


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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January 9, 2008

Ms. Coleen Ann McFarland
2345 Harborview Blvd.
Lorain, OH 44052-1179

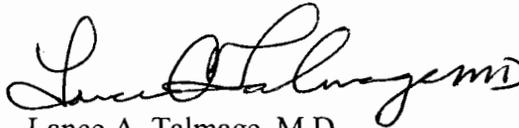
Dear Ms. McFarland:

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 January 9, 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



Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

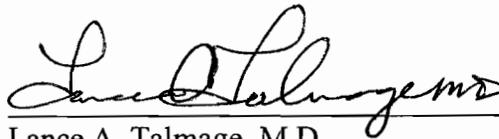
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CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Gretchen L. Petrucci, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on January 9, 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 Coleen Ann McFarland, 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)

January 9, 2008

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

COLEEN ANN MCFARLAND

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on January 9, 2008.

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 allegations against Coleen Ann McFarland, set forth in the June 14, 2007, notice of opportunity for hearing are DISMISSED.

The application of Ms. McFarland, for a certificate to practice massage therapy in Ohio is GRANTED, provided that she otherwise meets all statutory and regulatory requirements.

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

(SEAL)



Lance A. Talmage, M.D.
Secretary

January 9, 2008

Date

2007 DEC 12 A 10: 26

**REPORT AND RECOMMENDATION
IN THE MATTER OF COLEEN ANN MCFARLAND**

The Matter of Coleen Ann McFarland was heard by Gretchen L. Petrucci, Hearing Examiner for the State Medical Board of Ohio, on November 19, 2007.

INTRODUCTION

I. Basis for Hearing

By letter dated June 14, 2007, the State Medical Board of Ohio [Board] notified Coleen Ann McFarland that it had proposed to take disciplinary action against her or deny her application for a certificate to practice massage therapy. The Board based its proposed action on the allegations that Ms. McFarland had acknowledged in her application that she had pleaded guilty to a charge of Driving under the Influence in 2004 and that, following a Board-ordered impairment examination in 2006, she was found to be impaired in her ability to practice massage therapy.

The Board alleged that Ms. McFarland's acts, conduct and/or omissions constitute "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice" as set forth in Section 4731.22(B)(26), Ohio Revised Code. Accordingly, the Board advised Ms. McFarland of her right to request a hearing in this matter. (State's Exhibit 1A)

By letter received by the Board on April 25, 2007, Ms. McFarland requested a hearing. (State's Exhibit 1B)

II. Appearances at the Hearing

- A. On behalf of the State of Ohio: Marc Dann, Attorney General, by Karen A. Unver, Assistant Attorney General.
- B. Ms. McFarland appeared on her own behalf.

EVIDENCE EXAMINED

I. Testimony Heard

Coleen Ann McFarland

II. Exhibits Examined

A. Presented by the State

State's Exhibits 1A through 1I: Procedural exhibits. [Redacted in part to obscure unconvicted criminal charges and certified mail information unrelated to this matter.]

State's Exhibit 2: Certification and February 2006 application of Coleen Ann McFarland. [Redacted in part to obscure unconvicted criminal charges and a social security number.]

State's Exhibit 3A: April 3, 2006, letter to the Board from Ms. McFarland, with enclosures. [Redacted in part to obscure unconvicted criminal charges and a social security number.]

State's Exhibit 4: August 23, 2006, letter to the Board from Ms. McFarland, with enclosures. [Redacted in part to obscure a social security number.]

State's Exhibit 5: November 1, 2006, letter to Ms. McFarland from the Board and related certified mail receipt.

State's Exhibit 6: January 25, 2007, letter to the Board enforcement staff from Mahjabeen Islam, M.D. [Admitted under seal.]

State's Exhibit 7: April 5, 2007, letter to the Board enforcement staff from Dr. Islam. [Admitted under seal.]

State's Exhibit 8: April 17, 2007, letter to Dr. Islam from the Board enforcement staff. [Admitted under seal.]

State's Exhibit 9: May 9, 2007, letter to Dr. Islam from the Board enforcement staff. [Admitted under seal.]

State's Exhibit 10: June 26, 2007, letter to the Board enforcement staff from Dr. Islam. [Admitted under seal.]

State's Exhibit 11: Certification of State's Exhibits 5 through 10.

B. Presented by the Respondent

Respondent's Exhibit A: October 25, 2007, letter to the Board from James D. Isner.

Respondent's Exhibit B: October 27, 2007, letter from John McNeill.

Respondent's Exhibit C: October 22, 2007, letter to the Board from Noreen M. Chernock.

Respondent's Exhibit D: October 15, 2007, letter to the Board from Barb and Jim Amato.

Respondent's Exhibit E: October 25, 2007, letter to the Board from C. Farina, CNM. [Redacted in part to obscure hearsay statements.]

Respondent's Exhibit F: Ms. McFarland's June 2007 authorization for release of health information.

Respondent's Exhibit G: June 27, 2007, letter to Compass Corporation for Recovery Services from Ms. McFarland and related certified mail receipt.

Respondent's Exhibit H: February 14, 2007, pathology report. [Admitted under seal.]

Respondent's Exhibit I: Ms. McFarland's curriculum vitae.

Respondent's Exhibit J: January 14, 2005, article written by Dr. Islam entitled "Pleasing God versus His Creation."

III. Proffered Exhibit

State's Exhibit 3: April 3, 2006, letter to the Board enforcement staff from Ms. McFarland, with enclosures. [Redacted in part to obscure a social security number.]

PROCEDURAL MATTER

After completion of the hearing, the Hearing Examiner determined that two of the admitted exhibits should have been more thoroughly redacted so that the redactions contained within those same exhibits are consistent with one another. *Sua sponte* on December 10, 2007, the Hearing Examiner reopened the hearing record, further redacted parts of State's Exhibits 2 and 3A, and readmitted them as they had been further redacted. The record was closed on December 10, 2007.

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.

Ms. McFarland's Background, Massage Therapy Examination, and Certificate Application

1. Coleen Ann McFarland graduated from The College of Wooster in Wooster, Ohio, with a bachelor's degree in chemistry. In 1993, she obtained a master's degree in macromolecular science from Case Western Reserve University. Since 1993, she has worked as a chemist.

For more than 12 years, Ms. McFarland has managed the thermal analysis laboratory at Polymer Diagnostics, Inc., which is owned by PolyOne Corporation. In that capacity, Ms. McFarland coordinates plastics-related projects, performs experiments, and supervises others. She stated that her work is similar to the type of laboratory work done on criminal evidence on the television show CSI, except that her work is on plastic. (Hearing Transcript [Tr.] at 16, 35; Respondent's Exhibits [Resp. Exs.] A, I)

2. In January 2004, Ms. McFarland was stopped while driving her car in Bay Village, Ohio. She was arrested and criminally charged with, among other things, driving under the influence [DUI]. Her blood-alcohol content at the time of her arrest was .192. The police report indicates that the officer observed Ms. McFarland "speeding" and weaving in the lanes. She failed the field sobriety tests. (State's Exhibit [St. Ex.] 2 at 11-15; St. Ex. 3A at 3-7; Tr. at 24-25)

In July 2004, Ms. McFarland pleaded guilty to DUI and the remaining charges were dropped. The Rocky River Municipal Court suspended her driver's license for 180 days, but gave her credit for the 180 days of pre-trial license suspension. Further, the court required her: (a) to pay a fine of \$400, (b) to pay court costs, and (c) to attend a driver's intervention program for three days. (St. Ex. 2 at 10-19; St. Ex. 3A at 2-10; St. Ex. 4 at 2-3)

3. In January 2004, Ms. McFarland enrolled in the massage therapy program at Cuyahoga Community College in Cleveland, Ohio. Later that year, she transferred to the Cleveland Institute of Medical Massage in Cleveland. In 2006, Ms. McFarland graduated from Cleveland Institute of Medical Massage. (St. Ex. 2 at 3, 24-26)

Ms. McFarland explained that she went back to school for massage therapy because:

* * * at work we started receiving massage, and I noticed a distinct improvement in my health and my mental attitude and I wanted to essentially pay that forward. Also I'm involved with marital arts and a large part of marital arts is healing, and my instructor encouraged me as well to learn anatomy [and] to learn massage.

I tried it at the community college and I liked it and I was very excited about all of it. So then I went to a certified school and continued to get a diploma or certificate. Just I'm interested in the healing aspects for helping people to feel better like I do.

(Tr. at 36)

4. In February 2006, Ms. McFarland filed with the Board an application for a massage therapy certificate. In the application, she indicated that she had 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." At that time, Ms. McFarland included a copy of the Journal

Entry from her DUI case. Later, she provided an explanation of the incident, certified copies of several court documents, computer records of the case, and the police report. (St. Exs. 2, 3A)

5. In June 2006, Ms. McFarland took the Massage Therapy Examination. She passed the examination with a score of 84 on the Basic Science portion of the examination and a score of 90 on the Limited Branch portion of the examination. (St. Ex. 2 at 23, 27)

Ms. McFarland's 2006 Impairment Examination

6. On November 1, 2006, the Board ordered Ms. McFarland to submit to an examination pursuant to Section 4731.22(B)(26), Ohio Revised Code. The Board ordered her to enter Compass¹ on November 30, 2006. Compass is a Board-approved treatment provider in Toledo, Ohio. (St. Ex. 5; State Medical Board of Ohio Website. November 21, 2007. <http://med.ohio.gov/pdf/treatment_compliance/TREATMNT.pdf>).
7. Per the Board's requirement, Ms. McFarland underwent a three-day inpatient examination to determine if she was in violation of Section 4731.22(B)(26), Ohio Revised Code. (Tr. at 20) Mahjabeen Islam, M.D., reported the conclusions to the Board in a series of letters. Dr. Islam did not testify in this proceeding. Dr. Islam's first letter to the Board, dated January 25, 2007,² indicates that she is certified in addiction medicine from the American Society of Addiction Medicine. She stated:

Ms. McFarland reported that her first use of alcohol was at age 14 and the duration of regular use of alcohol has been since age 19. She reported her last drink as being about 4 days prior to admission and on an average she reported drinking 6 beers per week. She had a DUI charge 3 years ago.

* * *

The admitted use of alcohol is not high, but it is well understood in Addiction Medicine that as a general rule, patients tend to minimize their use. Ms. McFarland has clearly continued to use alcohol despite her DUI charge and therein is my reservation, which I voiced to her: it is important to recognize that *there is a problem with the use of alcohol and that no alcohol whatsoever should be used at all.*

* * *

¹The Board's letter ordered the examination to take place at Comprehensive Addiction Service Systems. (St. Ex. 5) The reports regarding that examination are from Compass Corporation for Recovery Services. (St. Exs. 6-10) Evidently, the organization has gone through a name change. The treatment provider will be simply referred to as "Compass" throughout this Report and Recommendation.

²Based upon the evidence presented, Dr. Islam's January letter appears to be the first assessment provided to the Board following Ms. McFarland's inpatient examination, which was conducted from November 30 to December 3, 2006.

She should be abstinent from alcohol and perhaps random drug screens can be obtained 2 to 4 times a year to ensure from the objective standpoint that sobriety is being maintained.

(St. Ex. 6, Emphasis added.)

8. On April 5, 2007, Dr. Islam essentially restated her earlier recommendation: “the patient should be entirely abstinent from alcohol and mood altering substances, and have random toxicology screens for one year and if they remain negative and she historically is abstinent from alcohol and other drugs as well, she should be considered for a massage therapy license.” (St. Ex. 7)
9. Later in April 2007, the assigned Board Enforcement Attorney, Daniel S. Zinsmaster, wrote to Dr. Islam, stating the purpose of the 72-hour inpatient examination and asking Dr. Islam to indicate whether Ms. McFarland is impaired or not impaired as defined in Section 4731.22(B)(26), Ohio Revised Code. Mr. Zinsmaster’s letter was in a “check the diagnosis box” format. Dr. Islam indicated that Ms. McFarland is impaired, but did not indicate any recommended treatment plan and/or practice conditions and restrictions. (St. Ex. 8)
10. In May 2007, Mr. Zinsmaster asked Dr. Islam for a “comprehensive evaluation signed by a licensed physician opining a diagnosis for why or why not Colleen [sic] A. McFarland is impaired.” (St. Ex. 9)
11. On June 26, 2007, Dr. Islam responded to Mr. Zinsmaster. Dr. Islam’s diagnosis and her recommendation were essentially the same as she had stated in April 2007. (St. Ex. 10)

Ms. McFarland’s Testimony about Her Alcohol Consumption

12. Ms. McFarland testified that she started drinking alcohol at 14 years of age, describing it as “normal kid stuff.” She admitted that she has periodically consumed alcohol since that time. (Tr. at 38-39)
13. Ms. McFarland acknowledged that she was convicted of DUI in 2004, describing it as a lapse in judgment. She acknowledged that it was not the first time she had driven home drunk, but it was the last time. Ms. McFarland testified that she had been depressed at that time because 80 percent of her co-workers had been “let go” from their positions. She explained that she had had “survivor guilt” and had used poor judgment that day. She points out that she is very sorry for what happened. She, however, disputed that it establishes that she is impaired. (Tr. at 20, 28-29)
14. She noted that she has reduced the amount and frequency of her alcohol use since her DUI conviction, and she no longer drinks and drives. She testified that she did not change her alcohol use after attending Compass. (Tr. at 28, 30)

15. Ms. McFarland also acknowledged that, until recently beginning a diet, she had consumed alcohol, averaging about six beers each week. Her drinking was done only at social engagements. More specifically, she explained that she would drink beer at bowling, when out to dinner with a friend, or at a party. She emphasized, however, that she does not drive on those occasions. (Tr. at 26, 30, 34-35, 38)

Others' Observations of Ms. McFarland and Her Alcohol Consumption

16. In a letter dated October 25, 2007, Ms. McFarland's supervisor, James D. Isner, wrote to the Board. The State did not have the opportunity to examine Mr. Isner.

Mr. Isner stated that he has been Ms. McFarland's supervisor since she began working at Polymer Diagnostics, Inc. [PDI]. He described Ms. McFarland as a key scientist for the PDI organization and an expert in her technical field. Additionally, Mr. Isner stated that PDI believes in Ms. McFarland's abilities and potential, having recently sponsored Ms. McFarland in a lengthy, highly selective, leadership development program, which she completed in 2007. Mr. Isner learned of Ms. McFarland's DUI charge soon after the event. He confirmed, as an explanation, that she had been under tremendous stress during that time in 2004 because 80 percent of her coworkers had been terminated from their jobs and she had been trying to cope with the "monumental increase to her workload and to adjust for the loss of colleagues and friends at work." Additionally, Mr. Isner wrote:

During her entire career, Coleen has been an exceptional employee who continually receives high performance ratings. She excels in her work everyday for me in a mentally demanding work environment. She has never been considered in any way impaired in her career here at PDI. When she told me that she was being judged as "impaired to perform massage" by the State Medical Board, I was surprised, as her performance at work does not indicate that such a judgment is appropriate.

* * *

I continue to offer my complete support of her endeavor [to obtain a massage therapy certificate] by stating that I do not believe that Coleen is impaired to perform massage.

(Resp. Ex. A)

17. Kelly Mitchell testified in support of Ms. McFarland. Ms. Mitchell works with Ms. McFarland at PDI. Ms. Mitchell has known Ms. McFarland for more than two years and has received massages from her. Ms. Mitchell stated that she does not believe that Ms. McFarland is impaired to give massages. Additionally, Ms. Mitchell testified that she was aware of Ms. McFarland's DUI conviction and of her alcohol use, neither of which prevented Ms. Mitchell

from seeking massages from Ms. McFarland. Ms. Mitchell also stated that she has socialized with Ms. McFarland on occasion and alcohol was consumed. (Tr. at 40-42)

18. John McNeill also testified in support of Ms. McFarland. Mr. McNeill met Ms. McFarland more than 10 years ago when she had taken a martial arts class that he had taught. He described her training and participation in the American Bando Association. Mr. McNeill learned of Ms. McFarland's DUI charge soon after it occurred. He testified that he has not ever seen her impaired and has no doubts about her ability to perform massage. He, however, has not been training with Ms. McFarland as often as they had in the past, but they speak with one another often. (Tr. at 44, 46-47)

In an October 27, 2007, letter, Mr. McNeill noted that he had been aware that Ms. McFarland was under "unprecedented work pressure" in 2004 because of the workforce reductions. He further stated that she was "having difficulty with her feelings as to why she maintained her job when so many talented friends and co-workers lost theirs." Finally, Mr. McNeill wrote:

In closing, I'd like to state that I fully support Coleen. She continues to grow and learn, plus she realizes and accepts her mistake. She's a talented leader in the Martial Arts community and at her professional job. * * *

I was one of the people that encouraged her to study massotherapy. I do not believe that Coleen is impaired to perform massage.

(Resp. Ex. B) Mr. McNeill explained that he understands alcohol impairment well because he has an impaired family member. He testified:

"I have seen how that becomes the only thing that's ever focused on when the person is impaired. I don't believe Coleen is like that at all. Does Coleen drink beer? Yes, she does drink beer. * * * [S]he does so many different tasks for our association, organizationally and things like that, that when she's on task, she's on task. And that to me impairment says, can I focus on what I'm doing here [and] now to the best of my abilities? I think she's not impaired to do massage.

(Tr. at 48)

19. One of Ms. McFarland's clients, Noreen M. Chernock, wrote in support of Ms. McFarland. The State did not have the opportunity to examine Ms. Chernock.

Ms. Chernock stated that Ms. McFarland conducts herself in a professional manner, accepting the responsibility of being a massage therapist and honoring the integrity of the profession. Ms. Chernock considers Ms. McFarland to be an asset to the massage therapy profession because of her loyalty, dedication and love of the art. (Resp. Ex. C)

20. Additionally, Ms. McFarland presented a letter jointly written by Barb and Jim Amato. Ms. Amato is a licensed massage therapist and yoga instructor, and Mr. Amato is a life coach. They have known Ms. McFarland for nearly two years. The State did not have the opportunity to examine them.

They stated that Ms. McFarland had pursued massage therapy after receiving massages herself. They noted that she wants to help others to feel the mental and physical benefits of massage. They do not feel that Ms. McFarland is impaired to practice massage. (Resp. Ex. D)

Other Information

21. Ms. McFarland testified that she believes that she is not impaired. She pointed out that she has worked and currently works in a position where safety and attentiveness are extremely important daily issues. Additionally, she noted that her colleagues do not find that she impaired. (Tr. at 17-18)
22. With regard to the impairment examination at Compass, Ms. McFarland raises several criticisms. First, Ms. McFarland testified that, Compass didn't know what to do with her when she got to Compass and that the nurse "decided to send [her] with the other women going through the rehabilitation process." (Tr. at 22)

Second, Ms. McFarland noted that Dr. Islam spent only 10 minutes with her during the 72-hour evaluation. Ms. McFarland acknowledged that she met with other counselors and attended many therapy sessions. However, Ms. McFarland stated that the Compass report does not seem to take into consideration the entirety of the 3-day evaluation or the other team members' impressions. In particular, Ms. McFarland testified that one of the counselors planned to report that Ms. McFarland was not impaired. Additionally, Ms. McFarland testified that "[not impaired] was the sense that I got from all of the people I met at Compass. So I was very surprised when I saw the report from Dr. Islam." She described Dr. Islam's opinion as extreme. (Tr. at 18, 23, 31, 32-34)

Third, Ms. McFarland testified that, during her stay at Compass, Dr. Islam indicated that she is against alcohol consumption. In support of her contention that Dr. Islam is biased against alcohol and has incorrectly concluded that Ms. McFarland is impaired, Ms. McFarland presented an article written by Dr. Islam. The article is entitled "Pleasing God versus His Creation." It appeared in Pakistan Link, a Pakistani internet newspaper and is dated January 14, 2005. In the article, Dr. Islam expressed her "horror" and noted her "protest" when alcohol had been present during a religious ceremony that she had attended while visiting in Pakistan. Furthermore, Dr. Islam wrote: "* * * not only do we drink we have the gall to hold a Qawwali performance at our home and drink while the holy names of God and the Prophet (pbuh) are taken in poetry. This is not just flouting the Law of God it is akin to challenging Him." (Tr. at 21; Resp. Ex. J)

Fourth, Ms. McFarland noted several difficulties encountered since her release to obtain her records from Compass. Ms. McFarland stated that, upon release from Compass, she was provided with no documentation. Ms. McFarland testified that she tried to obtain copies of her records from Compass in order to obtain another doctor's opinion. Specifically, she executed a medical release form for her doctor's office, which then sought to obtain the records from Compass. Additionally, Ms. McFarland called and wrote directly to Compass requesting that copies of her records be provided to her. Moreover, she also believes that the Board's enforcement attorney attempted to obtain her records and that none of those record requests were successful. (Tr. at 18-19, 33; Resp. Exs. E, F, G)

23. Ms. McFarland testified that she does not intend to become a full-time massage therapist. She intends to maintain her current career in chemistry, but wishes to provide massage therapy on a part-time basis. Additionally, she testified that she would like to provide massage therapy in connection with hospice services. (Tr. at 23-24)

FINDINGS OF FACT

1. On February 16, 2006, Coleen Ann McFarland submitted an "Application for Certificate to Practice a Limited Branch – Massage Therapy." In that application, she answered "Yes" to question 11, which asked whether she had been found guilty of a violation of any law, other than a minor traffic violation. She provided supplemental information, indicating that she had pleaded guilty, on July 15, 2004, in the Rocky River Municipal Court, to a charge of Driving under the Influence.
2. Ms. McFarland's February 2006 application remains pending.
3. On November 1, 2006, the Board Secretary wrote to Ms. McFarland, indicating that the Board has reason to believe that she is in violation of Section 4731.22(B)(26), Ohio Revised Code. The Board ordered her to submit to a 72-hour inpatient examination on November 30, 2006, at Compass.
4. Ms. McFarland attended the Board-ordered, 72-hour examination and, thereafter, Mahjabeen Islam, M.D., at Compass, found that Ms. McFarland is impaired in her ability to practice massage therapy according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances.

CONCLUSION OF LAW

Based upon the evidence of record, Coleen Ann McFarland's acts, conduct, and/or omissions do not constitute "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice" as set forth in Section 4731.22(B)(26), Ohio Revised Code. The evidence of record

is insufficiently reliable, probative, and substantial to establish that Ms. McFarland is impaired in her ability to practice massage therapy for the following reasons:

- a. Mahjabeen Islam, M.D., at Compass, did not initially diagnose impairment. The written assessment provided by Dr. Islam is a collection of letters. She stated in January 2007 that “there is a problem with the use of alcohol” apparently because Ms. McFarland continued to consume alcohol despite her DUI charge. This statement is not a diagnosis of impairment.
- b. It was not until after multiple requests from the Board enforcement attorney, who had provided a “check the diagnosis box” letter, that Dr. Islam stated that Ms. McFarland was impaired.
- c. No underlying records were presented to support Dr. Islam’s impairment diagnosis and no one from Compass testified in support of the diagnosis or to explain the basis for the diagnosis.
- d. Although Ms. McFarland’s first exposure to alcohol was at an early age and Ms. McFarland has regularly consumed alcohol as an adult, there is no evidence that she abuses alcohol.
- e. The evidence establishes that Ms. McFarland, on her own, reduced her alcohol consumption and her behavior following her DUI arrest and conviction, which had occurred during a particularly difficult period of time for Ms. McFarland.
- f. Ms. McFarland presented reliable, probative, and substantive evidence from individuals who see, socialize, and work with her on a daily and/or regular basis. Those individuals, one of whom is quite familiar with alcohol impairment, deny that Ms. McFarland is impaired.

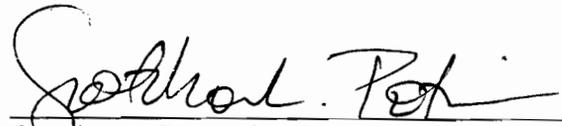
PROPOSED ORDER

It is hereby ORDERED, that:

The allegations against Coleen Ann McFarland, set forth in the June 14, 2007, notice of opportunity for hearing are DISMISSED.

The application of Ms. McFarland, for a certificate to practice massage therapy in Ohio is GRANTED, provided that she otherwise meets all statutory and regulatory requirements.

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

A handwritten signature in black ink, appearing to read "Gretchen L. Petrucci". The signature is written in a cursive style with a large initial "G" and a distinct "P".

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 JANUARY 9, 2008

REPORTS AND RECOMMENDATIONS

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 records, the proposed findings of fact, conclusions of law, and orders, and any objections filed in the matters of: Kimberli Jo Burback; Coleen Ann McFarland; and Kolli Mohan Prasad, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Kumar	- aye
	Dr. Buchan	- aye
	Dr. Madia	- aye
	Mr. Browning	- aye
	Dr. Robbins	- 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. Kumar	- aye
	Dr. Buchan	- aye
	Dr. Madia	- aye
	Mr. Browning	- aye
	Dr. Robbins	- 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. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

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

.....

COLEEN ANN MCFARLAND

.....

DR. KUMAR MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF COLEEN ANN MCFARLAND. DR. STEINBERGH SECONDED THE MOTION.

.....

A vote was taken on Ms. McFarland's request to approve and confirm:

ROLL CALL:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Madia	- aye
	Mr. Browning	- aye
	Mr. Hairston	- aye
	Dr. Robbins	- aye
	Dr. Kumar	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.



State Medical Board of Ohio

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

June 14, 2007

Ms. Coleen Ann McFarland
2345 Harborview Blvd.
Lorain, Ohio 44052

Dear Ms. McFarland:

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 February 8, 2006, you caused to be submitted to the Board an "Application for Certificate to Practice a Limited Branch — Massage Therapy" [Application], in which you answered "yes" to question 11 that asked whether you had been found guilty of a violation of any law. You provided supplemental information with the Application, which currently remains pending, indicating that on or about July 15, 2004, you entered a plea of guilty in the Rocky River [Ohio] Municipal Court to a charge of Driving under the Influence. A copy of the Journal Entry is attached hereto and incorporated herein.

On or about November 1, 2006, a letter was issued by the Board indicating it had reason to believe you were in violation of Section 4731.22(B)(26), Ohio Revised Code, and ordered you to submit to a 72-hour inpatient examination beginning November 30, 2006, at Comprehensive Addiction Service Systems [Compass]. At the conclusion of said evaluation, Mahjabeen Islam, M.D., Medical Director of Compass, found you to be impaired in your ability to practice massage therapy according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitutes "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

Mailed 6-14-07

Ms. Coleen Ann McFarland

Page 2

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.

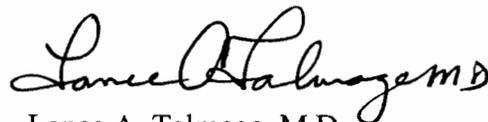
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at 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/DSZ/flb
Enclosures

CERTIFIED MAIL #91 7108 2133 3931 8318 3619
RETURN RECEIPT REQUESTED



ROCKY RIVER MUNICIPAL COURT

21012 Hilliard Blvd., Rocky River, OH 44116-3398 (440) 333-0066
July 15, 2004

www.rrcourt.net

PLAINTIFF: State of Ohio
Bay Village, City of

VS

JOURNAL ENTRY

CASE NO: 04 TRC 00877

DEFENDANT: 04 TRC 00877
COLEEN A MCFARLAND
4245 W 223rd
Fairview Park OH 44126

DOB:
Offense Date: 01/15/2004
DLN: RH018384

Original Charge(s):

- 1] 4511.19A1 DUI 4] 333.03 B Speed
2] 4511.19a7 BAC-Breath .17+ 5]
3] 331.34 B Weaving 6]

Amended Charge(s):

- 1] 333.01A1 DUI 4]
2] 5]
3] 6]

7-15-04 Defendant in court without counsel, for sentencing having waived right to counsel, after rights explained in open court on tape. Sentencing had. Sentence on DUI: \$400.00 and costs. 3 day DIP c/o McIntyre.

Class 5 suspension of Deft's drivers license is ordered for 180 days pursuant to judicial suspension less credit of 180 days ALS. ALS reinstatement fee paid therefore Defendant does not owe reinstatement fee herein. Pre-trial suspension ordered terminated. Insurance shown.

Prosecutor's motion to nolle remaining charges previously granted with court costs transferred to DUI charge. SO ORDERED. (recorded)

cc: Defendant

OHIO STATE MEDICAL BOARD

APR 13 2006

JOURNALIZED
Rocky River Municipal Court
JUL 15 2004
WILLIAM E. GAREAU
CLERK OF COURT

Barbara Valponi
Acting Judge Barbara D. Valponi

Journal Book # 2004
Journal Page # 877

JEBDV.doc 06/14/2004

STATE OF OHIO)
County of Cuyahoga) SS. Rocky River Municipal Court
City of Rocky River) RECORD CERTIFICATION
I, WILLIAM E. GAREAU, Clerk of Court, hereby certify this
to be a true and exact copy of the original record of this Court.
I hereto subscribe my name and affix the seal of the Rocky
River Municipal Court this 20th day of
March AD, 2006
By: Coleen Faringer
Deputy Clerk