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7 Attorneys for the State of Arizona

8  
9 **BEFORE THE ARIZONA STATE BOARD OF MASSAGE THERAPY**

10 In the Matter of

11 **KENNETH ADAMS,**

12 Holder of License No. MT-003189P  
As a Massage Therapist  
13 In the State of Arizona

Board Case No. 17-104

**CONSENT AGREEMENT  
FOR SURRENDER**

14  
15 In the interest of a prompt and judicious settlement of this case, consistent with the  
16 public interest, statutory requirements and the responsibilities of the Arizona State Board  
17 of Massage Therapy ("Board") under A.R.S. § 32-4201, *et. seq.*, Kenneth Adams  
18 ("Respondent"), holder of Massage Therapist License Number MT-003189P in the State  
19 of Arizona, and the Board enter into the following Recitals, Findings of Fact,  
20 Conclusions of Law and Order ("Consent Agreement") as a final disposition of this  
21 matter.

22 **RECITALS**

23 1. Respondent has read and understands this Consent Agreement and has had  
24 the opportunity to discuss this Consent Agreement with an attorney, or has waived the  
25 opportunity to discuss this Consent Agreement with an attorney.  
26

1           2.     Respondent understands that he has a right to a public administrative  
2 hearing concerning this matter, at which hearing he could present evidence and cross  
3 examine witnesses. By entering into this Consent Agreement, Respondent knowingly  
4 and voluntarily relinquishes all right to such an administrative hearing, as well as rights  
5 of rehearing, review, reconsideration, appeal, judicial review or any other administrative  
6 and/or judicial action, concerning the matters set forth herein.

7           3.     Respondent affirmatively agrees that this Consent Agreement shall be  
8 irrevocable.

9           4.     Respondent understands that this Consent Agreement or any part of the  
10 agreement may be considered in any future disciplinary action by the Board against him.

11          5.     Respondent understands this Consent Agreement deals with Board case  
12 number 17-104 involving allegations that Respondent engaged in conduct that would  
13 subject him to discipline under the Board's statutes and rules. The investigation into  
14 these allegations against Respondent shall be concluded upon the Board's adoption of  
15 this Consent Agreement.

16          6.     Respondent understands that this Consent Agreement does not constitute a  
17 dismissal or resolution of any other matters currently pending before the Board, if any,  
18 and does not constitute any waiver, express or implied, of the Board's statutory authority  
19 or jurisdiction regarding any other pending or future investigation, action or proceeding.

20          7.     Respondent also understands that acceptance of this Consent Agreement  
21 does not preclude any other agency, subdivision, or officer of this State from instituting  
22 any other civil or criminal proceedings with respect to the conduct that is the subject of  
23 this Consent Agreement.

24          8.     Respondent acknowledges and agrees that, upon signing this Consent  
25 Agreement and returning this document to the Board's Executive Director, he may not  
26

1 revoke his acceptance of the Consent Agreement or make any modifications to the  
2 document regardless of whether the Consent Agreement has been signed by the  
3 Executive Director. Any modification to this original document is ineffective and void  
4 unless mutually agreed by the parties in writing.


5 9. This Consent Agreement is effective only when signed by the Executive  
6 Director on behalf of the Board.

7 10. If a court of competent jurisdiction rules that any part of this Consent  
8 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement  
9 shall remain in full force and effect.

10 11. Respondent understands that this Consent Agreement is a public record that  
11 may be publicly disseminated as a formal action of the Board and may be reported as  
12 required by law to the National Practitioner Data Bank and the Healthcare Integrity and  
13 Protection Data Bank.

14 12. Respondent agrees that the Board will adopt the following Findings of Fact,  
15 Conclusions of Law and Order.

16  
17 ACCEPTED AND AGREED BY RESPONDENT

18  
19   
20 \_\_\_\_\_  
Kenneth Adams

Dated: 1/13/17

21  
22 ...  
23 ...  
24 ...  
25 ...  
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**FINDINGS OF FACT**

1  
2 1. The Board is the duly constituted authority for licensing and regulating the  
3 practice of Massage Therapy in the State of Arizona.

4 2. Respondent is the holder of license number MT-003189P to practice as a  
5 Massage Therapist in the State of Arizona. Respondent has been licensed as a massage  
6 therapist in Arizona since August 2004.

7  
8 3. On October 7, 2015, Respondent performed a massage on female massage  
9 therapy client JW. During the massage, Respondent touched JW's genitals.

10 4. Following this incident, Respondent initiated counseling with a licensed  
11 clinical therapist.

12  
13 5. Respondent's conduct constitutes grounds for discipline under A.R.S. § 32-  
14 4253(A)(10)(Engaging in conduct that could result in harm or injury to the public).

15 6. Respondent's conduct constitutes grounds for discipline under A.R.S. § 32-  
16 4253(A)(16) (Failing to adhere to the recognized standards and ethics of the massage  
17 therapy profession). A.R.S. § 32-4251(B) further requires that a massage therapist adhere  
18 to the recognized standards and ethics of the massage therapy profession. A licensee  
19 shall refrain from engaging in sexual activity with the client even if the client attempts to  
20 sexualize the relationship. A.A.C. R4-15-103(1)(H).

21 7. Respondent's conduct constitutes grounds for discipline under A.R.S. § 32-  
22 4253(A)(15)(Engaging in sexual activity with a client).

23 8. Respondent's conduct constitutes sexual activity pursuant to A.R.S. § 32-  
24 4253(B)(2)(a) ("Sexual activity" means sexual conduct). "Sexual conduct" means any  
25 direct or indirect touching, fondling, or manipulating of any part of the genitals or anus  
26

1 by any part of the body or by any object or causing a person to engage in that conduct.  
2 A.R.S. § 32-4253(B)(3).

3 **CONCLUSIONS OF LAW**

4 1. The Board possesses jurisdiction over the subject matter and over  
5 Respondent pursuant to A.R.S. § 32-4201 *et seq.*

6 2. The Board possesses statutory authority to enter into a consent agreement  
7 with a massage therapist and accept the surrender of an active license from a massage  
8 therapist who admits to having committed an act, which would subject him to discipline  
9 under the Board's statutes or rules. A.R.S. § 32-4254(O)(2).

10 **ORDER**

11 IT IS HEREBY ORDERED that License Number MT-003189P issued to Kenneth  
12 Adams to practice as a massage therapist in the State of Arizona is hereby  
13 SURRENDERED.

14 DATED this 28th day of February, 2017.

15  
16 ARIZONA STATE BOARD OF MASSAGE  
17 THERAPY

18 (Seal)

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

1 ORIGINAL OF THE FORGOING FILED  
this 28<sup>th</sup> day of Feb, 2017, with:

2 Arizona State Board of Massage Therapy  
3 1700 West Washington, Suite 250  
4 Phoenix, Arizona 85007

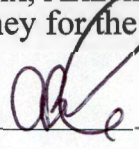
5 EXECUTED COPY OF THE FOREGOING MAILED  
BY CERTIFIED MAIL  
this 28<sup>th</sup> day of Feb, 2017, to:

6 Kenneth Adams  
7 Address of Record  
8 Respondent

9 EXECUTED COPY OF THE FOREGOING MAILED  
this 28<sup>th</sup> day of Feb, 2017, to:

10 Zachary W. Schon, Esq.  
11 FARHANG & MEDCOFF  
12 4801 E. Boardway, Suite 311  
13 Tucson, Arizona 85711  
14 Attorney for Respondent

15 Elizabeth A. Campbell  
16 Assistant Attorney General  
17 1275 W. Washington Street, CIV/LES  
18 Phoenix, Arizona 85007  
19 Attorney for the Board

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