

IN THE MATTER OF

*** BEFORE THE**

JING YAN

*** STATE BOARD OF MASSAGE**

APPLICANT

*** THERAPY EXAMINERS**

*** Case No: 18-29M**

*** * * * ***

FINAL ORDER

On August 28, 2019, the State Board of Massage Therapy Examiners (the “Board”), notified the Applicant, **JING YAN**, that it was initially denying her a registration to practice as a Registered Massage Practitioner under the Maryland Massage Therapy Act (the “Act”), Md. Code Ann., Health Occupations (“Health Occ.”) §§ 6-101 *et seq.* (2014 Repl. Vol. and 2018 Supp.). In accordance with Md. Code Ann., Health Occ. §6-302(C)(1), the applicant was denied initially because of lack of good moral character. The Notice informed the Applicant that she had 30 days to request a hearing. The Applicant timely requested a hearing. On July 22, 2020, a hearing was held on this matter. The Board held an evidentiary hearing before a quorum of the Board, in accordance with Maryland Administrative Procedure Act, Md. Code Ann., State Gov’t § 10-201 *et seq.*, and the Board’s regulations, COMAR 10.65.02. The hearing was held over Google Meets. A notice of the hearing was sent to both parties. After the conclusion of the hearing, the same quorum of the Board convened to deliberate and voted to deny application for registration by the Applicant for the reasons set forth in this Final Decision and Order.

SUMMARY OF THE EVIDENCE

The following documents were entered into evidence.

A. Documents

State's Exhibits

- Ex. 1. Application, dated 8/13/18
- Ex. 2. Examination documents, Complaint Form
- Ex. 3. Transcript of Interview, 9/25/18
- Ex. 4. Investigative Report
- Ex. 5. Letter of Procedure and Notice, 8/28/19
- Ex. 6. Request for Hearing, 9/11/19
- Ex. 7. Entry of Appearance, 9/17/19
- Ex. 8. Hearing Notice, 2/28/20

Applicant's Exhibits

- Ex 1. Applicant Motion for Continuance, 7/15/20

B. Witnesses

State: David Ford, Former Board Investigator

Mr. Ford testified for the State. He provided documentation that showed the Applicant had been sent notice of the hearing. Further, he identified and described the

exhibits cited above. The exhibits included the test booklet at issue. It also included Mr. Ford's interview with Ms. Yan upon her return of the test.

Mr. Ford appeared via audio and video. He proctored the jurisprudence examination at issue. Mr. Ford discovered that a test booklet was missing after the examination. Through a process of elimination, Mr. Ford determined that Ms. Yan did not return her examination booklet. Mr. Ford contacted Ms. Yan immediately and requested that she return the test in-person. Ms. Yan did return the test and agreed to be interviewed about the matter.

Applicant: Jing Yan

The Applicant appeared and testified via telephone. She did not appear on video. Due to technical difficulties, Ms. Yan was only able to testify via speakerphone through her attorney's connection.

Ms. Yan admitted that she had taken the examination. She claimed that it was a mistake to take the examination home. She explained that she had neatly folded the examination and placed it in her purse to take it home and dispose of it. Ms. Yan claimed that she did not understand the instructions regarding the return of the test booklet. The test booklet, with the instructions were introduced as evidence.

The Board based its decision to deny the registration on the foregoing facts which the Board had reason to believe are true:

BACKGROUND

1. The Applicant took the Massage Therapy Jurisprudence Examination

(“MTJ Exam”) on September 24, 2018. The MTJ Exam is administered to new applicants who apply for a license or registration in massage therapy. New applicants must pass the MTJ Exam to be eligible to receive a registration.

2. On September 24, 2018 the applicant took the MTJ Exam in a room at 4201 Patterson Ave, Baltimore, MD 21215, at the Board’s location. At the beginning of the MJT Exam, the Applicant was provided with a folder containing a test booklet, a scantron answer sheet, and an examination disclosure form.

3. The examination disclosure form was signed by the Applicant and includes the following language: “I acknowledge that any failure to adhere to given instructions . . . shall constitute cheating.”

4. The test booklet contains clear instructions that the test booklet must be returned when the test has been completed.

5. The first page of the test booklet states in large, all capitalized, bold letters that: **“ALL TEST BOOKLETS MUST BE TURNED IN FOLLOWING THE EXAMINATION. ANY DISHONESTY WILL RESULT IN IMMEDIATE FAILURE AND A REPORT TO THE FULL BOARD.”**

6. The last page of the test booklet states in regular and large capitalization as follows: “Ensure that you are returning YOUR BOOKLET WITH NO MARKS, TICS, OR CIRCLES”. The last page also states in red lettering “Put ALL test materials in the folder and personally hand them to the Exam Proctor.”

7. The MTJ Exam questions may be reused on future examinations and it is, therefore, critically important for the future integrity of the application process that all

test booklets are collected at the end of each examination.

8. After completing her MTJ Exam, the Respondent failed to turn in her test booklet to the Exam Proctor and placed it in her bag and took it home with her.

9. During the grading of the examination on September 25, 2018, the Board's Exam Proctor, noticed that the Applicant's test booklet was not in the examination folder and had not been turned in as required. The Exam Proctor telephoned the Respondent and asked her to immediately return the test booklet to the Board.

10. The Applicant returned the test booklet the same day and submitted to an interview under oath by the Investigator.

11. During the interview, the Applicant stated that she has lived in the United States for four years; has an address in New York; and, works as a Massage Therapist at a school in Fairfax, Virginia.

12. The Applicant admitted that she signed the examination disclosure form.

13. The Applicant claimed that she placed the test booklet in her bag and took it with her because she thought the examination booklet was "trash". There was a trash can in the examination room as well trash cans in front of the building where the test was administered. The Applicant never placed the test booklet in the trash and was in possession of the test booklet when the Exam Proctor called her and asked her to return it to the Board.

14. By failing to return the test booklet to the Exam Proctor and by removing the test booklet from the examination room, the Applicant failed to adhere to the given instructions of the MTJ Exam.

15. The Applicant's conduct, as described above, in whole or in part, constitutes violations of the § 6-302(c)(1) of the Act, which is evidence of a lack of moral character and is a basis on which to deny her Application.

16. By failing to meet the requisite requirement of "good moral character," the Applicant does not meet the requirement to become a Registered Massage Therapy Practitioner, and her application is DENIED.

CONCLUSIONS OF LAW

Based upon the above, the Board believes the State has shown that the Applicant violated §§ 6-302 and 6-308(11). Specifically, the Board concludes, as a matter of law, that the Applicant violated Health Occ. §6-302.

(c) To qualify to be registered, an applicant shall be an individual who:

(1) Is of good moral character [;].

After hearing the evidence and argument, the Board determined that it would deny Ms. Yan's application and not allow her to reapply for two years. Ms. Yan is a new applicant who admitted that she left the Board's examination with a copy of the test. The Board's test was compromised by her actions. The Board views this act in a very dim light. As such, the Board determined that Ms. Yan's application should be denied.


ORDER

As set forth above, the Board hereby Orders that the application to practice as a Registered Massage Therapist Practitioner in Maryland filed by **JING YAN**, the Applicant, be and is **DENIED and cannot reapply until after August 28, 2021.**

NOTICE OF RIGHT OF APPEAL

In accordance with § 6-310 of the Act and the Administrative Procedure Act, Md. Code Ann., State Government (State Govt.). §§ 10-201, et seq. (2014 Repl. Vol and 2018 Supp.), you have a right to a direct judicial appeal of this decision. A petition for appeal of the Final Board Order shall be filed within thirty days from your receipt of this Final Order and shall be made in accordance with the forecited authority.

03/02/2021
Date



Sharon J. Oliver, MBA, Executive Director
Board of Massage Therapy Examiners