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

July 14, 2010

Adam Lee Fowler
8949 Desoto Drive
Cincinnati, OH 45231

RE: Case No. 09-CRF-099

Dear Mr. Fowler:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Gretchen L. Petrucci, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 14, 2010, 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

Lance A. Talmage, M.D.

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3936 3124 2691
RETURN RECEIPT REQUESTED

Mailed 7-22-10

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Gretchen L. Petrucci, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 14, 2010, 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 Adam Lee Fowler, Case No. 09-CRF-099, 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 MD

Lance A. Talmage, M.D.
Secretary

(SEAL)

July 14, 2010
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF	*	
	*	CASE NO. 09-CRF-099
ADAM LEE FOWLER	*	

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on July 14, 2010.

Upon the Report and Recommendation of Gretchen L. Petrucci, 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 Adam Lee Fowler for a certificate of 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 MD

Lance A. Talmage, M.D.
Secretary

(SEAL)

July 14, 2010
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of	*	
		Case No. 09-CRF-099
Adam Lee Fowler,	*	
		Hearing Examiner Petrucci
Respondent.	*	

2010 JUN 11 PM 2:32
STATE MEDICAL BOARD OF OHIO

REPORT AND RECOMMENDATION

Basis for Hearing

By letter dated August 12, 2009, the State Medical Board of Ohio [Board] notified Adam Lee Fowler that it intended to determine whether to deny his application for a certificate to practice massage therapy in Ohio or to take disciplinary action. The Board based its proposed action on allegations that Mr. Fowler had been found guilty of one felony count of Unlawful Sexual Contact with a Minor in violation of Section 2907.04, Ohio Revised Code, and that he had been found to be a sexually oriented offender. Further, the Board stated that the 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 set forth in Section 4731.22(B)(9), Ohio Revised Code. Accordingly, the Board advised Mr. Fowler of his right to request a hearing in this matter. (State's Exhibit [St. Ex.] 1A)

On September 14, 2009, Mr. Fowler requested a hearing. (St. Ex. 1B)

Appearances at the Hearing

Richard Cordray, Attorney General, by Kyle C. Wilcox, Assistant Attorney General, on behalf of the State of Ohio. James M. McGovern, Esq., on behalf of Mr. Fowler.

Hearing Date: April 29, 2010

SUMMARY OF THE EVIDENCE

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

Background

1. Adam Lee Fowler was born in 1985. Mr. Fowler attended the Northern Kentucky University in 2004/2005, but he dropped out. For the next several years, he worked as a waiter, cook and cashier. (St. Ex. 2 at 1, 3; Hearing Transcript [Tr.] at 12, 32)

2. From September 2007 to May 2009, Mr. Fowler attended the Cincinnati School of Medical Massage and completed that program. (St. Ex. 2 at 2, 20-21; Tr. at 15, 17)

Felony Conviction

3. On July 23, 2007, when Mr. Fowler was 21 years old, he met an acquaintance, A.G. He explained that they drove around Cincinnati and they talked. He went to a public park and they had sexual intercourse. A.G. was 14 years old at the time, and Mr. Fowler knew her age. (St. Ex. 2 at 9, 13, 14; St. Ex. 3; Tr. at 21-22)

4. Mr. Fowler was arrested and indicted in the Hamilton County Court of Common Pleas for engaging in intercourse with a minor whom Mr. Fowler knew was 13 years of age or older and less than 16 years of age, in violation of Section 2907.04(A), Ohio Revised Code. *State v. Fowler*, Case No. B 0706215. (Tr. at 17, 22-23; St. Ex. 2 at 12; St. Ex. 4)

5. On August 27, 2007, Mr. Fowler entered a plea of guilty to the felony charge. On September 18, 2007, the Hamilton County Court of Common Pleas found him guilty of the felony of Unlawful Sexual Conduct with a Minor in violation of Section 2907.04(A), Ohio Revised Code. The court sentenced Mr. Fowler to five years of community control, ordered him to have no contact with the victim and other minors, ordered him to pay court costs and defense attorney fees, and ordered him to provide a DNA specimen. Moreover, the court found Mr. Fowler to be a sexually oriented offender. (St. Exs. 5, 6; Tr. at 23-25)

6. Mr. Fowler explained that several restrictions and requirements accompany a sexually oriented offender designation: he cannot live within 1,000 feet of a school or daycare, he cannot be paid or volunteer to supervise minors, he will register biennially with his county sheriff department for the next 20 years, and he will have special "tags" on his car license plate. Also, residents within a mile of his residence will be informed of his status and location. (Tr. at 26-27, 65)

Certificate Application

7. On March 2, 2009, as Mr. Fowler neared completion of his massage-therapy training, he filed an application with the Board for a certificate to practice massage therapy in Ohio. (Tr. at 24-25; St. Ex. 2) The application remains pending.

8. Mr. Fowler acknowledged that he had been convicted or found guilty of a violation of the law, other than a minor traffic violation. He supplied documentation of his felony conviction and an explanation. (St. Ex. 2 at 6, 9-14, 18-19)

9. Mr. Fowler took the June 2009 massage-therapy examination. He does not know the results. (Tr. at 67; St. Ex. 2 at 22)

Mr. Fowler's Testimony

10. Mr. Fowler described a number of significant events in his life that explained his personal situation at the time of the incident with A.G. He testified that his son Jared was born in 2005 not long after he had finished high school. Mr. Fowler stated that he had enrolled in college and tried to juggle college, work and his son, but dropped out of college because it had been

too much to handle. Mr. Fowler stated that his relationship with Jared's mother ended, she moved away, and he raised his son, with his mother's help. (Tr. at 13-14, 30-34)

11. In early 2006, Mr. Fowler began dating another girl, Crystal. Soon thereafter, he and Jared moved into an apartment together with Crystal. Thereafter, Crystal gave birth to a daughter, Alexis, who was not Mr. Fowler's child. Mr. Fowler cared for and raised Alexis during this time period. (Tr. at 35-36, 38-39, 93)

    In December 2006, Jared was injured while under Crystal's care. Mr. Fowler was accused of injuring Jared, but Crystal confessed to biting Jared's face and breaking his arm. Crystal was charged, convicted and sentenced to prison. Alexis' biological father took custody of her. In May 2007, Alexis died, after her biological father kicked/pushed her and caused her to hit her head. Moreover, Mr. Fowler learned that Crystal had given birth to a son. Mr. Fowler discovered, after DNA testing, that he is the child's biological father and that the child had been placed in foster care. (Tr. at 36-41, 43, 93-95)

12. Mr. Fowler stated that, as a result of these events, he suffered from depression:

> I still felt, I don't know the word for it, empty, just – I was on autopilot in life. I was just going through the motions. * * *
>
> And I continued working through Buffalo Wild Wings until the incident [with A.G.], simply working, paying rent. For the most part, my social life was null and void after that. I simply sat in the apartment and either played with [Jared] or watched him play and felt sorrow knowing that Alexis was never going to do it again. Again, I know she wasn't mine, but I loved her like she was.
>
> * * *
>
> [L]ike I said, in my eyes, my son had already been injured and I felt as though I failed him being a good father by my bad judgment leading to him getting injured, and then within six months a lady – or, Alexis had passed away. I know there was nothing I could have done to prevent that.
>
> I couldn't have fault because I couldn't get her, but at the same time, like I said, I raised her like she was my own. She played with my son. I treated her like she was my daughter and her passing away, to me, hurt like I lost a daughter.
>
> And I don't know any other ways to put that. That's what it felt like to me, that I lost a daughter.

(Tr. at 44-45)

13. Mr. Fowler also described how he knew A.G. and how the July 2007 incident occurred. Mr. Fowler explained that he knew A.G. because she "hung out" at the same hobby store that

he frequented. He noted that the hobby store encouraged game playing in the store, and Mr. Fowler would visit to play tabletop games with other "gamers." A.G. was a friend of the store owner's daughter. Mr. Fowler had A.G.'s telephone number and he occasionally sent text messages to her to see who was at the store. (Tr. at 46-47)

Mr. Fowler explained that, later, A.G. was "locked out" of her house on several occasions. She asked Mr. Fowler to wait with her until one of her parents came home because she was fearful of waiting by herself. Mr. Fowler agreed because he did not want "her stuck on the side of the road." On approximately three of those occasions, Mr. Fowler waited with A.G. outside her home until one of her parents arrived home. On another occasion, he brought A.G. to his apartment to wait until one of her parents called. The fifth occasion occurred on July 23, 2007, when Mr. Fowler had had an argument with his then-girlfriend. He decided to drive around with A.G., stating that he had no particular destination. (Tr. at 47-48, 50)

Eventually, they drove to a park in Cincinnati. Mr. Fowler remembers talking about the incidents concerning Jared and Alexis, and becoming emotional. He and A.G. had sexual intercourse. The police discovered them, and Mr. Fowler was arrested. Mr. Fowler believes that he was depressed and very emotional at the time, and that he had a lapse of judgment. (Tr. at 48-52)

14. Mr. Fowler stated that, after his arrest, he was placed in a psychiatric room in the jail for three days. During that time, he decided to change the course of his life. He considered several options. When he left the jail, he saw an advertisement for the Cincinnati School of Medical Massage. He decided to look into the program further, and later he enrolled. (Tr. at 18-20, 53-54)

15. Mr. Fowler explained that, before enrolling in massage-therapy school, he discussed his felony conviction with the school, specifically noting that he was a sexually oriented offender. Mr. Fowler stated that the school responded that his conviction would not stop him from obtaining the education, but the school was not certain whether the Board would grant a certificate, although others had gotten licenses. Mr. Fowler accepted that response and did not inquire further about obtaining licensure, and did not contact the Board. (Tr. at 20-21, 67-68)

16. Mr. Fowler stated that he enjoyed the massage-therapy classes, and discovered that he had a strong desire to practice massage therapy. Mr. Fowler noted that he scored well in school too. (Tr. at 54-57)

17. Mr. Fowler testified that, at the time of the hearing, he was compliant with his criminal sentence. He noted that he visits his probation officer twice a month, and he has complied with his community control obligations. He also stated that he has not paid all of the court costs and attorney fees, but is nevertheless compliant because he still has time to pay the fees. (Tr. at 25, 61, 66)

18. Mr. Fowler noted that he was very honest with the Board in providing documentation regarding his conviction and in answering questions of a Board investigator. (Tr. at 59-60)

19. Mr. Fowler stated that he regrets the incident with A.G. and he would like to move forward with his life. He noted that, if granted a massage-therapy certificate, he would not provide massages to minors. He stated, "I have no intentions on repeating this incident, [and] have no intentions of putting myself in a situation where someone can say I did either." (Tr. at 59, 61-62) Additionally, he testified:

> I can hope that the incident doesn't stop me from getting the future that I've seen. In my head, I see a future where I can practice, and hopefully find a place that allows me a little freedom to do what I want. I wish to not only be a therapist that's in a room doing massage, I wish to be one that – like I said earlier, that can enlighten people to what can be done.

(Tr. at 62-63)

Supporting Testimony

20. Andrea Byrd is Mr. Fowler's probation officer. Ms. Byrd stated that she has been Mr. Fowler's probation officer since January 2010, and seen him six times. She testified that he is compliant with the requirements of his criminal sentence, although he has not paid all court costs and attorney fees yet. (Tr. at 61, 73-75, 77-78)

21. Laurie Ann Ackerman was one of Mr. Fowler's massage-therapy instructors, teaching massage theory and the procedures of massage. She explained that Mr. Fowler was a very good student, very intelligent, a good participant and always present in class. Additionally, she explained that Mr. Fowler was a very good therapist, and never was inappropriate in school. She stated that, although Mr. Fowler has been determined to be a sexually oriented offender, she believes he deserves a massage-therapy certificate. She testified that Mr. Fowler has good moral character. (Tr. at 107-109, 112-113)

22. Kathi Fowler is Mr. Fowler's mother. Ms. Fowler testified that, as a child, Mr. Fowler did not get into trouble. She noted that he dropped out of college in order to care for Jared because Jared's mother was not working and then left. She also stated that Mr. Fowler became depressed after the events with Jared, Alexis and Crystal. (Tr. at 61, 90, 92, 95)

    Ms. Fowler stated that she was shocked when she learned of the charges involving A.G., and there was no pattern of any similar behavior. She stated:

> Adam was not raised that way and he knows how I feel. I mean, I'm a teacher, I deal with adolescent children daily and he – you know, he's always [been] brought up to have good family values and respect children and adults.

(Tr. at 97) Ms. Fowler testified that, since the incident with A.G., Mr. Fowler has matured and he has been more open with her about his frustrations, particularly in seeking employment and housing. She confirmed that Mr. Fowler enrolled in massage-therapy school in order to improve his future so that he can support himself and Jared. She also noted that Mr. Fowler makes sure that an adult is present when he is near minors. (Tr. at 98-99, 100)

Ms. Fowler stated that, since the incident, Mr. Fowler has been honest, hardworking and determined. She stated that he is more focused than ever before and he pursued his massage-therapy education with enthusiasm. She believes that he deserves a chance. (Tr. at 101-102)

23. Jesse L.A. Hooven is one of Mr. Fowler's childhood friends. He stated that, other than the July 2007 incident, Mr. Fowler has not been in trouble with the law. Mr. Hooven stated that Mr. Fowler is a very honest and precise person. Mr. Hooven stated that Mr. Fowler was "really depressed" after the events with Jared and Alexis. He further stated that he was surprised about the incident with A.G., and had never envisioned Mr. Fowler engaging in such conduct. He believes that Mr. Fowler is trying to improve his life and care for Jared. Mr. Hooven also noted that Mr. Fowler is very careful to avoid any future problems. (Tr. at 60, 82-87)

FINDINGS OF FACT

1. On March 2, 2009, Adam Lee Fowler submitted to the Board an Application for Certificate to Practice a Limited Branch Massage Therapy, which remains pending.

2. On September 18, 2007, in the Court of Common Pleas for Hamilton County, Cincinnati, Ohio, Mr. Fowler was found guilty of one felony count of Unlawful Sexual Contact with a Minor in violation of Section 2907.04, Ohio Revised Code, and he was determined to be a sexually oriented offender. The facts underlying his conviction included that Mr. Fowler had sexual intercourse with a 14-year-old female.

CONCLUSION OF LAW

The finding of guilt set forth in Finding of Fact 2 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 set forth in Section 4731.22(B)(9), Ohio Revised Code.

Rationale for the Proposed Order

Mr. Fowler has been designated a sexually oriented offender, a designation that will continue for many years to come. In light of the nature of massage-therapy work and the vulnerability of massage-therapy clients, the Hearing Examiner cannot recommend that Mr. Fowler receive a certificate.

There are several mitigating factors for the Board's consideration: full and free disclosure to the Board, sincere remorse, rehabilitation efforts, and compliance with his criminal sentence. If the Board were to grant a certificate, the Board should impose a permanent limitation/restriction to prohibit Mr. Fowler from providing massage-therapy services to minors.

PROPOSED ORDER

It is hereby ORDERED that:

The application of Adam Lee Fowler for a certificate of 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.

Gretchen L. Petrucci
Hearing Examiner

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

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EXCERPT FROM THE DRAFT MINUTES OF JULY 14, 2010

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

Dr. Amato announced that the Board would now consider the Reports and Recommendations, and the Proposed Findings and Proposed Order appearing on its agenda.

Dr. Amato asked whether each member of the Board had received, read and considered the hearing records; the Findings of Fact, Conclusions of Law, Proposed Orders, and any objections filed in the matters of: Alfred Larry Boulware, M.D.; Kevin Wayne Bowers, D.O.; Calvin Richard Brown, M.D.; Hatem Marwan Dajani, M.D.; Adam Lee Fowler; Elease Michelle Fulgham; Joseph James Koenigsmark, D.O.; Rhonda Kay Masci; Kwabena Mawulawde, M.D.; Giovanni A. Pupillo, M.D.; and Stephen Alan Straubing, M.D. A roll call was taken:

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Amato	- aye
	Mr. Albert	- aye
	Dr. Madia	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Mr. Morris	- aye
	Dr. Ramprasad	- aye

Dr. Amato 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:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Amato	- aye
	Mr. Albert	- aye
	Dr. Madia	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Mr. Morris	- aye
	Dr. Ramprasad	- aye

Dr. Amato 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 matter of Ms. Masci, as that case is not disciplinary in nature and concerns only Ms. Masci's qualifications for licensure. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

Dr. Amato reminded all parties that no oral motions may be made during these proceedings.

The original Reports and Recommendations shall be maintained in the exhibits section of this Journal.

.....

ADAM LEE FOWLER

.....

Dr. Talmage exited the meeting prior to this discussion

.....

Dr. Steinbergh moved to approve and confirm Ms. Petrucci's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Adam Lee Fowler. Mr. Hairston seconded the motion.

.....

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

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Amato	- aye
	Mr. Albert	- abstain
	Dr. Madia	- aye
	Dr. Suppan	- aye
	Mr. Morris	- aye
	Dr. Ramprasad	- 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

August 12, 2009

Case number: 09-CRF- 099

Adam Lee Fowler
8949 Desoto Drive
Cincinnati, OH 45231

Dear Mr. Fowler:

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 March 2, 2009, you caused to be submitted to the Board an Application for Certificate to Practice a Limited Branch Massage Therapy, which remains pending.

(2) On or about September 18, 2007, in the Court of Common Pleas for Hamilton County, Cincinnati, Ohio, you were found guilty of one felony count of Unlawful Sexual Contact with a Minor in violation of Section 2907.04, Ohio Revised Code, and you were determined to be a sexually oriented offender. The facts underlying your conviction included that you had sexual intercourse with a fourteen-year-old female.

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.

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.

Mailed 8-13-09

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 3936 3071 2065
RETURN RECEIPT REQUESTED