

IN THE MATTER OF
ROBERT ZELLNER

Applicant

* BEFORE THE MARYLAND STATE
* BOARD OF PROFESSIONAL
* COUNSELORS AND THERAPISTS
* Case Number: 2020-080

* * * * *

CONSENT ORDER

On November 20, 2020, the Maryland State Board of Professional Counselors and Therapists (the “Board”) issued a “Notice of Intent to Deny Application to practice as an Alcohol and Drug Trainee” which notified **ROBERT ZELLNER** (the “Applicant”) of the Board’s intent to deny his Application to practice as an alcohol and drug trainee pursuant to the Maryland Professional Counselors and Therapists Act (the “Act”), codified at Md. Code Ann., Health Occ. §§ 17-101 *et seq.* (2014 Repl. Vol. and 2019 Supp.).

Specifically, the Board based its action on the following provisions of the Act:

Health Occ. § 17-509. Denial, probation, suspension or revocation of trainee status, license, or certificate.

Subject to the hearing provisions of § 17-511 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny trainee status, a license, or a certificate to any applicant, place any trainee, licensee, or certificate holder on probation, reprimand any trainee, licensee, or certificate holder, or suspend, rescind, or revoke the status of any trainee, a license of any licensee, or a certificate of any certificate holder if the applicant, trainee, licensee, or certificate holder:

- (10) Is convicted of or pleads guilty or nolo contendere to a felony or a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside[.]

On January 15, 2021, the parties appeared at a Case Resolution Conference (“CRC”) before a committee of the Board. The Applicant, represented by counsel, and the Administrative Prosecutor assigned to the case participated in the CRC. As a result of the negotiations at the CRC, the parties agreed to the following Consent Order consisting of Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The Board makes the following Findings of Fact:

I. Application

1. On or about February 4, 2020, the Board received the Applicant’s Alcohol and Drug Trainee Application (the “Application”).
2. In his Application, the Applicant answered “yes” to question 2, which asked: “Have you pled guilty, *nolo contendere*, [*sic*] or been convicted of, received probation before judgment, or had a conviction set aside for any criminal act (excluding traffic violations)?”
3. The Application instructed the Applicant to “attach a separate page with a complete explanation of each occurrence (include date, time, location, disposition, etc.) and a certified copy of the disciplinary/court document from the issuing agency, if applicable.” (emphasis added)
4. The Applicant included a written explanation with his Application, which failed to include a complete explanation for each criminal conviction as required by the Application.

5. On or about March 2, 2020, the Board's Investigator spoke with the Applicant by telephone and requested a detailed narrative surrounding each incident and requested that the Applicant obtain certified copies of the court documents for the incidents that occurred. During the conversation, the Applicant admitted he failed to disclose a conviction from Pennsylvania because he only provided his criminal history from Maryland.

6. On or about May 18, 2020, the Board received a second written explanation from the Applicant which described each of the criminal convictions and his reason for applying to the Board.

7. Based on the Applicant's acknowledgment on the Application that he had a criminal history and his written explanations, the Board began an investigation.

II. Circuit Court for Washington County, Maryland

8. On or about March 2, 2010, the Applicant was charged by criminal information in the Circuit Court for Washington County, Maryland with one count of possession with intent to distribute heroin and one count of possession of heroin.

9. On May 27, 2010, the Applicant pled guilty to, and was found guilty of, Possession with Intent to Distribute Heroin, a felony and a crime involving moral turpitude, and the State entered a *nolle prosequi* for the remaining count of possession of heroin. The Applicant was sentenced to eight (8) years of incarceration with all but three (3) years suspended and given 3 days of credit.

10. The Applicant was also sentenced to one (1) year of supervised probation followed by two (2) years of unsupervised probation upon release. As part of his probation

the Applicant was ordered to: 1) totally abstain from alcohol and illegal drugs, 2) submit to testing, 3) complete substance abuse treatment (6-month program), and 4) pay court costs of \$135.00 through the clerk's office.

11. On or about January 12, 2014, the Applicant was charged in the District Court of Maryland for Washington County with one count of Theft less than \$100, one count of possession of crack cocaine, and one count of possession of controlled paraphernalia. After praying a jury trial, on September 9, 2014, in the Circuit Court of Washington County, Maryland the Applicant pled guilty to possession of controlled paraphernalia, and the remaining counts were entered *nolle prosequi* by the State. The Applicant was sentenced to eighteen (18) months with the entire term suspended. The Applicant was placed on two (2) years of supervised probation. As part of his probation the Applicant was ordered to: 1) totally abstain from alcohol and illegal drugs, 2) submit to testing, and 3) pay court costs of \$145.00 through the clerk's office.

12. On or about May 18, 2020, the Board received a written explanation from the Applicant describing this incident. The Applicant stated:

In June of 2014 I was stopped by loss prevention at [Store] Hagerstown Maryland over suspicion of theft of a piece of merchandise of the stores [*sic*]. Upon being apprehended by the loss prevention, I waited for the Sheriff's Department to arrive. That is when I was searched and an empty baggie of suspected narcotic was found on my person. This is when the police officer made an accusation of there being residue in the bag that went into the evidence and was later tested to which it was negative. The states attorney was willing to allow me to plea out to paraphernalia instead of me taking the case to a jury trial. They knew I was going that route but did not want to because I wanted to get on with my life, so I plead [*sic*] out to the paraphernalia charge. After convicted, I paid all court costs and \$500.00 in fees. I also completed my probation in its entirety.

III. Circuit Court for Frederick County, Maryland

13. On or about May 2, 2014, the Applicant was charged with one count of possession of heroin, one count of possession of controlled paraphernalia, and one count of possession with intent to use controlled drug paraphernalia.

14. On February 13, 2015, the Applicant pled guilty to, and was found guilty of, possession of controlled paraphernalia, a misdemeanor, and the State entered the remaining counts *nolle prosequi*. The Applicant was sentenced to eighteen (18) months of incarceration with the entire sentence suspended.

15. The Applicant was also sentenced to two (2) years of supervised probation. As part of his probation the Applicant was ordered to: 1) totally abstain from alcohol and illegal drugs, 2) submit to testing, 3) complete alcohol and drug evaluation, testing, treatment, and education as directed by his supervising agent.

IV. York County Court of Common Pleas, Pennsylvania

16. On December 6, 2016, the Applicant pled guilty to, and was found guilty of, possession of a controlled dangerous substance and driving under the influence of a controlled dangerous substance, with both convictions being misdemeanors and a crime involving moral turpitude.

17. The Applicant was sentenced to twelve (12) months of probation for possession of a controlled dangerous substance and two (2) months of house arrest followed by six (6) months of intermediate probation and a \$1,000 fine for driving under the influence of a controlled dangerous substance.

18. On or about May 18, 2020, the Board received a written explanation from the Applicant relating to this case. The Applicant stated:

In June of 2016 I was pulled over in Pennsylvania on Interstate 83 for erratic driving. I was severely tired from the prior night and was on my way to work in McConnellsburg Pennsylvania. Once pulled over the officer explained that he had been following me for a couple miles and watched me go from side to side in the lane hitting both sides of the lane strips. Once pulled over they executed a search over suspicion of being impaired. From there, they conducted a field sobriety test. I failed the field test. During the search the officer found a bag of narcotics and other drug paraphernalia. I was arrested and given a bond.

19. On or about May 18, 2020 the Board received a written explanation from the Applicant titled "Explanation for Not Reporting the Pennsylvania Charge" which stated:

When filling out my application and researching my charges to be able to give the proper paperwork and information, I was not aware that the Pennsylvania conviction was needed to be given for the Maryland board. I take full responsibility for my actions of not asking the board if they needed all conviction paperwork and explanations and for that I am beyond apologetic. I did not do that as a deceitful or dishonest act. It was immature on my end to not ask for direction and I apologize.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Applicant's conduct described as above constitutes a violation of the Act and a basis on which to deny the Applicant's Application to practice as an Alcohol and Drug Trainee. Specifically:

The Applicant was convicted of multiple crimes involving moral turpitude and was convicted of possession with intent to distribute heroin, a felony. This, as set forth above, constitutes a violation of: Health Occ. § 17-509(10) (being convicted of a felony or a crime

involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside).

ORDER

Based on the foregoing Findings of Fact and Conclusions of law, it is this
16th day of April, 2021 by a majority of the quorum of the Board
considering this case hereby:

ORDERED that the Applicant's Application to practice as an Alcohol and Drug Trainee is **GRANTED**; and it is further

ORDERED that the Applicant's certificate to practice as an Alcohol and Drug Trainee in the State of Maryland shall be placed on **PROBATION** for a minimum period of **TWO (2) YEARS**; and it is further

ORDERED that the Applicant receive weekly supervision, at least one time per week, for sixty (60) minutes from a Board-approved supervisor; and it is further

ORDERED that prior to signing a supervision agreement with any Board-approved supervisor, the Respondent shall present a complete copy of the Consent Order to the prospective supervisor; and it is further

ORDERED that the Respondent shall authorize the Board to provide the Supervisor with this Consent Order and all of the relevant documents in the investigative file, including the Investigative Report and its attachments; and it is further

ORDERED that the supervisor shall submit written quarterly reports to the Board; and it is further

ORDERED that the supervisor shall submit every six (6) months an evaluation of

knowledge, skills, and abilities regarding the Applicant's Alcohol and Drug Trainee status; and it is further

ORDERED that the Applicant shall be responsible for all costs incurred under the terms and conditions of this Order; and it is further

ORDERED that the Applicant shall ensure that the quarterly reports and biannual evaluations are submitted to the Board on time; and it is further

ORDERED that a negative report from the supervisor or any failure to comply with the supervisor's recommendations shall be deemed a violation of probation or of this Consent Order; and it is further

ORDERED that the Applicant shall immediately notify the Board should the supervisor or the Applicant, discontinue the supervision for any reason during the probationary period. The Applicant shall be solely responsible for securing a new Board-approved supervisor, which may extend the term of probation; and it is further

ORDERED that the Applicant shall report any relapses immediately to the Board and comply with any actions the Board deems appropriate; and it is further

ORDERED that at the end of the two (2) year period, the Applicant may petition to have the probation lifted; and it is further

ORDERED that after consideration of the written petition for termination of probation, the probation may be terminated through an order of the Board. The Board at its discretion may grant termination if the Respondent has fully and satisfactorily complied with all the terms and conditions of the Consent Order, there are no pending investigations or complaints against the Respondent, the Supervisor recommends termination of

probation, and the Board deems termination of probation appropriate; it is further

ORDERED that if the Respondent fails to make any such petition, then the probationary period status may continue indefinitely, subject to the conditions set forth in this Order; and it is further


ORDERED, that if the Board determines that the terms or conditions of this Order have not been successfully completed, the Board may modify the terms and conditions of Respondent's probation, upon notice to the Respondent; and it is further

ORDERED that if the Respondent allegedly fails to comply with any term or condition of the Consent Order, the Respondent shall be given notice and an opportunity for a hearing. If, in its sole discretion, the Board determines that there is a genuine dispute as to a material fact, the hearing shall be an evidentiary hearing before the Board. If there is no genuine dispute as to a material fact, the Respondent shall be given a show cause hearing before the Board; and it is further

ORDERED that after the appropriate hearing, if the Board determines that the Respondent has failed to comply with any term or condition of the Consent Order, the Board may reprimand the Respondent, place the Respondent on probation with appropriate terms and conditions, or suspend or revoke the Respondent's license(s) in Maryland. The Board may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine upon the Respondent; and it is further

ORDERED that this is a Final Order and as such is a **PUBLIC RECORD** pursuant to Md. Code Ann., Gen. Prov., §§ 4-101 *et seq.* (2014).

April 16, 2021
Date


Jeffrey M. Galecki, MS, LCADC, LCPC
Board Chair
Maryland State Board of Professional
Counselors and Therapists

CONSENT

I, Robert Zellner, by affixing my signature hereto, acknowledge that:

1. I am represented by counsel, and I have consulted with counsel in this matter. I have knowingly and voluntarily agreed to enter into this Consent Order. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.
2. I am aware that I am entitled to a formal evidentiary hearing, pursuant to Md. Code Ann., Health Occ. §§ 17-511 (2014 Repl. Vol and 2019 Supp.) and Md. Code Ann., State Gov't, §§ 10-201 *et seq.* (2014 Repl. Vol. and 2019 Supp.).
3. I acknowledge the validity and enforceability of this Consent Order as if entered into after the conclusion of an evidentiary hearing in which I would have the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and all other substantive and procedural protections as provided by law. I am waiving those procedural and substantive protections.
4. I voluntarily enter into and agree to abide by the terms and conditions set forth herein as a resolution of the Notice of Intent to Deny Application To Practice as an Alcohol and Drug Trainee. I waive any right to contest the Findings of Fact and Conclusions of Law, and I waive my right to a full evidentiary hearing, as set forth above, and any right to appeal this Consent Order or any adverse ruling of the Board that might have followed any such hearing.
5. I sign this Consent Order voluntarily, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

3-20-21

Date



Robert Zellner

NOTARIZATION

STATE: Maryland

CITY/COUNTY: Hagerstown/Washington

I HEREBY CERTIFY that on this 28th day of March, 2021,
before me, Melissa Dehaven, Notary Public of the State and City/County
aforesaid, **Robert Zellner**

personally appeared – **OR** –

if, during the Maryland State of Emergency and Catastrophic Health Emergency related to COVID-19 as declared by Governor Lawrence J. Hogan, Jr. (the “Governor”), appeared in a manner and under the conditions authorized by the Governor’s Executive Order (“EO”) Authorizing Remote Notarizations (EO 20-03-30-04)

and made oath in due form of law that signing the foregoing Consent Order was the voluntary act and deed of **Robert Zellner**.

AS WITNESSETH my hand and notarial seal.

SEAL



[Handwritten Signature]

Notary Public

My Commission Expires: 5/1/2023