

IN THE MATTER OF

BRIAN W. SURGUY

Applicant

*

*

*

*

BEFORE THE MARYLAND STATE

BOARD OF CHIROPRACTIC AND

MESSAGE THERAPY EXAMINERS

Case Number: 13-56C

* * * * *

FINAL ORDER

On or about August 22, 2013, **BRIAN W. SURGUY** (the "Applicant") submitted an application to be employed as a chiropractic assistant applicant trainee (the "Application") to the Maryland State Board of Chiropractic and Massage Therapy Examiners (the "Board"). Subsequently, the Board notified him of the Board's intent to deny his Application pursuant to the Maryland Chiropractic Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") §§ 3-101 *et seq.* (2009 Repl. Vol.).

Specifically, the Board based its action on the following provisions of the Act under Health Occ. § 3-313:

Subject to the hearing provisions of § 3-315 of this subtitle, the Board may deny a license to any applicant... if the applicant:

- (1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;
- (5) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;
- (17) Is disciplined by a licensing or disciplinary authority of any other state or country or convicted by a court of any state or country for an act that would be grounds for disciplinary action under this section;
- (19) Violates any rule or regulations adopted by the Board; and

- (21) Commits an act of unprofessional conduct in the practice of chiropractic.

Under Health Occ. § 3-313(17), the act(s) for which the Applicant was convicted would be grounds for disciplinary action under Health Occ. § 3-313(1), (5), (19) and (21).

The Board further based its action on the Applicant's violation of the following regulation adopted by the Board under Md. Regs. Code ("COMAR") 10.43.07:

.05 Chiropractic Applicant or Assistant Qualifications and Training.

A. A chiropractic assistant or applicant shall:

- (1) Be 18 years old or older and of good moral character at the time of application[.]

FINDINGS OF FACT

The Board makes the following Findings of Fact:

Background

1. The Applicant has not previously been licensed or registered to practice chiropractic in Maryland.
2. By application received by the Board on or about August 22, 2013 (the "Application"), the Applicant sought Board approval to be employed as a chiropractic assistant applicant trainee with a supervising chiropractor.
3. The Applicant is not now, and has not previously been, licensed or certified to practice any type of professional counseling or therapy in Maryland.
4. In the Application, under the subsection entitled "CA APPLICANT PERSONAL DATA," the Application answered "yes" to the following question:

HAVE YOU EVER BEEN ARRESTED OR CHARGED WITH A CRIME? IF "YES" PLEASE EXPLAIN ON A SEPARATE SHEET IN FULL DETAIL

5. In a separate document attached to the Application, the Applicant stated, in pertinent part:

In 2009 I was involved in a very serious car accident on interstate 495. I sustained serious personal injury and was prescribed rather large amounts of pain medication due to the severity of my injury. Unfortunately, I became addicted to the medications and found myself spiraling in the addiction. The addiction became horrible. I struggled with this problem and accumulated legal consequences in the process... While in the recovery house, I went to court for my charges and was granted probation.

6. Based on the Applicant's affirmative answer, the Board initiated an investigation.

Board Investigation

7. In the course of its investigation, the Board obtained the Applicant's court records from the Maryland District Court for Harford County, the Maryland District Court for Baltimore County and the Circuit Court for Baltimore County, Maryland.

8. The Applicant's court records revealed the following criminal history, most of which he failed to disclose in his Application:

- (a) On or about July 19, 2000, the Applicant was granted probation before judgment ("PBJ") in the Maryland District Court for Baltimore County, Case Number 6C00124571, on the charge of CDS (Controlled Dangerous Substance): Possession - Not Marihuana, in violation of Md. Ann. Code, Article 27 § 287(a). The Applicant was placed on supervised probation for two years.
- (b) On or about May 24, 2012, the Applicant was granted PBJ in the Maryland District Court for Baltimore County, Case Number

- 3C00351291, on the charge of CDS: Possession - Paraphernalia, in violation of Md. Code Ann., *Criminal Law*, § 5-619(c)(1). The Applicant was placed on unsupervised probation for one year.
- (c) On or about January 31, 2013, the Applicant pleaded guilty to and was convicted of Theft: Less \$1,000 Value, in violation of *Criminal Law*, § 7-104, and Assault - Second Degree, in violation of *Criminal Law*, § 3-203, in the Circuit Court for Baltimore County, Maryland, Case Number 03K12005765. The Applicant was given an 18-month suspended sentence for the Theft conviction and consecutive a 10-year suspended sentence for the Second Degree Assault conviction. He was placed on supervised probation for two years. The court record relating to the Applicant's convictions revealed that he punched a woman in the face, after which he stole \$800 in cash and a newly purchased cellular phone from her.
- a) (d) On or about March 14, 2013, the Applicant was convicted of the charge of CDS: Possession - Marihuana, in violation of *Criminal Law*, § 5-601(a)(1), in the Maryland District Court for Harford County, Case Number 0R00083923. The Applicant was given a 12-month suspended sentence and placed on probation until June 5, 2013.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that there are reasons to deny the Applicant's Application based on the following grounds under Health Occ. § 3-313:

The Applicant's plea of guilty and conviction for Theft Less than \$1,000 in 2013 in the Circuit Court for Baltimore County, Maryland constitutes being convicted of and pleading guilty to a crime involving moral turpitude, in violation of Health Occ. § 3-313(5); and being convicted in a court of any state for an act that would be grounds for disciplinary action under Health Occ. § 3-313, in violation of Health Occ. § 3-313(17).

The Applicant's failure to disclose the full extent of his criminal history in his Application to the Board constitutes fraudulently or deceptively attempting to obtain a license, in violation of Health Occ. § 3-313(1); and committing an act of unprofessional conduct in the practice of chiropractic, in violation of Health Occ. § 3-313(21).

The Applicant's pleas of guilty, criminal convictions and/or PBJ for Possession of CDS and paraphernalia, Theft under \$1,000 and Second Degree Assault, and his failure to disclose the full extent of his criminal history in his Application, constitute violating any rule or regulations adopted by the Board, *i.e.* lacking good moral character, in violation of Health Occ. § 3-313(19) and COMAR 10.42.07.05A(1).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 15th day of January, 2013⁴, by a majority of the Board considering this case:

ORDERED that the Applicant's Application to be employed as a chiropractic assistant applicant trainee in the State of Maryland is hereby **DENIED**; and it is further

ORDERED that this is a Final Order and as such is a **PUBLIC** document pursuant to Md. Code Ann., State Gov't §§ 10-611 *et seq.* (2009 Repl. Vol.).

Vallone for / by direction
Michael Fedorczyk, D.C. *1-15-2014*
President
State Board of Chiropractic and
Massage Therapy Examiners

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., Health Occ. § 3-316(b), the Applicant has the right to take a direct judicial appeal. Any appeal shall be filed within thirty (30) days from the date of this Final Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If the Applicant files an appeal, the Board is a party and should be served with the court's process at the following address:

**State Board of Chiropractic
and Massage Therapy Examiners
c/o
James J. Vallone, J.D., CFE
Executive Director
4201 Patterson Avenue
Baltimore, Maryland 21215**

The Administrative Prosecutor is no longer a party to this case and need not be served or copied.