

VIRGINIA:

BEFORE THE BOARD OF NURSING

IN RE: SAMANTHA ROBERTS, C.M.T.
Certificate No.: 0019-012778

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") on March 23, 2015, in Henrico County, Virginia, to inquire into evidence that Samantha Roberts, C.M.T., may have violated certain laws and regulations governing massage therapy practice in Virginia. The case was presented by Wendy Deaner, Adjudication Specialist, Administrative Proceedings Division. Charis Mitchell, Assistant Attorney General, was present as legal counsel for the Board. Ms. Roberts was not 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. Samantha Roberts, C.M.T., was issued Certificate No. 0019-012778 to practice massage therapy in the Commonwealth of Virginia on July 31, 2014. Said certificate is set to expire on March 31, 2016.
2. Based upon the representations of Wendy Deaner, Adjudication Specialist, and Commonwealth's Exhibit #1, the Notice of Formal Hearing and Statement of Particulars, Allegation Summary Worksheet and Affidavit of Mailing, the presiding officer ruled that adequate notice was provided to the respondent, and the hearing proceeded in her absence.
3. During the course of her employment with Balance Therapeutic Massage, Virginia Beach,

Virginia:

- a. By her own admission to a Virginia Department of Health Professions investigator, between 2012 and March 2014, Ms. Roberts used the designation “massage therapist,” was employed as a massage therapist, and provided massage services to clients. However, Ms. Roberts was not certified as a massage therapist by the Virginia Board of Nursing until July 31, 2014.
 - b. On August 30, 2013, Ms. Roberts provided a hot stone massage to a client, causing the client to suffer burns to his back. Ms. Roberts’ previous employer testified that the client had noticeable scars to his back months following the incident.
4. During the course of her employment with The New Hope Center of Reproductive Medicine, Virginia Beach, Virginia, between March 26, 2014 and June 1, 2014, Ms. Roberts used the designation “massage therapist” and, by her own admission, she was identified as a massage therapist on the facility website and provided massage services to clients. However, Ms. Roberts was not certified as a massage therapist until July 31, 2014.
5. On Ms. Robert’s application for employment with The New Hope Center, dated March 18, 2014:
- a. Ms. Roberts indicated her prior title at Balance Therapeutic Massage was “massage therapist.” Ms. Roberts also indicated her type of professional license and certification was “massage therapy & bodywork,” nationally certified, and she indicated that the certification was issued by the State of Virginia. Furthermore, Ms. Roberts signed a contract with New Hope Center on March 18, 2014, which contained a clause indicating that she possessed the appropriate licensure to perform massage services. The contract, which designated Ms. Roberts as a Massage Therapy Independent Contractor, further indicated that the agreement could be terminated if either party to the agreement lost their licensure related to the services he or she would provide.
 - b. Ms. Roberts answered “no” to the question pertaining to prior felony or misdemeanor

convictions. However, Ms. Roberts was convicted of one count of driving under the influence of alcohol ("DUI") on July 16, 2009, in the Virginia Beach, Virginia, General District Court.

6. On her applications for certification as a massage therapist received by the Board on January 11, 2012, and July 21, 2014, Ms. Roberts answered "no" to the question pertaining to prior felony or misdemeanor convictions. As stated in Finding of Fact 5(b), Ms. Roberts was convicted of a DUI in 2009. During an interview with the investigator, Ms. Roberts indicated that with regard to her 2012 application, she was probably in a hurry to complete the application and did not fully read the question. However, when she was asked about the 2014 application, she stated that she did not think the question was asked and indicated that she was sure she had written a letter explaining her DUI with the first application; neither application contained an explanation regarding her DUI conviction.

7. On her application for certification as a massage therapist received by the Board on July 21, 2014, Ms. Roberts indicated she was previously certified or licensed as a massage therapist in Virginia; she listed the year of 2011 and a certificate number of 604033-11. Ms. Roberts was not certified in Virginia until July 31, 2014.

8. On August 14, 2014, the investigator requested that Ms. Roberts submit to a urine drug screen. Ms. Roberts went to Labcorp on August 15, 2014; however, she took her child with her and she was unable to leave the child alone in the waiting room. Therefore, she did not submit a sample.

9. At the formal hearing, Ms. Roberts' former employer testified that she received multiple client complaints regarding bruising after receiving massage services from Ms. Roberts. Her former employer testified that she observed black and blue bruising on a client days after the client received a massage from Ms. Roberts.

CONCLUSIONS OF LAW

The Board concludes that:

1. Findings of Fact Nos. 3(a) and 4 constitute a violation of §54.1-3007(2) and (5) of the Code

and 18 VAC 90-50-90(1)(c) and (2)(h) of the Regulations Governing the Certification of Massage Therapists (“Regulations”).

2. Finding of Fact No. 3(b) constitutes a violation of §54.1-3007(2), (5) and (8) of the Code and 18 VAC 90-50-90(2)(b) of the Regulations.

3. Finding of Fact No. 5(a) constitutes a violation of §54.1-3007(2) and (5) of the Code and 18 VAC 90-50-90(1)(c) and (2)(e) of the Regulations.

4. Finding of Fact No. 5(b) constitutes a violation of §54.1-3007(2) of the Code and 18 VAC 90-50-90(2)(e) of the Regulations.

5. Findings of Fact Nos. 6 and 7 constitute a violation of §54.1-3007(1) of the Code and 18 VAC 90-50-90(1)(b) of the Regulations.

ORDER

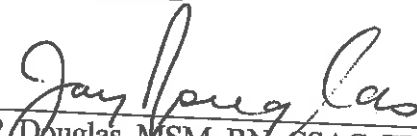
WHEREFORE, the Virginia Board of Nursing, effective upon entry of this Order, hereby ORDERS as follows:

1. Certificate No. 0019-012778, issued to Samantha Roberts, C.M.T., to practice massage therapy in the Commonwealth of Virginia, is hereby REVOKED.
2. The certificate of Ms. Roberts will be recorded as REVOKED and no longer current. Pursuant to § 54.1-2408.2 of the Code, should Ms. Roberts seek reinstatement of her certificate after three years, she shall be responsible for any fees that may be required for the reinstatement of her certificate prior to issuance of her certificate to resume practice. The reinstatement of Ms. Roberts’ certificate shall require the affirmative vote of three-fourths of the members at a meeting of the Board.
3. At such time as Ms. Roberts shall petition the Board for reinstatement of her certificate, an administrative proceeding will be convened to determine whether she is able to return to the safe and competent practice of massage therapy.

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

April 2nd, 2015

ENTERED

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.