

<p>IN THE MATTER OF</p> <p>JIANMEI GAO</p> <p>Applicant for Registration</p>	<p>*</p> <p>*</p> <p>*</p> <p>*</p>	<p>BEFORE THE MARYLAND</p> <p>STATE BOARD OF MASSAGE</p> <p>THERAPY EXAMINERS</p> <p>Board Case Number: 17-04M</p>
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FINAL ORDER

On or about January 20, 2017, **JIANMEI GAO** (“the Applicant”) submitted an *Application for Registration in Massage Therapy* (the “Application”) to the Maryland State Board of Massage Therapy Examiners (“the Board”) seeking initial registration as a Registered Massage Practitioner in the State of Maryland. The Board subsequently issued a *Notice of Intent to Deny Registered Massage Practitioner Application under the Maryland Massage Therapy Act*, in which it notified the Applicant of its intent to deny her Application pursuant to the Maryland Massage Therapy Act (“the Act”), Md. Code Ann., Health Occ. I (“Health Occ. I”) §§ 6-101 *et seq.* (2014 Repl. Vol., 2016 Supp.) and Md. Code Regs. (“COMAR”) 10.65.01 *et seq.* (2017).

The Board based its action on the following provisions of the Act:

Health Occ. I § 6-308. Denials, reprimands, suspensions, and revocations.

(a) *In general; grounds.* – Subject to the hearing provisions of § 6-309 of this subtitle, the Board may deny a license or registration to an applicant . . . if the applicant . . . :

(11) Has violated any provision of this title, *to wit*:

Health Occ. I § 6-301:

(a) *In general.* – Except as otherwise provided in this title, an individual shall be:

(2) Registered by the Board before the individual may practice massage therapy in a setting that is not a health care setting in the State; [and]

Health Occ. I § 6-302. Qualifications.

(b) *Qualifications for registration.* – To qualify to be registered, an applicant shall be an individual who:

- (1) Is of good moral character; [and]

Health Occ. I § 6-501. Practicing without license.

Except as otherwise provided in this title, an individual may not practice, attempt to practice, or offer to practice massage therapy, massage, myotherapy, or any synonym or derivation of these terms in the State unless licensed or registered by the Board.

The pertinent provisions under COMAR provide:

COMAR 10.65.01 GENERAL REGULATIONS

.06 Application for License or Registration.

C. To be a registered massage practitioner, an applicant shall:

- (4) Provide evidence that the applicant is:

- (a) Of good moral character[.]

On June 29, 2017, the Applicant received the Board's *Notice of Intent to Deny Registered Massage Practitioner Application under the Maryland Massage Therapy Act* ("the Notice"). The Board notified the Applicant in that Notice that this Final Order would be executed thirty (30) days from service of the Notice unless the Applicant requested a hearing. The Applicant's written request was due no later than July 29, 2017. The Applicant did not request a hearing by Sept. 15, 2017.

FINDINGS OF FACT

The Board makes the following Findings of Fact:

I. Application Information

1. On or about January 20, 2017, the Applicant mailed her Application to the Board for initial registration as a Registered Massage Practitioner. The Board received the Application on or about January 23, 2017.

2. On the Application, the Applicant responded "YES" to the question, "Have you ever appeared in court, been arrested, or entered a plea of guilty, no contest, *nolo contendere* or been convicted of a crime or received probation before judgment in any jurisdiction for a crime other than a minor traffic violation?" The Applicant wrote that she had appeared in the District Court of Maryland for Frederick County on the charge of "Massage Therapy w/o License." The Applicant indicated the court marked the charge "stet"¹ on or about January 17, 2017.

II. Board Investigation

3. The Board initiated an investigation of the Applicant based on the information the Applicant provided in her Application.

4. During its investigation of the Applicant, the Board obtained relevant court records related to the Applicant's criminal charge. According to documents produced at or around the time of a related police investigation, on or about September 28, 2016, the police executed a search warrant at Autumn Breeze Spa in Frederick, Maryland. The search was part of an ongoing prostitution investigation. Police observed three females inside Autumn Breeze Spa, one of whom was providing a massage to a male client. No one inside Autumn Breeze Spa at the time was licensed or registered in the State of Maryland to perform massage therapy. Police identified the Applicant as one of the individuals inside Autumn Breeze Spa at the time of the search.

5. Review of court records obtained during the Board's investigation show that on or about October 13, 2016, the Applicant was charged with one count of "Massage Therapy w/o License," in violation of Health Occ. I § 3-501(b).² On or about January 17, 2017, the District Court marked "STET" on the charge of "Massage Therapy

¹ Under the Maryland Rules, a "stet" in a criminal case is an indefinite postponement of trial. Md. Rule 4-248(a). "A stettered charge may be rescheduled for trial at the request of either [the State's Attorney or the defendant] within one year and thereafter only by order of court for good cause shown." *Id.*

² Effective October 1, 2016, this section was recodified to Health Occ. I § 6-501.

w/o License.” As conditions of the stet, the District Court ordered, among other things, that the Applicant “obey all laws, obtain massage license.”

6. On or about March 7, 2017, the Applicant was interviewed under oath at the Board’s offices. During the interview, the Applicant admitted to massaging clients at Autumn Breeze Spa as well as another spa in or near Hagerstown, Maryland beginning in or around April 2016. The Applicant admitted that she provided approximately three to five massages daily while working at these spas in Maryland. She admitted that she did not have a Maryland license or registration during the time she provided massage therapy services at these spas. The Applicant also admitted that she was working inside Autumn Breeze Spa on or about September 28, 2016, when police executed the search warrant.

7. The Board’s investigation confirmed through Board verification procedures that the Applicant was not and has never been certified or registered by the Board to provide any massage therapy services in the State of Maryland.

III. Grounds for Discipline

8. The Board may deny a license to any applicant based on grounds stated in Health Occ. I § 6-308. The Applicant was arrested for and has admitted under oath to practicing massage therapy without a valid license or registration in Maryland.

9. The Respondent’s actions, as set forth above, constitute a violation of one or more of the following provisions of the Act: Health Occ. I § 6-308(a)(11), Violates a provision of Title 6, Health Occupations Article, specifically § 6-301(a)(2), An individual shall be registered by the Board before the individual may practice massage therapy in a non-health care setting in the State; Health Occ. I § 6-302(b)(1), An applicant must be an individual of good moral character; and Health Occ. I § 6-501, An individual may not

practice, attempt to practice, or offer to practice massage therapy in the State unless licensed or registered by the Board.

10. The Respondent's actions, as set forth above, constitute a violation of the Board's regulations in COMAR 10.65.01.06C(4)(a), An applicant shall provide evidence that the applicant is of good moral character.

11. The Board denies the Applicant's Application based on her violation of the above provisions of Health Occ. I §§ 6-308, 6-302(b)(1), and 6-501.

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 January 20, 2017 Application pursuant to Health Occ. I § 6-308(a)(11), Violates a provision of Title 6, Health Occupations Article, specifically § 6-301(a)(2), An individual shall be registered by the Board before the individual may practice massage therapy in a non-health care setting in the State; Health Occ. I § 6-302(b)(1), An applicant must be an individual of good moral character; and Health Occ. I § 6-501, An individual may not practice, attempt to practice, or offer to practice massage therapy in the State unless licensed or registered by the Board.

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that there are reasons to deny the Applicant's January 20, 2017 Application pursuant to COMAR 10.65.01.06C(4)(a).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 15 day of September 2017, by an affirmative vote of a majority of the Board considering this case:

ORDERED that the Applicant's *Application for Registration in Massage Therapy* in the State of Maryland is hereby **DENIED**; and it is further

ORDERED that this is a Final Order of the Board and as such, is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Prov. §§ 4-101 through 4-601 (2014).

9-15-17
Date

David Cox
David A. Cox, LMT / LSJ

Chair, Maryland State Board of
Massage Therapy Examiners

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., Health Occ. I § 6-310, except as provided for an action under § 6-308 of this subtitle, any person aggrieved by a final decision of the Board in a contested case, as defined in the Administrative Procedure Act, may petition for judicial review as allowed by the Administrative Procedure Act. Any person aggrieved by a final decision of the Board under § 6-308 of this subtitle may not appeal to the Secretary but may take a direct judicial appeal as provided in the Administrative Procedure Act.

9-15-17
Date

David Cox / LMT
David A. Cox, LMT
Chair, Maryland State Board of
Massage Therapy Examiners