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 8, 2009

Michael Anthony Liston
129 West Mill Street
Circleville, OH 43113

RE: Case No. 08-CRF-004

Dear Mr. Liston:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Siobhan R. Clovis, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 8, 2009, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3936 3160 5922
RETURN RECEIPT REQUESTED

Cc: Richard L. Gerhardt, Esq.
CERTIFIED MAIL NO. 91 7108 2133 3936 3160 5939
RETURN RECEIPT REQUESTED

Mailed 8-11-09

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 July 8, 2009, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Michael Anthony Liston, Case No. 08-CRF-004, 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

(SEAL)

July 8, 2009
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF	*	
	*	CASE NO. 09-CRF-004
MICHAEL ANTHONY LISTON	*	

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on July 8, 2009.

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 modification, 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:

A. **GRANT OF MASSAGE THERAPY LICENSURE SUBJECT TO CONDITIONS:** The application of Michael Anthony Liston for a certificate to practice massage therapy in Ohio is GRANTED, provided that he otherwise meets all statutory and regulatory requirements, and subject to the conditions set forth below.

B. **REPRIMAND**: Michael Anthony Liston is REPRIMANDED.

C. **PROBATION**: Upon reinstatement or restoration, Mr. Liston's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least one year:

1. **Obey the Law**: Mr. Liston shall obey all federal, state, and local laws, and all rules governing the practice of massage therapy in Ohio.

2. **Personal Appearances**: Mr. Liston shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Mr. Liston's certificate is restored or reinstated, or as otherwise directed by the Board. Subsequent personal appearances must occur every six months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

3. **Declarations of Compliance**: Mr. Liston shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which Mr. Liston's certificate is restored or reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

4. **Personal and/or Professional Ethics Course(s)**: Before the end of the probationary period, or as otherwise approved by the Board, Mr. Liston shall provide acceptable documentation of successful completion of a course or courses dealing with personal and/or professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee.

   In addition, at the time Mr. Liston submits the documentation of successful completion of the course or courses dealing with personal and/or professional ethics, he shall also submit to the Board a written report describing the course, setting forth what he learned from the course, and identifying with specificity how he will apply what he has learned to his practice of massage therapy in the future.

D. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Mr. Liston's certificate will be fully restored.

E. **VIOLATION OF THE TERMS OF THIS ORDER**: If Mr. Liston violates the terms of this Order in any respect, the Board, after giving her notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

F. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER**

1. **Required Reporting to Employers and Others**: Within 30 days of the effective date of this Order, Mr. Liston shall provide a copy of this Order to all employers or entities with which he is under contract to provide health-care services (including but not limited to third-party payors), or is receiving training, and the chief of staff at each hospital or health-care center where he has privileges or appointments.

   For massage therapists, the term "health-care services" includes massage-therapy services, and the term "health-care center" includes but is not limited to entities that may be referred to as a wellness center, exercise center, health club, spa, salon, or gymnasium.

In the event that Mr. Liston provides any health-care services or health-care direction or medical oversight to any emergency medical services organization or emergency medical services provider, Mr. Liston shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

This requirement shall continue until Mr. Liston receives from the Board written notification of the successful completion of his probation.

2. **Required Reporting To Other Licensing Authorities**: Within 30 days of the effective date of this Order, Mr. Liston shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Administration, through which he currently holds any license or certificate.

   Mr. Liston further shall provide a copy of this Order at the time of application to the proper licensing authority of any state or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license.

   This requirement shall continue until Mr. Liston receives from the Board written notification of the successful completion of his probation.

3. **Required Documentation of the Reporting Required by Paragraph F**: Mr. Liston shall provide the Board with **one** of the following documents as proof of each required notification within 30 days of the date of each such notification: (1) the return receipt of certified mail within 30 days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

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

Lance A. Talmage, M.D.
Secretary

(SEAL)

July 8, 2009
Date

STATE MEDICAL BOARD
OF OHIO
2009 MAY 28 P 12: 33

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of	*	**Case No. 09-CRF-004**
Michael Anthony Liston,	*	**Hearing Examiner Clovis**
Respondent.	*	

REPORT AND RECOMMENDATION

Basis for Hearing

By letter dated January 14, 2009, the State Medical Board of Ohio [Board] notified Michael Anthony Liston that it proposed to deny his pending August 2008 Massage Therapy Application [Application] or to take other disciplinary action. The Board based its proposed action on allegations that Mr. Liston had been found guilty of Attempted Gross Sexual Imposition and Restriction on the Sale of Liquor, and had failed to disclose those convictions in his Application. The Board alleged that the Mr. Liston's conduct, individually and/or collectively, constitutes violations of Sections 4731.22(B)(5) and/or (B)(13), Ohio Revised Code. The Board advised Mr. Liston of his right to request a hearing, and received his request on February 3, 2009. (State's Exhibit [St. Ex.] 1A; St. Ex. 1B)

Appearances

Richard Cordray, Attorney General, by Barbara J. Pfeiffer, Assistant Attorney General, on behalf of the State of Ohio.

Richard L. Gerhardt, Esq., on behalf of the Respondent.

Hearing Date: April 7, 2009

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.

1. On August 28, 2008, Michael Anthony Liston submitted to the Board an Application for Certificate to Practice a Limited Branch Massage Therapy [Application]. Mr. Liston signed an Affidavit along with the Application in which he certified under oath that "all statements that I have or shall make with respect [to the Application] are true." (St. Ex. 2 at 1, 10; Hearing Transcript [Tr.] at 12)

2. In the Additional Information section of his Application, Mr. Liston answered "No" to question number 11, which asked, in part: "Have you ever been convicted or found guilty of a violation of any law, regardless of the legal jurisdiction in which the act was

committed, other than a minor traffic violation?" In fact, Mr. Liston had been convicted of two misdemeanors. (St. Ex. 2 at 5; St. Ex. 3; St. Ex. 4; Tr. at 12)

3. On April 25, 1988, in the Franklin County Municipal Court in Columbus, Ohio, Mr. Liston was found guilty of one third-degree misdemeanor count of Restriction on the Sale of Liquor, a violation of Section 4301.22(A), Ohio Revised Code, as in effect at that time. (St. Ex. 4)

4. On October 5, 1988, in the Court of Common Pleas of Franklin County, in Columbus, Ohio, Mr. Liston was found guilty of one first-degree misdemeanor count of Attempted Gross Sexual Imposition, a violation of Section 2923.02, Ohio Revised Code, as in effect at that time. (St. Ex. 3)

5. Mr. Liston explained that the first conviction arose out of an incident at a bar near the campus of Ohio State University. While working there as a bartender, he had sold alcohol to an intoxicated patron. He explained that he had sought instruction from his manager about whether to serve the individual, and his manager had told him to do so. However, he understood that he was ultimately responsible for the sale, so he accepted responsibility and pleaded guilty to the offense. (Tr. at 39-41)

6. The second conviction arose out of a relationship that Mr. Liston, who had been 23 years old at the time, had had with a fourteen-year-old girl. Mr. Liston testified that he and the girl had been on one date, after Mr. Liston had met her parents and received their permission for the date. A week or two later, the girl was discovered by her parents to have secretly left their home during the night with a friend. Apparently, there was an accusation that Mr. Liston had had sex with the girl during the illicit outing. Mr. Liston testified that, although the girl's friend initially corroborated the accusation against Mr. Liston, she eventually recanted. (Tr. at 42-46)

7. Mr. Liston denied seeing the girl on that night. He testified that it was his understanding that she had been at a party and wanted to hide the truth from her parents. Although initially charged with three felonies, Mr. Liston was offered a deal to plead guilty to one misdemeanor. Mr. Liston testified that he had pleaded guilty, despite his innocence, because he "was scared to death." (Tr. 45-46)

8. When asked how he could assure the Board that it could safely license him as a massage therapist, despite his attempted gross sexual imposition conviction, Mr. Liston responded:

> I'm not a pervert or a sexual deviant in any way. I just -- I made a mistake and dated a girl who was too young one time. I learned from that mistake. I never dated any girls under 18 after that or before that. I have teenage daughters of my own. I have no interest in anything of a sexual nature as far as children are concerned.

(Tr. at 62)

9. Mr. Liston testified that he has worked for several employers who had conducted background checks of him. He explained that it was his understanding, based on his experiences with these previous employment investigations, that the 1988 convictions no longer appeared on his record. He explained that he had not reported the convictions because he believed that they no longer "exist[ed]." He admitted that he should have reported them whether or not they are available through a records check. (Tr. 37-39, 48-49, 63-64)

10. Mr. Liston testified about his employment history, which includes several factory jobs, as well as contract work for the United States Postal Service. Mr. Liston is skilled in plastics extrusion, which he described as a "dying art." He testified about three manufacturing jobs he had held, any one of which he would have been pleased to retire from, and all of which he had been involuntarily terminated from: one due to the factory leaving the state to avoid a union; one due to the employer's bankruptcy; and one due to a reduction in force. He explained that he had decided to learn massage therapy for the following reason:

> Just tired of being unemployed. Jobs in plastics and stuff are hard to get. And, mainly, I'm just a factory worker. And those jobs seem to be getting harder and harder to obtain. You see on TV all the time where companies are going out of business and laying off and moving to Mexico. So I thought massage therapy is a great opportunity to work for myself.

(Tr. at 29-34; 46)

11. Mr. Liston explained that his interest in massage therapy had been piqued by television advertisements for Everest Institute, the massage therapy school from which he graduated. He said that he has always had a talent for "massaging" friends and family members and so he thought it would be a "good fit." He testified that he enjoyed the schooling and had done well. He said that he would further like to be a massage therapist so that he can provide a better way of life for his wife and children. Mr. Liston has not been in trouble since his 1988 convictions. He described himself as "[h]ard working, stay out of trouble. I don't drink. I don't do drugs." (Tr. at 30, 33, 47, 50, 66)

12. Debra Sue Schroeder, a licensed chiropractor and massage therapist, who had been one of Mr. Liston's instructors at Everest Institute, testified on his behalf. She said that he was one of only two students that she has ever allowed to massage her. She testified that she would have no qualms about hiring him at her own practice, despite his convictions and his false statement on his Application. (Tr. at 69-75)

FINDINGS OF FACT

1. On August 28, 2008, Michael Anthony Liston submitted to the Board an Application for Certificate to Practice a Limited Branch Massage Therapy [Application], which remains pending. By signing the Application, Mr. Liston certified that the information provided therein was true.

   In the "Additional Information" section of his Application, Mr. Liston answered "NO" to question number 11 which asked, in pertinent part:

   > Have you ever been convicted of 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 fact, as described in Findings of Fact 2 and 3 below, Mr. Liston had been convicted of two separate misdemeanors.

2. On October 5, 1988, in the Court of Common Pleas of Franklin County, in Columbus, Ohio, Mr. Liston was found guilty of one first-degree misdemeanor count of Attempted Gross Sexual Imposition in violation of Section 2923.02, Ohio Revised Code, as in effect at that time.

3. On April 25, 1988, in the Franklin County Municipal Court, in Columbus, Ohio, Mr. Liston was found guilty of one third-degree misdemeanor count of Restriction on the Sale of Liquor in violation of Section 4301.22(A), Ohio Revised Code, as in effect at that time.

CONCLUSION OF LAW

1. Michael Anthony Liston's acts, conduct, and/or omissions, as set forth in Findings of Fact 1 through 3 above, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, 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).

2. Further, Mr. Liston's plea of guilty or the judicial finding of guilt as set forth in Findings of Fact 2 and 3 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.

Rationale for the Proposed Order

Mr. Liston's misdemeanor convictions are over twenty years old and he appears today to be a hardworking family man, who is truly committed to improving his life through a new career in massage therapy. As he readily admitted, however, the failure to report his convictions on his license application was a serious offense. Mr. Liston displayed credible remorse for the failure, and seemed to regret his actions sincerely. Further, it is remarkable that he made such a positive impression on his instructor, Dr. Shroeder. For the foregoing reasons, Mr. Liston should be licensed subject to a suspension and a period of probation.

PROPOSED ORDER

It is hereby ORDERED that:

A. **GRANT OF MASSAGE THERAPY LICENSURE SUBJECT TO CONDITIONS:** The application of Michael Anthony Liston for a certificate to practice massage therapy in Ohio is GRANTED, provided that he otherwise meets all statutory and regulatory requirements, and subject to the conditions set forth below.

B. **SUSPENSION:** The certificate of Mr. Liston to practice massage therapy in the State of Ohio shall be SUSPENDED for a period of 180 days.

C. **PROBATION**: Upon reinstatement or restoration, Mr. Liston's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years:

1. **Obey the Law**: Mr. Liston shall obey all federal, state, and local laws, and all rules governing the practice of massage therapy in Ohio.

2. **Personal Appearances**: Mr. Liston shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Mr. Liston's certificate is restored or reinstated, or as otherwise directed by the Board. Subsequent personal appearances must occur every six months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

3. **Declarations of Compliance**: Mr. Liston shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which Mr. Liston's certificate is restored or reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

4. **Personal Ethics Course**: Before the end of the first six months of probation, or as otherwise approved by the Board, Mr. Liston shall provide acceptable documentation of successful completion of a course or courses dealing with personal ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee.

   In addition, at the time Mr. Liston submits the documentation of successful completion of the course or courses dealing with personal ethics, he shall also submit to the Board a written report describing the course, setting forth what he learned from the course, and identifying with specificity how he will apply what he has learned to his practice of massage therapy in the future.

D. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Mr. Liston's certificate will be fully restored.

E. **VIOLATION OF THE TERMS OF THIS ORDER**: If Mr. Liston violates the terms of this Order in any respect, the Board, after giving her notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

F. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER**

1. **Required Reporting to Employers and Others**: Within 30 days of the effective date of this Order, Mr. Liston shall provide a copy of this Order to all employers or entities with which he is under contract to provide health-care services (including but not limited to third-party payors), or is receiving training, and the chief of staff at each hospital or health-care center where he has privileges or appointments.

   For massage therapists, the term "health-care services" includes massage-therapy services, and the term "health-care center" includes but is not limited to entities that may be referred to as a wellness center, exercise center, health club, spa, salon, or gymnasium.

   In the event that Mr. Liston provides any health-care services or health-care direction or medical oversight to any emergency medical services organization or emergency medical services provider, Mr. Liston shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

   This requirement shall continue until Mr. Liston receives from the Board written notification of the successful completion of his probation.

2. **Required Reporting To Other Licensing Authorities**: Within 30 days of the effective date of this Order, Mr. Liston shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Administration, through which he currently holds any license or certificate.

   Mr. Liston further shall provide a copy of this Order at the time of application to the proper licensing authority of any state or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license.

   This requirement shall continue until Mr. Liston receives from the Board written notification of the successful completion of his probation.

3. **Required Documentation of the Reporting Required by Paragraph F**: Mr. Liston shall provide the Board with **one** of the following documents as proof of each required notification within 30 days of the date of each such notification: (1) the return receipt of certified mail within 30 days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

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

Siobhan R. Clovis

Siobhan R. Clovis
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 8, 2009

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDER

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

Dr. Madia asked whether each member of the Board had received, read and considered the hearing record; the Findings of Fact, Conclusions of Law and Proposed Orders; and any objections filed in the matters of Samer Ahmad Ali-Hasan, M.D.; James J. Anthony, M.D.; Romeo C. Enrique, M.D.; Michael Anthony Liston; Jason D. McComb, M.T.; Steven Paul Sherry, D.O.; and Muhammad Z. Shrayyef, M.D.; and the Proposed Findings and Proposed Order in the Matter of David Ronald Miller, M.D. A roll call was taken:

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

Dr. Madia 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. Talmage	- aye
	Dr. Varyani	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Madia	- aye

Dr. Madia 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. Ali-Hasan, Dr. Enrique and Dr. Shrayyef, 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.

Dr. Steinbergh indicated that she thought that Dr. Shrayyef's case was pulled from the agenda and she did not review his materials. She would therefore abstain from voting in his case.

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

.....

MICHAEL ANTHONY LISTON

Dr. Madia directed the Board's attention to the matter of Michael Anthony Liston. He advised that no objections were filed to Hearing Examiner Clovis' Report and Recommendation.

Dr. Madia continued that a request to address the Board has been timely filed on behalf of Mr. Liston. Five minutes would be allowed for that address.

Mr. Liston thanked the Board for the opportunity to speak. He stated that he has been a factory worker most of his life. The last couple of jobs he's had required background checks and nothing turned up on those checks, so when he filled out his application to sit for the massage therapy examination, he answered "no," that he had no criminal background because he assumed that nothing would show up on the background check like it had failed to show up before. He was wrong and he's sorry for that.

Mr. Liston concluded by stating that he's trying to improve his family's way of life by becoming a massage therapist.

Dr. Madia asked whether the Assistant Attorney General wished to respond.

Ms. Pfeiffer stated that she does not.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. CLOVIS' FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF MICHAEL ANTHONY LISTON. DR. VARYANI SECONDED THE MOTION.

Dr. Madia stated that he would now entertain discussion in the above matter.

Dr. Amato noted that Mr. Liston's misdemeanor conviction was over twenty years ago. He commented

that it seems that the proposed 180-day suspension on his license is a bit severe. He stated that, as a matter of fact, he would like to see zero suspension, but he doesn't like the fact that Mr. Liston didn't mention that conviction. He stated that he would impose a ten-day suspension with no probation. He again noted that this was a misdemeanor crime that occurred 20 years ago and there have been no other infractions of the law by Mr. Liston.

Dr. Stephens stated that she would agree with no suspension, but she doesn't know which is better: no suspension or no probation. Dr. Stephens stated that she would think that no suspension and a very limited probation would be better for him. She suggested a three-month probation.

Dr. Steinbergh stated Mr. Liston has applied for a massage therapy license and he did have, in fact, a misdemeanor over twenty years ago. He did not answer the Board's questions correctly. The Conclusions of Law state that his actions do constitute making a false, fraudulent, deceptive and misleading statement. She stated that Mr. Liston has been very remorseful for his failure to answer the application question correctly.

Dr. Steinbergh stated that she agrees with the Proposed Order granting Mr. Liston a license. There is a question then about the suspension, which could be stayed. Dr. Steinbergh stated that she agrees that the probationary term is too long, and she suggested a one-year probation. She stated that the reason she suggests a one-year probation is that she believes that he ought to be taking a personal and/or professional ethics course to allow him to understand the responsibilities to his certificate and what it means to take care of patients in the state of Ohio. Dr. Steinbergh stated that when the Board licenses a massage therapist, it is saying that this is an ethical and honest individual, and to the best of the Board's knowledge, is appropriate for massage therapy. Dr. Steinbergh stated that there is no evidence that Mr. Liston would not be an appropriate therapist, but this would be a good time to take this course.

Dr. Steinbergh stated that her thought was that, if Mr. Liston had some professional ethics course during his massage therapy training, he could submit that to the Board as documentation of the professional piece and then go on to take the personal ethics course. She stated that she thinks that the other parts of the Proposed Order are appropriate.

Dr. Varyani agreed with staying the suspension and imposing a one-year probation. Dr. Varyani noted that Mr. Liston has stayed out of trouble for 20 years, and, according to his statement, he wants to better his life for his family and himself. Dr. Varyani would just let it go at that.

Dr. Steinbergh suggested a reprimand and probation for one year.

Dr. Varyani stated that that would be great.

Dr. Stephens stated that, in terms of Mr. Liston's "lying," she can put herself in his shoes and believe that he applied for jobs, they did a background check, nothing came up, and he believed his record is expunged and he really didn't have to put that on an application. She stated that she can see where he made that

mistake. She doesn't get the sense that he was purposely trying to be deceitful or lie or anything like that. He thought about it and came to the wrong conclusion. She suggested a reprimand and minimal probation.

Dr. Amato agreed with Dr. Stephens. He suggested that, de facto Mr. Liston has served a one-year suspension, based on the eleven months he has been kept from practicing massage therapy, having filed his application in August 2008. He agrees with a reprimand and the idea of probation. He added that the ethics course requirement also makes sense.

Dr. Steinbergh stated that she doesn't look at that "application pending" time as a suspension. She stated that Mr. Liston couldn't have expected to start practicing at the time he submitted his application.

Dr. Amato stated that a clean license application would have brought him within a month of licensure.

Dr. Varyani stated that applications are made before the applicant even sits for the licensing examination.

Ms. Debolt explained that the application for massage therapy is actually an application to sit for the exam. If his application came in in August, it was to sit for the December 2008 examination. And then it would be seven months since he passed the December examination.

Dr. Amato stated that no matter how the Board talks about the months, Mr. Liston has already had a suspension.

Ms. Debolt advised that, for purposes of professional licensure, an expunged conviction is not necessarily expunged, and it does show up on background checks, routinely.

Dr. Stephens stated that she doesn't think that lay people know that.

Mr. Whitehouse stated that the question asks whether the applicant has ever been convicted. It doesn't say, "excluding expungements."

Ms. Pfeiffer stated that this conviction was never expunged. It just didn't show up on some background checks.

DR. STEINBERGH MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF MR. LISTON TO GRANT HIM A LICENSE TO PRACTICE MASSAGE THERAPY, TO REPRIMAND HIM, TO PLACE HIM ON PROBATION FOR AT LEAST ONE YEAR, DURING WHICH TIME HE WILL COMPLETE A PERSONAL AND/OR PROFESSIONAL ETHICS COURSE, THE EXACT NUMBER OF HOURS AND THE COURSE OR COURSES SHALL BE SUBJECT TO PRIOR APPROVAL OF THE BOARD.

Dr. Steinbergh stated that if Mr. Liston wishes to submit some evidence of having taken a course in professional ethics during his training, he could submit that to the Board for approval and then just take the

personal ethics course.

DR. STEPHENS SECONDED THE MOTION. A vote was taken:

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

The motion carried.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. CLOVIS' FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER, AS AMENDED IN THE MATTER OF MICHAEL ANTHONY LISTON. DR. VARYANI SECONDED THE MOTION. A vote was taken:

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

January 14, 2009

Case number: 09-CRF- 004

Michael Anthony Liston
129 West Mill Street
Circleville, OH 43113

Dear Mr. Liston:

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 28, 2008, you caused to be submitted to the Board an Application for Certificate to Practice a Limited Branch Massage Therapy [2008 Application], which remains pending. By signing the 2008 Application, you certified that the information provided therein was true.

In the "Additional Information" section of your 2008 Application you answered "NO" 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?

In fact, as described in paragraphs 2 and 3 below, you were convicted of two separate misdemeanors.

(2) On or about October 5, 1988, in the Court of Common Pleas for Franklin County, Columbus, Ohio, you were found guilty of one first degree misdemeanor count of Attempted Gross Sexual Imposition in violation of Section 2923.02, Ohio Revised Code, as in effect at that time.

Mailed 1-15-09

(3) On or about April 25, 1988, in the Franklin County Municipal Court, located in Columbus, Ohio, you were found guilty of one third degree misdemeanor count of Restriction on the Sale of Liquor in violation of Section 4301.22(A), Ohio Revised Code, as in effect at that time.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) through (3) above, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

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

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

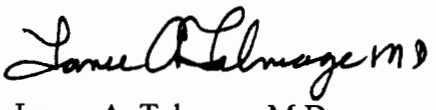
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.
Secretary

LAT/DPK/flb
Enclosures

CERTIFIED MAIL #91 7108 2133 3934 3487 0794
RETURN RECEIPT REQUESTED