

IN THE MATTER OF
JAY ROBERT DARLING

- * **BEFORE THE**
- * **STATE BOARD OF PHYSICAL**
- * **THERAPY EXAMINERS**
- * **Case No.: PT-12-24**

FINAL DECISION AND ORDER

Procedural Background

On May 11, 2012, Jay Darling (the “Applicant”) applied to the Maryland Board of Physical Therapy Examiners (the “Board”) for a license to practice physical therapy in Maryland. On his application, the Applicant disclosed his criminal history, which included arrests in several states and a federal conviction. Further investigation revealed that the Applicant had been arrested for theft in Alabama, California, Oregon, and Washington, and that he was federally convicted of mail fraud related to an insurance scheme. On July 20, 2012, the Board issued a Notice of Intent to Deny Application for Physical Therapy License to the Applicant under the Maryland Physical Therapy Act (the “Act”), Md. Code Ann., Health Occ. § 13-101 *et seq.* (2009 Repl. Vol. and 2011 Supp.)

On July 30, 2012, the Board received a timely request for an evidentiary hearing from the Applicant. The Board scheduled the evidentiary hearing for May 21, 2013, and sent the Applicant notice of the hearing via certified mail. The Applicant confirmed that he would attend the hearing. On May 21, 2013, the Board held an evidentiary hearing before a quorum of the Board in accordance with the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't § 10-201 *et seq.*, and the Board's regulations, COMAR 10.38.05. The Applicant did not appear for the hearing, but the Board held the hearing in the Applicant's absence as provided for

in the Act, Md. Code Ann., Health Occ. § 13-317(g). Following the hearing, the same quorum of the Board convened to deliberate and voted unanimously to deny the Applicant's application for the reasons set forth in this Final Decision and Order.

SUMMARY OF THE EVIDENCE

A. Documents

The following documents were admitted into evidence.

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| State's Exhibit No. 1 | - | Application for Physical Therapist Licensure, 5/10/12 |
| State's Exhibit No. 2 | - | License Profiles |
| | a. | Oregon |
| | b. | Alabama |
| | c. | Mississippi |
| State's Exhibit No. 3 | - | Criminal Background Report |
| | a. | Oregon |
| | b. | Washington |
| State's Exhibit No. 4 | - | <i>Indictment: Man planned to fake death,</i>
JuneauEmpire.com, 9/29/02 |
| State's Exhibit No. 5 | - | <i>Jury acquits man in wife's death,</i> JuneauEmpire.com,
5/25/06 |
| State's Exhibit No. 6 | - | Board Investigative Report, 6/4/12 |
| State's Exhibit No. 7 | - | Notice of Intent to Deny Application for Physical Therapist
Licensure, 7/20/12 |

B. Witnesses

John Bull, Investigator, Board of Physical Therapy Examiners

FINDINGS OF FACT

Based upon the documentary and testimonial evidence admitted at the evidentiary hearing, the Board finds the following:

1. On or about May 10, 2012, the Applicant submitted an Application for Physical Therapist Licensure to the Board. (State's Ex. 1; Tr. at 12)
2. The Applicant has previously held licenses to practice physical therapy in Alabama, Mississippi, and Oregon. The Applicant's out-of-state licenses are all either expired or inactive. (State's Exs. 1, 2A-2C; Tr. at 14-17)
3. On his application, the Applicant answered, "yes" to the question "Have you committed a criminal act to which you pled guilty or nolo contendere or for which you were convicted or received probation before judgment?" (State's Ex. 1; Tr. at 13)
4. The Applicant provided an explanation for his affirmative answer with his application. The Applicant stated that he was convicted of misdemeanor theft charges in Alabama, California, Oregon, and Washington between 1989 and 2011, and that he was convicted of federal mail fraud, a felony, in Alaska in 2003. (State's Ex. 1; Tr. at 14)
5. Thereafter, the Board's investigator performed a uniform criminal history check on the Applicant. The background check revealed that the Applicant was convicted of theft between \$100 and \$1,000, a misdemeanor, in Oregon in 2007. The background check also revealed that the Applicant was convicted of theft less than \$750, a misdemeanor, in Washington in 2011. (State's Exs. 3A-3B, 6; Tr. at 18-19)
6. The Board's investigator experienced difficulty obtaining details on the Applicant's federal mail fraud conviction through the federal courts in Alaska, so he performed a search for newspaper articles related to the conviction. The investigator located two relevant articles from

an online newspaper in Juneau, Alaska. The first article reported that the Applicant was indicted for misstating income on applications for life insurance for himself and his wife, which he planned to collect on by faking his own death. The second article further detailed that in April 2003, the Applicant was sentenced to 40 months in prison after pleading guilty to one count of federal mail fraud related to the insurance scheme.¹ (State's Exs. 4-5; Tr. at 20-22)

7. On June 4, 2012, the Board's investigator conducted a telephone interview with the Applicant. During the interview, the Applicant disclosed details about his theft convictions in Oregon and Washington and his conviction for federal mail fraud in Alaska. The Applicant also disclosed that in 1989, he pled guilty to theft related to use of a credit card in California and received a \$200 fine, and that in 1993, he was found guilty of theft of an ATM camera in Alabama and was ordered to pay restitution. (State's Ex. 6; Tr. at 23-24).

OPINION

The Board's primary and most important duty is to protect the public, and the Board's first method of adhering to that duty is to ensure that applicants for licensure are qualified to hold licenses to practice physical therapy in Maryland. The Board's licensure requirements are intended to safeguard the public from prospective licensees who are not competent or ethical. To that end, the Act requires that to qualify for a physical therapy license, an applicant "shall be of good moral character." Md. Code Ann., Health Occ. § 13-302(b). The Act also provides that the Board "may deny a license . . . to any applicant" if the applicant "[i]s convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude." Md. Code Ann., Health Occ. § 13-316(6).

¹ The second article also reported that the Applicant was later acquitted on charges that he killed his wife, who died after falling 800 feet off a bluff in Alaska. (State's Ex. 5; Tr. at 22)

The Board does not believe the Applicant has the good moral character necessary to qualify for a license to practice physical therapy in Maryland. The Applicant's myriad convictions – including a felony and various crimes of moral turpitude – display a pattern of misconduct and an inability, or unwillingness, to conform with the law. That the Applicant has convictions as early as 1989 and as recent as 2011 shows that the Applicant has not learned from his earlier mistakes or changed in any meaningful way. The Board is particularly concerned with the felony conviction for federal mail fraud. As a physical therapist, the Applicant would have access to his patients' insurance and other financial information, and would have ample opportunity to fraudulently use that information to his financial benefit.

The Board is also concerned that the Applicant has not held an active license to practice physical therapy in any state since 2001. Although the Applicant has no documented complaints against his physical therapy license in any other state, this is not a case where the Applicant has demonstrated, through a recent stretch of safe and ethical practice as a physical therapist in another state, that he no longer poses a risk to patients in Maryland. If an applicant had a recent history of good practice in other states, and had clearly reformed his or her criminal conduct, the Board might find that such applicant did not pose a risk to the public. As the facts exist in this case, however, the Applicant has a protracted criminal history of serious and repeated offenses involving deceit and dishonesty. The Board is unable to issue a license to the Applicant without posing unnecessary risk to the public's health, safety and welfare.

CONCLUSIONS OF LAW

Based upon the foregoing summary of evidence, findings of fact, and opinion, the Board finds that the Applicant does not meet the good moral character requirement for licensure under the Act, Md. Code Ann., Health Occ. § 13-302(b). The Board also concludes as a matter of law

that the Applicant's licensure is subject to denial pursuant to the Act, Md. Code Ann., Health Occ. § 13-316(6).

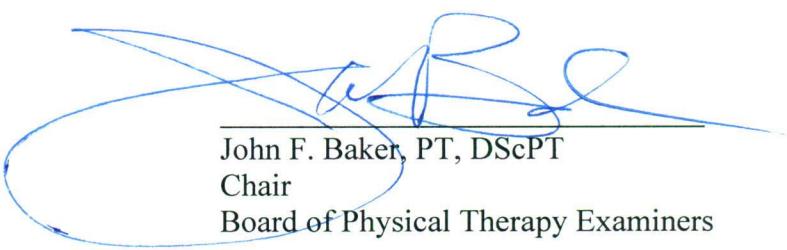
ORDER

Based on the foregoing Findings of Fact, Opinion, and Conclusions of Law, by a unanimous decision of a quorum of the Board, it is hereby:

ORDERED that the Applicant's application for a license to practice physical therapy in Maryland be **DENIED**; and be it further,

ORDERED that this is a final order of the Maryland Board of Physical Therapy Examiners and as such is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., State Gov't §10-617(h).

07/11/13
Date


John F. Baker, PT, DScPT
Chair
Board of Physical Therapy Examiners

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., Health Occ. § 13-318, you have the right to take a direct judicial appeal. Any petition for judicial review shall be filed within thirty (30) days of this Final Decision and Order and shall be made as provided for in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't §10-201 *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.