

VIRGINIA:

BEFORE THE BOARD OF NURSING

IN RE: JUAN DELA TORRE, C.M.T.
Certificate No.: 0019-009738

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 January 29, 2014, in Henrico County, Virginia, to inquire into evidence that Juan Dela Torre, C.M.T., may have violated certain laws and regulations governing massage therapy practice in Virginia. The case was presented by David W. Kazzie, Adjudication Specialist, Administrative Proceedings Division. Charis A. Mitchell, Assistant Attorney General, was present as legal counsel for the Board. Mr. Dela Torre was present and was represented by Jenna Volm, Esquire. 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. Juan Dela Torre, C.M.T., was issued Certificate No. 0019-009738 to practice as a massage therapist in Virginia on April 26, 2011. Said certificate expired on September 30, 2013.
2. During the course of his employment with Massage Envy, Arlington, Virginia, on May 17, 2013, while providing Client A with a massage, Mr. Dela Torre penetrated Client A's vagina with his fingers without her consent.
3. Client A reported the incident to the police the day the incident occurred. As part of the police investigation, Client A spoke with Mr. Dela Torre by telephone about the sexual assault several days after it occurred. On multiple occasions during the phone call, which was recorded by the police, Client A referred specifically to Mr. Dela Torre inserting his fingers into her vagina. At no time did Mr. Dela Torre deny that he had committed this act. During the phone call, he stated that what had occurred during the massage was

not intentional, was accidental, and that he was sorry for what happened. He never specified during the phone call for what he was apologizing.

4. Mr. Dela Torre's employment with Massage Envy was terminated.

5. Client A told the Department of Health Professions Investigator that she had felt Mr. Dela Torre brushed "her private area" but was not certain he had done so. She thus did not say anything until the next time she felt inappropriate touching and she felt his fingers in her vagina.

6. Mr. Dela Torre testified that Client A had been dressing in a more revealing manner for the massages leading up to the massage on May 17, 2013. He testified that he wondered if Client A was trying to send him a message through this change in appearance and he thought she was attracted to him.

7. Mr. Dela Torre testified that during the phone call referenced in Finding of Fact #4, he thought Client A was upset about his taking his shirt off, despite the numerous times she asked him why he had placed his fingers in her vagina. He also testified that he apologized on the phone call because he thought the new stretches he had done during Client A's massage seemed to have made her feel uncomfortable, despite the many times she asked about his placing his fingers in her vagina. When questioned by the Board, he stated that during the phone call when he apologized and said his actions were accidental and not intentional, he was referring to accidentally brushing her genitalia when kneading her thighs. He had testified earlier that he never touched her vagina but was close to her vagina while kneading her thighs. Nonetheless, when asked by his attorney, he stated that his apology was for taking his shirt off or for making her uncomfortable with the stretches he performed. He repeatedly testified that the only thing he did wrong during the massage was removing his shirt.

8. On October 11, 2013, Mr. Dela Torre pled guilty to misdemeanor sexual battery in connection with this incident in the General District Court of Arlington County, Virginia.

CONCLUSIONS OF LAW

The Board concludes that Finding of Fact No. 2 constitutes a violation of 54.1-3007(2), (5), and (8) of the Code and 18 VAC 90-50-90(2)(d) and (i) of the Regulations Governing the Certification of Massage Therapists, as referenced in Section XIV of the Code of Ethics of the National Certification Board for Therapeutic Massage and Bodywork.

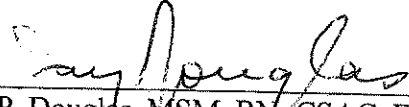
ORDER

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

1. The right of Juan Dela Torre, C.M.T., to renew Certificate No. 0019-009738 to practice as a massage therapist in the Commonwealth of Virginia is hereby REVOKED.
2. The certificate of Mr. Dela Torre will be recorded as REVOKED and no longer current. Pursuant to § 54.1-2408.2 of the Code, should Mr. Dela Torre seek reinstatement of his certificate after three years, 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. The reinstatement of Mr. Dela Torre's certificate shall require the affirmative vote of three-fourths of the members at a meeting of the Board.
3. At such time as Mr. Dela Torre 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 professional nursing.

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

February 14th, 2014

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, R.N., M.S.M., C.S.A.C., 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.

Certified True Copy
By 
Virginia Board of Nursing