

VIRGINIA:

BEFORE THE BOARD OF NURSING

IN RE: KELVIN THAI, C.M.T. REINSTATEMENT APPLICANT
Certificate No.: 0019-012184

ORDER

Pursuant to §§ 2.2-4020, 54.1-110 and 54.1-2400(11) of the Code of Virginia (1950), as amended ("Code"), a formal administrative hearing was held before a panel of the Board of Nursing ("Board") and one member of the Massage Therapy Advisory Board on January 26, 2015, in Henrico County, Virginia, to receive and act upon Kelvin Thai's application for reinstatement of his certificate to practice massage therapy in Virginia, which was mandatorily suspended by Order of the Department of Health Professions entered October 20, 2014, and to inquire into evidence that Mr. Thai may have violated certain laws and regulations governing massage therapy practice in Virginia. The case was presented by Cynthia E. Gaines, Adjudication Specialist, Administrative Proceedings Division. Charis Mitchell, Assistant Attorney General, was present as legal counsel for the Board. Mr. Thai was present and was not represented by legal counsel. The proceedings were recorded by a certified court reporter.

Upon consideration of the evidence presented, the Board adopted the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Kelvin Thai, C.M.T., was issued Certificate No. 0019-012184 to practice massage therapy in the Commonwealth of Virginia on February 10, 2014. Said certificate was mandatorily suspended pursuant to § 54.1-2409 of the Code by Order of the Department of Health Professions entered on October 20, 2014.
2. Mr. Thai submitted an application for reinstatement of his certificate to practice massage therapy which was received by the Board on November 5, 2014.
3. On May 11, 2012, Mr. Thai was convicted of computer fraud in the United States District

Court, Eastern District of Virginia, Alexandria Division. This conviction formed the basis of the mandatory suspension of his certificate.

4. On his application for certification by examination to practice massage therapy received by the Board on December 18, 2013, Mr. Thai answered "NO" to the question "have you ever been convicted, pled guilty to, or pled Nolo Contendere to the violation of any federal, state, or ordinance constituting a felony or misdemeanor?" when, in fact, he was convicted of a felony.

5. Mr. Thai had his license to practice cosmetology in Virginia revoked due to the conviction in Finding of Fact No. 3. He also was fined a total of \$3,000.00 by the Virginia Board of Barbers and Cosmetology, which he has not paid. Mr. Thai did not express understanding that he was required to pay the fine imposed by the Board of Barbers and Cosmetology, as ordered on November 18, 2013, and explained that he could not pay because he did not have a cosmetology license. He further stated that he did not think the Board of Barbers and Cosmetology was correct in its interpretation of the regulations, so it was not right that he would have to pay the fine.

6. Mr. Thai did not receive a certificate to practice massage therapy in Virginia until 2014, but evidence demonstrated that he had worked in Virginia as a massage therapist in 2011. He stated the only time he has practiced massage therapy is in Virginia.

7. Mr. Thai demonstrated a history of misunderstanding and misapplying rules and regulations. At the hearing, he attempted to justify some of his misunderstandings by explaining California regulations to the Board.

CONCLUSIONS OF LAW

The Board concludes that:

1. Finding of Fact No. 3 constitutes a violation of § 54.1-3007(4) of the Code.
2. Finding of Fact No. 4 constitutes a violation of § 54.1-3007(2) of the Code and 18 VAC 90-50-90(1)(b) of the Regulations Governing the Certification of Massage Therapists.

ORDER

WHEREFORE, the Virginia Board of Nursing, effective upon entry of this Order, hereby ORDERS as follows:


1. The application of Kelvin Thai for reinstatement of Certificate No. 0019-012184 to practice massage therapy in the Commonwealth of Virginia is hereby DENIED, due to a failure to obtain the affirmative vote for reinstatement of three-fourths of the members of the Board at the hearing. Further, it is hereby ORDERED that the certificate of Mr. Thai be CONTINUED on INDEFINITE SUSPENSION. At such time as he shall petition the Board for reinstatement of his certificate, an administrative proceeding will be convened to determine whether he is able to return to the safe and competent practice of massage therapy.

2. The certificate shall be recorded as suspended.

3. Should Mr. Thai seek reinstatement of his certificate consistent with this Order, he shall be responsible for any fees that may be required for the reinstatement of his certificate prior to issuance of his certificate to resume practice.

Pursuant to §§ 2.2-4023 and 54.1-2400.2 of the Code, the signed original of this Order shall remain in the custody of the Department of Health Professions as public record and shall be made available for public inspection or copying on request.

FOR THE BOARD

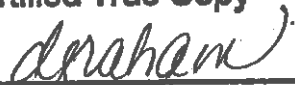


Jay P. Douglas, MSM, RN, CSAC, FRE
Executive Director
Virginia Board of Nursing



ENTERED

Certified True Copy

By 

Virginia Board Of Nursing

NOTICE OF RIGHT TO APPEAL

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have 30 days from the date you are served with this Order in which to appeal this decision by filing a Notice of Appeal with Jay P. Douglas, MSM, RN, CSAC, FRE, Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Henrico, Virginia 23233. The service date shall be defined as the date you actually received this decision or the date it was mailed to you, whichever occurred first. In the event this decision is served upon you by mail, three days are added to that period.