

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

Patricia Ann Hale
252 North Gould Road, Apt. C
Columbus, OH 43209

RE: Case No. 08-CRF-040

Dear Ms. Hale:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Siobhan R. Clovis, 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 MD".

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3686 5774
RETURN RECEIPT REQUESTED

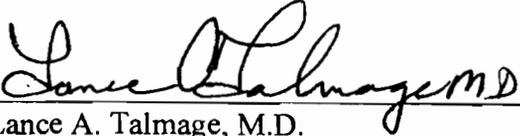
Mailed 12-12-08

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Siobhan R. Clovis, 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 Patricia Ann Hale, Case No. 08-CRF-040, 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-040

PATRICIA ANN HALE

*

CORRECTED ENTRY OF ORDER

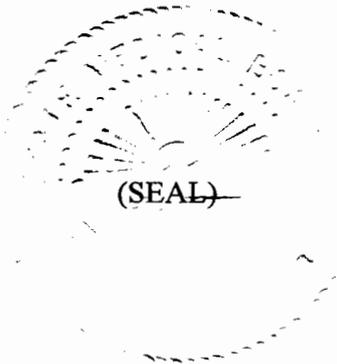
This matter came on for consideration before the State Medical Board of Ohio on December 10, 2008.

Upon the Report and Recommendation of Siobhan R. Clovis, 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 Patricia Ann Hale for a certificate to practice massage therapy in Ohio is PERMANENTLY DENIED.

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



Lance A. Talmage MD

Lance A. Talmage, M.D. *RW*
Secretary

December 10, 2008

Date

**REPORT AND RECOMMENDATION
IN THE MATTER OF PATRICIA ANN HALE
Case No. 08-CRF-040**

2008 NOV -3 P 4: 04

The Matter of Patricia Ann Hale was heard by Siobhan R. Clovis, Hearing Examiner for the State Medical Board of Ohio, on October 2, 2008.

INTRODUCTION

Basis for Hearing

By letter dated April 9, 2008, the State Medical Board of Ohio [Board] notified Patricia Ann Hale that it proposed to deny her pending August 2007 Massage Therapy Re-examination application. The Board based its proposed action on allegations that Ms. Hale had pleaded guilty to, and been found guilty of, Robbery, a second-degree felony. The Board alleged that the guilty plea and judicial finding of guilt, 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. The Board advised Ms. Hale of her right to request a hearing, and received her request on April 21, 2008. (State’s Exhibit [St. Ex.] 1A; St. Ex. 1B)

Appearances

Nancy H. Rogers, Attorney General, and Barbara J. Pfeiffer, Assistant Attorney General, on behalf of the State.

Patricia A. Hale, pro se

EVIDENCE EXAMINED

Testimony Heard

Patricia Ann Hale

Exhibits Examined

State’s Exhibit 1: Procedural exhibits

State’s Exhibit 2: Certified copies of the Applications submitted by Patricia Ann Hale to the Board for licensure to practice as a massage therapist

State’s Exhibit 3: Certified copy of the October 2, 1997, Indictment in *State v. Hale*, Franklin County, Ohio, Court of Common Pleas Case No. 97CR 10-5470 (Portions redacted – See Procedural Matters, below)

State’s Exhibit 4: Certified copy of the March 18, 1998, Entry of Guilty Plea filed in *State v. Hale*, Franklin County, Ohio, Court of Common Pleas Case No. 97CR 10-5470

State's Exhibit 5: Certified copy of the May 5, 1998, Judgment Entry of Conviction and Sentence filed in *State v. Hale*, Franklin County, Ohio, Court of Common Pleas Case No. 97CR 10-5470

PROCEDURAL MATTER

After the hearing, the Hearing Examiner decided that it would be proper to redact a certain portion of one of the State's Exhibits. The Hearing Examiner attempted a conference call with Ms. Pfeiffer and Ms. Hale, but was unable to reach Ms. Hale. Ms. Pfeiffer had no objection to the redaction on behalf of the State. The Hearing Examiner has redacted the exhibit accordingly.

SUMMARY OF THE EVIDENCE

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

1. On October 2, 1997, in the Court of Common Pleas of Franklin County, Ohio [Court], Patricia Ann Hale was indicted for Aggravated Robbery, a first-degree felony in violation of Section 2911.01, Ohio Revised Code. This count included a firearm specification. The Indictment alleged that Ms. Hale had committed this offense against Robert Dougherty on September 24, 1997. (St. Ex. 3)
2. On March 18, 1998, Ms. Hale pleaded guilty to one count of the stipulated lesser offense of Robbery, a second-degree felony in violation of Section 2911.02, Ohio Revised Code, with a firearm specification. The prosecution and defense agreed to jointly recommend to the sentencing court a prison term of four years, plus one year for the firearm specification. (St. Ex. 4)
3. On May 5, 1998, the Court sentenced Ms. Hale to six years in prison for the Robbery, with one additional year for the firearm specification to be served consecutively, for a total of seven years. (St. Ex. 5)
4. Ms. Hale completed her prison term on August 26, 2004. She was placed on post-release control, which terminated on August 29, 2005. (St. Ex. 2, p. 17)
5. On February 23, 2007, Ms. Hale submitted to the Board an Application for Certificate to Practice a Limited Branch - Massage Therapy [Application]. The Application includes a copy of Ms. Hale's February 2, 2007, diploma in Massage Therapy from Everest Institute. (St. Ex. 2 at p. 71)

6. In the Application, Ms. Hale answered "Yes" to Question 11: "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?" (St. Ex. 2 at p. 63)
7. On May 31, 2007, Ms. Hale submitted to the Board a written statement about her crime and incarceration. The statement says:

On September 24, 1997 between the hours of 3-5 a.m., Jermain Cheatam, Jones and myself entered the residence of Mr. Robert Dougherty. At the time he was living off of E. 2nd and N. High Street.

When we arrived at the home of Mr. Dougherty Jones climbed over some gates to get to the back door of Mr. Dougherty's home. I don't know how Jones got into the residence there was no noise so he couldn't of kicked the door in. Upon entering the house Mr. Dougherty was already in the kitchen and began to yell for help. Jermain grabbed my hand and we ran to the front of the house and into the front door. Jermain goes straight to the kitchen with Jones to calm down Mr. Dougherty. I was standing in the living room. Jermain left twice. The first time I believe he left to get a mask and gave that to Jones then left again to get the gun. Both times returning to the kitchen. When Mr. Dougherty stopped yelling they brought him into the living room. Jermain and I removed the T.V. off of an old table that had an stereo player inside and put the TV on the chair. Inside the stereo player is where it was told to us that the money would be. Jermain grabs the money and assist that there was more some where in Mr. Dougherty's house. Jermain handed me the gun while they went upstairs to search through Mr. Doughertys belongings. Within 2-3 minutes the police had arrived shining their spot light on the window. I yelled out 50. They came running down the stairs. Jones looked out the window. We start running out the back door and Mr. Dougherty heads to the front. I then aim the gun and say don't move. Jermain and Jones climbed the fence and got over. I fell back into the yard then got over the fence and was caught. At that time in my life I was what my mom would call me young and dumb. I was not a leader. I've done things to fit in and didn't have nothing going for myself. I didn't have a job, moved out of my moms house. When I lost my children to Children Services and moved in with my best friend, whom had different types of people in and out of her house, My life was out of control lost 2 of my children and was pregnate with my 3rd. I had to do out patient treatment for drugs and get housing to get my children back. Shortly after having my baby I was doing good and fall short and committed my crime. I received 7 years for the robbery and gun spec when I got sentenced to that 1 yr gun spec and 6 yr robbery there wasn't nothing stated that I would have to do while I was in prison. The only thing that was stated was that I would have bad time meaning if I went to the hole that my days would stop and start back up once I got out of the hole. When I got to the prison I decided to do

something better than what I was doing it was time for me to stand up and be a leader. I entered myself into a program called Tapestry - "Behavior Modification Program. I stayed in that program 16 months earning various achievement certificates. I also participated in victims awareness, House of Healing, life without a crutch as well as facilitated in S.T.O.P. (Start to Operate Positively), scared straight, and countless other programs as well as 2 yrs of college. I've done all that to better self and asking that I will be given the choice to continue to better myself and life.

(St. Ex. 2, p. 13-15 [punctuation and spelling as in original])

8. Ms. Hale testified that, at the time of her crime, she had not had custody of two of three daughters. She had been told that she could not have custody of all of her children unless she found a suitable place to live. She and her friends had heard from the victim's nephew that he kept cash because he did not believe in banks. She decided to participate in the crime to obtain money to pay for housing. She stated that the victim had been in his fifties or sixties at the time of the robbery. (Tr. at 34)
9. Ms. Hale admitted at hearing that she had been abusing drugs and alcohol at the time in her life when she committed her crime. She said that, today, she drinks alcohol but does not take illegal drugs. (Tr. at 34-35)
10. Ms. Hale's Application includes numerous certificates for the programs in which she participated while she was incarcerated. Ms. Hale testified that none of these programs had been required, but that she had made a conscious effort in prison to behave well, to change her life, and to improve herself. She participated in behavior modification classes, drug rehabilitation programs, and community service. She also testified that she had never been placed in the isolation or segregation unit (known as "the hole") for disciplinary reasons during her seven years of imprisonment. (St. Ex. 2 at p. 24-56; Tr. at 7-8, 23, 27-30)
11. Ms. Hale took the June 19, 2007, Massage Therapy examination, but did not receive a passing grade. The passing grade on the two portions of the test is 75.0. Ms. Hale received a 74.0 in the Basic Science portion of the examination, and a 68.0 in the Limited Branch portion. (St. Ex. 2 at p. 11).
12. Ms. Hale submitted a "Massage Therapy Re-Examination Application - Entire Exam" [Re-Examination Application] to the Board on August 13, 2007. The Re-Examination Application is pending. (St. Ex. 2 at p. 2)
13. Ms. Hale's Application and Re-Examination Application each list her current employment as a dispatcher for Yellow Cab in Columbus, Ohio. At hearing, she testified that she had since been fired from that job on August 1, 2008. She is now working at The Gap warehouse. She said that she is currently in training for different positions at the warehouse, including packing, checking, and loading boxes, as well as credit card processing for gift certificates. (St. Ex. 2 at 3, 61; Tr. at 9, 15, 26)

14. Ms. Hale testified that she had been fired from Yellow Cab for “feeding fares.” She explained that “feeding fares” means routing calls directly to a particular driver, in exchange for a share of the fare, rather than directing the calls to the central system as required. (Tr. at 15-17)
15. Ms. Hale admitted that she had fed calls, but maintained that one of the accusations of feeding fares had been false. She also testified that she felt that she had been unfairly fired, because she had been a good employee and had not received any sort of warning before her dismissal. (Tr. at 24-26)
16. Ms. Hale testified that she has not been in any trouble with the law since her release from prison. She currently has custody of one of her children, and she is ready to file papers to obtain custody of the other two children. (Tr. at 8, 33)
17. When asked why she felt that she would never commit any crimes in the future, she responded:

Man, seven years. Seven years away from - of my life. It's my life first that I took away from myself, seven years I took away from my children. Just going through that, not seeing them grow, not knowledgeable to be there for some of my family. Because my mother, she passed when I was in prison, as well. But I could not do it again to be missing out on my kids, and I know they need me.

(Tr. at 30)

FINDING OF FACT

In February 2007, Patricia Ann Hale caused to be submitted to the Board an Application for Certificate to Practice a Limited Branch, Massage Therapy [February 2007 Application]. She answered “yes” to Question 11, which asks if the applicant has 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. In August 2007, Ms. Hale caused to be submitted to the Board a Massage Therapy Re-examination Application, Entire Exam [August 2007 Application], which remains pending. Documents that Ms. Hale supplied with her February 2007 Application and additional Board investigation disclosed the following:

On October 2, 2007, Ms. Hale was indicted in the Court of Common Pleas, Franklin County, Ohio, on one count of Aggravated Robbery with Specifications, in violation of Section 2911.01, Ohio Revised Code, a felony of the first degree. On March 18, 1998, she entered a plea of guilty to one count of the stipulated lesser offense of Robbery, a felony of the second degree, in violation of Section 2911.02, Ohio Revised Code. On May 5, 1998, Ms. Hale was sentenced to a prison term for six years with an additional year of incarceration for the use of a firearm, to run consecutively. Ms. Hale completed

her prison sentence on August 26, 2004, and was released to post-release control, which was terminated on August 29, 2005.

CONCLUSION OF LAW

Patricia Ann Hale's plea of guilty or the judicial finding of guilt as set forth in the Finding of Fact 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.

* * * * *

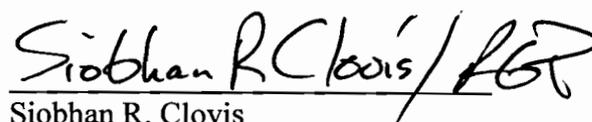
During and since her imprisonment, Patricia Ann Hale has demonstrated a commitment to her rehabilitation and her progress is commendable. Unfortunately, however, given the position of trust that a massage therapist must hold with respect to her clients, it would be inappropriate to issue a license to an individual who has been convicted of the violent offense of robbery with a firearm.

PROPOSED ORDER

It is hereby ORDERED that:

The application of Patricia Ann Hale for a certificate to practice massage therapy in Ohio is PERMANENTLY DENIED.

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


Siobhan R. Clovis
Hearing Examiner

State Medical Board of Ohio

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

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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. Steinbergh	- aye
	Dr. Varyani	- 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.

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

.....

PATRICIA ANN HALE

.....

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. CLOVIS' FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF PATRICIA ANN HALE. MR. HAIRSTON SECONDED THE MOTION.

.....

A vote was taken on Dr. Steinbergh'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

April 9, 2008

Case number: 08-CRF- **040**

Patricia Ann Hale
252 North Gould Road, #C
Columbus, OH 43209

Dear Ms. Hale:

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) In or around February 2007, you caused to be submitted to the Board an Application for Certificate to Practice a Limited Branch, Massage Therapy [February 2007 Application]. You answered "yes" to Question 11, which asks if you have 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. In or around August 2007, you caused to be submitted to the Board a Massage Therapy Re-examination Application, Entire Exam [August 2007 Application], which remains pending. Documents that you supplied with your February 2007 Application and additional Board investigation disclosed the following:
 - (a) On or about October 2, 1997, you were indicted in the Court of Common Pleas, Franklin County, Ohio, on one count of Aggravated Robbery with Specifications, in violation of Section 2911.01, Ohio Revised Code, a felony of the first degree. On or about March 18, 1998, you entered a plea of guilty to one count of the stipulated lesser offense of Robbery, a felony of the second degree, in violation of Section 2911.02, Ohio Revised Code. On or about May 5, 1998, you were sentenced to a prison term of six years with an additional year of incarceration for the use of a firearm, to run consecutively. You completed your prison sentence on or about August 26, 2004, and were released to post-release control, which was terminated on or about August 29, 2005.

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.

Mailed 4-10-08

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.

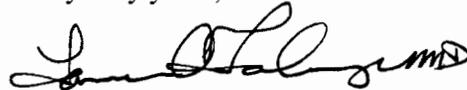
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at 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, M.D.", with a stylized flourish at the end.

Lance A. Talmage, M.D.
Secretary

LAT/LAZ/flb
Enclosures

CERTIFIED MAIL #91 7108 2133 3934 3685 0411
RETURN RECEIPT REQUESTED