that it was then that her mother began pursuing her massage therapy education and that Twyla saw a change in her mother. (Tr. at 69-70)
27. Twyla Berry also stated that her mother did not always make the best life choices, such as the theft charges. She stated that after her mother broke her ankle, Twyla saw that her mother no longer wanted to depend on her past boyfriends and wanted to become more independent. She also said that her mother felt school was important for Twyla and her mother always made sure that Twyla got to school on time and was involved in various activities. She also stated that she felt her mother emphasized school for her so she (Twyla) would not go down the same path as her mother. (Tr. at 70-71)

FINDINGS OF FACT

1. On August 23, 2007, Erica L. Berry submitted to the Board an Application for a Certificate to Practice Limited Branch Massage Therapy [Certificate Application]. (St. Ex. 2) Ms. Berry answered “Yes” to Question No. 11, which asked whether she had 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.
2. The Certificate Application instructions required the applicant to furnish complete details, including date, place, reason and disposition of the matter, for each Application question the applicant answers “yes” to, including Certificate Application Question No. 11.
3. As part of her Certificate Application, Erica L. Berry disclosed that on or about January 25, 1996, Ms. Berry entered a guilty plea and was convicted and found guilty of one count of theft, a felony of the fourth degree, in the Summit County Ohio Common Pleas Court in Case No. CR 93-07-1689 for passing bad checks to a local department store. She was given a one-year suspended prison sentence, ordered to pay restitution and placed on three years probation. The case is closed and Ms. Berry’s probation terminated. Ms. Berry also disclosed and provided explanations in her Application of other criminal convictions which were not cited in the Board’s notice and not part of the instant matter.

4. As part of her Certificate Application, Erica L. Berry disclosed the following criminal convictions but failed to provide any explanation for each conviction:
 - a. 1992 Theft Conviction - On December 8, 1992, Ms. Berry pled guilty, was convicted, and found guilty of one count of theft in the Akron Municipal Court in Case No. 92CR-12431 arising out of the theft of food items from a Marc's Store in Akron, Ohio. She was ordered to pay a fine of \$100.00 and court costs and ordered to stay out of all Marc's Stores.
 - b. 1990 No Driver's License Conviction - In or about December 1990, Ms. Berry pled no contest, was convicted, and found guilty of the charge of no driver's license, a third degree misdemeanor, in the Akron Municipal Court in Case No. 90-31452. She was fined and paid court costs.
 - c. 1996 No Driver's License Conviction - In or about January 1996, Ms. Berry pled no contest, was convicted, and found guilty of the charge of no driver's license, a first degree misdemeanor, in the Akron Municipal Court in Case No. 96-01430. She was ordered to pay a fine of \$100.00 plus court costs and to obey all laws for two years.
 - d. 1997 Suspended Driver's License Conviction - In or about June 1997, Ms. Berry pled no contest, was convicted, and found guilty of the charge of suspended driver's license, a first degree misdemeanor, in the Akron Municipal Court in Case No. 97-13273. She was ordered to pay a fine of \$150.00 plus court costs, not to repeat the offense and to obey all laws for two years.
 - e. 2000 Suspended Driver's License Conviction - In or about May 2000, Ms. Berry pled guilty, was convicted, and found guilty of the charge of suspended driver's license, a first degree misdemeanor, in the Akron Municipal Court in Case No. 00-10830. She was sentenced to serve 45 days of house arrest plus court costs.
 - f. 2000 Suspended Driver's License Conviction - In or about September 2000, Ms. Berry pled guilty, was convicted, and found guilty of the charge of suspended driver's license, a first degree misdemeanor, in the Akron Municipal Court in Case No. 00-06554. She was sentenced to 20 days community service for jail time.
 - g. 2005 Suspended Driver's License Conviction - In or about April 2005, Ms. Berry pled guilty, was convicted, and found guilty of the charge of suspended driver's license, a first degree misdemeanor, in the Akron Municipal Court in Case No. 05-13421. She was ordered to pay a fine of \$150.00 plus court costs, and to obey all laws for one year.

- Ms. Berry did provide written explanations of the above-noted driver's license convictions at the hearing. (Resp. Ex. K)
5. Ms. Berry neither disclosed or provided any explanation in the Certificate Application of the following criminal convictions:
- a. 1998 Aggravated Menacing Conviction - In or about June 1998, Ms. Berry was convicted and found guilty of one count of aggravated menacing, a first degree misdemeanor, in the Akron Municipal Court in Case No. 98-19564 arising out of Ms. Berry's threat to kill another person. She was given a 30 day suspended jail sentence and ordered to pay a fine of \$250.00 and court costs.
 - b. 1998 Suspended Driver's License Conviction - In or about June 1998, Ms. Berry was convicted and found guilty of the charge of suspended driver's license, a first degree misdemeanor, in the Akron Municipal Court in Case No. 98-15293. She was sentenced to 20 days house arrest.
 - c. 2005 No Driver's License and Suspended Driver's License Convictions - In or about April 2005, Ms. Berry pled guilty, was convicted, and found guilty of the charges of no driver's license and suspended driver's license, both first degree misdemeanors, in the Barberton Municipal Court pursuant to Citation No. CT030715. She was ordered to pay a fine of \$50.00 plus court costs.

CONCLUSIONS OF LAW

1. R.C. 4731.22, in pertinent parts, states as follows:

(B) The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:

(5) Making 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 used in this division, “false, fraudulent, deceptive, or misleading statement” means a statement that includes a misrepresentation of fact, is **likely to mislead or deceive because of a failure to disclose material facts**, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(9) 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;

(13) 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 misdemeanor involving moral turpitude;

(Emphasis added).

2. Ms. Berry’s guilty plea and subsequent conviction to the 1996 felony theft charge in the Summit County Common Pleas Court constitutes “a plea of guilty to” and/or “a judicial finding of guilt of “a felony as that language is used in R.C. 4731.22(B)(9).
3. Ms. Berry’s 1992 misdemeanor theft conviction constituted a plea of guilty to and/or a judicial finding of guilt of a “misdemeanor involving moral turpitude” as that language is used in R.C. 4731.22(B)(13).
4. Although disclosing and providing explanations of some of her various criminal convictions in her Certificate Application, Ms. Berry omitted disclosure and explanation of significant previous convictions from her Application. These omissions included her 1992 misdemeanor theft conviction from a Marc’s Store in Akron, Ohio. Further, Ms. Berry omitted a 1998 aggravated menacing

conviction which involved a charge that she and another had threatened to kill a third person. Additionally, Ms. Berry failed to provide explanation of numerous convictions for no driver's license and suspended driver's license convictions on her Certificate Application. These acts, conduct and/or omissions, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement * * * in securing or attempting to secure any certificate to practice or certificate of registration issued by the board" as that language is used in R.C. 4731.22(B)(5).

* * * * *

Subsections (B)(5), (B)(9) and (B)(13) of R.C. 4731.22 set forth various circumstances under which the Board may deny an individual's application for a massage therapy certificate in the state of Ohio. As noted in the report, Ms. Berry has an extensive record of criminal convictions dating back to 1990. Several of Ms. Berry's previous criminal convictions, even though disclosed, can serve as specific bases for denial of an application pursuant to R.C. 4731.22(B) due to the nature of the criminal conviction.

In Ms. Berry's case, she plead guilty and was convicted for a felony count of theft in 1996 in the Summit County Common Pleas Court for passing bad checks to a local store. Such felony conviction may serve as a basis for denying her application pursuant to R.C. 4731.22(B)(9). Similarly, consistent with previous Board cases and interpretation by Ohio courts, Ms. Berry's 1992 misdemeanor theft conviction may also serve as a basis for denying her application due to the fact that theft involves a crime of moral turpitude pursuant to R.C. 4731.22(B)(13).

Finally, although Ms. Berry did in fact provide limited disclosure and explanation on her Certificate Application of previous criminal convictions, certain other previous convictions were not explained on the application or omitted altogether. For example, Ms. Berry did not provide an explanation of her 1992 misdemeanor theft conviction. Further, she did not even disclose her 1998 aggravated menacing conviction in which she threatened to kill another. Beyond these significant omissions, she provided no explanation whatsoever regarding her numerous no-license and suspended-license convictions. The omissions were material and are false, fraudulent, deceptive, or misleading pursuant to R.C. 4731.22(B)(5).

PROPOSED ORDER

It is hereby ORDERED that:

The application of Erica L. Berry for a certificate to practice to practice massage therapy in Ohio is hereby PERMANENTLY DENIED.

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



Paul Stehura
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

EXCERPT FROM THE DRAFT MINUTES OF DECEMBER 10, 2008

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

Dr. Varyani announced that the Board would now consider the Reports and Recommendations appearing on its agenda. He asked whether each member of the Board had received, read and considered the hearing record; the findings of fact, conclusions and proposed orders; and any objections filed in the matters of: Larry John Little, M.D.; Donald E. Higgs, M.D.; Erica L. Berry; Sara C. Gorbett; Patricia Ann Hale; Leonid Macheret, M.D.; Ruba W. Nijmeh, M.D.; and Paul H. Volkman, M.D. A roll call was taken:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Mahajan | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

Dr. Varyani asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

| | | |
|------------|--------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Mahajan | - aye |

Dr. Varyani noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters. They may, however, participate in the matters of Dr. Higgs and Dr. Nijmeh, as those cases are not disciplinary in nature and concern only the doctors' qualifications for licensure. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

The original Proposed Findings and Proposed Orders shall be maintained in the exhibits section of this Journal.

.....

ERICA L. BERRY

.....

Dr. Talmage, Dr. Amato and Dr. Stephens left the meeting during the previous discussion.

DR. SUPPAN MOVED TO APPROVE AND CONFIRM MR. STEHURA'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF ERICA L. BERRY. DR. MADIA SECONDED THE MOTION.

.....

A vote was taken on Dr. Suppan's motion to approve and confirm:

| | | |
|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Hairston | - aye |
| | Dr. Mahajan | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.



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

June 11, 2008

Case number: 08-CRF-078

Erica Lorell Berry
162 Snyder Avenue
Barberton, OH 44203

Dear Ms. Berry:

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 23, 2007, you caused to be submitted to the Board an Application for Certificate to Practice a Limited Branch Massage Therapy [2007 Application]. By signing the Affidavit associated with the 2007 Application, you certified that all statements you made with respect to your application were true. Your 2007 Application remains pending.

In the "Additional Information" section of your 2007 Application you answered "YES" to question number 11 which asks, 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?

Although you disclosed several convictions, you failed to disclose the following convictions in your written explanation for the affirmative answer in your 2007 Application:

- (a) On or about December 21, 1990, in the Akron Municipal Court in Akron, Ohio, [Akron Municipal Court] you pled no contest to and were found guilty of one third degree misdemeanor count of License Required as Driver or Commercial Driver--Unlicensed Operation on Private Property

Mailed 6-12-08

in violation of Section 71.01, Akron Municipal Code. You were fined and assessed costs of \$43.00.

- (b) On or about January 16, 1996, in the Akron Municipal Court, you pled no contest to and were found guilty of one first degree misdemeanor count of License Required as Driver or Commercial Driver--Unlicensed Operation on Private Property in violation of Section 71.01, Akron Municipal Code. You were fined and assessed costs of \$176.00 and ordered to obey all laws for two years.
- (c) On or about June 12, 1997, in the Akron Municipal Court, you pled no contest to and were found guilty of one first degree misdemeanor count of Driving under Suspension or Revocation in violation of Section 71.07, Akron Municipal Code. You were fined and assessed costs of \$251.00, ordered not to repeat the offense and ordered to obey all laws for two years.
- (d) On or about June 19, 1998, in the Akron Municipal Court, you were found guilty of one first degree misdemeanor count of Aggravated Menacing in violation of Section 135.05, Akron Municipal Code, and one first degree misdemeanor count of Driving under Suspension or Revocation in violation of Section 71.07, Akron Municipal Code. You were ordered to spend twenty days in house arrest.
- (e) On or about May 18, 2000, in the Akron Municipal Court, you pled guilty to and were found guilty of one first degree misdemeanor count of Driving under Suspension or Revocation in violation of Section 71.07, Akron Municipal Code. You were assessed costs of \$81.00 and were ordered to spend forty-five days in house arrest.
- (f) On or about September 7, 2000, in the Akron Municipal Court, Ohio, you pled guilty to and were found guilty of one first degree misdemeanor count of Driving under Suspension or Revocation in violation of Section 71.07, Akron Municipal Code. You were ordered to perform twenty days of community service in lieu of jail time.
- (g) On or about April 6, 2005, in the Barberton Municipal Court in Barberton, Ohio, you pled guilty to and were found guilty of one first degree misdemeanor count of Operating a Motor Vehicle without a Valid License in violation of Section 4510.12, Ohio Revised Code. You were fined and assessed costs of \$120.00.

- (h) On or about April 6, 2005, in the Akron Municipal Court, you pled guilty to and were found guilty of one first degree misdemeanor count of Driving under Suspension or Revocation in violation of Section 71.07, Akron Municipal Code. You were fined and assessed costs of \$238.00 and ordered to obey all laws for one year.
- (2) (a) On or about December 8, 1992, in the Akron Municipal Court, you entered a plea of guilty to and were found guilty of one first degree misdemeanor count of Theft in violation of Section 131.15, Akron Municipal Code. You were fined \$100, received a suspended sentence of thirty days of incarceration and ordered to “stay out of all Mark Stores.”
- (b) On or about January 25, 1996, in the Court of Common Pleas for Summit County, you entered a plea of guilty to and were found guilty of one fourth degree felony count of Theft in violation of Section 2913.02, Ohio Revised Code. You were ordered to make restitution as determined by the Adult Probation Department, pay the costs of prosecution, ordered to receive any counseling recommended by the Adult Probation Department, received a suspended sentence of one year of incarceration and placed on three years of probation.

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 (2)(a) 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 misdemeanor involving moral turpitude,” as that clause is used in Section 4731.22(B)(13), Ohio Revised Code.

Further, your plea of guilty or the judicial finding of guilt as alleged in paragraph (2)(b) 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.

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

Erica Lorell Berry

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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,



Lance A. Talmage, M.D.
Secretary

LAT/DPK/flb
Enclosures

CERTIFIED MAIL #91 7108 2133 3934 3690 6484
RETURN RECEIPT REQUESTED