



COUNTY OF SAN MATEO
Inter-Departmental Correspondence

Office of County Counsel

DATE: August 5, 2002

BOARD MEETING DATE: August 20, 2002

TO: Honorable Board of Supervisors

FROM: County Counsel

SUBJECT: Appeal of Decision of the San Mateo County License Board Denying Application for Massage Technician License – Ms. Van Cam Vo

Recommendation

Reject the appeal and uphold the decision of the San Mateo County License Board denying a Massage Technician License to Ms. Van Cam Vo.

Procedural Framework

This is an appeal of a decision by the San Mateo County License Board to deny an application, made by Ms. Van Cam Vo, for a Massage Technician's License to work at Serenity Spas (formerly Orchid Spas), 93 Fifth Avenue, Redwood City. The decision was made following a hearing on July 11, 2002, and Ms. Cam Vo was advised of the decision by letter dated July 18, 2002, addressed to her attorney. (Attachment A.) A timely appeal to the Board of Supervisors was filed by Ms. Cam Vo on July 23, 2002. (Attachment B.) The Board of Supervisors is required to do the following:

1. Hold a hearing within thirty (30) days of the filing of the notice of appeal.
2. Hear any facts presented by appellant as to why the application should be granted.
3. Hear statements and testimony of any other persons as to why the license should be granted or denied.
4. At the close of the hearing, or within thirty (30) days thereafter, determine from the facts presented at the hearing whether the decision of the License Board should be upheld, modified or reversed.

Regulatory Requirements

Under Section 5.44.010 et seq. of the San Mateo County Ordinance Code ("SMCOC"), any person proposing to engage in the practice of providing massages must obtain a Massage Technician's License. Application for licenses are heard by the San Mateo County License Board. Among other things, the application requires the applicant to state "[a]ll criminal convictions, if any, other than misdemeanor traffic violations, of the applicant, the nature of each offense and the punishment or penalty assessed thereto". (SMCOC section 5.44.100(d).) The grounds for denial of a license are set forth in Section 5.04.210 of the Ordinance Code, which states, among other things, that the License Board shall deny an application for a license if, after public hearing, it finds that the applicant has "knowingly made a false statement in a material matter either in his [or her] application or in his [or her] testimony before the Board." (SMCOC section 5.04.210 (2)(d).)

In addition, the medical certificate submitted by Ms. Cam Vo does not make the required statement that she is free from infectious or venereal disease. (San Mateo County Ordinance Code section 5.44.100(h).)

Factual Summary

The facts presented to the License Board were as follows:


1. On April 9, 2002, (date is unclear on the application) Ms. Vo submitted an application for a Massage Technician's License. Question No. 7 on the application asks: "Have you ever had a criminal conviction, other than misdemeanor traffic violations?" Ms. Cam Vo responded "no" to this question. (Attachment C.)
2. During an interview with Detective Barry Coyle, Ms. Cam Vo stated, in response to questions from Detective Coyle, that she had been arrested for certain offenses in the past. Detective Coyle conducted an investigation that revealed the following:
 - a. In or about December 1990, Ms. Cam Vo was convicted in Alameda Municipal Court of violating Penal Code section 415 (disturbing the peace) after pleading nolo contendere. On February 2, 1996, the court granted a motion brought by Ms. Cam Vo to set aside the plea and enter a plea of not guilty under a procedure set forth in Penal Code section 1203.4. (Attachment D.)
 - b. On July 18, 1994, Ms. Cam Vo was convicted in San Mateo County Municipal Court of violating City of San Mateo Ordinance Code section 5.44.030 (practicing massage without a license). On January 24, 1996, the court granted a petition brought by Ms. Cam Vo to set aside the finding of guilt under a procedure set forth in Penal Code section 1203.4. (Attachment E.)

In a letter dated June 10, 2002, Detective Coyle declined to recommend Ms. Cam Vo for a Massage Technician license. (Attachment F.)

3. Penal Code section 1203.4 sets forth a procedure for changing a plea and dismissing charges previously brought after successful completion of probation. This section provides that if a petition is granted, "the court shall thereupon dismiss the accusations or information against the defendant and except as noted below, he or she shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted" Section 1203.4 further states that "the order does not relieve him or her of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery."
4. Ms. Cam Vo argued at the hearing before the License Board, through her attorney, that while the answer provided to Question No. 7 may have been false, it was not knowingly false because Ms. Cam Vo did not understand that she was required to report convictions for which relief under Penal Code section 1203.4 had been granted. (Attachment G.)
5. Based on the evidence presented, the License Board determined that Ms. Cam Vo had violated SMCOG section 5.04.210 by knowingly failing to report the convictions as required by Penal Code section 1203.4.
6. On July 31, 2002, Ms. Cam Vo's attorney, Christopher Hall, was notified that this appeal would be heard by the Board of Supervisors on August 20, 2002. (Attachment H.)

Vision Alignment

No. 20: Government decisions are based on careful consideration of future impact, rather than temporary relief or immediate gain.


Thomas F. Casey III, County Counsel

Admin/Bd Memo re Massage License

TFC:MS/ag

cc: Christopher Hall, Esq.
Jim Eggemeyer

Attachments:

- A. July 18, 2002 Notice of Decision
- B. July 23, 2002 Notice of Appeal
- C. April 9, 2002 Application of Van Cam Vo and Attachments
- D. February 2, 1996 Alameda County Court Order
- E. January 24, 1996 San Mateo County Court Order
- F. June 10, 2002 Letter from Detective Coyle
- G. Transcript of July 11, 2002 Hearing
- H. July 31, 2002 Notice of Appeal Hearing