

1 BEFORE THE ARIZONA BOARD OF MASSAGE THERAPY

2 In the Matter of:

3	)	<b>Case No. 14-120</b>
4	)	
5	)	<b>FINDINGS OF FACT, CONCLUSIONS OF</b>
6	)	<b>LAW, AND ORDER</b>
7	)	
8	)	

9  
10 On September 22, 2014, the Arizona Board of Massage Therapy (the Board) considered  
11 the State's Motion to Deem Allegations admitted. Elizabeth Campbell, Assistant Attorney  
12 General, appeared on behalf of the state. Chris Munns of the Solicitor General's Section of the  
13 Attorney General's Office was present and available to provide independent legal advice to the  
14 Board. Neither Respondent nor an attorney for Respondent was present.

15 After reviewing the record and hearing from the parties, the Board granted the State's  
16 Motion to Deem Allegations Admitted. Based upon A.R.S. § 32-4252(H) and the Complaint and  
17 Notice of Hearing filed in this matter, the Board issues the following Findings of Fact,  
18 Conclusions of Law, and Order.

19 **FINDINGS OF FACT**

20 1. On July 18, 2001, Respondent was convicted of Distribute, Deliver Manufacture/Produce  
21 (or Attempt to/Possess with Intent), a controlled Substance in Missouri Court Case No.  
22 16CR00007105.

23 2. On March 30, 2012, Respondent filed an application for licensure with the Board. On  
24 May 16, 2012, Respondent received his Arizona massage therapist license.

25 3. On October 30, 2012, in Pima County, Arizona, Superior Court Case No. CR20123072,  
26 Respondent was convicted of Solicitation to Possess a Narcotic Drug for Sale, Oxycodone, a  
27 Class 4 Felony, committed on or about July 27, 2012.

1 4. On October 3, 2013, in Tucson, Arizona, Municipal Case No. M-1041-CR-13104197.  
2 Respondent was convicted of Possession of Drug Paraphernalia, a misdemeanor, based upon  
3 charges filed on September 24, 2013.

4 5. On May 12, 2014, in Pima County, Arizona, Superior Court Case No. CR20140790,  
5 Respondent was convicted of Attempted Possession of a Narcotic Drug, Heroin, a class 5  
6 Felony, committed on or about February 2, 2014.

7 6. In Respondent's written statement to the Board received on May 16, 2014, Respondent  
8 admitted that he is addicted to drugs. Respondent is currently incarcerated based upon his drug-  
9 related offenses.

10 7. Respondent failed to notify the Board that he had been charged with the offenses listed in  
11 paragraphs 2 through 4 above within 10 days after the charges were filed.

#### 12 CONCLUSIONS OF LAW

13 1. The convictions and admission described above in the Findings of Fact paragraphs 1,  
14 and 3-6 are grounds for discipline under A.R.S. § 32-4253(A)(3) (Using drugs or intoxicating  
15 liquors to an extent that affects professional competency)

16 2. The felony convictions described above in the Findings of Fact, paragraphs 3 and 5, are  
17 grounds for discipline under A.R.S. § 32-4253(A)(4) (Being convicted of a felony or other  
18 offense involving moral turpitude or conviction for prostitution, solicitation or another similar  
19 offense. A conviction by a court of competent jurisdiction is conclusive evidence of the  
20 commission of the crime).

21 3. The conduct described in the Findings of Fact paragraphs 2-5 and 7 constitutes  
22 unprofessional conduct under A.R.S. § 32-3208(A) and (D), which provide that it is  
23 unprofessional conduct for a health professional who has been charged with a misdemeanor  
24 involving conduct that may affect patient safety or a felony after receiving or renewing a license  
25 or certificate to fail to notify the health professional's regulatory board in writing within ten  
26 working days after the charge is filed.

#### 27 ORDER

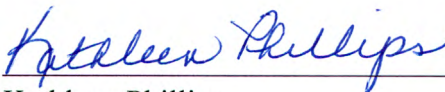
28  
29 **IT IS HEREBY ORDERED** that Respondent's license number MT-17335 is **REVOKED**.  
30

1  
2 **NOTICE**

3 Any aggrieved party may appeal this decision by filing a written request for Rehearing or  
4 Review with the Board within 30 days of service of this Decision. Service of this Decision is  
5 effective on personal delivery or **five** days after the date of mailing. A motion for Rehearing or  
6 Review shall conform to the requirements set forth in the Board's rules at A.A.C. R4-15-401 and  
7 shall be served on the opposing party. The filing of a Motion for Rehearing or Review is required  
8 in order to exhaust a party's administrative remedies. The failure to file a Motion for Rehearing  
9 or Review will preclude a party from seeking judicial review of this decision.

10 Dated and signed this 1st day of October, 2014.

11 ARIZONA BOARD OF MASSAGE THERAPY

12 By: 

13 Kathleen Phillips  
14 Executive Director  
15

16 ORIGINAL OF THE FOREGOING FILED

17 This 1st day of October, 2014 with the:  
18 Arizona State Board of Massage Therapy  
19 1400 West Washington, Suite 300  
20 Phoenix, AZ 85007

21  
22 EXECUTED COPY OF THE FOREGOING MAILED  
23 BY CERTIFIED & REGULAR FIRST-CLASS MAIL

24 this 1st day of October, 2014, to:

25  
26 Joseph Mathew Adams  
27 Address of Record  
28 Respondent  
29

30 COPY OF THE FOREGOING MAILED

31 this 1<sup>st</sup> day of October, 2014, to:  
32 Christopher Munns  
33 Assistant Attorney General  
34 1275 W. Washington Street, CIV/SGO  
35 Phoenix, Arizona 85007  
36 Attorney for the Board  
37

38 Elizabeth Campbell

1 Assistant Attorney General  
2 1275 W. Washington Street, CIV/LES  
3 Phoenix, Arizona 85007  
4 Attorney for the State  
5  
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*[Handwritten signature]*

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State of Arizona  
Arizona State Board of Massage Therapy

Executive Director: Kathleen Phillips

**Summary for Board Review June 23, 2014 Board Meeting**

**Case 14-120 Joseph Adams**

Documents were received pertaining to Mr. Adams and law enforcement contact and convictions in Pima County Arizona. Mr. Adams has failed to notify the Board within the 10 day period as required by our Rules and Laws. He applied for his massage license on March 30, 2012 and received his license on 05/16/201 with an expiration date of 03/23/2015. Mr. Adams checked all questions on page 3 of the application #17 through #26 with a checkmark in the NO boxes. This is incorrect according to the Arizona Superior Court of Pima County and the Tucson Municipal Court. Mr. Adams has several contacts with the courts immediately after the application for his massage license and receiving his massage license. He is currently incarcerated in the Arizona State Prison system.

**SYNOPSIS:**

Mr. Joseph Adams failed to notify the Board of his contact with law enforcement. This is in violation of **A.R.S. 32-3208 CRIMINAL CHARGES; MANDATORY REPORTING REQUIREMENTS; CIVIL PENALTY.**

Mr. Adams failed to notify the Board when he was found guilty by a Court of Law and was sentenced to serve time for a specific violation. This is in violation of **A.R.S. 32-4253 DISCIPLINARY ACTION; GROUNDS; DEFINITIONS.**

**A. The following are grounds for disciplinary action:**

1. Failing to meet or maintain the requirements for an original license under section 32-4222, subsection A.
2. Using fraud, deceit or misrepresentation in obtaining or attempting to obtain a license or the renewal or reinstatement of a license.
4. Being convicted of a felony or other offense involving moral turpitude or any conviction for prostitution, solicitation or another similar offense. A conviction by a court of competent jurisdiction is conclusive evidence of the commission of the crime.
16. Failing to adhere to the recognized standards and ethics of the massage therapy profession.
19. Failing to report to the board any act or omission of a licensee or applicant or any other person who violates this chapter.

Mr. Adams failed to meet the qualifications for licensure in violation of **A.R.S. 32-4222 QUALIFICATIONS FOR LICENSURE:**

7. Within five years preceding the date of the application, not have been convicted of:
  - (a) A class 1, 2 or 3 felony.
9. Not be currently under investigation, suspension or restriction by a political subdivision of this state or a regulatory agency in another jurisdiction in the United States for an act that occurred in that jurisdiction and that would be subject to discipline pursuant to this chapter. If the applicant is under investigation by a regulatory agency in another jurisdiction, the board shall suspend the application process and may not issue or deny a license to the applicant until the investigation is resolved.

**Staff recommendation:**

Mr. Joseph Adams has submitted his response to the allegations. It is recommended that this case be moved to Formal Hearing.

Respectfully Submitted at the June 23, 2014 Board Meeting,

A handwritten signature in cursive script that reads "Stanley Conger". The signature is fluid and extends to the right.

Stanley Conger  
Investigator III

1 TOM HORNE  
Attorney General  
2 (Firm State Bar No. 14000)  
3 ELIZABETH A. CAMPBELL  
Assistant Attorney General  
4 State Bar No. 018311  
1275 W. Washington, CIV/LES  
5 Phoenix, Arizona 85007-2997  
Tel: (602) 542-7681  
6 Fax: (602) 364-3202  
Attorneys for the State

7  
8 **BEFORE THE ARIZONA BOARD**  
9 **OF MASSAGE THERAPY EXAMINERS**

10 In the Matter of

11 **JOSEPHY MATTHEW ADAMS, LMT**

Board Case No. 14-120

12 Holder of License No. MT-17335  
13 As a Massage Therapist  
In the State of Arizona

**MOTION TO DEEM**

14

15 The State of Arizona hereby requests that the Arizona Board of Massage Therapy  
16 Examiners (the "Board") vacate the hearing set for September 22, 2014, at 9:00 a.m. and  
17 deem the allegations contained in the Board's Complaint and Notice of Hearing admitted  
18 pursuant to A.R.S. § 32-4254(H). A copy of the Complaint and Notice of Hearing is  
19 attached.

20

21 The Complaint and Notice of Hearing notified Respondent that, pursuant to A.R.S.  
22 § 32-4254(H), Respondent was required to prepare and file with the Board a written  
23 Answer to the allegations in the Complaint within 30 days after service. It further  
24 notified Respondent that the Board could consider Respondent's failure to respond within  
25  
26

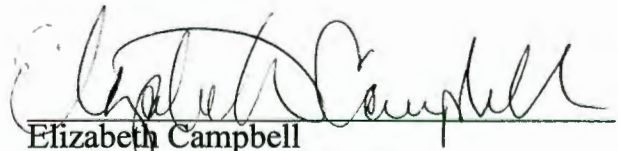
1 30 days an admission by default to the allegations stated in the Complaint and that the  
2 Board could then take disciplinary action without conducting a hearing.

3 The Complaint and Notice of Hearing was mailed by first-class and certified mail  
4 on August 4, 2014, to Respondent's address of record with the Board and to  
5 Respondent's attorney. Notice of a complaint and hearing is effective by a true copy of it  
6 being sent by certified mail to the licensee's last known address if record. A.R.S. § 32-  
7 4254(N). Notice of the complaint is complete on the date of its deposit in the mail. *Id.*

8 Respondent has failed to file an Answer within the time permitted by statute. As  
9 such, the State requests that the scheduled hearing be vacated and that the allegations  
10 contained in the Complaint and Notice of Hearing be deemed admitted pursuant to A.R.S.  
11 § 32-4254(H).  
12

13 RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of September, 2014.  
14

15 TOM HORNE  
16 Attorney General

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18 Elizabeth Campbell  
19 Assistant Attorney General  
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**BEFORE THE ARIZONA BOARD  
OF MASSAGE THERAPY EXAMINERS**

In the Matter of

**JOSEPH MATTHEW ADAMS, LMT,**

Holder of License No. MT-17335  
As a Massage Therapist  
In the State of Arizona

Board Case No. 14-120

**COMPLAINT AND NOTICE OF  
HEARING**

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**I. NOTICE OF PUBLIC HEARING**

YOU ARE HEREBY NOTIFIED, the Arizona Board of Massage Therapy  
("Board") will conduct an administrative hearing at the following place and time, to  
determine whether grounds exist to revoke or take other action regarding Massage  
Therapist License No. MT-17335 held by JOSEPH MATTHEW ADAMS  
("Respondent"):

**Arizona Board of Massage Therapy  
1400 West Washington, Basement Meeting Room B-1  
Phoenix, Arizona 85007  
On September 22, 2014, at 9:00 a.m.**

18 and continuing on successive days until concluding, concerning the matters set forth in  
19 this Complaint and Notice of Hearing, at which time and place, evidence, testimony and  
20 argument in support of the charges set forth in the Complaint will be presented. If you  
21 desire to make a defense to the charges at the hearing, you may appear at the hearing in  
22 person and may be represented by legal counsel and may at that time cross-examine the  
23 witnesses against you and present testimony of witnesses, evidence and argument in your  
24 own behalf.

25 After the hearing, if the Board determines that you have committed unprofessional  
26

1 conduct, or otherwise violated the Board's statutes and rules, the Board may revoke or  
2 suspend your license, impose a civil penalty of up to \$10,000 for each violation, issue a  
3 decree of censure, impose probation, order the payment of restitution, and/or take other  
4 disciplinary action. A.R.S. § 32-4254. If the Board determines that you have violated the  
5 Board's statutes or rules, it may also charge you the costs of the formal hearing. A.R.S. §  
6 32-4254(K).

7 **Whether or not you intend to appear at the hearing, pursuant to A.R.S. § 32-**  
8 **4254(H), YOU ARE REQUIRED to prepare and file a written Answer to the**  
9 **allegations alleged in the above Complaint with the Board within 30 days after**  
10 **service of this Complaint and Notice of Hearing.** Your Answer must be in writing and  
11 filed with the Board within thirty (30) days after service of the Complaint. *Id.* **THE**  
12 **BOARD MAY CONSIDER YOUR FAILURE TO RESPOND WITHIN THIS TIME**  
13 **AS YOUR ADMISSION BY DEFAULT TO THE ALLEGATIONS STATED IN**  
14 **THE COMPLAINT.** *Id.* The Board may then take disciplinary action without  
15 conducting a hearing. If you Answer and fail to appear for the hearing, the Board may  
16 proceed in your absence. If you desire to waive a hearing and not contest the facts herein  
17 alleged, you may file an Answer consisting of a declaration that the material allegations  
18 of the Complaint are admitted.

19 In accordance with Title II of the Americans with Disabilities Act (ADA), the  
20 Board does not discriminate on the basis of disability in admission to and participation in  
21 hearings. Should you, or anyone you call as a witness need special accommodations,  
22 please contact the Board office at (602) 542-8225 at least three working days before the  
23 hearing.

24 Pursuant to A.R.S. § 32-3206, you have the right to request a copy of the  
25 following information from the Board:  
26

- 1 1. Any review conducted by an expert or consultant providing an evaluation
- 2 of or opinion on the allegations.
- 3 2. Any records on the patient obtained by the board from other health care
- 4 providers.
- 5 3. The results of any evaluations or tests of the health professional conducted
- 6 at the board's direction.
- 7 4. Any other factual information that the board will use in making its
- 8 determination.

9 Please be advised that if you obtain the above-referenced information from the Board,  
10 you may not release it to any other person or entity or use it in any proceeding or action  
11 except the administrative proceeding or appeals related to the administrative proceeding.  
12 Violation of this restriction constitutes an act of unprofessional conduct per A.R.S. § 32-  
13 3206(B). Also, please be advised that pursuant to A.R.S. § 32-3206(C), you or your  
14 attorney may be charged for the cost of providing the information received up to the fee  
15 for making a copy of each page as prescribed by A.R.S. § 12-284(A).

16 Pursuant to A.R.S. § 41-1092.06, Respondent has the right to request an informal  
17 settlement conference by filing a written request with the Board, no later than twenty (20)  
18 days before the scheduled hearing. The conference will be held within fifteen (15) days  
19 after receipt of the request. Respondent waives any right to object to the participation of  
20 the Board's representative in the final administrative decision of the matter if it is not  
21 settled at the conference.

#### 22 PARTIES AND JURISDICTION

23 1. The Board is the duly constituted authority for licensing and regulating the  
24 practice of massage therapy in the State of Arizona.

25 2. Respondent held license number MT-17335, which allowed him to practice  
26 as a massage therapist in the State of Arizona. Respondent's license expired in March  
2014. Because Respondent was notified of the Board's investigation prior to the  
expiration of the massage license, the Board retains jurisdiction pursuant to A.R.S. § 32-

1 3202.

2 3. Under A.R.S. § 32-4201, *et seq.*, the Board possess jurisdiction over the  
3 subject matter and over Respondent as a licensee of the Board.

4 **FACTUAL ALLEGATIONS**

5 1. On July 18, 2001, Respondent was convicted of Distribute, Deliver  
6 Manufacture/Produce (or Attempt to/Possess with Intent) a Controlled Substance in  
7 Missouri Court Case No. 16CR00007105.

8 2. On March 30, 2012, Respondent filed an application for licensure with the  
9 Board. On May 16, 2012, Respondent received his Arizona massage therapist license.

10 3. On October 30, 2012, in Pima County, Arizona, Super Court Case No.  
11 CR20123072, Respondent was convicted of Solicitation to Possess a Narcotic Drug for  
12 Sale, Oxycodone, a Class 4 Felony, committed on or about July 27, 2012.

13 4. On October 3, 2013, in Tucson, Arizona, Municipal Case No. M-1041-CR-  
14 13104197, Respondent was convicted of Possession of Drug Paraphernalia, a  
15 misdemeanor, based upon charges filed on September 24, 2013.

16 5. On May 12, 2014, in Pima County, Arizona, Super Court Case No.  
17 CR20140790, Respondent was convicted of Attempted Possession of a Narcotic Drug,  
18 Heroin, a Class 5 Felony, committed on or about February 2, 2014.

19 6. In Respondent's written statement to the Board received on May 16, 2014,  
20 Respondent admitted that he is addicted to drugs. Respondent is currently incarcerated  
21 based upon his drug-related offenses.

22 7. Respondent failed to notify the Board that he had been charged with the  
23 offenses listed in paragraphs 2 through 4 above within 10 working days after the charges  
24 were filed.

25 ...

26

1 ALLEGED VIOLATIONS

2 1. The convictions and admission described above in the Factual Allegations  
3 paragraphs 1, and 3-6 are grounds for discipline under A.R.S. § 32-4253(A)(3) (Using  
4 drugs or intoxicating liquors to an extent that affects professional competency).

5 2. The felony convictions described above in the Factual Allegations  
6 paragraphs 3 and 5 are grounds for discipline under A.R.S. § 32-4253(A)(4) (Being  
7 convicted of a felony or other offense involving moral turpitude or conviction for  
8 prostitution, solicitation or another similar offense. A conviction by a court of competent  
9 jurisdiction is conclusive evidence of the commission of the crime).

10 3. The conduct described in the Factual Allegations paragraphs 2-5 and 7  
11 constitutes unprofessional conduct under A.R.S. § 32-3208(A) and (D), which provide  
12 that it is unprofessional conduct for a health professional who has been charged with a  
13 misdemeanor involving conduct that may affect patient safety or a felony after receiving  
14 or renewing a license or certificate to fail to notify the health professional's regulatory  
15 board in writing within ten working days after the charge is filed.

16 DATED this 4<sup>th</sup> day of August, 2014.

17 ARIZONA BOARD OF MASSAGE  
18 THERAPY

19 By: Kathleen Phillips  
20 KATHLEEN PHILLIPS  
21 Executive Director  
22  
23  
24  
25  
26

1 ORIGINAL OF THE FORGOING FILED  
this 4<sup>th</sup> day of August, 2014, with:

2 Arizona Board of Massage Therapy  
3 1400 West Washington, Suite 230  
Phoenix, Arizona 85007

4 COPY OF THE FOREGOING MAILED  
5 BY CERTIFIED & REGULAR FIRST-CLASS MAIL  
this 4<sup>th</sup> day of August, 2014, to:

6 Joseph Matthew Adams  
7 Address of Record  
Respondent

8 COPY OF THE FOREGOING MAILED  
9 this 4<sup>th</sup> day of August, 2014, to:

10 Christopher Munns  
Assistant Attorney General  
11 1275 W. Washington Street, CIV/SGO  
Phoenix, Arizona 85007  
12 Attorney for the Board

13 Elizabeth A. Campbell  
Assistant Attorney General  
14 1275 W. Washington Street, CIV/LES  
Phoenix, Arizona 85007  
15 Attorney for the State

16

17 S. Conger  
#4088537

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